



Our reference: OTP-CR-220/17

The Hague, 18 July 2017

Dear Sir, Madam

The Office of the Prosecutor of the International Criminal Court acknowledges receipt of your documents/letter.

This communication has been duly entered in the Communications Register of the Office. We will give consideration to this communication, as appropriate, in accordance with the provisions of the Rome Statute of the International Criminal Court.

Please note this acknowledgement letter does not mean an investigation has been opened, nor that an investigation will be opened by the Office of the Prosecutor.

As soon as a decision is reached, we will inform you, in writing, and provide you with reasons for this decision.

Yours sincerely,

Mark P. Dillon  
Head of Information & Evidence Unit  
Office of The Prosecutor

U Ne Oo

## ENSLAVEMENT IN MANUS ISLAND AND NAURU

### Summary of Allegations

1. The Commonwealth Government of Australia has perpetrated the crime against humanity of enslavement of asylum-seekers. A total of 2,200 asylum-seekers, who are of entirely civilian characters have been confined in Manus Island of Papua New Guinea and in Republic of Nauru for four years. The detention companies Broadspectrum and Ferrovia have co-perpetrated in the crime of enslavement. The governments of Papua New Guinea and Republic of Nauru also have co-perpetrated in this crime.

### **The Author's Statement**

2. I, U Ne Oo, resident of Ryde NSW 2112 Australia, respectfully submit this communication to the Office of the Prosecutor of International Criminal Court under Article 15 of Rome Statute. I am a private citizen and I am not a member of, or in association with, any political parties. This communication is also intended for the members of public to assist in their campaigns to free asylum-seekers from Australian-run offshore processing centres. As an independent grassroots refugee-rights activist, I urge fellow Australians as well as international citizens, and that of all organisations of legal and professional standings, to assist the Office of the Prosecutor and ICC to deliver justice for those enslaved asylum-seekers.

### **Preamble**

3. In international law, the enslavement is defined as the exercise of any or all of the powers attaching to the right of ownership over a person<sup>1</sup>. Under this definition, whether a person has been enslaved is not necessarily determined by his/her condition of living or the degrees of confinement of which he/she has been under; although these factors can be indicators of enslavement. The enslavement is measured by a person's ability to enjoy the freedom and that of individual liberty. When the enslavement of persons has been taken place in a widespread or systematic manner, this is considered as the crime against humanity.

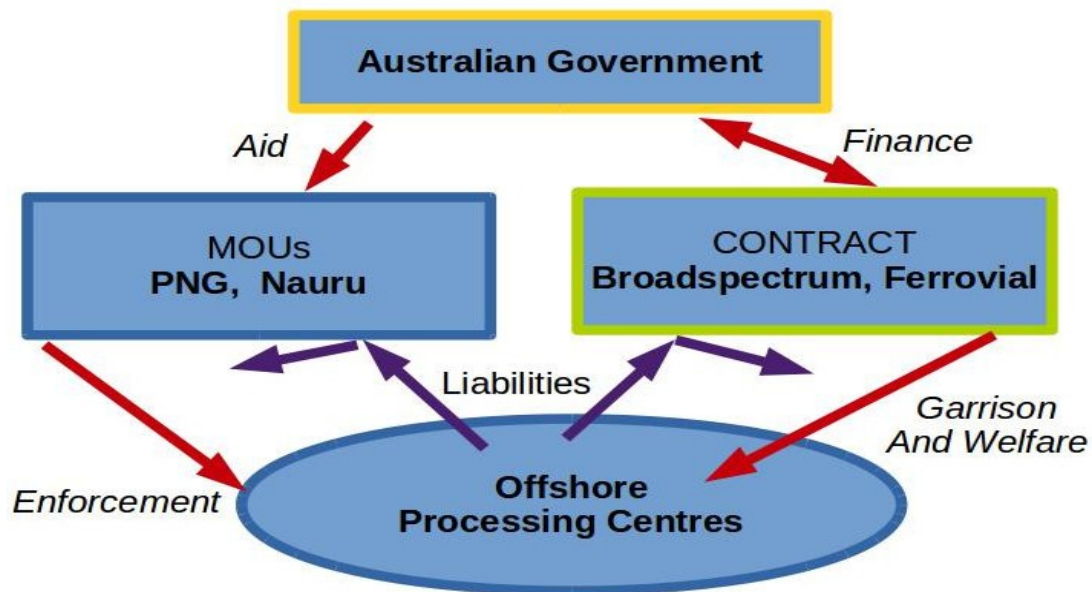
The Article 7(1) (c) of Rome Statute and the Elements of Crime define the crime against humanity of enslavement as:

1. The perpetrator exercised any or all of the powers attaching to the right of ownership over one or more persons, such as purchasing, selling, lending or bartering such a person or persons, or by imposing on them a similar deprivation of liberty.
2. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.
3. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

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1 “the exercise of any or all of the powers attaching to the right of ownership over a person” is a legal definitional syntax of slavery/enslavement. How to read and interpret that sentence, along with real-life international examples of slavery/enslavement can be found in the two chapters ( 3 & 6 ) from the book “Slavery in International Law”, written by international legal scholar, Prof. Jean Allain of Queen's University, Belfast, UK.  
(Download => [http://www.netipr.org/saorg/docs/20120101\\_jean-allain-slavery.pdf](http://www.netipr.org/saorg/docs/20120101_jean-allain-slavery.pdf))

4. In this case of Commonwealth Government of Australia ("the government") and the asylum-seekers, the government *de facto* exercises the powers attaching to the right of ownership over asylum-seekers. The Australian government, by means of Memorandum of Understandings (MOU) with the governments of Papua New Guinea and Nauru, has delegated the powers for detaining and confining of asylum-seekers. Then, Australian government is able to *de facto* exercise the powers attaching to the right of ownership over asylum-seekers. The government has set up the Regional Processing Centres ("RPCs") under those MOUs since 2012. For the day-to-day operation of RPCs, the government has given private contracts, mainly, to an influential Australian infrastructure company, Broadspectrum (formerly Transfield Services P/L).



***The Blueprint for Enslavement:*** A pre-conceived plan to deflect the complaints and liabilities against Australian Government.

