

**Communiqué for the Office of the Prosecutor regarding the application
to the International Criminal Court by
Refugee Action Collective (Victoria)**

28 March 2016

Refugee Action Collective as a group, reflecting the dismay and revulsion of many other Civil Society groups and professional associations toward the current treatment of asylum seekers by the Australian government, wishes to file:

Complaint and request that the ICC investigate and act against the following persons:

- Mr Tony Abbott, former Prime Minister of Australia,
- Mr Malcolm Turnbull Prime Minister (added 16 March 2016)
- Mr Scott Morrison, former Minister of Immigration and Border Protection
- Mr Peter Dutton, Minister of Immigration and Border Protection
- Mr George Brandis, Attorney-General

In its policies and treatment of asylum seekers who attempt to find protection in Australia, the Australian Government is in clear violation of international law as codified in covenants to which Australia is a voluntary signatory. In particular, under the 1951 UN Convention and Protocol Relating to the Status of Refugees, Australia is obligated to offer protection to asylum seekers and refugees who arrive in Australia, regardless of means of arrival. Indeed at another time, the Australian High Court Judge, later leader of the Labor opposition, Dr H.V. Evatt was the President of the General Assembly of the United Nations when it adopted the 1948 Universal Declaration of Human Rights. He and Eleanor Roosevelt were instrumental in the inclusion of **Article 14** which states:

“Everyone has the right to seek and to enjoy in other countries asylum from persecution.”

The Australian government also ignores the standards of human rights as set in the Rome Statute, the International Covenant on Civil and Political Rights, the Convention against Torture, and the Convention on the Rights of the Child.

The following activities of the Australian Government contravene these UN Conventions and Covenants in both spirit and action. Some of these actions constitute crimes against humanity:

1. The systematic deprivation of physical liberty in the form of mandatory incarceration of asylum seekers, and the deportation and forced transfer of asylum seekers to “offshore processing centres” in third-party countries.¹ As of April 2015, the numbers of asylum seekers incarcerated on Nauru and Manus Island (Papua New Guinea) detention centres was 1648 people, with

another 1613 in domestic or Christmas Island detention centres.² Arbitrary detention squarely contravenes Article 9, UN Universal Declaration of Human Rights 1948. It states:

“No one shall be subjected to arbitrary arrest, detention or exile”.

1. The lack of judicial oversight of Australia’s detention regime which breaches the right to affective remedy under article 2 of the ICCPR.³
2. Indefinite detention of two classes of people: a) refugees without ASIO (Australian Security & Intelligence Organization) clearance⁴, and b) stateless asylum seekers who have been denied protection and cannot be returned to their country of origin.
3. Using potentially lethal policies such as boat turn-backs as deterrents against asylum seekers who may well have a valid case for protection (which themselves are inconsistent with the United Nations Convention on the Law of the Sea).⁵
4. The practice of detaining children in violation of the Convention on the Rights of the Child, to which Australia is a signatory.⁶
5. Incarcerating asylum seekers in harsh conditions which have resulted in deaths, soaring rates of self-harm, and exposure to sexual assault.⁷
6. Failing to pursue justice for the 2014 deaths of two young men—Reza Barati and Hamid Kehazaei—at Manus Island detention centre.
7. Deporting people without exhaustive assessment into situations of danger that may well include incarceration, persecution, torture and even death.
8. Contracting out its international legal obligations in relation to asylum seekers to neighbouring countries. According to international law, Australia can share responsibility with Nauru and Papua New Guinea, but it cannot devolve it.⁸
9. Exploiting poor and dependent countries in the region by dumping asylum seekers on them, thereby exposing those persons to attacks and persecutions in Nauru and Papua New Guinea.
10. In the context of the recent Rohingya refugee crisis in the Malacca Strait, refusing to assist in this major humanitarian crisis and encouraging Australia’s neighbours Indonesia and Malaysia to follow our example in turning back boats, resulting in what the UN described as “maritime ping pong.”⁹

These actions are not just a dereliction of Australia’s duty toward asylum seekers, but constitute the systematic and deliberate infliction of harm toward this vulnerable population. The Australian Government has repeatedly brushed off a number of extremely damning reports—both domestic and international—that emphasize the brutality of the offshore detention system. These include:

- the 2015 “Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment”, submitted to the UN’s Human Rights Council by Juan E. Mendez¹⁰
- the 2015 “Review into recent allegations relating to the conditions and circumstances at the Regional Processing Centre in Nauru” (otherwise known as the “Moss Report”), commissioned by former Minister for Immigration and Border Protection¹¹
- the 2014 report “Forgotten Children: National Inquiry into Children in Immigration Detention 2014” by Professor Gillian Triggs, President of the

Such reports have amply condemned The Australian government for its cruel and unlawful detention of children, women and men who have committed no crime.

