

# Companies and the Australian immigration detention system

## Profiting from human rights abuse

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**Australia sends asylum seekers to offshore camps where they are detained indefinitely and subjected to well-documented abuses, in violation of their human rights.**

**The Australian Government outsources the operations at the camps, and Spanish company Ferrovial has responsibility for the system's largest operational contracts, through its wholly-owned subsidiary, Broadspectrum. Investors in Ferrovial, including the Norwegian Pension Fund, are exposed to the significant risks of association with human rights abuse.**

Briefing note

**Brynn O'Brien**  
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# Summary

There is overwhelming evidence of ongoing, grave human rights abuses occurring in Australia's system of offshore immigration camps located on the Pacific Islands of Manus and Nauru. People seeking asylum, as well as those found to be refugees, are detained arbitrarily and indefinitely and exposed to cruel, inhuman and degrading conditions.

Despite a government policy of secrecy, the abuses involved in this system have drawn repeated condemnation from international human rights experts, including numerous United Nations authorities. In October 2016 Amnesty International stated that the conditions appear deliberate and the system "amounts to torture under international law."<sup>1</sup>

Australia outsources the operations at the offshore detention camps to companies. It is not possible for these companies to meet the most basic human rights standards in their operations, and investors in these companies are associated with the flow-on risks of human rights abuses.

This paper surveys recent developments within the contract network that supports the operation of the offshore detention camps, and the consequences of those developments for the corporations directly involved as well as their financial stakeholders.

Spanish company Ferrovial took responsibility for the system's operational contracts earlier this year, when it acquired Australian company Broadspectrum. Importantly, Ferrovial knew about the human rights abuses at the camps, and that the offshore detention contracts made up a significant proportion of Broadspectrum's underlying revenue, before the acquisition was completed.

One of Ferrovial's biggest investors is the Norwegian Pension Fund (The Fund). The Fund is known for its strong ethical investment policies and processes. Although the Fund divested from Broadspectrum in 2015,<sup>2</sup> Ferrovial later acquired Broadspectrum. As such, the Fund is once again exposed to the risks associated with the serious,

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<sup>1</sup> Amnesty International, "Island of Despair: Australia's 'Processing' of Refugees on Nauru," October 17, 2016, <https://www.amnesty.org/en/documents/document/?indexNumber=asa12%2f4934%2f2016&language=en>.

<sup>2</sup> Correspondence with NBIM, September 2016.

persistent and well-documented human rights abuses occurring in these detention camps.

Investing in Ferrovial, or indeed any company involved in such activity, is inconsistent with the Fund's Ethical Guidelines<sup>3</sup> and its expectations documents on Human Rights<sup>4</sup> and Children's Rights.<sup>5</sup>

**Recommendations:**

**In order to act consistently with its ethical standards and to avoid future shareholdings in companies that operate immigration detention centres where human rights standards are not met:**

- 1. The Norwegian Pension Fund should divest its shareholding in Ferrovial;**
- 2. The Norwegian Pension Fund should apply a conduct-based exclusion to Ferrovial for as long as the company is involved in the operation of Australia's offshore detention camps; and**
- 3. The Norwegian Ministry of Finance should consider amending its ethical guidelines to allow for a screen to be applied to companies involved in the operation of detention facilities.**

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<sup>3</sup> "Observation and Exclusion of Companies," *Norges Bank Investment Management*, accessed September 21, 2016, <https://www.nbim.no/en/responsibility/exclusion-of-companies/>.

<sup>4</sup> NBIM, "Human Rights Expectation Document" (Norges Bank Investment Management), accessed May 22, 2016, <https://www.nbim.no/en/transparency/news-list/2016/human-rights-expectation-document/>.

<sup>5</sup> NBIM, "Children's Rights Expectation Document" (Norges Bank Investment Management), accessed May 22, 2016, <https://www.nbim.no/en/responsibility/risk-management/childrens-rights/>.

# Introduction

## HISTORY

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Australia's longstanding policy of offshore detention currently rests on the existence of two extraterritorial detention camps, located on the remote islands of Nauru and Manus Island (part of Papua New Guinea). At these camps, asylum seekers and refugees are detained indefinitely, in inadequate conditions, without access to appropriate healthcare and without recourse to Australia's legal system.<sup>6</sup>

The system of offshore detention has been condemned by the world's leading international human rights authorities, including the United Nations High Commissioner for Refugees, the UN Special Rapporteur on Torture, the UN High Commissioner for Human Rights, the UN Special Rapporteur on the Human Rights of Migrants, Amnesty International, and Human Rights Watch, as well as Australia's own Human Rights Commission. (See section on Human Rights Abuses, below, for extracts of statements made by these authorities).