5. Although sovereign and independent states, the Republic of Nauru and Papua New Guinea, practically, are dependent upon financial aid and assistance from Australia. These regional governments, therefore, are in no position to resist any request made by the Australian government. As for the Broadspectrum, there has been an obscene amount of profits gaining from the contracts with Australian government for running RPCs <sup>2</sup>. Recent Amnesty International report also described <sup>3</sup>:

According to information from the Australian Government's contracts website, the combined total value of that contract is currently AUD\$2.5 billion (US\$1.9 billion) over three and a half years. The Australian National Audit Office (ANAO) has estimated that holding people in the RPCs under the current contract with Broadspectrum cost the Australian Government over AUD\$573,000 (then USD\$427,611) per person, per year as of December 2015.

6. As noted above, the government has the incentives for maintaining the RPCs for period longer than necessary so as to gain financial profits for the detention companies. The

<sup>2</sup> 2015-November, Business in Abuse by GetUP. See. pp. 17 "The role of Transfield in Australia's offshore detention regime". [https://d68ej2dhhub09.cloudfront.net/1321-NBIA\\_Report-20Nov2015b.pdf](https://d68ej2dhhub09.cloudfront.net/1321-NBIA_Report-20Nov2015b.pdf)

<sup>3</sup> <https://www.amnesty.org.au/report-treasure-iland-corporate-giant-ferrovial-making-millions-from-australias-torture-of-refugees-on-nauru/> AI Index ASA 12/5942/2017, April 2017.

purpose of this communication is to establish whether the government has intentionally sought to prolong confinement of the asylum-seekers at RPCs, thereby violating the criminal laws within the meaning of Article 7(1)(c) of Rome Statute. To do so, we are being guided by the findings of International Criminal Tribunal on former Yugoslavia<sup>4</sup>, the conclusion of which it indicates the criminal enslavement of a person as:

Para 540. Thus, the Trial Chamber finds that the *actus reus* of the violation is the exercise of any or all of the powers attaching to the right of ownership over a person. The *mens rea* of the violation consists in the intentional exercise of such powers.

The Special Court for Sierra Leone made similar conclusion as:

Para 747: ..... enslavement as a crime against humanity was the “exercise of any or all of the powers attaching to the right of ownership over a person. The *actus reus* of enslavement is the exercise of those powers, and the *mens rea* is the intentional exercise of such powers.”

7. The approach taken in this communication to analyse the patterns of enslavement<sup>5</sup> and also to count the incidents of crime has been as follows:
  - (i) When the government exercises powers to coerce asylum-seekers to stay longer than necessary in RPCs, it will be counted as the government having criminal intention, *mens rea*, of enslavement.
  - (ii) When the government exercises or de facto exercises the powers attaching to the right of ownership over asylum-seekers, it will be counted as the government's criminal conduct, *actus reus*, of enslavement. In this case, the *mens rea* is also obvious.
  - (iii) On every case of crime incidents, it's necessary to identify that the violations are widespread or systematic.
8. In order to meet the threshold of the crime against humanity, we must firstly look at the elements of crime (2) and (3) of Rome Statute, of which the targeted population are civilians and the *attack* must be *widespread or systematic*<sup>6</sup>. The Rome Statute requires that the attack occurred either on a widespread basis or in a systematic manner in order to exclude isolated or random acts.

### **Allegations Against the Government**

9. In 2012, the Australian Labour government had reintroduced offshore detention for asylum-seekers who arrived by boat. The then Labour government had signed MOUs with the PNG and Nauru and start transferring unauthorised boat arrivals to these offshore/regional processing centres (“RPCs”). During that time, an influential Australian infrastructure

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4 2001-Feb-22. International Tribunal for Former Yugoslavia, IT-96-23-T & IT-96-23/1-T.

5 This analysis closely follows the pattern checks outlined in Chapters 3 & 6 of Jean Allain's writings: “Slavery In International Law”.

6 2007 June 20: The Special Court for Sierra Leone, Case File: SCSL-04-16-T.

*Para 214.* An ‘attack’ has been defined as a “campaign, operation or course of conduct directed against a civilian population and encompasses any mistreatment of the civilian population”.

*Para 215.* International Tribunals have defined the term “widespread” to denote “massive, frequent, large-scale action, carried out collectively with considerable seriousness and directed at multiple victims”; and the term “systematic” to denote “organised action following a regular pattern and carried out pursuant to a pre-conceived plan or policy, whether formalised or not.”

company, Transfield Services P/L (renamed in 2015 as Broadspectrum), had entered into offshore detention business. The initial set up and operation of RPCs, as being claimed by the then Labour government, was to send message of deterrent to would be asylum-seekers and people smugglers.

10. It appeared the Labour government had set up RPCs as policy manoeuvre to create a circuit breaker for intensified people smuggling activities. The RPCs were not actually meant to operate for long term <sup>7</sup>. A fair point can be made is that the large-scale unauthorised boat arrivals are disturbing local politics and unacceptable to most Australians. Then again, globally, there are refugees trying to escape from dire circumstances, who will never hesitate to take any risk. This refugees taking risks, combined with people smugglers' drive for profits can produce a dangerous and unpredictable outcomes. In this context, the government should be given some room to make policy manoeuvre and make a circuit breaker, provided that the government respects '*right to life*' of asylum-seekers <sup>8</sup>. Having said that, once the crisis is over, the government must also make the priority to solve the case of vulnerable people who, basically, are the victims of human trafficking <sup>9</sup>.
11. The unfortunate fate of asylum-seekers was that the primary purpose of RPCs turned out not as planned. In August 2013, the LNP Government <sup>10</sup> had won the general election primarily on anti-boatpeople and anti-asylum-seekers platforms. Subsequently, the LNP Government launched high media profile Operation Sovereign Borders, with all the operational details have been made secretive. The Labour government's initial purpose of deterrent measures for RPCs appeared to have evolved into the enslavement of asylum-seekers <sup>11</sup>. ***The Australian government has therefore enslaved 2,200 asylum-seekers from the period of 14-October-2013 <sup>12</sup> to 30-June-2017.*** The enslaved asylum-seekers are being confined in Manus Island of Papua New Guinea and the Republic of Nauru.
12. Before being transported to the RPCs, these asylum-seekers had entered Australian territory in July-Aug 2013 by peaceful means and with the purpose of seeking asylum. Upon arriving Australia, they were prepared to lawfully submit themselves to relevant immigration

