




THE DETENTION SLAVERY Crime Against Humanity of Enslavement and Torture -- Australia Submission to Special Rapporteur on Contemporary Forms of Slavery

I thank Special Rapporteur Mr. Tomoya Obokata for organizing his thematic report focusing on the protection of minorities from contemporary forms of slavery. I am an independent citizen activist in Australia and I appreciate the opportunity to be able to bring up my report directly to the UN Human Rights Council. This report has arisen out from my long term investigative work on the policy implementations by Commonwealth Government of Australia ("the government") on its offshore asylum-processing scheme.


In 2012, Australian government had sent 2200 asylum-seekers who arrived Australia by boat to offshore asylum-processing centers in Manus Island of Papua New Guenia and Republic of Nauru. These processing centers were being set up with the authorization of respective regional governments under MOUs co-signed by Australian government. The day-to-day operations for the garrison and welfare, including the health care for asylum-seekers, were being contracted out to primarily Australian owned detention companies. Based on available indicators, in particular the extra-ordinary expenses that incurred to our taxpayers  , I have since June 2017 characterized the government's conduct as enslavement of asylum-seekers.

The government imposed range of measures on asylum-seekers ostensibly to prevent them from reaching Australia. The government through its sole contractor International Health and Medical Services have imposed restrictions on the health care services for asylum-seekers. The imposed restrictions found to have violated inalienable right to health of asylum-seekers and, consequently violating torture laws. Whilst I am not a lawyer, I now have confidence about legal proof that the government has commissioned the crime of enslavement over this group of asvlum-seekers.

UNAUTHORIZED MARITIME ARRIVALS (UMAs) AS VULNERABLE MINORITY GROUP

Among all other minority groups, the asylum-seekers arriving Australia by boat -- UMAs -- are the most vulnerable, politically and legally. Since 1992, the government enacted laws for mandatory detention of UMAs and seeking indeterminate delays for processing of UMAs' asylum applications. This practice of mandatory detention and delay in processing has been supported by both major parties. The UMAs have no other supportive voice within community or in the parliament, but only a few refugee activists scattered throughout the country

Australia practices the common laws since British colonization in 1788 and also after enactment of Federal Constitution in 1901. Successive Australian governments since Federation

have strictly observed the independence of judiciary in accordance with constitution. However, Australia is unique among 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 laws. As such, the UMAs cannot assert their legal rights to apply for asylum. Under the common laws, an alien UMA will have no other specific rights but only have the standing in court if he/she were being detained or mistreated. In recent years, the government have further restricted on the UMAs ability to apply for asylum. 


The lack of political and legal protection meant that these UMAs are prone to abuse and exploitation.

ASYLUM DETENTION AS THE NEW FORM OF SLAVERY

Australian government's offshore asylum-processing scheme presents a new form of slavery, i.e. "Detention Slavery", where the government has created the slaves in order to shored up the detention industry.

When considering slavery, the normative definition along with understandings are originated in the 1926 Slavery Convention, where Article 1.1 states:

=> Slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.

After a century from adaptation of this Convention, the general public understanding for slavery has not been moving much further from that of historic chattel slaves, where the owner would exercise the powers of control directly over the slave. To many, a slave is meant to live in harsh conditions and be exploited for exaction of forced labour. To the professional circle, however, there has been the recognition that the slavery has evolved beyond that of 'historic' chattel. The International Criminal Tribunal for Former Yugoslavia in 2002 (ICTY),  for example, already noted there has now been the contemporary forms of slavery arising out from the exercise of "any or all powers attached to the right of ownership". Further, ICTY indicates the possibility of numerous new forms of slavery:

"118. The Appeals Chamber will however observe that the law does not know of a "right of ownership over a person". Article 1(1) of the 1926 Slavery **Convention speaks more guardedly "of a person over whom any or all of the powers attaching to the right of ownership are exercised."** **That language is to be preferred.**

