



# TREASURE I\$LAND

HOW COMPANIES ARE PROFITING FROM AUSTRALIA'S ABUSE  
OF REFUGEES ON NAURU



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**Cover photo:** Nauru. The Island is not equipped to receive refugees. The country has an area of just 21 sq. km, much of which is uninhabitable due to large-scale phosphate mining that has significantly degraded the environment.

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# CONTENTS

|                                                                                                            |           |
|------------------------------------------------------------------------------------------------------------|-----------|
| <b>1. NAURU: AN ISLAND OF DESPAIR AND PROFIT</b>                                                           | <b>4</b>  |
| METHODOLOGY                                                                                                | 5         |
| <b>2. WHAT IS THE SITUATION FOR REFUGEES AND PEOPLE SEEKING ASYLUM AND WHY ARE THEY THERE?</b>             | <b>7</b>  |
| <b>3. CORPORATE COMPLICITY IN ABUSE AND SECRECY</b>                                                        | <b>9</b>  |
| 3.1 BROADSPECTRUM'S COMPLICITY IN VIOLATIONS BY THE AUSTRALIAN GOVERNMENT                                  | 11        |
| 3.2 THE ROLE OF BROADSPECTRUM AND WILSON SECURITY IN DIRECT ABUSES                                         | 13        |
| 3.3 PROFITING FROM ABUSE                                                                                   | 16        |
| 3.4 HIDING THE SCALE OF ABUSE AND PROFIT                                                                   | 20        |
| <b>4. THE HUMAN RIGHTS RESPONSIBILITIES AND POTENTIAL LEGAL LIABILITIES OF BROADSPECTRUM AND FERROVIAL</b> | <b>22</b> |
| 4.1 BROADSPECTRUM'S HUMAN RIGHTS RESPONSIBILITIES                                                          | 24        |
| 4.2 FERROVIAL'S HUMAN RIGHTS RESPONSIBILITIES AND COMPLICITY IN ABUSE                                      | 28        |
| 4.3 THE POTENTIAL LEGAL LIABILITIES OF FERROVIAL AND BROADSPECTRUM                                         | 31        |
| 4.4 THE HUMAN RIGHTS RESPONSIBILITIES AND POTENTIAL LEGAL LIABILITIES OF FUTURE SERVICE PROVIDERS          | 31        |
| <b>5. RECOMMENDATIONS</b>                                                                                  | <b>32</b> |
| <b>ANNEX</b>                                                                                               | <b>33</b> |





*An Iranian refugee sits in an abandoned phosphate mine on Nauru.*  
© Rémi Chauvin

# 1. NAURU: AN ISLAND OF DESPAIR AND PROFIT

In a remote corner of the Pacific Ocean, the Government of Australia has created an island of despair.

The Republic of Nauru, an island state just 21 square kilometres in size, holds approximately 1,000 refugees and people seeking asylum who fled persecution and serious human rights violations to seek safety on Australian shores. In response the Government of Australia forcibly deported them from its territory and trapped them in an open-air prison, as part of a deliberate and systematic regime of neglect and cruelty designed to deter some of the world's most vulnerable people from seeking that same safety.

Australia has operated its “offshore processing” system on Nauru as well as Manus Island in Papua New Guinea since 2012. There have been multiple

reports, including by United Nations experts, of the gravity and scale of abuse experienced under that system by refugees and people seeking asylum. Amnesty International investigated the situation on Manus Island in 2013 and 2014 and on Nauru in 2016. This briefing focuses on how the system operates on Nauru and, in particular, how Spanish services and infrastructure giant Ferrovial and its wholly-owned Australian subsidiary Broadspectrum are complicit in and reaping vast profits from this abusive system.<sup>1</sup>

Australia's offshore processing system on Nauru subjects refugees and people seeking asylum to a daily diet of humiliation, neglect, abuse and poor physical and mental health care. Their suffering is heightened by being trapped on the island – they cannot leave, even after being granted refugee status, and there is no certainty as to when or even if the Governments of Nauru or Australia will allow them to leave.

The Australian Government has publicly and proudly acknowledged that its offshore processing system is harsh and cruel, saying that this is necessary to deter people from trying to enter the country

1. This briefing focuses predominantly on Ferrovial and Broadspectrum's role in abuses on Nauru in light of Amnesty International's most recent research on this island. For further information on the responsibility of Ferrovial and Broadspectrum with respect to Manus Island, see No Business in Abuse ([www.nobusinessinabuse.org](http://www.nobusinessinabuse.org)).

irregularly. Yet the Government has also gone to extraordinary lengths to hide the full magnitude of the abuses on Nauru, making it a criminal offence for medical and welfare professionals to speak out and placing service providers under strict confidentiality clauses. The Government of Nauru refuses virtually all requests to visit the island from researchers and journalists.

In July 2016, Amnesty International managed to access Nauru. Its resulting investigation and report exposed the true extent of the appalling abuse and neglect suffered by people seeking asylum and refugees on the island.<sup>2</sup> Amnesty concluded that the Australian Government is intentionally and systematically violating the rights of refugees and people seeking asylum on Nauru. Moreover it concluded that the system to which they are subject amounts to torture.

While the Australian Government has created an island of despair for refugees and people seeking asylum on Nauru, it has created an island of profit for companies. Of the billions of dollars that the Australian Government spends in maintaining its offshore processing system on Nauru, a significant portion is paid to companies who provide day-to-day services on the island on its behalf. The leading private contractor is Broadspectrum, which runs the refugee processing centres on Nauru as well as Manus Island under a three-and-a-half year contract valued at AUD\$2.5 billion (US\$1.9 billion). Broadspectrum has been a subsidiary of Ferrovial since April 2016.

The Government of Australia's offshore processing system on Nauru could not function without Broadspectrum's involvement. Broadspectrum is well aware of the conditions faced on Nauru by refugees and people seeking asylum and, in some cases, its employees and sub-contractors are directly responsible for neglect and abuse. Yet Broadspectrum continues to provide services on the island – and continues to receive a substantial profit from doing so. Ferrovial acquired Broadspectrum in full knowledge of these human rights abuses and the level of profit that Broadspectrum makes on the back of this immense suffering.

This briefing shines a light on how Ferrovial and Broadspectrum are complicit in and profiting from the abusive and secretive regime on Nauru, exposing themselves to liability under civil and criminal laws and acting contrary to their corporate responsibility to respect human rights.

This briefing also serves as a warning.

Broadspectrum's current contract comes to an end in October 2017 and it will not be bidding for a new contract. Amnesty International believes that Australia's "offshore processing" system on Nauru and Manus Island is so fundamentally at odds with even basic human dignity that it would be impossible to provide core services at the Refugee Processing Centres (RPCs) without causing or contributing to serious human rights abuses. As others consider providing these services, Amnesty International is therefore putting them on notice. You will be complicit in an intentionally and inherently abusive and cruel system, you will be acting in direct contravention of your human rights responsibilities and you will be exposing yourself to potential legal liability.

## METHODOLOGY

This briefing is based on extensive desk-based research on the companies that operate on Nauru, carried out between October 2016 and March 2017. The research consisted of reviewing public filings and reports from the Australian Government, Ferrovial, Broadspectrum and Wilson Security as well as contracts (where publicly available) for the operation of the Refugee Processing Centres on Nauru and Manus Island. It also consisted of reviewing media reports and legal claims as well as reports and submissions in connection with official inquiries and reviews in Australia with respect to Nauru and Manus Island. Company searches were conducted in Australia and the United Kingdom.

2. Amnesty International, *Island of Despair: Australia's "Processing" of Refugees on Nauru* (Index: ASA 12/4934/2016), 17 October 2016, [www.amnesty.org/en/documents/asa12/4934/2016/en/](http://www.amnesty.org/en/documents/asa12/4934/2016/en/) (accessed 22 February 2017) (hereafter Amnesty International, *Island of Despair*).

This briefing also draws on reports published by Amnesty International on the situation on Nauru and Manus Island between December 2013 and October 2016.

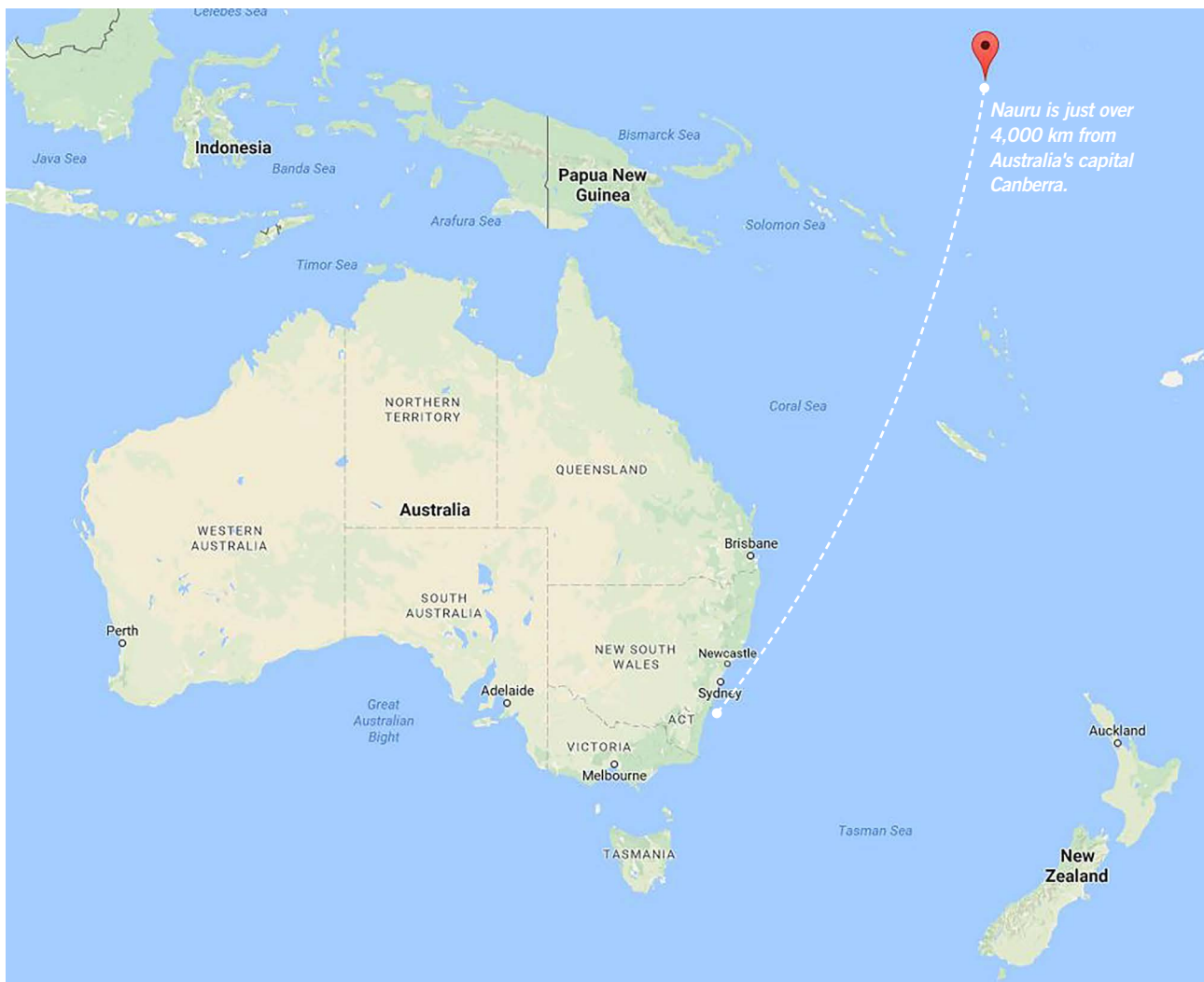
Amnesty International shared relevant portions of the draft of this briefing with Ferrovia, Broadspectrum and Wilson Security and has previously corresponded with them in connection with Amnesty's work on Nauru. Their responses are reflected in this briefing. In its most recent letter, Broadspectrum stated that it does not agree with Amnesty International's findings and conclusions in this briefing including as to their complicity in human rights abuses. At Ferrovia and Broadspectrum's request, their full response of 24 March 2017 is attached in the annex to this briefing.

Amnesty International did not receive any response from Wilson Security by the time of publication of this briefing.

Amnesty International would like to thank everyone who has contributed to this briefing, including the Australian civil society organisations No Business in Abuse, GetUp and the Human Rights Law Centre, who have been exposing the corporate complicity in the abuses on Nauru and Manus Island for a number of years.

Unless otherwise indicated, aliases are used to protect the refugees and people seeking asylum mentioned in this briefing.

 The marker indicates Nauru's location in relation to Australia.  
 Map data  
 © 2016 Google, ZENRIN.





## 2. WHAT IS THE SITUATION FOR REFUGEES AND PEOPLE SEEKING ASYLUM AND WHY ARE THEY THERE?

The Government of Australia's approach to people seeking asylum is focused on deterrence – that is, discouraging anyone who cannot travel to Australia without a visa from attempting to enter the territory irregularly. The vast majority of people who come from countries from which refugees flee – such as Afghanistan, Iraq, Somalia, Sri Lanka and Syria – would fall into this category.

The Australian authorities attempt to achieve deterrence through two principal means. One is a practice called “pushbacks” or “turnbacks”, which are military-led operations during which Australian officials intercept and repel asylum-seekers arriving by boat. The second is the policy of “offshore processing”, which involves forcibly taking people who do reach Australia by boat to offshore places of detention on Nauru and on Manus Island in Papua New Guinea.

The 1951 Refugee Convention protects the right to seek and enjoy asylum, a right afforded to children, men and women who have to flee persecution or other serious human rights violations. The Australian Government is denying would-be asylum-seekers their right to seek asylum simply by deporting them to Nauru and Manus Island.

However the Government of Australia also intends that the people detained on Nauru and Manus Island should suffer, in order to deter other would-be asylum-seekers from seeking protection in Australia.

In terms of inflicting harm, offshore processing has been extremely successful. Amnesty International's research into conditions on Manus Island in 2013 and 2014 found that the combined effect of detention conditions amounted to cruel, inhuman and degrading treatment or punishment, and that some detention conditions violated the international prohibition on torture and other ill-treatment.<sup>3</sup> Similarly, the organization's research on Nauru in 2016 found that the Government of Australia's treatment of refugees and asylum-seekers on the island is a deliberate and systematic regime of neglect and cruelty, and amounts to torture under international law.<sup>4</sup>

The conditions for refugees and people seeking asylum on Nauru are exacerbated by significant environmental damage due to large-scale phosphate mining, which has left the interior of the 21 kilometre square island uninhabitable.



March 2017. Accommodation in the refugee processing centre. An investigation carried out by members of the Australian Senate said living conditions at the centre are “unacceptably low” including insufficient access to water and sanitation – and the provision of mouldy or rotten food.  
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3. Amnesty International, *This is Breaking People: Human Rights Violations at Australia's Asylum Seeker Processing Centre on Manus Island, Papua New Guinea* (Index: ASA 12/002/2013), 11 December 2013, [www.amnesty.org/en/documents/ASA12/002/2013/en/](http://www.amnesty.org/en/documents/ASA12/002/2013/en/) (hereafter Amnesty International, *This is Breaking People*); Amnesty International, *This is Still Breaking People: Update on Human Rights Violations at Australia's Asylum Seeker Processing Centre on Manus Island, Papua New Guinea* (Index: ASA 12/002/2014), 12 May 2014, [www.amnesty.org/en/documents/asa12/002/2014/en/](http://www.amnesty.org/en/documents/asa12/002/2014/en/) (hereafter Amnesty International, *This is Still Breaking People*) (both accessed 16 March 2017).
4. Amnesty International, *Island of Despair*.