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7 <http://www.canberratimes.com.au/comment/malcolm-turnbull-has-sunk-to-a-new-low-over-refugees-to-hang-on-to-his-job-20161101-gsfbui.html>

8 In historical contexts, regarding with the circuit-breaker for large scale people smuggling and to stop unauthorised arrivals to Australia, there had been an incident that has acted as such. In 2003, a suspiciously overloaded asylum-seeker boat, now known as SIEV-X, had sunked and killed total of 352 persons onboard, including 142 women and 146 children. See <http://www.sievx.com>

9 Enclosure I. Letter to Hon. Andrew Wilkie.

10 Liberal and National Coalitions Party, the incumbent government since August 2013.

11 2016-Sep-17, The Saturday Papers. See the section on "Transfield awarded Manus without proof of efficiencies". DIBP contracts with Transfield offshore activities were being consolidated after August 2013.

<https://www.thesaturdaypaper.com.au/news/immigration/2016/09/17/transfields-11b-offshore-processing-contract-farce/14740344003749> (or)

[http://www.netipr.org/saorg/docs/20160917\\_transfield-offshore-processing-contract-farce.pdf](http://www.netipr.org/saorg/docs/20160917_transfield-offshore-processing-contract-farce.pdf)

12 The starting date (14-Oct-2013) is this author's assertion and it's not arbitrary. The date coincide with Transfield Chief was inducted into Prime Minister Tony Abbott's offices. See the Saturday paper . Anyone in public who may find contrary to that date, or like to change that date, please send your correspondence directly to the Office of the Prosecutor of International Criminal Court.

authorities in order to take a fair and reasonable chance for applying asylum. ***These 2,200 persons now being held in Manus Island and Nauru are entirely of civilian in character and include many women and children.***

13. Global Legal Action Network (GLAN) has chronicled the characteristic of Australian government's attack on these asylum-seekers in its communication to the ICC <sup>13</sup>. In Part III (Para 1 &2) of its submission, the widespread and systematic nature of attack is described as:

In the present case, the course of conduct constituting the attack contains acts of both legislative, administrative and physical violence. Through legislative, judicial, and executive schema, individuals associated with the Australian government developed and implemented a policy against refugees and asylum seekers.

The attack on asylum-seekers has come from the governmental level and therefore the attack-actions bear the responsibility of State. In the Part III of its submission, GLAN noted about the asylum-seekers confined at RPCs as:

They are, instead, a deliberately selected group of individuals, defined by their lack of power or political authority, exploited by the Australian government to pursue a policy of immigration deterrence.

14. These asylum-seekers, indeed, have no political representation, such as strong connexion with constituents, within Australia. There, of course, are vocal and vibrant refugee-rights activists. However, they are very much in minority and the government considered them “politically expendable”.



*Politically Expendable? Atcivists unfurled banner on Australian Parliament House, calling for the closure of RPCs.*

15. Although, the small bands of refugee supporting activists on their own are politically expandable, in politics, unpredictable things can happen and that, in such event, public opinions may unexpectedly turn against the government's offshore detention policies. Therefore, while the government is keeping asylum-seekers in remote Pacific Islands, it has make political cover-ups where necessary and, with the help of corporate mass media, carefully manages information about the RPCs. In the following two examples, the systematic and organised nature of collusions between the government, business and mass media to politically manage government's offshore detention policy, and hence, protecting the enslavement process <sup>14</sup>.

<sup>13</sup> <https://assets.documentcloud.org/documents/3461339/Communication-Regarding-the-Situation-on-Manus.pdf>

<sup>14</sup> See also, Enclosure (I), Letter to Hon. Andrew Wilkie.

16. The political cover-up of boat turnback agreement with Indonesia: The secrecy on the government handling of asylum-seekers under Operation Sovereign Borders, especially, the Australian Navy turning back of asylum-boats has been the subject of many parliamentary inquiries. The enclosed analysis had shown that the governments of Indonesia and Australia had signed a bilateral agreement to return asylum-seekers departing from Indonesia<sup>15</sup>. The Australian government's silence on this bilateral agreement has been, therefore, to create public perception that the offshore detention regime is the only policy action that has been contributing to stop the asylum-boats.

This political cover-up about OSB is to create policy environment conducive to offshore detention policy and, hence, to support the enslavement process. This cover-up conduct by the government may be taken into account, not directly as criminal intents and knowledge of the crime of enslavement, *mens rea*, but as an indicator. From this conduct of political cover-up, one can draw inference on the characters of perpetrators who commit the crime of enslavement are of as well-organised, systematic and sophisticated.

17. Corporate media filtering of sensitive information about RPCs: There have already been enough reports about the government making threat on whistle blowers with regards to RPCs<sup>16</sup>. The government has also applied threats and intimidation on personnel within its civil servant structure regarding with RPCs. For example, the Attorney-General pressured the Australian Commissioner for Human Rights to resign linking critical report regarding with children in RPCs<sup>17</sup>. Whilst the government try to conceal any concrete information that may cause damages to its offshore detention policies, the other news that the government cannot have been filtered by the mass media. One such instance was seen on the Christmas Eve of 2016.



*Manus RPC inmates holding memorial for Faysal Ahmed (photo. inset)*

A Sudanese asylum-seeker Faysal Ishak Ahmed died on the 23<sup>rd</sup> of December 2016. Faysal appeared to have had certain heart conditions. Faysal had been making several unsuccessful attempts for six months, in order to get treated at the clinic at Manus Island RPC. Leads up to the Christmas, there were leaked emails on the death in 2014 of another asylum-seeker at

15 Enclosure II. OSB and Cover-ups.

16 GLAN Report, Part II, 2. (B)

<https://assets.documentcloud.org/documents/3461339/Communication-Regarding-the-Situation-on-Manus.pdf>

17 <https://www.theguardian.com/australia-news/2015/feb/13/brandis-asked-gillian-triggs-to-resign-before-critical-child-detention-report>

RPC<sup>18</sup>. Those leaked emails suggest the immigration department was responsible for the delay in evacuation of severely ill asylum-seeker. Therefore, another tragic death of Faysal Ahmed on Christmas Eve might have aroused the sympathy in Australia for asylum-seekers. The mass media, therefore, have created the news 'blackout' on the death of Faysal on Manus Island RPC<sup>19</sup>.