In order to understand the seriousness and intention behind the Australian Government's actions, we believe the following information pertaining to the concept of *judicial notice*¹³ is necessary:

- a) A challenge to the legality of offshore detention practices was mounted in the Australian High Court in 2014, but was rejected. Neither the Executive Government nor the highest court in the land have acted against the perpetrators of these crimes. Asylum seekers in Manus Island detention centre are now mounting a challenge in the Papua New Guinea Supreme Court to claim that their detention breaches PNG's constitution.¹⁴ However, the advantage of third-country detention is clear: the asylum-seekers come under the protection of neither Australian law nor the host nation's. This leaves no option but to pursue justice for asylum seekers in the ICC. Recently, The High Court of Australia decided again (3 February 2016) that detention in other sovereign states is legal under Commonwealth Migration Act.
- a) The Australian Government's persecution of asylum seekers arriving in Australia has been accompanied by the manipulation of public sentiment. It has encouraged and benefited from racist media coverage and the blatantly false demonization of "boat people" as a national security threat. They have misled the public by describing asylum seekers as "illegals", when governments know that this is not the case.
- a) The Australian Government is exploiting poorer neighbours in the Pacific region by offering much needed aid money in exchange for the "offshore detention" and "regional resettlement" of Australia's refugees in Papua New Guinea, Nauru and most recently Cambodia. Not only is this a blatant avoidance of Australia's international responsibilities toward asylum seekers, it is negatively affecting these countries—especially PNG and Nauru—by placing enormous stress on their resources, undermining their national sovereignty, and causing social disruption.
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- a) The actions of the Australian Government have become negative models in the global management of asylum seekers. Since the beginning of the "Pacific Solution" in 2001, the practice of offshore processing has increased across the world with the establishment of "transit camps" across North Africa,¹⁶ while boat turn-backs have become part of the repertoire of many states in their response to asylum seekers. As the recent tragic loss of life in the Mediterranean and Southeast Asia indicate, detention policies and boat turn-backs *neither* save lives *nor* serve as an effective deterrent to the worldwide movement of refugees.
- a) Indicative of the Australian government's wilful intent to break international laws

is the way in which its tactics have steadily become more severe and inhumane. At first, boat turn-backs were performed “when safe to do so”; then they were done when it was in the “national interest” or when it “was necessary”. Most recently, the government has declared it “will do whatever we need to do to have this evil trade stopped.”¹⁷ This included payments to “people smugglers” to turn back boats to Indonesia. Employing people smugglers is against both Indonesian and Australian laws.

In sum, we believe that the Australian government is a systematic perpetrator of crimes against humanity, in particular: the deportation and forcible transfer of a population, severe deprivation of physical liberty, and sexual abuse. We further believe that the Australian government’s disregard for international law concerning refugees is not just a problem for the asylum seekers affected, but for *all* United Nation member states who have a stake in upholding international laws concerning civil, political and children’s rights. It is in everyone’s interest to maintain a rule based international system. Former Prime Minister Abbott’s outbursts about not “succumbing to the cries of the human rights lawyers”, and being “sick of being lectured to by the UN” indicate this government’s blatant disregard for the basic tenets of the international legal system.¹⁸

We therefore urge the Court to exercise its jurisdiction in initiating a criminal investigation of the above named persons. We acknowledge the prior (January 2015) submissions to the Office of the Prosecutor by Mr Andrew Wilkie MP, and Ms Tracie Aylmer, Sydney solicitor and migration agent (May 2014), as well as the current support for a similar investigation urged by Mr Julian Burnside QC.

Our submission, by contrast represents a diverse collection of Civil Society groups, indicating growing popular outrage against the Australian government’s policies and our collective will for a criminal investigation. A list of professional and civic organisations that endorse our submission is included in the attached appendix.

Refugee Action Collective Vic asks the Court to accept and note any late endorsements and any additional evidence of wrongdoing by the above named persons or any other person acting for the Australian Government now or in the future to design and implement policies and practices that breach international law.

Yours sincerely,

Peter Farago for
Refugee Action Collective (Victoria)

Appendix 1.

RAC Complaint to ICC
28 March 2016y

Endorsed by:

Brigidine Asylum Seeker Project Melbourne
Compassion and Justice for Refugees Upper Spencer Gulf South Australia
Grandmothers Against Detention of Children:

Melbourne
Bendigo Vic
Ballarat Vic
Sydney

Rural Australians for Refugees:

Mansfield Vic
Queebeyan NSW
Warnambool Vic
Grampians/Gairwerd Vic
Armidale ARAR NSW
Macedon Ranges Vic
Bendigo Vic

Australians and Allies Against Mandatory Detention AAOAMD (Worldwide)

Combined Refugee Action Group Geelong CRAG Vic

Refugee Advocacy Network RAN (Melbourne)

Ballina Support for Refugees

UKi Refugee Project

Radical Women (Melbourne)

Mums for Refugees

Project Safe Com Inc (Narrogin Western Australia)

Catholic Asylum Seeker and Migration Office (Melbourne)

Gippsland Trades and Labour Council

Labor for Refugees

Pax Christi Queensland

Hunter Asylum Seeker Advocacy*

Melbourne Street Medics

Sydney Street Medics

Teachers for Refugees

Urban Neighborhood of Hope (Australia) UNOH

Australian Jewish Democratic Society

Jews for Refugees

Central Victorian Refugee Support Network

Kommonground Inc (Melbourne)

Humanitarian Research Partners

Unionists for Refugees (Western Australia)

Darwin Asylum Seeker Support and Advocacy Network (DASSAN)

Civil Liberties Australia

Asylum Seekers Resource Centre (Melbourne)

Australian Nursing and Midwifery Federation Vic

House of Welcome Ballarat

National Tertiary Education Union (NTEU Vic)
Islamic Council of Victoria
Refugee Action Coalition (Sydney)
Tamil Refugee Council
Refugee Action Committee Canberra
Fremantle Refugee Rights Action Network (RRAN)
Bayside Refugee Advocacy and Support Association (Melbourne)
Central Victorian Refugee Support Network
Tasmanian Asylum Seeker Support Network
Victorian Allied Health Professionals (VAHPA)
Victorian Psychologists Association
Combined Refugee Action Group (CRAG)

**will file own complaint as well*