## A FAMILY DESTROYED: THE CASE OF “YASMIN”, “AMIR” AND “DARIUS”<sup>5</sup>

“Amir”, a 28-year-old man from southern Iran, worked as a barber and his wife, “Yasmin”, ran a beauty salon. The family decided to flee Iran and head to Australia where they were hoping to find “freedom and safety”. Amir said the circumstances under which they had to flee were too traumatic to share. They were detained in the Refugee Processing Centre (RPC) on Nauru until October 2015, when they received their refugee status and were moved to community accommodation.

Hundreds of pages of medical reports seen by Amnesty International paint a devastating picture of a healthy, happy family that was hoping to build a safe future in Australia, being slowly destroyed. In November 2014, Yasmin made her first attempt at self-harm or suicide by drinking washing liquid and shampoo. Amir says that Yasmin did not have mental health issues before they arrived in Nauru, but started deteriorating during her time in detention at the RPC.

In March 2015 her son Darius, who was then five-years-old, was attacked by one of the guards in the camp who threw a rock at a group of children who she believed were misbehaving. The rock hit Darius in the face, chipping off his tooth. Amir says that he complained to various authorities for weeks about the incident and was eventually told that the guard had been transferred from the camp.

“This incident affected my wife even more, and my son got mental issues since then as well: he started wetting his bed, developed what seems like autism – he almost doesn’t speak – has nightmares, panic attacks. My wife got anxiety; she started taking more pills, but nothing changed. For the last few months she just stayed in bed ... I was basically a nurse for both my son and my wife”. Medical records confirm this account.

Amir says that Yasmin continued to try killing herself – “once with tablets, and once with a lighter”. At the end of May 2016 Yasmin was rescued after a fire at their house, started while Amir and Darius were out. She still remains in a psychiatric ward at the RPC.

Hourly reports from nurses observing Yasmin note that she refuses food and medication, and does not shower, brush her teeth or change her clothes. She still tries to end her life. A report from 2 September 2016 describes Yasmin swinging herself “out from the steel beam in an attempt to get onto the water tank”. This action failed. The report continues: “She has previously indicated she wants to climb to a high place and jump off in order to break her bones”.

Devastated, Amir says, “I have no hope. It’s end of time here. I can see my son and wife going down day by day”.

5. See Amnesty International, *Island of Despair*, p. 20-21 for full details.



### 3. CORPORATE COMPLICITY IN ABUSE AND SECRECY

The Australian Government is responsible for creating and maintaining its inherently cruel and abusive “offshore processing” system on Nauru. However it would have great difficulty in running that system on a daily basis without the involvement of Broadspectrum – the Australian company that it pays to operate the refugee processing centre on the island on its behalf. Broadspectrum and its parent company Ferrovial

have a responsibility to avoid causing or contributing to human rights abuses wherever they operate, and to address human rights impacts with which they are involved. This section describes the role of Broadspectrum in respect of both the Australian Government’s violations of the rights of refugees and people seeking asylum on Nauru and direct abuses by Broadspectrum and its main sub-contractor Wilson Security. It also describes how Broadspectrum and Ferrovial are making a substantial profit from the abuse and secrecy that are inherent in the Australian Government’s offshore processing system. Section 4 then analyses, in this context, the human rights responsibilities and failings of Broadspectrum and Ferrovial – which exposes them to claims of criminal and civil liability.

#### THE ROLE OF BROADSPECTRUM

Australian company Broadspectrum (formerly called Transfield Services) is the leading private contractor on Nauru. Broadspectrum is one of an increasing number of “outsourcing” or “business to government” companies across the world. These companies are paid by governments to deliver services that were once provided by the state, in areas like defence, prisons, transport, justice, healthcare and immigration. This is big and potentially lucrative business: a search of the Australian Government’s contracts website for example reveals 989 records for contracts awarded to Transfield Services and 90 for contracts awarded to Broadspectrum going back to July 2006.<sup>6</sup>

Broadspectrum has provided “garrison services” on Nauru on behalf of the Australian Department of Immigration and Border Protection (DIBP) since September 2012.<sup>7</sup> Since March 2014, it has provided “garrison and welfare services” on behalf of the DIBP on both Nauru and Manus Island in Papua New Guinea.<sup>8</sup> The DIBP contract was originally supposed to end in October 2015 but has been gradually extended until October 2017 due to problems and delays in awarding a new contract.<sup>9</sup> In April 2016, Ferrovial announced that Broadspectrum would not be undertaking these services on Nauru and Manus Island in the future because it is “not a strategic activity in Ferrovial’s portfolio”.<sup>10</sup>

As provider of “garrison and welfare services” on Nauru and Manus Island, Broadspectrum is responsible for running the Refugee Processing Centres (RPCs) on the islands. This includes providing operational and support services such as facilities management, clothing, food, transport, cleaning and security services, and providing recreational and educational programmes to refugees and asylum-seekers.<sup>11</sup> Since April 2015, Broadspectrum has provided support services to refugees living outside the RPCs on Nauru and Manus Island, including site management at two refugee

6. Based on a search of the ausTender website ([www.tenders.gov.au/](http://www.tenders.gov.au/)) on 16 March 2017 using the search terms “Broadspectrum” and “Transfield Services”.
7. Transfield Services Limited (now Broadspectrum), *Transfield Services to provide services to Department of Immigration and Citizenship*, 11 September 2012, [www.broadspectrum.com/news-2012/transfield-services-to-provide-services-to-department-of-immigration-and-citizenship](http://www.broadspectrum.com/news-2012/transfield-services-to-provide-services-to-department-of-immigration-and-citizenship) (accessed 23 February 2017).
8. *Contract in relation to the provision of Garrison and Welfare Services at Regional Processing Countries between the Commonwealth of Australia represented by the Department of Immigration and Border Protection and Transfield Services (Australia) Pty Limited*, dated 24 March 2014, [webcache.googleusercontent.com/search?q=cache:QZqx3fl2JzgJ:www.apb.gov.au/DocumentStore.ashx%3Fid%3D80d11c55-2281-4b08-a9a3-9c87491022f6+&cd=2&hl=en&ct=clnk&gl=uk](http://webcache.googleusercontent.com/search?q=cache:QZqx3fl2JzgJ:www.apb.gov.au/DocumentStore.ashx%3Fid%3D80d11c55-2281-4b08-a9a3-9c87491022f6+&cd=2&hl=en&ct=clnk&gl=uk) (accessed 27 February 2017) (hereafter Broadspectrum, *DIBP Contract*).
9. Transfield Services Limited (now Broadspectrum), *Supplementary Target’s Statement*, [www.asx.com.au/asxpdf/20160208/pdf/434wp935c88kv.pdf](http://www.asx.com.au/asxpdf/20160208/pdf/434wp935c88kv.pdf), p. 3-4; Ferrovial, *Edited Transcript of FER.MC earnings conference call or presentation 28-Jul-16 4:00pm GMT*, [finance.yahoo.com/news/edited-transcript-fer-mc-earnings-203206595.html](http://finance.yahoo.com/news/edited-transcript-fer-mc-earnings-203206595.html) (hereafter, Ferrovial, *July 2016 Earnings Call* (both accessed 27 February 2017)).
10. Ferrovial, *Ferrovial reaches 59% of Broadspectrum*, 29 April 2016, [www.ferrovial.com/wp-content/uploads/2016/04/HR-Tasmania-aceptacion-en.pdf](http://www.ferrovial.com/wp-content/uploads/2016/04/HR-Tasmania-aceptacion-en.pdf), p. 4 (accessed 27 February 2017).
11. Broadspectrum, *DIBP Contract*, Schedule 1 (Statement of Work).

“camps” on Nauru that are situated outside the RPC, and transportation and accommodation services on the wider island.<sup>12</sup> Broadspectrum provides these services through its wholly-owned Australian subsidiary Broadspectrum (Australia) Pty Limited (formerly Transfield Services (Australia) Pty Limited).

Since late 2012, and with the approval of the Australian Government,<sup>13</sup> Broadspectrum has sub-contracted some of its responsibilities on Nauru to another Australian company called Wilson Parking Australia 1992 Pty Ltd (trading as Wilson Security).<sup>14</sup> Broadspectrum also sub-contracts similar responsibilities to Wilson Security on Manus Island.<sup>15</sup> Wilson Security itself has sub-contracted to a local security provider in Nauru called Sterling Security.<sup>16</sup> In September 2016, Wilson Security announced that it would be leaving Nauru when its contract expires in October 2017.<sup>17</sup>

Although Wilson Security's current contract with Broadspectrum has not been made public, their previous contract from September 2013 is available online and many of the terms of that contract are near identical to the terms of Broadspectrum's current contract with the DIBP. As such, and presuming that Broadspectrum continues to sub-contract similar services to Wilson Security under the current contract, it would appear that Wilson Security's main responsibility is to provide security services at the RPC on Nauru, including managing the overall security situation at the RPC, monitoring entry to and exit from the RPC, “discreetly monitoring the movement and location of all people on the Site” and maintaining the security of its perimeter. It would also seem to be responsible for transport and escort services, the reception, transfer and discharge of refugees and asylum-seekers at the RPC, managing their property, and dealing with behavioural management issues.<sup>18</sup> It appears to provide similar services on Manus Island.<sup>19</sup>

Although Broadspectrum has sub-contracted these services to Wilson Security, it remains responsible for Wilson Security's performance of those services under the terms of its contract with the DIBP.<sup>20</sup> Furthermore, presuming that the terms of the current contract are similar to the September 2013 contract, Broadspectrum retains a significant amount of control over the performance of the contract by Wilson Security. For example, it has the ability to approve sub-contractors of Wilson Security, to vary or suspend the services to be provided by Wilson Security at any time, to remove Wilson Security staff at any time and to terminate the sub-contract at any time.<sup>21</sup> Three Wilson Security staff have in fact been dismissed from Nauru at Broadspectrum's request as of August 2015.<sup>22</sup> Broadspectrum is also responsible for the general recruitment, screening and contracting of staff at the RPC on Nauru.<sup>23</sup>

12. *Deed of Variation No. 1 between the Commonwealth of Australia represented by the Department of Immigration and Border Protection and Transfield Services (Australia) Pty Ltd*, dated 21 April 2015, [www.aph.gov.au/DocumentStore.ashx?id=ebce06ff-befe-4b93-8488-4a307ffb98aa](http://www.aph.gov.au/DocumentStore.ashx?id=ebce06ff-befe-4b93-8488-4a307ffb98aa) (accessed 2 March 2017). Details of the exact services provided by Broadspectrum at the East Lorengau “refugee transit centre” on Manus Island are redacted from this publicly available version of the contract.
13. *Plaintiff M68/2015 v Minister for Immigration and Border Protection*, [2016] HCA 1, 2 February 2016, para. 208, [eresources.hcourt.gov.au/downloadPdf/2016/HCA/1](http://eresources.hcourt.gov.au/downloadPdf/2016/HCA/1) (accessed 19 March 2017) (hereafter *Case M68/2015*).
14. Wilson Security, *Nauru and Manus Island Fact Sheet*, [www.wilsonsecurity.com.au/ourexperience/documents/nauru%20and%20manus%20island%20fact%20sheet.pdf](http://www.wilsonsecurity.com.au/ourexperience/documents/nauru%20and%20manus%20island%20fact%20sheet.pdf) (accessed 1 March 2017); Subcontract Agreement General Terms and Conditions in relation to the Provision of Services on the Republic of Nauru, dated 2 September 2013, between Transfield Services (Australia) Pty Limited and Wilson Parking Australia 1992 Pty Ltd, [www.border.gov.au/AccessandAccountability/Documents/FOI/FA140300149.PDF](http://www.border.gov.au/AccessandAccountability/Documents/FOI/FA140300149.PDF) (accessed 1 March 2017) (hereafter Broadspectrum, *Wilson Sub-Contract*); *Subcontract Agreement General Terms and Conditions in relation to the Provision of Services on the Republic of Nauru*, dated 28 March 2014, between Transfield Services (Australia) Pty Limited and Wilson Parking Australia 1992 Pty Ltd.
15. Slater & Gordon, *Manus Island Class Action*, para. 132, [www.slatergordon.com.au/class-actions/current-class-actions/manus-island-class-action](http://www.slatergordon.com.au/class-actions/current-class-actions/manus-island-class-action) (accessed 9 March 2017) (hereafter, *Manus Island Class Action*).
16. Philip Moss, *Review into recent allegations relating to conditions and circumstances at the Regional Processing Centre in Nauru (Final Report)*, 6 February 2015, para. 2.16, [www.border.gov.au/ReportsandPublications/Documents/reviews-and-inquiries/review-conditions-circumstances-nauru.pdf](http://www.border.gov.au/ReportsandPublications/Documents/reviews-and-inquiries/review-conditions-circumstances-nauru.pdf) (accessed 7 March 2017) (hereafter Moss Review, *Final Report*).
17. Stephanie Anderson, *Wilson Security to stop servicing Nauru, Manus Island detention centres*, ABC News, 2 September 2016, [www.abc.net.au/news/2016-09-02/wilson-security-to-stop-servicing-nauru,-manus-island-detention/7807746](http://www.abc.net.au/news/2016-09-02/wilson-security-to-stop-servicing-nauru,-manus-island-detention/7807746) (accessed 28 February 2017).
18. Broadspectrum, *Wilson Sub-Contract*, Annexure 8 – Statement of Services.
19. *Manus Island Class Action*, para. 132.
20. Broadspectrum, *DIBP Contract*, Clause 6.4 (Service Provider liability and obligations).
21. Broadspectrum, *Wilson Sub-Contract*, Clauses 3.4 (Right of Removal), 4.2 (Variations), 5.1 (Suspension), 11.1 (Transfield Services remedy notice), 11.2 (Termination for Convenience) and 11.5 (Termination of Head Contract).
22. Senate Select Committee on the Recent Allegations relating to Conditions and Circumstances at the Regional Processing Centre in Nauru, *Taking responsibility: conditions and circumstances at Australia's Regional Processing Centre in Nauru (Final Report)*, 31 August 2015, para. 2.103, [www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Regional\\_processing\\_Nauru/Regional\\_processing\\_Nauru/Final\\_Report](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Regional_processing_Nauru/Regional_processing_Nauru/Final_Report) (accessed 7 March 2017) (hereafter Senate Select Committee, *Final Report*).
23. Senate Select Committee, *Final Report*, para. 2.118.

### 3.1 BROADSPECTRUM'S COMPLICITY IN VIOLATIONS BY THE AUSTRALIAN GOVERNMENT

The Australian Government has always denied that it has any responsibility for refugees and people seeking asylum after it forcibly deports them to Nauru. In its October 2016 report, Amnesty International concluded that under international law the Australian Government retained at least joint responsibility with the Government of Nauru – and likely primary responsibility – for the human rights of the refugees and people seeking asylum on Nauru.

Amnesty also concluded that, due to the intentionally and inherently abusive nature of its “offshore processing system” on Nauru, the Australian Government was systematically violating the rights of the refugees and people seeking asylum – including children – who are trapped on the island. This includes a wide range of human rights that Australia has undertaken to respect, protect and fulfil under international treaties, such as the ban on torture and other cruel, inhuman or degrading treatment or punishment; the right to life; the right to liberty and security of the person; the ban on arbitrary detention; the right to health; and the right to education.<sup>24</sup> More specifically, Amnesty concluded that the conditions on Nauru – refugees’ severe mental anguish, the intentional nature of the system, and the fact that the goal of offshore processing is to intimidate or coerce people to achieve a specific outcome – amount to torture.