This is an example where mass media colluding with the government by carefully calibrating public opinions about the offshore detention policy. This mass media conduct, whilst not a crime in itself, but it is to be taken as the indicator for a well-organised, sophisticated and systematic characters of the perpetrators of the crime of enslavement.

***In sum, on Australian government's enslavement of the asylum-seekers, it will be found that, the perpetrators have conducted the crime in a well-organised and systematic manner.***

## **The Crime of Enslavement**

That slavery is ultimately about control. Control which deprives a person, in a significant manner, of their individual liberty or autonomy; and ultimately, that this control is meant to allow for exploitation and is typically maintained through coercion or violence.<sup>20</sup>

18. The core of enslavement is exploitation of human being who has been kept under control. On examining any condition of slavery, one must look into individual cases and how the control is affecting personal liberty. We must also look at the substance of the practice that manifests the exercise of any or all of the powers attaching to the right of ownership over a person. Following is a non-exhaustive list of cases and incidents where the enslavement of persons has been observed.
19. The government lending asylum-seekers to be used for profit<sup>21</sup>: While the asylum-seekers are confined in RPCs, the Australian government had lent them to the detention companies to be used as immigration detainees<sup>22</sup>. To be recognised here is, in this particular instance of enslavement, the exaction of labour from the enslaved wasn't required for exploitation. The detention companies only need to show that a sizeable numbers of asylum-seekers have been maintained at the RPCs. On international scene, one such example of lending, or transfer, of persons for profit which tantamount to enslavement has been noted by UN

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18 <https://www.theguardian.com/australia-news/2016/nov/28/delay-to-treatment-of-hamid-kehazaei-before-he-died-revealed-in-leaked-files>

19 Enclosure III. The Report Card on Scapegoating.

20 Quote from Jean Allain, Chapter 3, Slavery. [http://www.netipr.org/saorg/docs/20120101\\_jean-allain-slavery.pdf](http://www.netipr.org/saorg/docs/20120101_jean-allain-slavery.pdf)

21 pp.22, Slavery. “ A further power attaching to the right of ownership stemming from the use of a person, in the context of slavery – where control tantamount to possession is present – is to profit from the use of a person. While we might ordinarily think of a person profiting from another person in the sense of making money from them, in property law the concept would go further so that slavery might include profit which emerges from the mortgaging of a person, from a person being let for profit, or being used as collateral.”

22 The Australian Government had given contract to Transfield Service P/L to maintain RPCs since 2012. However, the mode of operation for RPCs changed around 14-Oct-2013 and turned into profit makings with enslavement of asylum-seekers. See para 11.



Special Rapporteur on Contemporary Form of Slavery as <sup>23</sup>:

The Special Rapporteur also received information about the 'lend or rent of children' for small amounts of money for the entire period of work ranging from 30 to 80 dollars to 'help' those to whom they have been lent in a wide variety of tasks. During the time children are lent, they are left at the full mercy of their 'tenants' and their parents are unaware of the whereabouts or occupation of their children.

***Therefore, within the meaning of Rome Statute, the element of crime 7(1)(c) 1, by lending the asylum-seekers to the detention companies, the Australian government have exercised the powers attaching to the right of ownership over asylum-seekers. This is actus reus of enslavement.***

20. In order to make various claims of expenses from the Commonwealth Government, the detention companies need a good sized number of asylum-seekers under their care. In order to maintain sizeable number of detainees at the RPCs, the government has been taking certain coercive actions. From these actions, the government's criminal intention, *mens rea*, to keep asylum-seekers in RPCs will be evident. In this communication, I will choose to present only the substantive actions of that nature. Other non-substantive actions, which might have fallen in the category of government campaigns and propaganda that supporting the offshore detention policy will be omitted.
21. Failing to process asylum-seekers at RPCs: Whenever there have been a mixed caseload of asylum-seekers, it is a common sense, or even customary to sort out the refugees from non-refugees. This kind of preliminary assessment shouldn't take more than 90 days. However, the Amnesty International in its May 2014 reported of the Australian government had taken no actions on assessment even after 18 months <sup>24</sup>:

There appears to have been little or no effort by the Australian and Papua New Guinean governments to address the recommendations ..... The primary concerns around arbitrary and indefinite detention and lack of clear plans for processing and resettlement of asylum seekers remain unaddressed .... not a single refugee assessment has been made in more than 18 months since the centre was first opened.

The Australian government's failure to process the asylum-seekers within the 18 months time frame must be seen in comparable regional contexts.

During Asian boat crisis in May 2015 <sup>25</sup>, the Burmese Navy had intercepted and taken into custody of about 700 victims of human-trafficking. Those victims consist of mixed Bangladesh and Burmese nationals. Burmese military junta had been well known for its records of human rights violations. Never the less, within a period of six months in December 2015, the status of all detainees were determined and the trafficking victims were returned or being received by their countries of origins <sup>26</sup>. Therefore, the Australian government's failure to process, or at least to sort out, the status of asylum-seekers for 18

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23 United Nations, General Assembly, Human Rights Council, Report of the Special Rapporteur on Contemporary Forms of Slavery, including its Causes and Consequences, Gulnara Shahinian, UN Doc. A/HRC/15/20/Add.3, 20 June 2011, p. 13.