"119. The Appeals Chamber considers that the question whether a particular phenomenon is a form of enslavement will depend on the operation of the factors or indicia of enslavement These factors include the "control of someone's movement, control of physical environment, psychological control, measures taken to prevent or deter escape, force, threat of force or coercion, duration, assertion of exclusivity, subjection to cruel treatment and abuse, control of sexuality and forced labour". **Consequently , it is not possible exhaustively to enumerate all of the contemporary forms of slavery which are comprehended in the expansion of the original idea;** this Judgment is limited to the case in hand. ..." (emphasis added)

In identifying slavery, it is therefore inadequate to focus solely on already known forms, such as forced labour, debt bondage, child labour or other servile status etc. One must look beyond those known forms and examine directly into the substance of conduct in question and, verify whether there were exercise of "any or all powers attaching to the right of ownership". With this rationale, I have examined the government's conduct in relation to its offshore asylum-processing scheme. The details of the expansion on the forms of slavery, [in accordance with Division 270 of Australian Criminal Code Act of 1995 \(Cth\)](#), has been given here.

EXERCISE OF POWERS ATTACHING TO THE RIGHT OF OWNERSHIP


The government interference on medical treatment and obstruction on medical evacuation of offshore asylum-seekers are the evidence of slavery. There has also been State sanctioned violation of inalienable rights to health of asylum-seekers.

The government's main objective in setting up asylum processing centers at offshore is to prevent asylum-seekers accessing Australian Courts. The asylum-seekers reaching to mainland Australia for medical treatment represent threats to offshore asylum processing scheme. On offshore asylum processing, the government has been acting beyond its authorized statutory powers, ultra vires, and acted in violation of UN Refugee Convention. The government fears these issues being properly get internationalized or the issues been reaching directly to the High Court of Australia with appropriate legal contexts in regards to its illegal asylum application processing. That would threaten the viability of entire offshore asylum processing scheme and destroy political legitimacy of incumbent LNP Government.

As for the health care of offshore asylum seekers, the government has contracted Internal Health and Medical Services (IHMS) to provide services. The IHMS is required to provide primary healthcare broadly comparable to Australian standard. The Commonwealth Department of Immigration and Border Protection (DIBP) and its administrative arm, Australian Border Force (ABF), oversee the management of contract and service delivery. The IHMS is the sole contractor for Manus Island Regional Processing Center.

Despite the asylum-processing centers are located in other sovereign states, the Australian government has the duty under common laws to provide appropriate health care to asylum-seekers. The considered role for DIBP/ABF is to provide logistics for patients from asylum-processing centers when medical transfer is required. The role of IHMS is to provide clinical care that is consistent with generally accepted privacy and human rights standards.

There has been evidence the IHMS had instructed the doctors it deployed in offshore asylum-processing centers to compromise on generally accepted ethical and professional

standards. I have also gathered [evidence that DIBP/ABF at the ministerial and departmental secretary levels had sought to obstruct medical care and offshore medical transfer procedures.](#) These pieces of evidence indicate that there have been State sanctioned violation of inalienable health rights of asylum-seekers. The State sanctioned denial of health care to offshore asylum-seeker, interpreted in law as "authorities exhibiting deliberate indifference to serious medical needs",  also violates the torture laws.

METHODOLOGY ON ESTABLISHING SLAVERY: TWO-STEP INVESTIGATION

In trying to establish the crime of slavery, I have focused on the conduct of DIBP/ABF and IHMS in providing health care at offshore asylum-processing centers. The rationale for selecting this area of health care and the time frame that chosen [has been explained in my communication to the Prosecutors of International Criminal Court.](#) To have direct relevance to Australian domestic slavery laws, I have taken a two-step approach on my investigation. First, I focus the DIBP/ABF's intervention and obstruction on offshore medical cares at the policy level and analyzed legal implications of that conduct. The details [can be found here at this link: "Offshore Deaths, Detention Slavery and ICC Legal Contexts"](#). In summary, I find that:

=> When an asylum-seeker has been `denied` or `deliberately rendered ineffectual` medical treatment, the Commonwealth Government, the IHMS and its GPs have violated the law of torture;

=> When such medical intervention by DIBP/ABF has restricted the freedom of movement for that asylum-seeker, the corresponding DIBP/ABF conduct has violated slavery laws. The IHMS and its GP may also found to be violating slavery laws.