Although the Australian Government is responsible for creating and maintaining the inherently cruel and abusive “offshore processing” system on Nauru, Broadspectrum is responsible for providing the core services that enable the Government to continue to operate that system on a daily basis.

It is clear from the terms of the DIBP contract as outlined above that the Australian Government would not be able to operate its offshore processing system on Nauru without Broadspectrum’s involvement. Under that contract, Broadspectrum manages the facilities and – essentially – controls the daily lives of refugees and people seeking asylum at the Refugee Processing Centre (RPC) on Nauru. It is responsible (either itself or through its sub-contractor Wilson Security) for controlling access to food, clothing, property and recreational activities, for dealing with incidents and behavioural issues at the RPC, and for monitoring entry and exit to and movement around the RPC.

Moreover, Broadspectrum has run the day-to-day operations of the Nauru RPC since September 2012 (see “Who Really Operates the Refugee Processing Centre (RPC)” below). It is well aware of the conditions faced by people seeking asylum and refugees on Nauru – as a result of both its staff being on Nauru and the high level of national, international and media attention on this situation – and continues to operate the RPC in that knowledge. Its involvement in the RPC facilitates the continuation of an abusive situation. Amnesty International therefore considers that Broadspectrum’s ongoing involvement in the RPC amounts to complicity in the Australian Government’s violations of the rights of people seeking asylum and refugees on Nauru. The resulting human rights and legal implications are set out in Section 4 below.

24. *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, Art. 1(1); *International Covenant on Civil and Political Rights*, 16 December 1966, Arts. 6(1), 7, 9(1) and 12(1); *Convention on the Rights of the Child*, 20 November 1989, Arts. 6(1), 24(1), 19(1), 28(1), 37(a), 37(b); *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, Arts. 12(1) and 13(1); *Convention on the Elimination of All Forms of Discrimination Against Women*, 18 December 1979, Art. 12(1).

## WHO REALLY OPERATES THE REFUGEE PROCESSING CENTRE (RPC) ON NAURU?

No one is willing to take responsibility for operating the RPC on Nauru.

Broadspectrum has repeatedly stated to Amnesty International that it “does not operate the Refugee Processing Centre”.<sup>25</sup> Its parent company Ferrovial claims that Broadspectrum “neither manages [sic] nor runs the RPCs, as its role is limited to rendering certain services to the centers”.<sup>26</sup> The Australian Government claims that the Government of Nauru operates it.<sup>27</sup> But statements from the Nauru Government’s “operations managers” at the RPC suggest that the day-to-day operation of the RPC is someone else’s responsibility.<sup>28</sup>

Given the services that Broadspectrum provides at the RPC on Nauru (see “The Role of Broadspectrum” above), it is Amnesty International’s view that Broadspectrum runs the RPC on a daily basis and has effective control over the day-to-day lives of refugees and asylum-seekers at the RPC, and that it does so on behalf of the Australian Government and with the Government’s ultimate oversight and control. This is supported by the terms of Broadspectrum’s contract with the DIBP, as well as by two reviews of the conditions on Nauru and an Australian court as outlined below.

The DIBP exercises ultimate control and oversight over Broadspectrum under the terms of its contract for the provision of services at the RPC. For example, it can require Broadspectrum to remove staff and can terminate or reduce the scope of the services provided by Broadspectrum at any time and at its absolute discretion. The DIBP also has “step-in rights” under which it can suspend the services provided by Broadspectrum and arrange for a third party or the DIBP to provide those services instead. Broadspectrum can only enter into sub-contracts over a certain value with the Government’s approval. Broadspectrum has to submit performance reports to the DIBP regularly and must immediately report certain welfare, safety and security issues to the DIBP.<sup>29</sup> The confidentiality deed attached to the DIBP contract makes clear that Broadspectrum, its sub-contractors and their staff are performing services “for or on behalf of the Commonwealth”.

In February 2015, the Nauru Government’s operations managers at the RPC told the Moss Review – established by the DIBP following allegations of sexual assault at the RPC – that “they are not receiving enough information about the day-to-day working on the Centre”. The operations managers “participate” in the operation of the centre through attending a range of meetings but said that “they did not always know when such meetings were occurring and/or were not invited”, that “they receive invitations when the relevant Departmental officer or contract service provider thinks to include them” and that “they are not kept fully informed by some of the contract service providers”. One of the operations managers said “I think one of the reasons why is, because the services providers are contracted to the DIBP, so they report to DIBP all the time”.<sup>30</sup>

This is supported by the “Nauru Files”, a cache of over 2,000 leaked incident reports written by security contractors, child protection workers and teachers working at the RPC on Nauru.<sup>31</sup> Amnesty International analysed all incident

25. Broadspectrum email to Amnesty International of 2 November 2016, [www.amnesty.org/en/documents/asa12/5108/2016/en/](http://www.amnesty.org/en/documents/asa12/5108/2016/en/) (accessed 2 March 2017).

26. Ferrovial, *Integrated Annual Report 2016*, February 2017, [www.ferrovial.com/wp-content/uploads/2017/02/Integrated-Annual-Report-2016-1.pdf](http://www.ferrovial.com/wp-content/uploads/2017/02/Integrated-Annual-Report-2016-1.pdf), p. 70 (hereafter Ferrovial, *Annual Report 2016*).

27. Senate Select Committee, *Final Report*, para. 1.38.

28. Moss Review, *Final Report*, para. 5.3.

29. Broadspectrum, *DIBP Contract*, Clauses 4.5 (Reports) Clauses 5.3 (Removal of Key Personnel), 5.7 (Removal of Service Provider Personnel), Clause 6.1 (Approval of subcontracts), 15.1 (Termination without default), 17.3.1(f) (Work health and safety) and 17.13 (Step in Rights), and Schedule 1 (Statement of Work), Part 2, Clause 2.2 and Part 3, Clause 4.14.5.

30. Moss Review, *Final Report*, paras. 5.3, 5.4, 5.8 and 5.9.

31. Paul Farrell, Nick Evershed and Helen Davidson, *The Nauru files: cache of 2,000 leaked reports reveal scale of abuse of children in Australian offshore detention*, *The Guardian*, 10 August 2016, [www.theguardian.com/australia-news/2016/aug/10/the-nauru-files-2000-leaked-reports-reveal-scale-of-abuse-of-children-in-australian-offshore-detention](http://www.theguardian.com/australia-news/2016/aug/10/the-nauru-files-2000-leaked-reports-reveal-scale-of-abuse-of-children-in-australian-offshore-detention) (accessed 17 March 2017).



reports that were labelled “major” or “critical” from 2013, 2014 and 2015 (totalling 287 reports). In those reports, Government of Nauru officials were one of the last stakeholders to be informed about an incident, whereas Australian authorities (the DIBP or the Australian Border Force) were one of the first.

In August 2015, an Australian Senate Select Committee that investigated the situation on Nauru noted that Broadspectrum (then Transfield Services) is the “principal contracted service provider” at the RPC on the island and concluded that:

*While the department advised that they neither run nor manage the RPC on Nauru, the evidence shows that the department has in-depth involvement in oversight of contracted service providers, including funding and complaints handling, and exerts a significant amount of control over the daily operations of the RPC on Nauru.<sup>32</sup>*

It went on to say that the DIBP “has effectively outsourced its accountability to Transfield Services and through them, to Wilson Security”.<sup>33</sup> For example, under the terms of the DIBP contract, Broadspectrum has indemnified the Australian Government for any costs and liabilities arising from the personal injury, disease, illness or death of any person at the RPC.<sup>34</sup>

In February 2016, the Australian High Court found that the Australian Government “funded the RPC and exercised effective control over the detention of transferees [i.e., refugees and asylum-seekers at the RPC] through the contractual obligations it imposed on Transfield”.<sup>35</sup> It also noted that, while the DIBP’s operations may have been authorised by the Government (albeit retrospectively), this does not prevent the Government or its officers or agents (such as Broadspectrum) from being subject to civil or criminal liability for their actions on Nauru under the laws of Australia or any other country.<sup>36</sup>

## 3.2 THE ROLE OF BROADSPECTRUM AND WILSON SECURITY IN DIRECT ABUSES

As outlined above, Broadspectrum is responsible for running the day-to-day operations of the RPC on Nauru on behalf of the Australian Government. It does so through its own staff as well as through its sub-contractor Wilson Security. This means that Broadspectrum and Wilson Security staff have extensive day-to-day interaction with the refugees and people seeking asylum in the RPC.

Incidents of serious abuse within the RPC on Nauru – including of children – first came to light in April 2014<sup>37</sup> and have been well-documented since then in numerous media and other reports.<sup>38</sup> Those sources also detail many allegations against Broadspectrum and Wilson Security of serious abuses of refugees and people seeking asylum at the RPC.

The February 2015 Moss Review (see “Who Really Operates the Refugee Processing Centre (RPC) on Nauru” above) included 20 pages of allegations of sexual and physical assault and harassment at the RPC on Nauru (both by service providers and detainees).<sup>39</sup> Eleven of those allegations can be identified as

32. Senate Select Committee Report, paras. 2.53 and 3.4.

33. Senate Select Committee Report, para. 5.34.

34. Broadspectrum, *DIBP Contract*, Clause 12.2.1 (Indemnity).

35. *Case M68/2015*, para. 93.

36. *Case M68/2015*, para. 181.

37. Oliver Laughland, *Nauru guards accused of assaulting children in detention camp*, The Guardian, 24 April 2014, [www.theguardian.com/world/2014/apr/24/nauru-guards-accused-of-assaulting-children](http://www.theguardian.com/world/2014/apr/24/nauru-guards-accused-of-assaulting-children) (accessed 3 March 2017).

38. For example, see: Moss Review, *Final Report*; Senate Select Committee, *Final Report*; Nick Evershed, Ri Liu, Paul Farrell, and Helen Davidson, *The Lives of Asylum Seekers in Detention Detailed in a Unique Database*, The Guardian, 10 August 2016, [www.theguardian.com/australia-news/ng-interactive/2016/aug/10/the-nauru-files-the-lives-of-asylum-seekers-in-detention-detailed-in-a-unique-database-interactive](http://www.theguardian.com/australia-news/ng-interactive/2016/aug/10/the-nauru-files-the-lives-of-asylum-seekers-in-detention-detailed-in-a-unique-database-interactive) (accessed 3 March 2017).

39. Moss Review, *Final Report*, p. 23-42.

involving employees of Wilson Security (some allegations refer generically to contract service providers or local security guards and some details are redacted because the person making the allegation did not want to be identified). The review noted that those interviewed “were generally credible and their accounts convincing” although it “could not establish the veracity of the allegations”.<sup>40</sup>

The August 2015 Australian Senate Select Committee report concluded that the RPC on Nauru “is not a safe environment for asylum-seekers”.<sup>41</sup> In a section on allegations regarding the conduct and behaviour of Broadspectrum (then Transfield Services) and Wilson Security staff, the report noted that the “specific allegations and incidents reported to this committee about the conduct and behaviour of contractor staff are too numerous to set out in detail in this report”.<sup>42</sup> It did include some specific detail (including as to allegations referred to the Nauru Police Force for criminal investigation):<sup>43</sup>

- As of 30 April 2015, Transfield Services had recorded “30 formal allegations of child abuse ... against RPC staff, 15 allegations of sexual assault or rape, and four allegations relating to the exchange of sexual favours for contraband”.
- Staff employed by Wilson Security were seen on a video from July 2013 “planning to use unreasonable force” against asylum-seekers even before a riot that took place at the RPC in that month.
- In November 2013, a cleaner for Transfield Services is alleged to have indecently assaulted a child at the RPC.
- Between 21 February 2014 and 30 April 2015, Transfield Services received 725 complaints from asylum-seekers in relation to staff at the RPC. Of these, 96 related to Transfield Services employees or services and 403 related to Wilson

Security employees or services. And of these, 18 complaints were referred to the Nauru Police Force. As of July 2015, the police had not charged anyone in relation to any of these alleged incidents.<sup>44</sup>

- In the first six months of 2015, Transfield Services dismissed 13 staff members for misconduct.

While disturbing, these figures also need to be viewed in the wider context of the reporting and investigation regime at the RPC. The Committee agreed with the earlier Moss Review that there was likely to be significant under-reporting of incidents, expressed concern that service providers were allowed to investigate their own staff and highlighted reports that Wilson Security staff shredded incident reports.<sup>45</sup>

In August 2016, The Guardian published the “Nauru Files” (see “Who Really Operates the Refugee Processing Centre (RPC) on Nauru” above). The incident reports in the Nauru Files document situations such as physical and sexual abuse, hunger strikes, self-harm and medical emergencies, and provide each with a severity rating. The files include “seven reports of sexual assault of children, 59 reports of assault on children, 30 of self-harm involving children and 159 of threatened self-harm involving children”.<sup>46</sup> One of these cases involved “Darius”, a five year old who was attacked in March 2015 by one of the guards in the RPC (see “A family destroyed: the case of “Yasmin”, “Amir” and “Darius”” above).

The “Nauru Files” also revealed that the full extent of abuses at the RPC and who was responsible for them may not have been disclosed to the Australian Senate Select Committee inquiry in 2015. As a result, a further Senate Inquiry was announced in September 2016 (which is still ongoing at the time of publication).<sup>47</sup>

40. Moss Review, *Final Report*, para. 20.

41. Senate Select Committee, *Final Report*, para. 5.71.

42. Senate Select Committee, *Final Report*, para. 2.55.

43. Senate Select Committee, *Final Report*, paras. 2.53, 2.67, 2.102 and 2.69 (in which the report confirms that, having seen the video footage, the Wilson Security employees did make the comments referred to in the submission quoted in para. 2.67), 2.113, 2.114, 2.115 and 4.35.

44. Senate Select Committee, *Final Report*, para. 1.78.

45. Senate Select Committee, *Final Report*, paras. 2.56, 2.57, 5.29, 5.30 and 5.81.

46. Nick Evershed, Ri Liu, Paul Farrell, and Helen Davidson, *The Lives of Asylum Seekers in Detention Detailed in a Unique Database*, The Guardian, 10 August 2016, [www.theguardian.com/australia-news/ng-interactive/2016/aug/10/the-nauru-files-the-lives-of-asylum-seekers-in-detention-detailed-in-a-unique-database-interactive](http://www.theguardian.com/australia-news/ng-interactive/2016/aug/10/the-nauru-files-the-lives-of-asylum-seekers-in-detention-detailed-in-a-unique-database-interactive) (accessed 6 March 2017).

47. Australian Broadcasting Corporation, Senate Inquiry to examine abuse claims after Nauru Files leaked, 12 September 2016, [www.abc.net.au/news/2016-09-12/senate-inquiry-to-examine-abuse-claims-after-nauru-files-leaked/7837162](http://www.abc.net.au/news/2016-09-12/senate-inquiry-to-examine-abuse-claims-after-nauru-files-leaked/7837162) (accessed 19 March 2017).

## A FATHER'S THREE MONTH IMPRISONMENT AND A SON WITH TUBERCULOSIS: THE CASE OF HAMID AND IRFAN <sup>48</sup>

Hamid Reza Nadaf is a 40-year-old mechanic from Iran, and his son Irfan is eight years old. They live at the Refugee Processing Centre (RPC), as they have not yet received a final decision on their applications for asylum.

On 3 June 2016, Mr. Nadaf was arrested and subsequently jailed for over three months until 7 September 2016. It appears that his arrest and imprisonment were arbitrary.