24 AI ASA12/002/2014, 14 May 2014. <https://www.amnesty.org/en/documents/asa12/002/2014/en/>

25 UNHCR report on Mixed Maritime Movements. <https://unhcr.atavist.com/mmm2015>

26 <http://burmese.voanews.com/content/migrant-from-bangladesh/3113563.html>

month tantamount to a deliberate action to maintain sizeable numbers of asylum-seekers at RPCs. ***The Australian government failure to process asylum-seekers for unreasonably long period has showed that the government has the criminal intention, mens rea, to maintain the RPCs.***

22. Constructing resettlement failure with Cambodia: Due mainly to criticism, the government in September 2014 announced those who found to be refugees in Nauru RPC will be resettled in Cambodia <sup>27</sup>. The MOU with Cambodian government was reportedly signed. However, it is well known fact that Cambodia is an impoverished country, which has no capacity to resettle refugees. The government ***knowingly*** <sup>28</sup> arranged resettlement agreement with Cambodia that no refugees in RPCs will choose to go there. ***The Australian government knowingly making such a failed resettlement arrangement is the mens rea of enslavement, of which the government's primary intention is to keep the asylum-seekers remaining in the RPCs.***
23. An observation needs to be made about the LNP government's policy and practices in regard to refugee issues. Aside from noted disrespect for human rights in general, the government consider the issues of refugees and asylum-seekers only within the contexts of domestic public opinion. The LNP government has no substantive policy to deal with refugees and asylum-seekers issues. The measures described by the government as regards resettlement of refugees in Nauru, PNG and Cambodia (see Enclosure IV) are not substantive efforts to solve the caseload from the RPCs. These are the collection of government's response made, partly media driven and on ad-hoc basics, with regards to asylum-seeker issues.
- For example, the so-called US-Australia refugee swap deal is not a pre-conceived policy/plan by the government. It is a media driven item, being picked-up by the government. This can be inferred from the fact that, when the Obama Administration was still in its office, the deal was mentioned by Whitehouse Officials at least twice but, without directly 'acknowledging' or 'confirming' such a deal exists <sup>29</sup>, <sup>30</sup>.
24. Attempting to Enact Regional Processing Cohort Bill (2016) <sup>31</sup>: In order to maintain sizeable number of asylum-seekers at the RPCs, the government has attempted to enact a legislation which will prohibit the refugees from RPCs coming to Australia. Following is the description of events that took place in order of sequence.
- On 30 September 2016, the Department of Immigration and Border Protection announced the results of refugee assessment outcomes, which are of 652 refugees on Manus

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<sup>27</sup> <https://www.theguardian.com/world/2014/sep/26/australia-signs-refugee-deal-cambodia>

<sup>28</sup> Rome Statute, Article 30, Mental Elements: (1) Unless otherwise provided, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court only if the material elements are committed with intent and knowledge. (2). For the purposes of this article, a person has intent where: (a) In relation to conduct, that person means to engage in the conduct; (b) In relation to a consequence, that person means to cause that consequence or is aware that it will occur in the ordinary course of events. (3). For the purposes of this article, 'knowledge' means awareness that a circumstance exists or a consequence will occur in the ordinary course of events. 'Know' and 'knowingly' shall be construed accordingly.

<sup>29</sup> <https://obamawhitehouse.archives.gov/the-press-office/2016/12/02/press-briefing-principal-deputy-press-secretary-eric-schultz-1222016>

<sup>30</sup> <https://www.facebook.com/groups/115101638182/permalink/10154598290983183/>

<sup>31</sup> <https://www.legislation.gov.au/Details/C2016B00177>

Island and 942 in Nauru<sup>32</sup>. The government has always been under pressure – though being able to ignore so far – from the refugee supporters to bring those refugees and asylum-seekers to Australia.

On 30 November 2016, the Prime Minister Malcolm Turnbull announced the government would be enacting the 'life-time visa ban' for anyone on Manus Island and Nauru coming to Australia<sup>33</sup>. Only after the Senate cross-bench and Opposition members opposed that legislation; and the refugee support groups threatened with international boycott actions<sup>34</sup>, the government appeared to have backed-down (but not withdraw that draft bill). The so-called US/Australia refugee swap was announced within the context of introducing the Regional Processing Cohort Bill. From this, we can draw inference that the government had the intention to keep sizeable numbers of asylum-seekers at the RPCs. ***Therefore, the government has the mens rea of enslavement of the asylum-seekers.***

## Deprivation of liberty

25. The notions of liberty and freedom are antithesis to slavery. On setting threshold tests on liberty, one must carefully examine the relationship between the enslaved (slave) and the perpetrator of enslavement (slave-owner). We must look into questions as to what kind of liberty an enslaved person would have wanted and what kind of freedom the perpetrator will grant, if any, to the enslaved.

For a slave-owner, the first priority is to keep his slaves in status quo, so long as they are being profitable. Therefore, a slave-owner will deny the slaves of their liberty to be free from enslavement. As for the enslaved person, the most important thing will be to free himself/herself from the status or condition that he/she has been in. Therefore, for the asylum-seekers in RPCs, the most important liberty is the one that enable them to be free from their current states of legal limbo.

Interestingly, in one of the government's replies mentioned about the situation of detention at RPCs<sup>35</sup>, which said:

There is no detention on Nauru. The Nauru RPC operates as an open centre and transferees are free to come and go at any time without restriction. Transport is provided to assist transferees to move around Nauru.

One must stress that those asylum-seekers at RPCs required are not the freedom to board a bus and the liberty to enjoy a film at the cinema. They need the liberty to change the status and the condition they are in.

As it has been stated in Para. 12, these asylum-seekers primary intention were – within a fair and reasonable means -- to apply for asylum in Australia. The asylum-seekers in RPCs were refused of Australian legal counsel, and they were not permitted to make phone calls to UNHCR<sup>36</sup>. ***This government's action tantamount to criminal conduct,***

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32 <http://newsroom.border.gov.au/channels/Operation-Sovereign-Borders/releases/operation-sovereign-borders-monthly-update-september-3>

33 <http://www.abc.net.au/news/2016-10-30/manus-nauru-refugees-asylum-seekers-to-be-banned-turnbull-says/7978228>

34 <http://www.netipr.org/saorg/node/38>

35 Enclosure IV: Reply letter from Hon. Peter Dutton, Immigration Minister.

36 GLAN submission to ICC, p. 43: Amnesty International noted that “access to the website of the UNHCR was blocked until detainees complained during UNHCR’s last visit to the centre” and that “phone calls to the UNHCR office were still blocked” when Amnesty International visited