As the second step, I applied above rules to two known incidents where medical care had been denied or delayed. The first case is an Iranian asylum-seeker named as Samuel (anonymous), where his recommended medical movement to Australia had been delayed and denied. In February 2017, Samuel had heart related symptoms and the doctors at Pacific International Hospital of PNG recommended further tests and treatment, where the IHMS had refused to send Samuel to Australia. [The detail report on Samuel can be found here.](#)

Second individual case I have examined is that of Sudanese asylum-seeker Faysal Ishak Ahmed who died at Manus Island asylum-processing center on the Christmas Eve of 2016. Faysal Ahmed was reported to be having heart related symptoms, where the doctors and the management of IHMS had been refusing to look into his illness. [The detail report on Faysal Ishak Ahmed can be found here.](#)

EXERCISE OF POWER OF POSSESSION

The slavery is ultimately about exploitation of person held under control. It is the type of control over a person, which significantly reduces his/her individual liberty or autonomy; and ultimately, that this control is maintained through coercion or violence. Whilst the perpetrator is exerting control tantamount to possession, that enslaved person has been exploited typically for pecuniary gains. Because one cannot legally 'own' another person, the perpetrator must be able to exercise the power of possession to achieve enslavement.

Australian law recognise the contemporary forms of slavery only -- the case of chattel ownership was outlawed since 1840s under the Imperial Code -- and emphasize the power of possession has played central role in slavery. As such, the Australian Criminal Code Act 1995 (Cth) Division 270.3(a) Slavery offence:

=> possesses a slave or exercises over a slave any of the other powers attaching to the right of ownership;

In above two health care incidents, the government have indirectly exercised the power of possession and hide its control measures under the subterfuge of administrative, legal, political and diplomatic complexities. In present day circumstances, it is impossible for the perpetrators of enslavement to deploy "overt display of possession" and "extreme control measures" that exhibited in the historic cases of chattel slaves. The perpetrators will selectively exert control, sometimes subtle ways, only to such extent that is necessary to achieve certain outcomes. This phenomenon has already been observed by ICTY:

"117. In the case of these various contemporary forms of slavery, the victim is not subject to the exercise of the more extreme rights of ownership associated with "chattel slavery," but in all cases, as a result of the exercise of any or all of the powers attaching to the right of ownership, there is some destruction of the juridical personality; the destruction is greater in the case of "chattel slavery" but the difference is one of degree...."

The test of [personal freedom for offshore asylum-seekers in comparison to historic chattel slaves has been made here.](#)

In sum, every known indicators are consistently indicating that Australia's offshore asylum-processing scheme has been a large scale enslavement. The Commonwealth Government of Australia, together with detention companies, therefore have perpetrated crime against humanity of enslavement.

SUPPORTING DOCUMENTS

[\[#1\] http://www.aus4iccwitness.org/node/92](http://www.aus4iccwitness.org/node/92), "Offshore Deaths, Detention Slavery & ICC Legal Contexts"

[\[#2\] http://www.aus4iccwitness.org/node/94](http://www.aus4iccwitness.org/node/94), "Case of Samuel (anonymous)"

[\[#3\] http://www.aus4iccwitness.org/node/75](http://www.aus4iccwitness.org/node/75), "Case of Faysal Ishak Ahmed"

[\[#4\] http://www.aus4iccwitness.org/evidence](http://www.aus4iccwitness.org/evidence), "Evidence, Incidents and Attributions"

[\[#5\] http://www.aus4iccwitness.org/node/93](http://www.aus4iccwitness.org/node/93), "OTP-ICC Follow-up Letter"