Mr. Nadaf believes that Nauruan authorities had long been looking for a pretext on which to arrest him. He is involved in a project documenting conditions at the RPC and said that he had been warned by Nauru Police Force (NPF) officers several times not to take photos of the RPC – even though he had been taking photos from outside the RPC, which is not forbidden. They had written down his name and other details.

On 30 May 2016, Mr. Nadaf took his son Irfan to the local police station. He wanted to lodge a complaint after a Nauruan security guard at the RPC threw Irfan out of the centre's store on 26 May – which Mr. Nadaf said resulted in an injury to his son's hand and required medical attention. At the station, a uniformed officer from the Australian Federal Police (AFP) questioned Irfan on his own for 20 minutes. Mr. Nadaf objected to this.

On 3 June, police officers from the AFP and NPF took Mr. Nadaf from the RPC to the police station and accused him of writing a threatening letter – in English – to a Nauru national. Mr. Nadaf is a Farsi-speaker who has a very rudimentary understanding of English. A former service provider who knows Mr. Nadaf says this “was clearly a set-up”.

Mr. Nadaf was released on 7 September 2016. He told Amnesty International that since his release he has been a nervous wreck.

His son Irfan has suffered numerous human rights violations linked to his status as a child. Mr Nadaf's wife, who is not Irfan's biological mother, has serious mental health issues and is unable to care for him. His son was ultimately left in the care of workers at the centre. This meant that during the course of his father's three month imprisonment, Irfan was effectively left alone at the RPC. He was only allowed to visit Mr. Nadaf in prison occasionally.

Mr. Nadaf also told Amnesty International that in August 2015 Irfan was diagnosed with tuberculosis, a highly infectious and sometimes deadly illness. He is unable to take his medication because it does not agree with him. Mr. Nadaf said that he was presented with a “consent form” stating that his son was refusing to take his medication, so if he has tuberculosis, “it was his own fault”. He refused to sign. Shockingly, Mr. Nadaf says that most of the approximately 40 children living in the RPC have tuberculosis and that the conditions in the centre – in particular the dampness and the phosphate in the air from old mining works – are particularly damaging for this illness.

48. See Amnesty International, *Island of Despair*, p. 40-42 for full details.



March 2017. The fenced and tented refugee processing centre on Nauru where people who have tried to seek asylum in Australia were forcibly sent. People initially spend a year or more living in this camp.

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### 3.3 PROFITING FROM ABUSE

The Australian Government spends billions of dollars in maintaining its offshore processing system on both Nauru and Manus Island in Papua New Guinea. Broadspectrum's contract with the Australian Department of Immigration and Border Protection (DIBP) is particularly profitable for the company and – in turn – its parent company Ferrovial.

Between September 2012 and February 2014, Broadspectrum provided garrison services on Nauru under various contracts with the DIBP with a combined value of AUD\$350 million (then US\$364.5 million).<sup>49</sup> Broadspectrum's current contract for garrison and welfare services on both Nauru and Manus Island

– signed in March 2014 and due to terminate in October 2017 – has been amended several times over the years, both in terms of its value and scope of services provided. 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.<sup>50</sup> 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.<sup>51</sup>

Broadspectrum disputes the AUS\$2.5 billion figure and has itself stated that the original value of the

49. Australian Government, *ausTender*, [www.tenders.gov.au/?event=public.advancedsearch.keyword&keyword=transfield+services+nauru](http://www.tenders.gov.au/?event=public.advancedsearch.keyword&keyword=transfield+services+nauru); Australian National Audit Office, *Offshore Processing Centres in Nauru and Papua New Guinea: Procurement of Garrison Support and Welfare Services*, 13 September 2016, Table 1.1, [www.anao.gov.au/work/performance-audit/offshore-processing-centres-nauru-and-papua-new-guinea-procurement](http://www.anao.gov.au/work/performance-audit/offshore-processing-centres-nauru-and-papua-new-guinea-procurement) (both accessed 24 February 2017). Australian Dollars converted to US Dollars at the mid-market exchange rate as of 11 September 2012 (the date Broadspectrum announced it had signed the contract), as reported on [www.xe.com/currencytables](http://www.xe.com/currencytables).

50. Australian Government, *ausTender: Contract Notice View – CN2163702*, [www.tenders.gov.au/?event=public.cn.view&CNUUID=1013C-CBE-92A3-D1D4-722EC39FCBF61B39](http://www.tenders.gov.au/?event=public.cn.view&CNUUID=1013C-CBE-92A3-D1D4-722EC39FCBF61B39) (accessed 24 February 2017). Australian Dollars converted to US Dollars at the mid-market exchange rate as of 9 March 2017, as reported on [www.xe.com/currencytables](http://www.xe.com/currencytables).

51. Australian National Audit Office, *Offshore Processing Centres in Nauru and Papua New Guinea: Procurement of Garrison Support and Welfare Services*, 13 September 2016, para. 3.65, [www.anao.gov.au/work/performance-audit/offshore-processing-centres-nauru-and-papua-new-guinea-procurement](http://www.anao.gov.au/work/performance-audit/offshore-processing-centres-nauru-and-papua-new-guinea-procurement) (accessed 7 March 2017). Australian Dollars converted to US Dollars at the mid-market exchange rate as of 13 September 2016 (the date the report was released), as reported on [www.xe.com/currencytables](http://www.xe.com/currencytables).



contract was AUD\$1.2 billion (then US\$1.1 billion)<sup>52</sup> based on the current occupancy of each of the Refugee Processing Centres (RPCs) on Nauru and Manus Island (although it has not explained exactly why this results in two such different figures).<sup>53</sup>

Even taken on its own, this is an outstandingly large amount of money. But when put into the context of Broadspectrum's other business sectors, it becomes clear just how profitable this contract is for the company.

The DIBP contract falls within the Defence, Social and Property (DSP) sector of Broadspectrum's business and, specifically, within the "Social" sub-sector of the DSP business. DSP is Broadspectrum's biggest business sector. In 2016, it contributed AUD\$1.646 billion (then US\$1.226 billion) of Broadspectrum's total operating revenues of AUD\$3.692 billion (then US\$2.749 billion) (i.e., 45%).<sup>54</sup> And in 2015, 69% of the DSP sector's revenues came from the "Social" sub-sector – within which the DIBP contract falls (figures are not available for 2016).<sup>55</sup> In 2016, the profit margin of the DSP sector (i.e., profit as a percentage of total revenue) was 17.8%. This stands in stark contrast to the profit margin in Broadspectrum's other business sectors such as Infrastructure (2.8%) and Resource and Industrial (1.6%).<sup>56</sup>

Amazingly the exact profit that Broadspectrum makes from the DIBP contract is shrouded in secrecy. Broadspectrum has never reported on its total revenues and costs under the contract or separate revenues and costs for Nauru and Manus Island – including the amount it pays to Wilson Security. Broadspectrum merely reports its revenues and costs

for the business sector that the DIBP contract falls within. In fact, Broadspectrum mentions "Nauru" just once in its entire 2016 financial statements and does not mention Wilson Security at all.<sup>57</sup>

When Ferrovia took over Broadspectrum in April 2016, it announced that Broadspectrum would not be providing services on Nauru and Manus Island after the end of its current contract (i.e., 31 October 2017).<sup>58</sup> Ferrovia became sole shareholder of Broadspectrum in June 2016. Until the contract comes to an end, Ferrovia therefore stands to make a large amount of money from Broadspectrum – a substantial portion of which will come from its operations on Nauru and Manus Island. In its 2016 annual report, Ferrovia revealed that it had received total revenues of €1.4 billion (US\$1.5 billion) from Broadspectrum in 2016.<sup>59</sup> Ferrovia also notes in the annual report that the revenues from its Services sector in 2016 increased by 24.1% in comparison to 2015 due to its acquisition of Broadspectrum.<sup>60</sup> Ferrovia has not released details of Broadspectrum's exact profits from the DIBP contract, saying that it is confidential.<sup>61</sup>

The vast amount of money that Ferrovia and Broadspectrum make from the DIBP contract stands in stark contrast to the shockingly poor conditions in which refugees and people seeking asylum have been forced to live at the RPC on Nauru since it has been operated by Broadspectrum. During a three-day visit to Nauru in November 2012, Amnesty International researchers found 387 men living in cramped and leaky army tents in extremely hot, wet and humid conditions.<sup>62</sup> The Australian Senate Select Committee's August 2015 report expressed

52. Australian Dollars converted to US Dollars at the mid-market exchange rate as of 24 March 2014 (the date the contract was signed), as reported on [www.xe.com/currencytables](http://www.xe.com/currencytables).

53. Transfield Services Limited (now Broadspectrum), *Transfield Services receives Letter of Intent for Department of Immigration and Border Protection Contract*, 24 February 2014, [www.asx.com.au/asxpdf/20140224/pdf/42mxphq18ldk1y.pdf](http://www.asx.com.au/asxpdf/20140224/pdf/42mxphq18ldk1y.pdf) (accessed 27 February 2017).

54. Broadspectrum, *FY2016 Results for the Year Ended 30 June 2016*, p. 5 (hereafter, *Broadspectrum 2016 Results*). These financial statements were obtained through a company search on the website of the Australian Securities and Investments Commission (ASIC) and are held on file by Amnesty International. Australian Dollars converted to US Dollars at the mid-market exchange rate as of 30 June 2016 (the date of the annual report), as reported on [www.xe.com/currencytables](http://www.xe.com/currencytables).

55. Broadspectrum, *Annual Report 2015*, p.34, [www.broadspectrum.com/irm/2015AnnualReport-menu.pdf](http://www.broadspectrum.com/irm/2015AnnualReport-menu.pdf) (accessed 24 February 2017).

56. *Broadspectrum 2016 Results*, p. 5-6.

57. *Broadspectrum 2016 Results*, p. 4.

58. Ferrovia, *Ferrovia reaches 59% of Broadspectrum*, 29 April 2016, [www.ferrovia.com/wp-content/uploads/2016/04/HR-Tasmania-aceptacion-en.pdf](http://www.ferrovia.com/wp-content/uploads/2016/04/HR-Tasmania-aceptacion-en.pdf), p. 4 (accessed 27 February 2017).

59. Ferrovia, *Annual Report 2016*, p. 20. Euros converted to US Dollars at the mid-market exchange rate as of 27 February 2017 (the date of the annual report), as reported on [www.xe.com/currencytables](http://www.xe.com/currencytables).

60. Ferrovia, *Annual Report 2016*, p. 37.

61. Ferrovia, *July 2016 Earnings Call*.

62. Amnesty International, *Nauru Camp A Human Rights Catastrophe With No End In Sight* (Index: ASA 42/002/2012), 23 November 2012, [www.amnesty.org/en/documents/asa42/002/2012/en/](http://www.amnesty.org/en/documents/asa42/002/2012/en/) (accessed 7 March 2017).

deep concern at evidence of the “unacceptably low” standards of living at the RPC on Nauru – including insufficient access to water and sanitation – and the provision of mouldy or rotten food.<sup>63</sup> The Committee concluded:

*It appears to the committee that the Regional Processing Centre on Nauru is not run well, nor are Wilson Security and Transfield Services properly accountable to the Commonwealth despite the significant investment in their services.*<sup>64</sup>

During investigations carried out between July and October 2016 with respect to Nauru, service providers told Amnesty International that refugees and people seeking asylum sometimes wait weeks or months to get even basic necessities like shoes and underwear.<sup>65</sup>

The DIBP's process for awarding Broadspectrum's current, highly profitable contract has been sharply criticised by the Australian National Audit Office (ANAO). The ANAO reported that, during the course of negotiations for the Nauru and Manus Island contract, Broadspectrum increased its bid by AUD\$1.1 billion (then US\$1.2 billion)<sup>66</sup> following the DIBP changing

its requirements and the scope of services to be provided. The ANAO concluded that the DIBP had failed to properly assess whether this escalation in price represented value for money, and that this “significantly increased the price of the services without Government authority to do so” and “resulted in higher than necessary expense for taxpayers”.<sup>67</sup> The ANAO has since found significant deficiencies in the DIBP's management of the contract:

*Previous ANAO audits of the department's contract management have found that: its contracting framework had not established clear expectations of the level and quality of services to be delivered; and its ability to monitor the performance of contractors was compromised by a lack of clarity in standards and performance measures and reliance on incident reporting to determine when standards were not being met. This audit has identified a recurrence of these (and other) deficiencies, which have resulted in higher than necessary expense for taxpayers and significant reputational risks for the Australian Government and the department.*<sup>68</sup>

## THE FERROVIAL TAKEOVER

In April 2016, Spanish multinational Ferrovial became the owner of Broadspectrum – previously a publicly listed company. Ferrovial paid AUS\$769 million in cash (then US\$560 million) for Broadspectrum.<sup>69</sup> It paid this cash by passing it down through various UK subsidiaries and then into the Australian company that Ferrovial established specifically to buy Broadspectrum.<sup>70</sup>

63. Senate Select Committee, *Final Report*, paras. 5.64 and 5.69.

64. Senate Select Committee, *Final Report*, para. 5.35 (footnotes omitted).

65. Amnesty International, *Island of Despair*, p. 29.

66. Australian Dollars converted to US Dollars at the mid-market exchange rate as of 15 December 2015 (the month in which the contract price was agreed), as reported on [www.xe.com/currencytables](http://www.xe.com/currencytables).

67. Australian National Audit Office, *Offshore Processing Centres in Nauru and Papua New Guinea: Procurement of Garrison Support and Welfare Services*, 13 September 2016, Summary and Recommendations (paras. 9, 10 and 25) and Section 4 (Open Tender Process from 2014 to 2016), Conclusion and paragraphs 4.39, 4.43 and 4.44, [www.anao.gov.au/work/performance-audit/offshore-processing-centres-nauru-and-papua-new-guinea-procurement](http://www.anao.gov.au/work/performance-audit/offshore-processing-centres-nauru-and-papua-new-guinea-procurement) (accessed 7 March 2017).

68. Australian National Audit Office, *Offshore Processing Centres in Nauru and Papua New Guinea: Contract Management of Garrison Support and Welfare Services*, para. 14, [www.anao.gov.au/work/performance-audit/offshore-processing-centres-nauru-and-papua-new-guinea-contract-management](http://www.anao.gov.au/work/performance-audit/offshore-processing-centres-nauru-and-papua-new-guinea-contract-management) (accessed 8 March 2017).

69. Australian Dollars converted to US Dollars at the mid-market exchange rate as of 13 May 2016 (the date Ferrovial completed its takeover bid for Broadspectrum), as reported on [www.xe.com/currencytables](http://www.xe.com/currencytables).

70. For example, in June 2016, Ferrovial Services International Limited (a UK company) issued just over 51.4 million new shares to its immediate UK parent company Ferrovial International Ltd. Ferrovial Services' latest financial statements say that it issued these shares to fund Ferrovial Australia's acquisition of Broadspectrum (Ferrovial Services International Limited, *Report and Financial Statements: Period Ended 31 December 2015*, 26 September 2016, p. 1, [beta.companieshouse.gov.uk/company/09635626/filing-history](http://beta.companieshouse.gov.uk/company/09635626/filing-history) (accessed 18 March 2017)).