*actus reus, in depriving liberty of the asylum-seekers.*<sup>37</sup>

26. At this point, an observation needs to be made. In Australia, under the regimes of mandatory or indefinite detentions, the governmental control has been applied on immigration detainees, thereby not allowing legal counsel & NGOs to see the detainees. The government's action of controlling on detainees and the legal counsel has been condemned, normally, as the violation of human rights and depriving detainees' personal liberty. Such government's violations now have transgressed into criminal activities within the meaning of Rome Statute 7(1)(c). The government has now crossed the boundary of criminality, because the government on one hand is applying control on detainees whilst the other hand has been exploiting those detainees for pecuniary gains. This is slavery. See also paragraph 18.
27. The Case of Loghman Sawari: On early 2017, an asylum-seeker by the name of Loghman Sawari had fled from Manus Island to Fiji to apply for asylum. That young man Sawari was still a 17 years old minor when he was transferred to Manus Island RPC in 2013. The detention guards reportedly assaulted Sawari while he was in detention. He was released into PNG community in City of Lae and soon found himself on the street. To note, the so-called PNG resettlement plan is another mens rea of the violations in enslavement; for PNG is not in a position to offer any permanent refugee resettlement (case not detailed in this communication). The Australian authorities thoughtless treatment of this young man Sawari needs a thorough condemnation. I shall however focus now on the aspects of deprivation of his liberty.



*The slaves must never see a Spartacus in victory: Fijian authorities deporting Loghman Sawari back to PNG.*

in November 2013.<sup>318</sup> Additionally, “after the [mid-February 2014 violence], access to the internet was turned off . . . reventing the asylum seekers from contacting the outside world” possibly until 3 March 2014.

- <sup>37</sup> This is Breaking People, AI Index ASA12/002/2013: Violation of Right to a fair process: P.89 “ Most asylum seekers detained on Manus Island have not yet been afforded a hearing on their claim to refugee status. They have not been informed of what the Refugee Status Determination processes are. Indeed, very few asylum seekers have been able to present claims, and even fewer have had hearings on those claims.”

Loghman Sawari's adventure for seeking asylum in Fiji has been cut short, as he was arrested and deported back to PNG before being able to see any Fijian immigration authorities. It is self evident that PNG is not a country for resettlement. The PNG authorities, deep down, are not committed to permanently taking these asylum-seekers. As such, Sawari is effectively in a state of limbo as he had been in 2013. Loghman Sawari has to have his liberty to seek asylum from any other country and to be able to escape from this uncertain condition. ***By arresting Loghman Sawari to hinder his endeavour of himself seeking asylum in Fiji, the Australian and PNG governments have exercised the powers attaching to the right of ownership over Sawari, and deprived him off his liberty. This is actus reus of enslavement.***

28. Holding security over asylum-seekers: In property law, the owner of a property has the right to his property not to be taken away by others. This is known as the 'security of holding'. In the case of enslavement, the perpetrators will exercise powers attached to the right of ownership over the enslaved, not to have taken away by the others. In most cases, the perpetrators would have to de facto exercise such powers, because the perpetrators cannot lawfully own the enslaved. There, then, a rule is set: the slave-owner would never give away his slaves to others nor let the slaves go free. In the following incidents, one can see the Australian government has been holding its security over asylum-seekers at RPCs, therefore exercising powers attached to the right of ownership over these asylum-seekers.

In 2013, in the midst of crisis in unauthorised boat arrivals, Australian Labour Prime Minister Julia Gillard and Prime Minister of New Zealand John Keys had made an agreement that New Zealand would take 150 genuine refugees par year from RPCs for resettlement<sup>38</sup>. Being Australia's close neighbour and a genuine refugee resettlement country, the New Zealanders are aware about the situation of asylum-seekers at the Australian-run RPCs. The Naurun government was reported to have allowed temporary stay for asylum-seekers but, understandably, lacking the capacity for permanent settlement.

In January 2016, the New Zealand government had approached Australia, offering to take the 2 years quota of up to 300 refugees from RPCs. The Australian government had rejected this offer<sup>39</sup>. In April 2016, the government of New Zealand had offered to take 150 refugees from RPCs. Australian Prime Minister Malcolm Turnbull, again, rejected this offer<sup>40</sup>. In February 2017, the Prime Minister of New Zealand, Bill English, has personally repeated to Australian Prime Minister the offer to resettle 150 refugees from the RPCs<sup>41</sup>. The Australian government, again, has rejected this offer<sup>42</sup>. ***The Australian government holding its security over the asylum-seekers, and not letting New Zealand to take some refugees from RPCs, tantamount to exercising powers attaching to the right of ownership over these asylum-seekers. This is actus reus of enslavement.*** It can be seen that the government has repeatedly violated the same criminal offence of enslavement over 3 years. The Australian government's intention to maintain sizeable number of asylum-seekers at RPCs, i.e. the mens rea, has now been obvious.

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38 <https://www.theguardian.com/australia-news/2016/jan/11/new-zealands-offer-to-take-150-offshore-refugees-a-year-never-taken-up>

39 <http://www.abc.net.au/news/2016-01-12/nz-unable-to-accept-nauru-refugees/7082764>

40 <https://www.theguardian.com/australia-news/2016/apr/29/turnbull-rejects-new-zealand-offer-to-take-150-refugees-from-detention>

41 <http://www.sbs.com.au/news/article/2017/02/17/nz-still-offering-take-asylum-seekers>

42 <http://www.sbs.com.au/news/article/2017/02/18/no-thanks-pm-tells-nz-refugee-offer>

The asylum-seekers at RPCs have written requests to the government of New Zealand, clearly expressing their desires to take up the resettlement offers <sup>43</sup>. Whilst New Zealand cannot take all asylum-seekers in RPCs, the Australian government should have allowed the asylum-seekers to exercise their liberty to apply for the resettlement in New Zealand. ***The Australian government not allowing the asylum-seekers in RPCs to take their chance for resettlement in New Zealand is the deprivation of asylum-seeker's liberty. This is actus reus of enslavement.***

## **Allegations against Broadspectrum and Ferroviaal**

29. As regards the Broadspectrum and Ferroviaal <sup>44</sup>, they have played central role in implementing the government's offshore detention regime. Without these companies' collusions, the Australian government will not be able to sustain its offshore detention policy. As for Transfield Services P/L, they may even have played a part in drafting the blueprint for enslavement. These corporate entities (i.e. detention contractors) clearly have criminal liability for the enslavement of asylum-seekers. The enslavement has attained, in international law, the level of the peremptory norms, meaning when violations transpire, they carry with them strict liability. One can expect these commercial entities will face severe penalty for taking part in the enslavement.
30. At the time of preparing this report, this author cannot find – within international settings -- any similar case of trials involving corporate entities engaged in the enslavement process. Therefore, by following the line of forward thinking by noted legal scholar <sup>45</sup>, this author determines whether these corporate entities have engaged in crime against humanity of enslavement and makes the count on crime incidents.