Ferrovial is one of the world's biggest providers of transport, urban and service infrastructure. A significant amount of its shares are held by the founding del Pino family. Although based in Spain, the greatest proportion of Ferrovial's revenue comes from the United Kingdom where it operates several airports, holds a 25% stake in the company that manages Heathrow Airport and provides transport services on the railways and London underground system through its subsidiary Amey.<sup>71</sup> A subsidiary of Ferrovial, Ferrovial Agroman, was recently awarded a £300 million contract to build the central leg of the UK's new high-speed rail network HS2.<sup>72</sup> The company also has a significant presence in Portugal, the United States and Canada, where it holds large stakes in various highways and toll roads. As a result of the Broadspectrum acquisition, Ferrovial now has significant operations in Australia and New Zealand.

When Ferrovial took over Broadspectrum in April 2016, it announced that Broadspectrum would not be providing services on Nauru and Manus Island after the end of its current contract (i.e., 31 October 2017).<sup>73</sup> Although Ferrovial has stated that this is for "strategic" reasons,<sup>74</sup> it marks a significant turnaround from Ferrovial's original intentions concerning the contract.

When Ferrovial launched its bid to buy Broadspectrum in December 2015, Ferrovial acknowledged that the DIBP contract was "highly profitable" to Broadspectrum. It stated that it intended to make "limited or no changes to the operations of [sensitive contracts with the Australian Government] other than to improve service levels wherever possible". However, to appeal to shareholders who might be interested in selling their shares in Broadspectrum, Ferrovial also highlighted that the future of the company was uncertain because the DIBP contract may not be renewed on as profitable terms or renewed at all.<sup>75</sup>

In fact, in February 2016, Ferrovial suggested that it might withdraw its bid for Broadspectrum altogether because the company was no longer preferred bidder for the new DIBP contract and this "adversely impacts the valuation of Broadspectrum".<sup>76</sup> Just over two weeks later, Ferrovial announced that its bid for Broadspectrum was still open.<sup>77</sup>

On 27th April 2016, the Government of Papua New Guinea announced that it would be closing the Manus Island RPC following a ruling by the Supreme Court that detaining people there was unconstitutional.<sup>78</sup> Immediately following that decision, Broadspectrum recommended that its shareholders accept Ferrovial's takeover bid. On 29th April, Ferrovial became majority shareholder of Broadspectrum.<sup>79</sup> In May 2016, Ferrovial appointed four of its staff to the Broadspectrum board of directors (which has six members in total). One of those appointees became Managing Director and Chief Executive Officer of Broadspectrum on 1 January 2017.<sup>80</sup> Since the end of June 2016, it has been the sole owner of Broadspectrum.<sup>81</sup>

This was actually Ferrovial's second attempt to buy Broadspectrum's shares. It made a similar bid in October 2014, as part of which it was provided with limited access to information about Broadspectrum's business.<sup>82</sup> That bid was ultimately unsuccessful.

71. Ferrovial, *Annual Report 2016*.

72. Ferrovial, *Ferrovial awarded £300m contract for HS2 enabling works in United Kingdom*, 17 November 2016, [www.ferrovial.com/en/press-room/press\\_releases/enabling-works-high-speed-uk/](http://www.ferrovial.com/en/press-room/press_releases/enabling-works-high-speed-uk/) (accessed 24 February 2017).

73. Ferrovial, *Ferrovial reaches 59% of Broadspectrum*, 29 April 2016, [www.ferrovial.com/wp-content/uploads/2016/04/HR-Tasmania-aceptacion-en.pdf](http://www.ferrovial.com/wp-content/uploads/2016/04/HR-Tasmania-aceptacion-en.pdf), p. 4 (accessed 27 February 2017).

74. Ferrovial, *Annual Report 2016*, p. 39.

75. Ferrovial, *Bidder's Statement*, 7 December 2015, p. 8 (held on file by Amnesty International); Ferrovial, *Ferrovial announces Takeover Offer for 100% of Broadspectrum shares*, 7 December 2015, p. 2, [www.asx.com.au/asxpdf/20151207/pdf/433lxcqbqw3vgr.pdf](http://www.asx.com.au/asxpdf/20151207/pdf/433lxcqbqw3vgr.pdf) (accessed 27 February 2017).

76. Ferrovial, *Fifth Supplementary Bidder's Statement*, 9 February 2016, [www.asx.com.au/asxpdf/20160209/pdf/434xq83dl70pf5.pdf](http://www.asx.com.au/asxpdf/20160209/pdf/434xq83dl70pf5.pdf) (accessed 27 February 2017).

77. Ferrovial, *Sixth Supplementary Bidder's Statement*, 25 February 2016, [www.asx.com.au/asxpdf/20160225/pdf/435cd96rhlyr26.pdf](http://www.asx.com.au/asxpdf/20160225/pdf/435cd96rhlyr26.pdf) (accessed 27 February 2017).

78. Stephanie Anderson, *Manus Island detention centre to be shut, Papua New Guinea Prime Minister Peter O'Neill says*, ABC, [www.abc.net.au/news/2016-04-27/png-pm-oneill-to-shut-manus-island-detention-centre/7364414](http://www.abc.net.au/news/2016-04-27/png-pm-oneill-to-shut-manus-island-detention-centre/7364414) (accessed 17 March 2017).

79. Ferrovial, *Ferrovial reaches 59% of Broadspectrum*, 29 April 2016, [www.ferrovial.com/wp-content/uploads/2016/04/HR-Tasmania-aceptacion-en.pdf](http://www.ferrovial.com/wp-content/uploads/2016/04/HR-Tasmania-aceptacion-en.pdf), p. 4 (accessed 27 February 2017).

80. Broadspectrum, *Broadspectrum announces Board changes*, 13 May 2016, [www.broadspectrum.com/news/broadspectrum-announces-board-changes](http://www.broadspectrum.com/news/broadspectrum-announces-board-changes); Broadspectrum, Board of Directors, [www.broadspectrum.com/investor/board-of-directors](http://www.broadspectrum.com/investor/board-of-directors) (both accessed 20 March 2017).

81. Broadspectrum, *Ferrovial completes acquisition of Broadspectrum*, 30 June 2016, [www.broadspectrum.com/news/ferrovial-completes-acquisition-of-broadspectrum](http://www.broadspectrum.com/news/ferrovial-completes-acquisition-of-broadspectrum) (accessed 9 March 2017).

82. Ferrovial, *Ferrovial submits a non-binding proposal to acquire Transfield Services for \$1.95 per shares*, 20 October 2014, [www.ferrovial.com/en/press-room/press\\_releases/non-binding-proposal-acquire-transfield-services/](http://www.ferrovial.com/en/press-room/press_releases/non-binding-proposal-acquire-transfield-services/) (accessed 27 February 2017).



*The Ferrovial head office, Madrid. Ferrovial is complicit in the Australian Government's violations of the rights of refugees and people seeking asylum at the refugee processing centre on Nauru*  
© Luis García

### 3.4 HIDING THE SCALE OF ABUSE AND PROFIT

The Australian Government has gone to extraordinary lengths to hide the full magnitude of the abuses on Nauru and Manus Island, making it a criminal offence for medical and welfare professionals to speak out and placing service providers under strict confidentiality clauses.<sup>83</sup>

Under its contract with the Department of Immigration and Border Protection (DIBP), Broadspectrum and its personnel and sub-contractors are prohibited from releasing to the media or any third party any information that “concerns or is related to or which might reasonably be expected to affect ... the Services; the relationship between the parties; or any other matter directly or indirectly related to [the contract]”.<sup>84</sup> All personnel for Broadspectrum and Wilson Security who carry out work under the DIBP contract are

required to sign a standard form confidentiality deed, under which they undertake not to copy, reproduce or disclose essentially any information regarding the provision of services on Nauru and Manus Island without the DIBP's written consent (which it can grant or withhold in its absolute discretion).<sup>85</sup> By signing the confidentiality deed, staff acknowledge that “publication or communication ... of any fact or document which has come to their knowledge or into their possession or custody by virtue of the performance of the Contract ... may be an offence under the Crimes Act 1914, punishment for which may include imprisonment”.<sup>86</sup> These confidentiality obligations are “perpetual”.<sup>87</sup>

Service providers who spoke to Amnesty International in connection with its October 2016 report on Nauru consistently described an oppressive culture of secrecy on the island. Broadspectrum has warned its staff, in a leaked internal document, that they can be fired for communicating in any way (social

83. On 30 September 2016, the Australian Government exempted medical professionals from the secrecy and non-disclosure provisions of the Australian Border Force Act 2015 ([www.border.gov.au/AccessandAccountability/Documents/determination-workers-c.pdf](http://www.border.gov.au/AccessandAccountability/Documents/determination-workers-c.pdf)).

84. Broadspectrum, *DIBP Contract*, Clause 13.2 (Service Provider not to make public statements).

85. Broadspectrum, *DIBP Contract*, Clause 5.4 (Service Provider Personnel) and Schedule 3 (Confidentiality Deed).

86. Broadspectrum, *DIBP Contract*, Schedule 3 (Confidentiality Deed), Clause 4.2 (Crimes Act).

87. Broadspectrum, *DIBP Contract*, Schedule 3 (Confidentiality Deed), Clause 7.1 (Survival of Obligations).



media, letter, fax, and “any other form of publication”) about offshore processing “operations”, or for sharing any information that “relates to the treatment of transferees [asylum-seekers] in relation to the operations”.<sup>88</sup> The company has threatened legal proceedings against one former service provider for disclosing information about offshore processing.<sup>89</sup>

This secrecy extends to the terms of the contracts under which Broadspectrum and Wilson Security provide services on Nauru and Manus Island. The full terms of these contracts are not known and even redacted copies were not made publicly available until two to three years ago. In May 2014, in response to a freedom of information request, the DIBP released a redacted copy of a September 2013 contract between Broadspectrum (then Transfield Services) and Wilson Security in relation to Nauru.<sup>90</sup> Broadspectrum and Wilson Security’s most recent Nauru contract of March 2014 and any subsequent amendments are not publicly available, and nor are any of their contracts for Manus Island. In May 2015, in response to a request from the Australian Senate Select Committee investigating the conditions on Nauru, the DIBP provided redacted versions of its current contract with Broadspectrum and an amendment of April 2015.<sup>91</sup> Although a further amendment to that contract was signed in September 2016, increasing its value by AUD\$340,580,000 (then US\$383,536,036), a copy has never been made publicly available.<sup>92</sup>

The information usually redacted from these contracts is the service fees paid by the DIBP to Broadspectrum

and, in turn, by Broadspectrum to Wilson Security. In justifying this secrecy in relation to the Broadspectrum / Wilson Security sub-contract, the DIBP has said – following consultation with Broadspectrum – that this contract was redacted because “it holds a significant commercial value that could reasonably be expected to be destroyed or diminished if the information were disclosed”.<sup>93</sup>

Amnesty International believes that commercial secrecy does not justify the non-disclosure of information about the costs and value of services being provided by Broadspectrum on Nauru and Manus Island. The secrecy around the value of the contracts allows Broadspectrum and its parent company Ferrovial to hide the exact profit they make from an abusive context. It allows the Australian Government to hide from taxpayers exactly how their money is spent – as noted above the ANAO estimates that holding people in the RPCs on Nauru and Manus Island under the current Broadspectrum contract costs over AUD\$573,000 (then USD\$427,611) per person, per year. The Australian public therefore has a legitimate interest in the disclosure of the full terms of these contracts.

Furthermore, the secrecy arising from the threat of criminal prosecution and stringent confidentiality obligations on service providers facilitate abuses at the RPCs and allow the Australian Government to hide the scale of the abuses on Nauru and Manus Island.

88. Transfield Services (now Broadspectrum), “Social Media Policy,” 2015, [static.guim.co.uk/ni/1427943384292/Transfield-Social-Media-pol.pdf](http://static.guim.co.uk/ni/1427943384292/Transfield-Social-Media-pol.pdf) (accessed 7 March 2017).

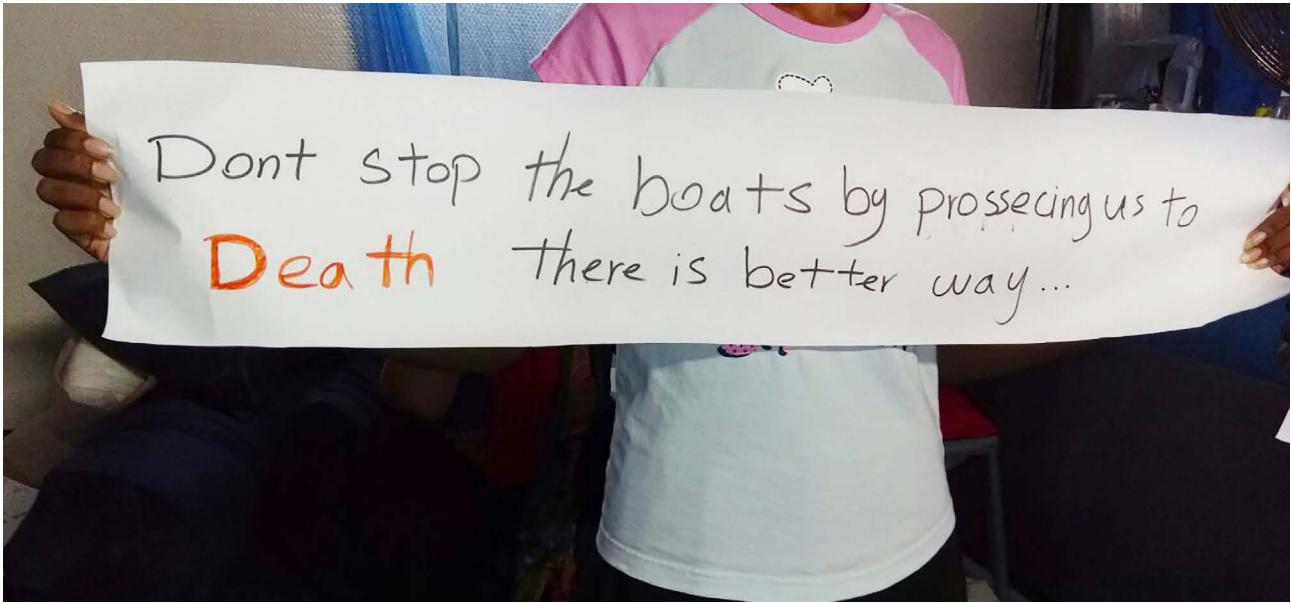
89. Amnesty International, *Island of Despair*, p. 51.

90. Department of Immigration and Border Protection, *Decision Record*, 30 May 2014, [www.border.gov.au/AccessandAccountability/Documents/FOI/FA140300149.PDF](http://www.border.gov.au/AccessandAccountability/Documents/FOI/FA140300149.PDF) (accessed 1 March 2017).

91. Parliament of Australia, *Question Taken on Notice: Parliamentary Inquiry 18 May 2015*, p. 10, [webcache.googleusercontent.com/search?q=cache:MOw1xWbcqCAJ:www.aph.gov.au/DocumentStore.ashx%3Fid%3D8bf36a60-5bc9-4200-a313-c8f9c1c758cb+&cd=3&hl=en&ct=clnk&gl=uk](http://webcache.googleusercontent.com/search?q=cache:MOw1xWbcqCAJ:www.aph.gov.au/DocumentStore.ashx%3Fid%3D8bf36a60-5bc9-4200-a313-c8f9c1c758cb+&cd=3&hl=en&ct=clnk&gl=uk) (accessed 1 March 2017).

92. Australian Government, *ausTender*, [www.tenders.gov.au/?event=public.cn.view&CNUUID=1013CCBE-92A3-D1D4-722EC39FCBF61B39](http://www.tenders.gov.au/?event=public.cn.view&CNUUID=1013CCBE-92A3-D1D4-722EC39FCBF61B39) (accessed 7 March 2017). Australian Dollars converted to US Dollars at the mid-market exchange rate as of 8 September 2016 (the date the amendment was signed), as reported on [www.xe.com/currencytables](http://www.xe.com/currencytables).

93. Department of Immigration and Border Protection, *Decision Record*, 30 May 2014, p. 5, [www.border.gov.au/AccessandAccountability/Documents/FOI/FA140300149.PDF](http://www.border.gov.au/AccessandAccountability/Documents/FOI/FA140300149.PDF) (accessed 7 March 2017).



↑ A refugee in the refugee processing centre on Nauru holds a sign appealing for help.  
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## 4. THE HUMAN RIGHTS RESPONSIBILITIES AND POTENTIAL LEGAL LIABILITIES OF BROADSPECTRUM AND FERROVIAL

Companies have a responsibility to respect all human rights wherever they operate in the world. This is an internationally endorsed standard of expected conduct.<sup>94</sup> It applies even when a company is operating through subsidiaries or sub-contractors.

The corporate responsibility to respect requires companies to avoid causing or contributing to human rights abuses through their own business activities and to address impacts with which they are involved, including by remediating any actual impacts. It also requires them to seek to prevent or mitigate adverse human rights impacts directly linked to their operations or services by their business relationships, even if they have not contributed to those impacts. A company's "business activities" are understood to include both actions and omissions, and its "business relationships" are understood to include "relationships with business partners, entities in its value chain, and any other non-State or State entity directly linked to its business operations, products or services".<sup>95</sup>

This responsibility is independent of a State's own human rights responsibilities and exists over and above compliance with national laws and regulations protecting human rights.<sup>96</sup>

94. This responsibility was expressly recognised by the UN Human Rights Council on 16 June 2011, when it endorsed the UN Guiding Principles on Business and Human Rights, and on 25 May 2011 when the 42 governments that had then adhered to the Declaration on International Investment and Multinational Enterprises of the OECD unanimously endorsed a revised version of the OECD Guidelines for Multinational Enterprises. See Human Rights Council, Human Rights and Transnational Corporations and other Business Enterprises, Resolution 17/4, UN Doc A/HRC/RES/17/4, 6 July 2011, [documents-dds-ny.un.org/doc/RESOLUTION/GEN/G11/144/71/PDF/G1114471.pdf?OpenElement](https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/G11/144/71/PDF/G1114471.pdf?OpenElement); OECD, *OECD Guidelines for Multinational Enterprises, 2011*, OECD Publishing, [www.oecd.org/corporate/mne/](http://www.oecd.org/corporate/mne/) (both accessed 3 March 2017).
95. UN Office of the High Commissioner for Human Rights, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework* (2011) UN Doc HR/PUB/11/04, Principles 11 and 13 including Commentary, [www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf) (accessed 3 March 2017) (hereafter *UNGPs*).
96. UNGPs, Principle 11 including Commentary.

To meet its corporate responsibility to respect, a company must take proactive and ongoing steps to identify and respond to its potential or actual human rights impacts. This includes putting appropriate policies and processes into place within their operations such as: (a) a policy commitment to meet the responsibility to respect human rights; (b) a due diligence process to identify, prevent, mitigate and account for how they address their human rights impacts; and (c) processes to enable the remediation of any adverse human rights impacts that they cause or contribute to. They should also take steps to ensure these policies are embedded throughout their operations. The due diligence process, in particular, should involve assessing actual and potential human rights impacts and acting upon those findings.<sup>97</sup>

There could be cases in which a company identifies through due diligence that it may cause or contribute to a serious human rights abuse and that it cannot prevent or mitigate that abuse. In such cases, the company should not undertake the relevant activity.

Furthermore, a company may expose itself to legal liability if it causes a human rights abuse itself, or contributes to human rights violations by other parties such as governments. For example, where a company causes a human rights abuse this may amount to a criminal offence under domestic laws relevant to human rights-related issues or provide a basis for victims to pursue a legal claim. As to contributing to violations, the UN Guiding Principles on Business & Human Rights provide a useful summary on how complicity can give rise to legal liability and may in itself amount to a crime in some countries or under international criminal law:

*Questions of complicity may arise when a business enterprise contributes to, or is seen as contributing to, adverse human rights impacts caused by other parties. Complicity has both non-legal and legal meanings. As a non-legal matter, business enterprises may be perceived as being*

*“complicit” in the acts of another party where, for example, they are seen to benefit from an abuse committed by that party.*

*As a legal matter, most national jurisdictions prohibit complicity in the commission of a crime and a number allow for criminal liability of business enterprises in such cases. Typically, civil actions can also be based on an enterprise’s alleged contribution to a harm, although these may not be framed in human rights terms. The weight of international criminal law jurisprudence indicates that the relevant standard for aiding and abetting is knowingly providing practical assistance or encouragement that has a substantial effect on the commission of a crime.<sup>98</sup>*

In light of these laws and standards and Amnesty’s recent research on Nauru, this section analyses the responsibilities and potential legal liabilities of Broadspectrum and Ferrovial with respect to their operations on Nauru only.



March 2017. Inside a tent where refugees are housed for a year or more in the refugee processing centre run by Ferrovial’s subsidiary, Broadspectrum, on Nauru. People, including families, live in these conditions as a result of Australia’s policy of forcibly transferring people to Nauru.

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97. UNGPs, Principles 15, 16 and 17 including Commentary.

98. UNGPs, Commentary to Principle 17.

## 4.1 BROADSPECTRUM'S HUMAN RIGHTS RESPONSIBILITIES

As part of its responsibility to respect, Broadspectrum must avoid causing human rights abuses itself and avoid contributing to human rights abuses by other parties through its own business activities. Broadspectrum must also seek to prevent or mitigate adverse human rights impacts that are directly linked to its operations or services by its business relationships – for example through its sub-contract with Wilson Security.

### 4.1.1 BROADSPECTRUM'S OWN BUSINESS ACTIVITIES

#### *Causing and contributing to human rights abuses*

The analysis in Section 3 above demonstrates that Broadspectrum staff have directly abused refugees and people seeking asylum at the RPC on Nauru. It also demonstrates the impact that this physical abuse can have on mental health. These abuses – at a minimum – infringe on the human right of refugees and asylum-seekers at the RPC to security of the person, which concerns freedom from injury to the body and the mind, or bodily and mental integrity.<sup>99</sup>

Additionally the analysis in Section 3 above demonstrates that, by running the day-to-day operations of the RPC on Nauru on behalf of the Australian Government, Broadspectrum is complicit in the Australian Government's violations of various rights of refugees and people seeking asylum on the island.

Broadspectrum is therefore both causing and contributing to human rights abuses at the RPC on Nauru through its own business activities. The potential legal implications of this are set out in Section 4.3 below.

#### *Policy commitment to human rights*

As noted above, to meet the responsibility to respect Broadspectrum should put in place a policy commitment to human rights, and take concrete steps to ensure that this policy is effectively implemented throughout its corporate group.

Broadspectrum has previously said to Amnesty International that it “has always operated with a zero-harm mentality”, has “zero tolerance for abuse” and operates to a “strict Code of Business Conduct, which includes a Board endorsed Human Rights Statement”.<sup>100</sup>

Section 3 above outlines numerous incidents that have occurred over several years, and include 45 allegations of child abuse and sexual assault against RPC staff that were detailed in the August 2015 Australian Senate Select Committee report (although in light of the “Nauru Files” released in August 2016 these figures are likely to be even higher). It is therefore clear that Broadspectrum has completely failed to implement its human rights policy in practice within the RPC on Nauru. This is a concern echoed in submissions to the Australian Senate Select Committee report on Nauru, one of which noted that there “appears to be a significant disconnect between the understanding of management who are located in Australia and the actual implementation of policy on the island”.<sup>101</sup>

#### *Human rights due diligence*

As noted above, to meet the responsibility to respect Broadspectrum should have in place a human rights due diligence process to identify the potential and actual human rights impacts associated with its operation of the RPC on Nauru and to assess how they can be prevented or mitigated (as appropriate). As part of that due diligence process, it should be acting upon those findings. This is not a one-off responsibility –

99. *International Covenant on Civil and Political Rights*, 16 December 1966, Art. 9(1); *Convention on the Rights of the Child*, 20 November 1989, Art. 19(1); UN Human Rights Committee, *General Comment No. 35, Article 9 (Liberty and Security of Person)*, 16 December 2014, UN Doc. CCPR/C/GC/35, paras. 3 and 9, [tbinternet.ohchr.org/\\_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=8&DocTypeID=11](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=8&DocTypeID=11) (accessed 7 March 2017).

100. Broadspectrum letter to Amnesty International of 1 August 2016; Broadspectrum email to Amnesty International of 2 November 2016, p. 4-5, [www.amnesty.org/en/documents/asa12/5108/2016/en/](http://www.amnesty.org/en/documents/asa12/5108/2016/en/) (accessed 6 March 2017).

101. Senate Select Committee, *Final Report*, para. 2.120.



Broadspectrum should have undertaken due diligence before entering into any contract to operate the Nauru RPC and be doing so on an ongoing basis throughout the life of the contract.<sup>102</sup>

For example, Broadspectrum entered into contracts with the Australian Department of Immigration and Border Protection (DIBP) to provide services on Nauru in September 2012 and to provide services on Nauru and Manus Island in March 2014. Until February 2016 it was preferred bidder for a new DIBP contract to provide services at both the Nauru and Manus Island RPCs.<sup>103</sup> When Broadspectrum entered into its new contract in March 2014, evidence had already come to light of the conditions for refugees and people seeking asylum on Manus Island.<sup>104</sup> By February 2016, incidents of serious abuse within the RPC on Nauru has been well-documented in numerous media and other reports (as highlighted above and in “Ferrovia’s Human Rights Responsibilities and Complicity in Abuse” below). Broadspectrum would also have been well aware of the potential and actual human rights impacts of running the RPCs from its own day-to-day operations at the centres.

Broadspectrum has previously said to Amnesty International that all alleged incidents at the Nauru RPC are dealt with by being reported to relevant stakeholders for action under a “robust incident reporting system” and in accordance with Broadspectrum’s own Code of Business Conduct.<sup>105</sup>

Amnesty International does not consider that a “reporting system” amounts to adequate action. The reporting system requires an incident to be reported to relevant stakeholders for action after any abuse has happened. The allegations outlined in Section 3 point to a systematic level of abuse by staff against refugees and asylum-seekers at the RPC on Nauru. Simply reporting the issue to other stakeholders for

action is not sufficient. Broadspectrum itself has a responsibility to take concrete steps to prevent the abuses happening in the first place, to identify and tackle the underlying reasons for any abuses and to prevent them re-occurring, including by ensuring that staff members involved are held accountable.

Broadspectrum’s Code of Business Conduct does recognise that the company should respect human rights and requires employees to comply with various rules and systems relevant to human rights.<sup>106</sup> It states that employees could face disciplinary action and dismissal for breaching the Code. And, as noted in Section 3 above, Broadspectrum has dismissed staff from the RPC on Nauru for misconduct.

Broadspectrum has not provided any specific evidence that it undertook due diligence to identify and address potential human rights risks at the Nauru RPC before entering into any of its contracts with the DIBP or in connection with the renewal of its contract. Broadspectrum has also not provided any other evidence of what specific steps it has undertaken to address the systematic levels of staff abuse at the RPC in Nauru. The numerous incidents outlined in Section 3 above and the fact that they have occurred over several years, indicate that Broadspectrum is not taking adequate action.

On the basis of the above, Amnesty International considers that Broadspectrum has failed to put an adequate due diligence process in place with respect to its operations at the RPC on Nauru. This is echoed by the August 2015 Senate Select Committee report on Nauru, in which the Committee said that it was “very deeply concerned about a situation in which this level of reported misconduct can occur and, at least until brought to light by the Moss Review, apparently be accepted”.<sup>107</sup>

102. UNGPs, Principle 17.

103. Broadspectrum, *Supplementary Target’s Statement*, 8 February 2016, [www.broadspectrum.com/news/dibp-extends-broadspectrum-s-contract-for-12-months-company-further-upgrades-fy2016-guidance](http://www.broadspectrum.com/news/dibp-extends-broadspectrum-s-contract-for-12-months-company-further-upgrades-fy2016-guidance) (accessed 18 March 2017).

104. See, for example, Amnesty International, *This is Breaking People*.

105. Broadspectrum email to Amnesty International of 2 November 2016, [www.amnesty.org/en/documents/asa12/5108/2016/en/](http://www.amnesty.org/en/documents/asa12/5108/2016/en/) (accessed 8 March 2017).

106. Broadspectrum, *Code of Business Conduct*, February 2016, [www.broadspectrum.com/pdf/108353\\_Code\\_of\\_Business\\_Conduct.pdf](http://www.broadspectrum.com/pdf/108353_Code_of_Business_Conduct.pdf), p. 7 and 8.

107. Senate Select Committee, *Final Report*, para. 5.29.

Broadspectrum is therefore failing to meet its responsibility to respect human rights with respect to its own business activities in four separate ways – by causing human rights abuses at the RPC on Nauru; by contributing to the Australian Government's violations of the rights of refugees and people seeking asylum at the RPC; by failing to implement its human rights policy in practice within the RPC; and by failing to undertake adequate due diligence with respect to its operations at the RPC.



*Hundreds of asylum seekers and refugees live in cramped tents in the refugee processing centre. Temperatures in the tents regularly reach 45 to 50 degrees Celsius (113 to 122 degrees Fahrenheit)*  
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#### 4.1.2 BROADSPECTRUM'S BUSINESS RELATIONSHIP WITH WILSON SECURITY

Under the corporate responsibility to respect, Broadspectrum must seek to prevent or mitigate adverse human rights impacts at the Nauru RPC that are directly linked to its operations or services by its business relationship with Wilson Security. To meet this responsibility, Broadspectrum should be carrying out due diligence to identify the potential and actual human rights impacts of Wilson Security's operations at the RPC on Nauru and to assess how Broadspectrum can try to prevent or mitigate any identified impacts. As part of this due diligence process, Broadspectrum should then act on those findings. This is not a one-off responsibility – Broadspectrum should have undertaken due diligence before entering into any contract with Wilson Security and be doing so on an ongoing basis throughout the life of the contract.<sup>108</sup>

##### *Human rights due diligence*

Broadspectrum first hired Wilson Security to work at the RPC on Nauru in late 2012 and at the RPC on Manus Island in February 2014.<sup>109</sup> It entered into contracts with Wilson Security with respect to Nauru in September 2013 and again in March 2014.

Even before Broadspectrum first hired Wilson Security in late 2012, the human rights risks associated with private contractors exercising control over vulnerable refugees and asylum-seekers in a prison-like environment should have been well-known by Broadspectrum – not the least because it had been operating the RPC on Nauru since September 2012. Broadspectrum should also have been aware of the heightened human rights risks associated with being authorised to use force against refugees and asylum-seekers at the RPC on Nauru. As part of the security services to be provided under the DIBP contract, Broadspectrum is “required to exercise use of force” against refugees and asylum-seekers at the RPCs in certain circumstances.<sup>110</sup> Wilson Security staff have been appointed as “authorised officers”

108. UNGPs, Principle 17.

109. Wilson Security, *Nauru and Manus Island Fact Sheet*, [www.wilsonsecurity.com.au/ourexp/ourdocuments/nauru%20and%20manus%20island%20fact%20sheet.pdf](http://www.wilsonsecurity.com.au/ourexp/ourdocuments/nauru%20and%20manus%20island%20fact%20sheet.pdf) (accessed 1 March 2017).