... required is to first establish, in substance, whether control tantamount to possession is present; in such cases the buying or selling of a person is evidence of slavery. ... In considering the notion of the power to buy or sell somebody as being an incident of ownership, we are actually speaking of such incidents within a larger conception of property law of *transfer*, in this case, of human beings. Beyond the buying or selling of a person, the grouping of transfer includes similar transactions to buying or selling, such as bartering, exchanging, or the giving or receiving of a person (the enslaved) as a gift.

Any and every transactions made by the corporate entities, whilst the control tantamount to possession being subjected on the enslaved, are to be counted as crime incidents.

31. The *possession* on enslaved can be understood in the following manner. In criminal law, the possession is a de facto ownership. Suppose, there is a drug-kingpin and a group of drug-couriers are perpetrating the transportation of a package of illicit-drug. To be found guilty in this crime of transporting illicit-drug, the drug-couriers need not own, but only need found to have held in possession of that package. The kingpin owns the package at all time. However, all the drug-couriers who hold possession of the illicit-drug package, including

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43 <http://www.radionz.co.nz/international/pacific-news/331376/manus-detainees-ask-for-nz-asylum>

44 As of 30 June 2016, Broadspectrum is 100% owned by Ferroviaal.

<http://www.broadspectrum.com/news/ferroviaal-completes-acquisition-of-broadspectrum>

45 Jean Allain, Chapter 3 on Slavery.

those who would have transported the package along the way, are to be charged of the crime. In similar fashion, the first corporate entity (Transfield Services P/L; the courier), along with subsequent corporate entities (Broadspectrum, Ferrovia; other couriers) which signed contracts with the government (the kingpin) to look after the enslaved asylum-seekers (the package) will found to have violated the Rome Statute 7(1)(c).

32. The *transfer* or *transaction* of enslaved is understood as follow. Consider an enterprising ship with slaves onboard is heading towards certain destination and making money. Along the way, the ship moored at different ports, the captain in charge may have changed and crews onboard may have rotated. The ship may have been repainted and may even change its flag. However, so long as the enslaved are held onboard that ship, the captains in charge and the enterprise in question are to be held liable for the crime of slave-trade. In our case of the slave-ship of Australian-run RPCs, the ship doesn't travel in spatial distances but in the length of time. In similar fashion, on the transactions relating to RPCs, the Transfield Services P/L, the (renamed) Broadspectrum and (new flag) Ferrovia will all found to have violated the crime of enslavement within the meaning of the Rome Statute.
33. There are three types of transactions made on asylum-seekers, while control tantamount to possession been present, between the government and corporate entities. First, the government contracting out to leading company such as Transfield Services P/L. Second, the transactions between the leading corporate entities, i.e. Transfield Services P/L, Broadspectrum and Ferrovia. Third, leading corporate entities sub-contracting out to other service providers. All three types of transactions satisfy the requirement of Rome Statute Article 7(1)(c) and the 3 elements of crime (See Para 3.).

(i) On 14<sup>th</sup> October 2013, at the start of enslavement process, the Transfield Services P/L received asylum-seekers in RPCs under the government's contract. The Transfield Services P/L is in possession of asylum-seekers and became the de facto owner of the asylum-seekers. Any and every exercise of powers attached to the right of ownership over asylum-seekers by Transfield Services P/L violated the crime against humanity of enslavement Rome Statute 7(1)(c).

(ii) While Transfield Services P/L was holding in possession of the asylum-seekers, it has made commercial transaction with Broadspectrum on 28 October 2015. The government was fully aware that, that transaction had taken place. That transaction between Transfield Services P/L and Broadspectrum, while the control tantamount to possession being present on asylum-seekers, equivalent to lending and bartering of enslaved asylum-seekers. Therefore that transaction should be counted as another crime incident.

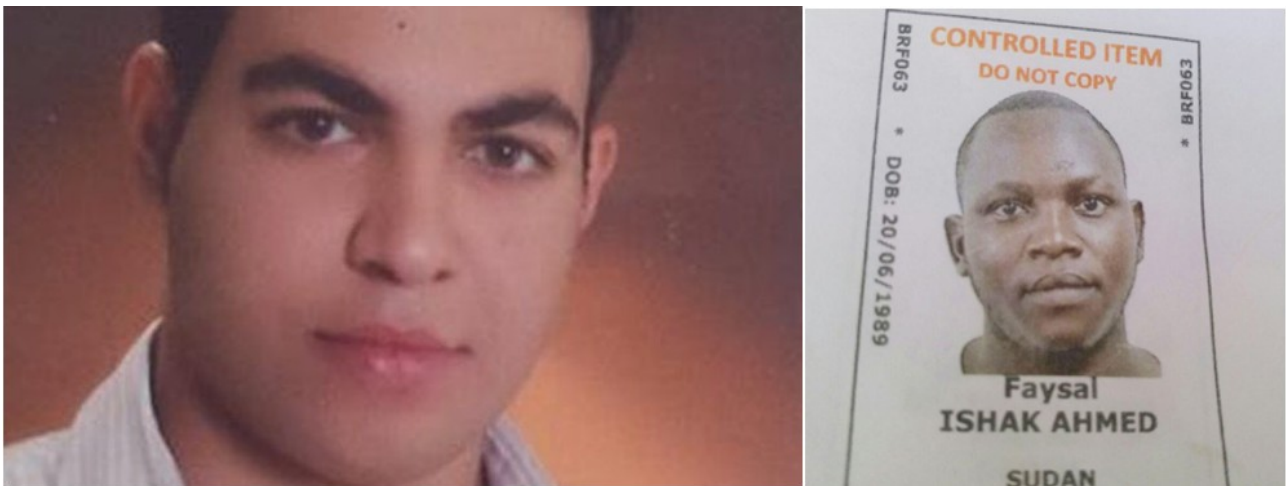
(iii) On 13-May-2016, Ferrovia purchase Broadspectrum while it was holding in possession of the asylum-seekers. The government was fully aware that, that transaction had taken place. This transaction should also be counted as a separate crime incident for selling and purchasing by Broadspectrum and Ferrovia that involved the enslaved asylum-seekers.