110. Broadspectrum, *DIBP Contract*, Schedule 1 (Statement of Work), Part 3, Clause 4.16 (Use of Force).

under Nauruan law, which allows them to use force against refugees and asylum-seekers at the Nauru RPC “to the extent reasonably necessary” to prevent injury or damage to themselves, other persons or property.<sup>111</sup>

When Broadspectrum entered into a new contract with Wilson Security for Nauru in March 2014, numerous allegations had already been made against Wilson Security with respect to its operations at the RPC. The incidents outlined in Section 3 above involve serious allegations against Wilson Security personnel at the Nauru RPC, which occurred over several years and when Broadspectrum was working next to Wilson Security on a daily basis. Furthermore, at that point the specific risks associated with security guards operating at any RPC had been made clear – Amnesty International reports from December 2013 and May 2014 outlined verbal aggression, abuse and violence by G4S security guards at the Manus Island RPC, including during a widely-reported riot that took place on 16/17th February 2014 and resulted in the death of one Iranian asylum-seeker.<sup>112</sup> Wilson Security’s potential and actual human rights impacts at the Nauru RPC were therefore predictable before Broadspectrum appointed the company and have become increasingly predictable the longer it has operated at the RPC.

The steps that Broadspectrum would be expected to take to try to prevent or mitigate any potential or actual human rights impacts by Wilson Security depend, among other things, on what “leverage” Broadspectrum has. Leverage can arise through factors such as direct control over a company, the terms of a contract with that company or the ability to incentivize that company to improve its human rights performance. Companies should also seek to increase their leverage so that they can use their relationship to prevent or mitigate human rights impacts.<sup>113</sup> Given this context, Broadspectrum is

uniquely placed to exercise leverage over Wilson Security – it works in exactly the same location as Wilson Security and can and does exercise a significant amount of control over its personnel and their activities through the terms of its sub-contract (see “The Role of Broadspectrum” in Section 3 above).

Broadspectrum should therefore have included terms in Wilson Security’s sub-contract requiring it to respect human rights in accordance with relevant international standards and to take steps to ensure that its staff do so (for example, through human rights training targeted at the specific risks and abuses associated with providing services at the RPC). It should have ensured that any staff employed by Wilson Security are competent and properly trained to deal with the specific conditions at the RPC. Broadspectrum should also have put robust processes in place to monitor and ensure that Wilson Security adheres to these conditions (for example through on-the-ground monitoring, incident reporting, performance reviews and audits) and should take appropriate action when they do not (including the removal of staff and review and termination of the contract itself).

Only Broadspectrum’s March 2013 contract with Wilson Security for the provision of services on Nauru is publicly available. The contract includes standard industry terms requiring Wilson Security to hire “appropriately skilled, trained and qualified” personnel and to perform the services in compliance with various standards including good industry practice and Broadspectrum’s own Code of Business Conduct.<sup>114</sup> The current version of this Code does refer to a human rights statement (albeit generic), in which Broadspectrum commits to conducting due diligence on its sub-contractors against relevant human rights guidelines and best practices.<sup>115</sup> Wilson Security has previously told Amnesty International that its runs

111. *Case M68/2015*, paras. 33, 89 and 213; Republic of Nauru, *Asylum Seekers (Regional Processing Centre) Act 2012*, Section 24(2).

112. Amnesty International, *This is Breaking People and This is Still Breaking People*; Helen Davidson, Oliver Laughland and agencies, *Manus Island: One dead, 77 injured and person shot in buttock at Australian asylum centre*, The Guardian, 19 February 2014, [www.theguardian.com/world/2014/feb/18/manus-island-unrest-one-dead-dozens-injured-and-man-shot-in-buttock](http://www.theguardian.com/world/2014/feb/18/manus-island-unrest-one-dead-dozens-injured-and-man-shot-in-buttock) (accessed 17 March 2017).

113. Office of the UN High Commissioner for Human Rights, *The Corporate Responsibility to Respect Human Rights: An Interpretative Guide*, June 2012, HR/PUB/12/2, p. 49 and 51.

114. Broadspectrum, *Wilson Sub-Contract*, Clause 3.2(c) (Performance warranties and covenants) and Annexure 7 (Special Conditions), Clause 3.4.2(e) (Subcontractor Personnel).

115. Broadspectrum, *Code of Business Conduct*, February 2016, [www.broadspectrum.com/pdf/108353\\_Code\\_of\\_Business\\_Conduct.pdf](http://www.broadspectrum.com/pdf/108353_Code_of_Business_Conduct.pdf); Broadspectrum, *Human Rights Statement: TMC-0000-LE-0020*, February 2016, [www.broadspectrum.com/pdf/Human\\_Rights\\_Statement\\_TMC-0000-LE-0020.pdf](http://www.broadspectrum.com/pdf/Human_Rights_Statement_TMC-0000-LE-0020.pdf) (both accessed 7 March 2017).

pre-deployment training for staff and contractors as well as refresher training every 12 months, including on the code of conduct, human rights standards and mental health awareness.<sup>116</sup> Under the March 2013 contract, Broadspectrum has the right to inspect and monitor Wilson Security's performance, to require it to rectify performance issues and to remove Wilson Security staff at any time.<sup>117</sup> Three Wilson Security staff have been dismissed at Broadspectrum's request as of August 2015.<sup>118</sup>

However, Broadspectrum has not provided any evidence of what specific human rights due diligence it conducted before entering into any contract with Wilson Security or conducts on an ongoing basis, or what specific steps it has taken to address Wilson Security's clear human rights impacts at the Nauru RPC. In particular, the significant amount of assault allegations against Wilson Security staff at the Nauru RPC over a number of years indicate that Broadspectrum is not taking adequate action to identify and address the human rights impacts of Wilson Security at the RPC on Nauru.

On the basis of the above, Amnesty International considers that Broadspectrum has failed to put an adequate due diligence process in place with respect to the operations of Wilson Security at the Nauru RPC.

### **Contributing to abuses**

Furthermore, Amnesty International considers that – in light of the unique leverage that Broadspectrum exercises over Wilson Security as outlined above, its continuing use of Wilson Security, and its long-term failure to address Wilson Security's well-known and entirely predictable human rights impacts – Broadspectrum is contributing through its own business activities to Wilson Security's abuse of refugees and people seeking asylum at the Nauru RPC. Broadspectrum is therefore failing to meet its responsibility to respect human rights with respect to Wilson Security in two separate ways: by failing

to undertake adequate due diligence to identify and address human rights impacts at the Nauru RPC that are directly linked to its business relationship with Wilson Security; and by contributing through its own business activities to Wilson Security's abuses of refugees and asylum-seekers at the Nauru RPC.

## **4.2 FERROVIAL'S HUMAN RIGHTS RESPONSIBILITIES AND COMPLICITY IN ABUSE**

As Broadspectrum's parent company, Ferrovial has a responsibility to respect the human rights of refugees and people seeking asylum at the RPC on Nauru.

To meet that responsibility, Ferrovial should have undertaken due diligence before buying Broadspectrum to identify its human rights impacts at the Nauru RPC and to assess how those impacts could be prevented or mitigated (as appropriate). As part of that due diligence process, Ferrovial should then have acted on those findings. This is not a one-off responsibility – as sole owner of Broadspectrum, Ferrovial should be undertaking human rights due diligence with respect to Broadspectrum's operations on an ongoing basis, including with respect to any expansion of Broadspectrum's services on Nauru.

For example, in July 2016 – after Ferrovial became sole shareholder of Broadspectrum – the Department of Immigration and Border Protection (DIBP) unilaterally decided to extend Broadspectrum's current contract regarding the RPCs on Nauru and Manus Island until 31 October 2017. Ferrovial knew that this was a possibility even before buying Broadspectrum, as Broadspectrum had publicly announced in a February 2016 response to Ferrovial's bid that the DIBP had the right to exercise this option.<sup>119</sup> Additionally, *The Guardian* reported in October 2016 that Broadspectrum would be providing welfare services for refugees on Nauru in place of a company called Connect Settlement

116. Wilson Security letter to Amnesty International of 11 October 2016.

117. Broadspectrum, *Wilson Sub-Contract*, Clauses 3.4 (Right of removal) and 4.3 (Right of Inspection, and defective Services).

118. Senate Select Committee, *Final Report*, para. 2.103.

119. Broadspectrum, *Supplementary Target's Statement*, 8 February 2016, [www.broadspectrum.com/news/dibp-extends-broadspectrum-s-contract-for-12-months-company-further-upgrades-fy2016-guidance](http://www.broadspectrum.com/news/dibp-extends-broadspectrum-s-contract-for-12-months-company-further-upgrades-fy2016-guidance) (accessed 18 March 2017).



Services.<sup>120</sup> At that time, Ferrovial was the sole shareholder of Broadspectrum and had appointed its employees to four of the six positions on the Broadspectrum board.<sup>121</sup>

Ferrovial's bid for Broadspectrum was a "hostile takeover", meaning that it would have had limited access to Broadspectrum's internal company information. However, Ferrovial was clearly aware of the DIBP contract and its value when it bid for Broadspectrum – it specifically mentioned the contract in bid documents and highlighted that it was "highly profitable" for the company.<sup>122</sup> The conditions for refugees and asylum-seekers on Nauru and Manus Island were well-known throughout the time that Ferrovial was interested in buying Broadspectrum (i.e., between October 2014 and April 2016). Amnesty International released reports on the appalling conditions at the RPC on Manus Island in December 2013 and May 2014.<sup>123</sup> Incidents of serious abuse at the RPC on Nauru – including of children – first came to light in April 2014.<sup>124</sup> Since then highly credible information about the abuse and mental distress suffered by refugees and people seeking asylum on Manus Island and Nauru has been consistently published by former service providers on the islands as well as by the United

Nations, rights organisations including Amnesty International and media outlets.<sup>125</sup> The conditions at the offshore processing centre on Nauru are the subject of an independent review appointed by the DIBP and an Australian Senate Select Committee.<sup>126</sup> The situation of refugees and asylum-seekers on both Nauru and Manus Island were the subject of legal claims against the Australian Government.<sup>127</sup> Australian civil society organisations published a report and ran a global campaign highlighting the complicity of Broadspectrum in these abuses, and provided a copy of this report to Ferrovial in December 2015.<sup>128</sup>

In its group-wide human rights policy, Ferrovial states that the company conducts "an ongoing due diligence process in its activities" with the "aim of identifying, preventing, mitigating and responding to any potential negative consequences regarding human rights".<sup>129</sup> In its 2016 annual report, Ferrovial notes that its training courses at executive and management level include a human rights module.<sup>130</sup> Ferrovial also specifically promises in this report that "the company will use all its resources to improve the life of asylum seekers and refugees" at the RPCs.<sup>131</sup>

However, Ferrovial has not provided any specific evidence of what human rights due diligence it conducted before buying Broadspectrum or conducts

120. Helen Davidson, *Broadspectrum reported to be taking over refugee welfare services on Nauru*, The Guardian, 26 October 2016, [www.theguardian.com/world/2016/oct/26/broadspectrum-reported-to-be-taking-over-refugee-welfare-services-on-nauru](http://www.theguardian.com/world/2016/oct/26/broadspectrum-reported-to-be-taking-over-refugee-welfare-services-on-nauru) (accessed 8 March 2017).

121. Broadspectrum, *Broadspectrum announces Board changes*, 13 May 2016, [www.transfieldservices.com/news/broadspectrum-announces-board-changes](http://www.transfieldservices.com/news/broadspectrum-announces-board-changes) (accessed 20 March 2017).

122. Ferrovial, *Bidder's Statement*, 7 December 2015, p. 8 (held on file by Amnesty International); Ferrovial, *Ferrovial announces Takeover Offer for 100% of Broadspectrum shares*, 7 December 2015, p. 2, [www.asx.com.au/asxpdf/20151207/pdf/433lxcqbqw3vgr.pdf](http://www.asx.com.au/asxpdf/20151207/pdf/433lxcqbqw3vgr.pdf) (accessed 27 February 2017).

123. Amnesty International, *This is Breaking People and This is Still Breaking People*.

124. Oliver Laughland, *Nauru guards accused of assaulting children in detention camp*, The Guardian, 24 April 2014, [www.theguardian.com/world/2014/apr/24/nauru-guards-accused-of-assaulting-children](http://www.theguardian.com/world/2014/apr/24/nauru-guards-accused-of-assaulting-children) (accessed 3 March 2017).

125. See, for example: David Marr and Oliver Laughland, *Australia's detention regime sets out to make asylum seekers suffer, says chief immigration psychiatrist*, The Guardian, 4 August 2014, [www.theguardian.com/world/2014/aug/05/sp-australias-detention-regime-sets-out-to-make-asylum-seekers-suffer-says-chief-immigration-psychiatrist](http://www.theguardian.com/world/2014/aug/05/sp-australias-detention-regime-sets-out-to-make-asylum-seekers-suffer-says-chief-immigration-psychiatrist); UN Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Mendez*, UN Doc A/HRC/28/68/Add.1, 6 March 2015, p. 8-9, [www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session28/Pages/ListReports.aspx](http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session28/Pages/ListReports.aspx); Amnesty International, *This is Still Breaking People*; Ben Doherty, *Manus guard sacked for reportedly assaulting handcuffed asylum seekers*, The Guardian, 18 March 2015, [www.theguardian.com/australia-news/2015/mar/18/manus-guard-sacked-for-reportedly-assaulting-handcuffed-asylum-seekers](http://www.theguardian.com/australia-news/2015/mar/18/manus-guard-sacked-for-reportedly-assaulting-handcuffed-asylum-seekers); Hayden Cooper, *Rape victims and whistleblower speak out about Nauru violence*, ABC News, 28 September 2015, [www.abc.net.au/7.30/content/2015/s4321266.htm](http://www.abc.net.au/7.30/content/2015/s4321266.htm); Paul Farrell, *Asylum seeker worker tells of abuse of children as young as two on Nauru*, The Guardian, 5 June 2015, [www.theguardian.com/australia-news/2015/jun/05/former-asylum-seeker-worker-tells-of-abuse-of-two-year-old-children-on-nauru](http://www.theguardian.com/australia-news/2015/jun/05/former-asylum-seeker-worker-tells-of-abuse-of-two-year-old-children-on-nauru); Ben Doherty and Nick Evershed, *Immigration detainees four times more likely to suffer severe mental distress*, The Guardian, 18 January 2016, [www.theguardian.com/australia-news/2016/jan/19/immigration-detainees-400-percent-more-likely-to-suffer-severe-mental-distress](http://www.theguardian.com/australia-news/2016/jan/19/immigration-detainees-400-percent-more-likely-to-suffer-severe-mental-distress) (all accessed 8 March 2017).

126. Moss Review, Final report; Senate Select Committee, *Final Report*.

127. *Manus Island Class Action; Case M68/2015*.

128. No Business in Abuse, *Business in Abuse: Transfield's complicity in gross human rights abuses within Australia's offshore detention regime*, November 2015, [d68ej2dhhub09.cloudfront.net/1321-NBIA\\_Report-20Nov2015b.pdf](https://d68ej2dhhub09.cloudfront.net/1321-NBIA_Report-20Nov2015b.pdf); No Business in Abuse, GetUp and the Human Rights Law Centre, *Association with Abuse: The financial sector's association with gross human rights abuses of people seeking asylum in Australia*, July 2016, p. 7 and 16, [cdn.getup.org.au/1851-Association\\_with\\_Abuse.pdf](http://cdn.getup.org.au/1851-Association_with_Abuse.pdf) (hereafter No Business in Abuse, *Association with Abuse*) (both accessed 18 March 2017).

129. Ferrovial, *Human Rights Policy*, 18 December 2014, p. 3, [www.ferrovial.com/wp-content/uploads/2016/01/Human-Rights-Policy-Ferrovial.pdf](http://www.ferrovial.com/wp-content/uploads/2016/01/Human-Rights-Policy-Ferrovial.pdf) (accessed 8 March 2017).

130. Ferrovial, *Annual Report 2016*, p. 71.

131. Ferrovial, *Annual Report 2016*, p. 71.

on an ongoing basis, or what specific steps it has taken to address the human rights impacts of Broadspectrum and Wilson Security at the Nauru RPC or the conditions faced by refugees and asylum-seekers at the RPC.

After it acquired Broadspectrum, Ferroviai announced Broadspectrum would not be providing services at the RPCs on Nauru and Manus Island in the future. Before then, in documents published in connection with its bid for Broadspectrum, Ferroviai simply stated that it planned to make “limited or no changes to the operations of [sensitive contracts with the Australian Government] other than to improve service levels wherever possible”.<sup>132</sup> While the human rights section of Ferroviai’s latest annual report describes specific due diligence that Ferroviai undertook for one project in Colombia, and mentions the controversy surrounding Broadspectrum, it does not outline any due diligence that the company took or is taking with respect to Broadspectrum’s operation of the RPC on Nauru. In fact, the report states that Ferroviai did not undertake any human rights reviews or impacts assessments in 2016.<sup>133</sup> And despite the wealth of information in the public domain, Ferroviai said to one Australian rights organisation that its ability to undertake human rights due diligence on Broadspectrum was restricted because it did not have access to the RPCs or the operational details of the contract.<sup>134</sup>

Moreover, statements made by Ferroviai since buying Broadspectrum suggest that, despite extensive evidence, it either doubts or is blind to the extent of the abuses on Nauru and Manus Island and the role of Broadspectrum and Ferroviai in those abuses. In its 2016 annual report published in February 2017, Ferroviai stated that the services provided by Broadspectrum at the RPCs have had “a positive impact on asylum seekers and refugees”.<sup>135</sup> It also states that Broadspectrum’s contracts with the Australian Government have “created some controversy given the criticism of Australia’s immigration policy by different entities and

organizations, who allege that the RPCs violate Human Rights”. This suggests they believe that neither they nor Broadspectrum have any responsibility for the human rights situation at the RPCs, a position that completely lacks credibility given the evidence and warnings provided to the company.

On the basis of the above, Amnesty International considers that Ferroviai failed to undertake adequate human rights due diligence before acquiring Broadspectrum and is failing to do so on an ongoing basis – including as to the potential adverse human rights impacts of Broadspectrum’s sub-contractor Wilson Security and as to Broadspectrum expanding the services it provides on Nauru. Had Ferroviai undertaken any human rights due diligence before buying Broadspectrum it would, at the very least, have established that there was a serious risk that it would be supporting and benefiting from human rights violations if it maintained the current contract – and could have decided not to proceed with its acquisition of Broadspectrum at all.

Ferroviai is therefore failing to meet its responsibility to respect human rights by not having an adequate human rights due diligence process in place – either now or before it acquired Broadspectrum. Additionally, as sole shareholder of Broadspectrum, Ferroviai is responsible for Broadspectrum’s failures to respect human rights as outlined above – including with regards to Broadspectrum’s failure to undertake adequate due diligence to identify and respond to Wilson Security’s human rights impacts.

Furthermore, Ferroviai knew of the serious abuses of refugees and asylum-seekers on Nauru before buying Broadspectrum. In that knowledge, and as the current sole shareholder of Broadspectrum, it is responsible for Broadspectrum’s continuing operation of the RPC on Nauru and therefore for facilitating the continuation of an abusive situation. It also benefits from an abusive context. In its 2016 annual report, Ferroviai revealed that it had received total revenues of €1.4

132. Ferroviai, *Bidder’s Statement*, 7 December 2015, p. 8 (held on file by Amnesty International); Ferroviai, *Ferroviai announces Takeover Offer for 100% of Broadspectrum shares*, 7 December 2015, p. 2, [www.asx.com.au/asxpdf/20151207/pdf/433lxcqbqw3vgr.pdf](http://www.asx.com.au/asxpdf/20151207/pdf/433lxcqbqw3vgr.pdf) (accessed 27 February 2017).

133. Ferroviai, *Annual Report 2016*, p. 70, 71 and 109.

134. No Business in Abuse, *Association with Abuse*, p. 16-17.

135. Ferroviai, *Annual Report 2016*, p. 70.

billion (US\$1.5 billion) from Broadspectrum in 2016 – a significant proportion of which will have come from Broadspectrum's operations on Nauru and Manus Island.<sup>136</sup> Ferrovial also notes in its annual report that the revenues from its Services sector in 2016 increased by 24.1% in comparison to 2015 due to its acquisition of Broadspectrum.<sup>137</sup> Amnesty International therefore believes that Ferrovial is complicit in the Australian Government's violations of the rights of refugees and people seeking asylum at the RPC on Nauru.

### 4.3 THE POTENTIAL LEGAL LIABILITIES OF FERROVIAL AND BROADSPECTRUM

As noted above, a company may expose itself to liability under civil and criminal law if it causes a human rights abuse itself, or is complicit in violations by other parties such as governments. For example, section 4 of the UN Convention Against Torture requires all ratifying States “to ensure that all acts of torture are offences under its criminal law” and that “the same shall apply to ... an act by any person which constitutes complicity or participation in torture”. Australia, Spain and Nauru have all ratified the Convention.<sup>138</sup>

In February 2017, 17 international criminal law and refugee law academics submitted a case for investigation by the International Criminal Court outlining the potential legal liability of Australian officials and directors of Ferrovial for crimes against humanity on Nauru and Manus Island.

### 4.4 THE HUMAN RIGHTS RESPONSIBILITIES AND POTENTIAL LEGAL LIABILITIES OF FUTURE SERVICE PROVIDERS

Amnesty International believes that Australia's “offshore processing” system on Nauru and Manus Island is so fundamentally at odds with even basic human dignity that it would be impossible to provide core services at the RPCs without causing or contributing to serious human rights abuses. As such the only way in which a company could ensure that it does not cause or contribute to abuses on Nauru and Manus – and expose itself to potential legal liability for violating national laws or for complicity – is by not providing those services in the first place.

And for anyone else that is looking to provide these services, Amnesty International is putting them on notice. You will be complicit in an intentionally and inherently abusive and cruel system, you will be acting in direct contravention of your human rights responsibilities and you will be exposing yourself to potential legal liability as outlined in Section 4.3 above.

136. Ferrovial, *Annual Report 2016*, p. 20. Euros converted to US Dollars at the mid-market exchange rate as of 27 February 2017 (the date of the annual report), as reported on [www.xe.com/currencytables](http://www.xe.com/currencytables).

137. Ferrovial, *Annual Report 2016*, p. 37.

138. UN Office of the High Commissioner for Human Rights, Status of Ratification: Interactive Dashboard, [indicators.ohchr.org](http://indicators.ohchr.org) (accessed 24 March 2017). See Amnesty International, *Island of Despair*, p. 20-21 for full details.

## 5. RECOMMENDATIONS

### GOVERNMENT OF AUSTRALIA

In its October 2016 report *Island of Despair*, Amnesty International made several recommendations to the Government of Australia and the Government of Nauru. In particular, Amnesty International continues to call on the Government of Australia to:

- End the policy of offshore processing and detention and permanently close the Refugee Processing Centres on Nauru and Manus Island;
- Bring all asylum-seekers and refugees on Nauru and Manus Island to Australia immediately;

- Assess, in a fair and timely manner, those whose international protection applications have not been finalized by the authorities in Nauru and Manus Island;
- Ensure that all those who were granted refugee status on Nauru and Manus Island have the right to settle in Australia;
- Cooperate with all rights-respecting offers of international cooperation and assistance, including resettlement of refugees to third countries if the refugees wish to be resettled and are able to make a fully informed and free choice.

### FERROVIAL

- End its operations on Nauru and Manus Island as soon as possible.



# ANNEX

Letter from Ferrovial and Broadspectrum - page 1




*Ms Audrey Gaughran*  
DIRECTOR OF GLOBAL ISSUES AND RESEARCH  
Peter Benenson House  
1 Easton Street  
London. WC1X 0DW  
United Kingdom

*Ms Beatriz Perales*  
HEAD OF DEPARTMENT  
Amnesty International  
C/Fernando VI, n°8 1° izda  
28004 Madrid  
Spain

Madrid, March 24th,

*Dear Ms Gaughran and Ms Perales:*

This letter is a combined response to your letters dated 21 March addressed to the CEOs of Ferrovial and Broadspectrum, regarding Broadspectrum's welfare-led facilities management services to the Regional Processing Centres (RPCs) at Manus and Nauru.

We request that this response is included in the final document published by Amnesty International (AI) to demonstrate AI has been fair in its reporting.

Broadspectrum does not agree with the multiple assertions that we have caused, contributed to, or are complicit in, human rights abuses.

Broadspectrum also does not agree its obligations surrounding contractual confidentiality have facilitated abuse. The care and wellbeing of asylum seekers and refugees is paramount in our processes and actions.

We work cooperatively with independent third parties to review our services and implement suggestions that might improve the wellbeing of asylum seekers and refugees. Since 2012, according to Australian government figures, the Nauru RPC has received, among others, four visits from the Commonwealth Ombudsman, 13 from the International Committee of the Red Cross, seven from the Office of the UN High Commissioner for Refugees, one from AI and two from the International Organization for Migration.

We welcome any suggestions that AI would like to make that might improve the wellbeing of asylum seekers and refugees through our delivery of welfare-led facilities management services.

Broadspectrum continues to deliver a range of welfare-led facilities management services on behalf of the Australian Government, in line with our contractual and commercial relationship. We maintain strict procedures regarding the delivery of these services, including prevention and response processes, and regularly ensure due diligence is applied to our contracts and subcontractors.

The Australian Government exercised its right to extend Broadspectrum's current contract to 31 October 2017. Ferrovial has publicly confirmed that it will not bid for a new contract following its expiration in October 2017 as it does not form part of the group's services strategy. Our ongoing motivation and commitment to the RPCs is to ensure the delivery of facilities management services that supports the care and wellbeing of asylum seekers and refugees. Our services are delivered in line with our Corporate Code of Ethics and related training program, which includes a commitment to uphold human rights in the course of operating its business.

## Letter from Ferrovial and Broadspectrum - page 2




Your most recent letter and request for a response does not substantially differ to your requests in AI's letters addressed to Broadspectrum and Ferrovial dated 1 August, 10 October, 19 October and 7 December 2016. For this reason, we will refer you to the positions outlined in Ferrovial's letter on 22 December and by Broadspectrum's letter on 14 October:

- Ferrovial has been a signatory of the UN Global Compact since 2002, and has adopted and respects the Universal Declaration of Human Rights, the United Nations Guiding Principles on Human Rights and the Guidelines of the Organisation for Economic Co-operation and Development. The company also has a Corporate Code of Ethics and a Human Rights Policy. Ferrovial is a member of the DJSI and FTSE4Good indices and is rated AAA by MSCI.
- The acquisition of Broadspectrum was based on a business decision to enter the services market in Australia. That company also operates in the United States, Canada, New Zealand and Chile. The acquisition allows diversification into activities such as energy, resources and telecommunications, among others.
- Immediately after the acquisition, Ferrovial announced that the contracts for the provision of services at the Regional Processing Centers (RPCs) in Nauru and Manus, where the client is the Australian Government Department of Immigration and Border Protection, were not an activity that forms part of the company's portfolio and, consequently, that Broadspectrum would not bid for a new contract following expiration in October 2017.
- Ferrovial does not agree with AI's assertion in its most recent letter that our decision-making is motivated by profit at the expense of human rights. Ferrovial's acquisition of Broadspectrum was based on further geographic expansion into Australia, New Zealand and the Americas. These statements can be verified by referencing Ferrovial's Annual Report. The financial transparency of Ferrovial's acquisition of Broadspectrum can also be verified by referencing Ferrovial's Annual Report, which is audited by Deloitte and filed with Spain's National Securities Market Commission.
- Broadspectrum does not manage or operate the RPCs; consequently, it does not have the capacity to determine the status of the asylum-seekers and refugees in Nauru. It provides essential social support and facility management services to those people, including education, religious services, sports, community integration, food, cleaning, facility maintenance and security. Some of those services were formerly provided by organizations such as Save the Children and the Salvation Army.
- The Nauru RPC is an open center. Consequently, the residents there can come and go freely using transport provided by Broadspectrum.
- Many of the allegations arose prior to Broadspectrum's commencement of services and, upon investigation, many have proved to be unfounded.
- Broadspectrum operates in accordance with a strict Code of Business Conduct, which includes mandatory training. The training encompasses respecting and upholding human rights.

According to the Australian government's official statistics, 79% of the asylum-seekers in Nauru have obtained refugee status.

Very truly yours,



Juan Francisco Polo  
HEAD OF COMMUNICATION AND CORPORATE  
RESPONSIBILITY



Fidel López  
MANAGING DIRECTOR AND CHIEF EXECUTIVE OFFICER



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IS A GLOBAL MOVEMENT  
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CONTACT US

 [info@amnesty.org](mailto:info@amnesty.org)

 +44 (0)20 7413 5500

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# TREASURE I\$LAND

## HOW COMPANIES ARE PROFITING FROM AUSTRALIA'S ABUSE OF REFUGEES ON NAURU

Under the Government of Australia's "offshore processing" regime, everyone who arrives in Australia by boat seeking asylum is forcibly taken to a "Refugee Processing Centre" on Manus Island in Papua New Guinea or the Pacific island of Nauru. The policy is designed to be punitive and has been widely promoted by a succession of Australian governments as a deterrent to potential asylum-seekers.

In October 2016, Amnesty International released a report exposing how the Government of Australia was flouting the 1951 Refugee Convention by trapping children, men and women on the tiny, remote island of Nauru and keeping them in deliberately and inherently cruel and abusive conditions. It concluded that the conditions for refugees and people seeking asylum on Nauru amount to torture. Amnesty International called on the Government of Australia to immediately close down the Nauru processing operation and to bring all refugees and people seeking asylum to Australia immediately.

The Australian Government would not be able to maintain the "Refugee Processing Centre" on Nauru without the involvement of Broadspectrum – the Australian company that it pays to run the day-to-day operation of the centres on both Nauru and Manus Island under a three-and-a-half year contract valued at AUD\$2.5 billion (US\$1.9 billion). Broadspectrum is well aware of the conditions faced on Nauru by refugees and people seeking asylum and, in some cases, its employees and sub-contractors are directly responsible for neglect and abuse.

In April 2016, Broadspectrum was acquired by Spanish services and infrastructure giant Ferrovial. Ferrovial bought Broadspectrum in full knowledge of the situation on Nauru.

This follow-up briefing exposes how Broadspectrum and Ferrovial are complicit in and reaping vast profits from the abusive and secretive system on Nauru, acting contrary to their responsibility to respect human rights and exposing themselves to potential liability under civil and criminal law. Amnesty International is calling on Ferrovial to end its operations on Nauru and Manus Island as soon as possible.

This briefing also serves as a warning to others looking to provide these services on Nauru as well as Manus Island. Amnesty International is putting them on notice. You will be complicit in an intentionally and inherently abusive and cruel system, you will be acting in direct contravention of your human rights responsibilities and you will be exposing yourself to potential legal liability.