(iv) During the period of 14-Oct-2013 to 30-Jun-2017, the detention companies, Transfield Services P/L, Broadspectrum and Ferrovia have made, with full knowledge of the government, further transactions involving enslaved persons as they were sub-contracting

out to other service providers. The non-exhaustive list of other service providers includes Wilson Security and IHMS<sup>46</sup>. These transactions should be counted as separate crime incidents involving the leading detention companies and other service providers.

## The Crime Against Humanity

34. There were few other incidents of loss of lives in RPCs, like the death of Faysal Ahmed. Faysal Ahmed had to wait six months and visit 20 times to the clinic run by sub-contractor IHMS, only to be evacuated on his death-bed to Australia. Another asylum-seeker, Hamid Kehazaei (24) had also died in 2014 from a treatable bacterial infection. Hamid was a good-hearted Samaritan, looking after and even cleaning up the excrements of another inmate, who had suffered entire mental breakdown; suggesting where his infection might have originated<sup>47</sup>. His admission to hospitals in Australia was deliberately delayed, which was causing his death.



*Where is our humanity? Hamid Kehazaei (24) and Faysal Ahmed (27) died from preventable causes in RPCs.*

The frequent deaths of asylum-seekers in RPCs have caused emotional responses, particularly within Australian activists and humanitarian community<sup>48</sup>. The deaths of these asylum-seekers were entirely preventable. The refugee supporting community in Australia are saddened at times; paralyzed in despair, realizing their lack of influence and power to prevent and intervene in these situations. Some activists were even turning on themselves, blaming at the lack of unity in ourselves or not caring enough for the humanity.

The ordinary citizens can do only so much, of course. As a private citizen, I cannot lodge any complaints on behalf of those victims to Australian Human Rights Commission. Any legal avenues and High Courts are off-limits to activists and I am not a lawyer anyway. Lacking details, one might have tempted to – I certainly did – contact Australian Federal

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46 See “Business in Abuse” Section 4. pp.17. [https://d68ej2dhub09.cloudfront.net/1321-NBIA\\_Report-20Nov2015b.pdf](https://d68ej2dhub09.cloudfront.net/1321-NBIA_Report-20Nov2015b.pdf)

47 <https://www.theguardian.com/australia-news/2016/nov/28/delay-to-treatment-of-hamid-kehazaei-before-he-died-revealed-in-leaked-files>

48 <http://artsonline.monash.edu.au/thebordercrossingobservatory/publications/australian-border-deaths-database/>



Police and express general concerns about things transpiring over there. The AFP did reply to me and said they cannot do anything about the Offshore Detentions (See Enclosure V).

But, what about the humanity ? Why is it that there is such a deep failure of humanity in these cases ? Why humanity cannot intervene in these cases; when human sufferings and the loss of human lives are being treated like disposable objects ?

The answer lies at the nature of control being exercised on these asylum-seekers. Suppose, you become attracted to, say a lovely antique chair, which already has its owner. You might like to touch it, feel it, try on it; clean the dust and put a shine on it. However much you like to care for that chair, you certainly cannot do it. You'll need the permissions from the owner.

The same is true for the case of those asylum-seekers. There are the controls tantamount to possession have been applied on those asylum-seekers. And that, the perpetrators of enslavement have been exercising all the powers attached to the right of ownership over those asylum-seekers. These tragic deaths are unmistakable indicators of slavery. To quote from the noted scholar <sup>49</sup>:

In the case of slavery this power attaching to the right of ownership might be understood as the ability to dispose of a person. In such context, the mistreatment or neglect of a person may point to slavery. ...The consideration of the power to dispose of a person as constituting a power attaching to the right of ownership speaks to the ability to use a person, to exhaustion, so that the slave might be consider as being disposable.

In slavery, the power of control is so severe and so dark that the humanity – the natural response of human kindness -- cannot even come into a shine for its effects. The humanity has been forbidden. Hence, the crime against humanity.

## **END OF REPORT**

### **Enclosures:**

(I) 2017-May-13: The Letter to Hon. Andrew Wilkie MP, Independent Member for Denison, GPO Box 32, Hobart TAS 7001, Australia.

[http://www.netipr.org/saorg/docs/20170513\\_andrew-wilkie.pdf](http://www.netipr.org/saorg/docs/20170513_andrew-wilkie.pdf)

(II) 2016-Jun-15: Operation Sovereign Borders, Turnbacks and Political Cover-ups by Network for International Protection of Refugees.

[http://www.netipr.org/saorg/docs/20160615\\_OSB-Coverups.pdf](http://www.netipr.org/saorg/docs/20160615_OSB-Coverups.pdf)

(III) 2017-Jan-8: To Hon. Malcolm Turnbull, Report Card on Scapegoating by Network for International Protection of Refugees.

[http://www.netipr.org/saorg/docs/20170108\\_ReportCard.pdf](http://www.netipr.org/saorg/docs/20170108_ReportCard.pdf)

(IV) 2017-Mar-27: Letter from The Hon. Peter Dutton MP, Minister for Immigration and Border Protection.

[http://www.netipr.org/saorg/docs/20170327\\_peter-dutton-reply.pdf](http://www.netipr.org/saorg/docs/20170327_peter-dutton-reply.pdf)

(V) 2017-Jun-5: Letter of reply from Australian Federal Police.

[http://www.netipr.org/saorg/docs/20170605\\_afp-reply.pdf](http://www.netipr.org/saorg/docs/20170605_afp-reply.pdf)

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49 Jean Allain, Chapter 3, Slavery.