The offshore detention camps – known as the *Pacific Solution* – have been in existence for fifteen years.<sup>7</sup> The Pacific Solution was established in 2001 after the Norwegian container ship, the MV Tampa, rescued asylum seekers in the waters to Australia's north. The ship was prevented from disembarking the asylum seekers in Australia by the Howard Government, a position that Norway's then Foreign Minister, Thorbjørn Jagland, described as “unacceptable and inhumane and contravening international law”<sup>8</sup>. Shortly thereafter, the Howard Government established offshore detention centres on Manus Island and Nauru.

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<sup>6</sup> See for example Australian Human Rights Commission, “Pathways to Protection: A Human Rights-based Response to the Flight of Asylum Seekers by Sea,” September 2016, [https://www.humanrights.gov.au/sites/default/files/20160913\\_Pathways\\_to\\_Protection.pdf](https://www.humanrights.gov.au/sites/default/files/20160913_Pathways_to_Protection.pdf); Brynn O'Brien, “Extraterritorial Detention Contracting in Australia and the UN Guiding Principles on Business and Human Rights,” *Business and Human Rights Journal*, April 21, 2016, 1–8, doi:10.1017/bhj.2016.12.

<sup>7</sup> Peter Mares, *Borderline : Australia's Response to Refugees and Asylum Seekers in the Wake of the Tampa*, 2nd ed. (Sydney, NSW: UNSW Press, 2002).

<sup>8</sup> Ben Doherty and David Marr, “We Will Decide Who Comes to This Country’,” *The Sydney Morning Herald*, accessed October 20, 2016, <http://www.smh.com.au/national/we-will-decide-who-comes-to-this-country-20110819-1j2cj.html>.

The system was largely dismantled under the first Rudd Government, but reinstated by the Gillard Government in 2012.<sup>9</sup> In July 2013, the second Rudd Government signed a Memorandum of Understanding (MoU) with Papua New Guinea and announced that people who arrived after 19 July 2013 would not be resettled in Australia. Successive governments under Tony Abbott and Malcolm Turnbull have continued this policy.

## CURRENT SYSTEM

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As at 31 July 2016, there were 833 men detained on Manus Island and 411 people on detained on Nauru, including 49 children.<sup>10</sup> These people arrived after the second Rudd Government's announcement of the MoU between Australia and PNG.<sup>11</sup> Consequently, at the time of writing, some people on Manus Island and Nauru have been in detention for over three years.

Within the cohort of people subjected to offshore detention, rates of acceptance of protection claims is high, for those who have had their claims determined. As at 31 May 2016, the rate of acceptance of people's claims to refugee status was 98% on Manus Island, and 77% on Nauru.<sup>12</sup>

Some of the people who have been found to be refugees have been moved to accommodation outside the camps, where restrictions still apply in respect of their movement and residence. In both PNG and Nauru, refugees face very serious personal safety issues in the community.<sup>13</sup> Even these people live in limbo, with no genuine

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<sup>9</sup> Australian Parliamentary Library and Elibritt Karlsen, "Australia's Offshore Processing of Asylum Seekers in Nauru and PNG: A Quick Guide to Statistics and Resources," text (Canberra: Department of Parliamentary Services, Parliament of Australia, June 30, 2016), [http://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/pubs/rp/rp1516/Quick\\_Guides/Offshore#\\_Total\\_number\\_of](http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1516/Quick_Guides/Offshore#_Total_number_of).

<sup>10</sup> Department of Immigration and Border Protection, "Detention and Community Statistics Summary," July 31, 2016, <http://www.border.gov.au/ReportsandPublications/Documents/statistics/immigration-detention-statistics-31-july-2016.pdf>.

<sup>11</sup> "Approximately 1,000 unauthorised maritime arrivals (UMAs) who entered Australia between 13 August 2012 and 19 July 2013 were taken to a regional processing country. On 19 July 2013, the former Rudd Government announced that these UMAs would be returned to Australia to create capacity for the transfer of UMAs who arrived after 19 July 2013. Returns occurred progressively and were completed in October 2015." As per Australian Parliamentary Library and Elibritt Karlsen, "Australia's Offshore Processing of Asylum Seekers in Nauru and PNG," 5.

<sup>12</sup> *Ibid.*, 10.

<sup>13</sup> Amnesty International and Human Rights Watch, "Australia: Appalling Abuse, Neglect of Refugees on Nauru," August 2016, <https://www.hrw.org/news/2016/08/02/australia-appalling-abuse-neglect-refugees-nauru>; "Refugee Attacked on Manus Island," *NewsComAu*, October 17, 2016,

resettlement options available to them. In a letter addressed to the UN Secretary-General on the eve of the Obama Administration's Leaders' Summit on the Global Refugee Crisis in September 2016, a "Dad in Nauru," who has had his claims determined and now lives "in the community", wrote:

To this day we are still like walking ghosts, utterly broken and hopeless. We are hollowed out and devoid of any enthusiasm for life, and we are stuck in animalistic state of existence because that is what we have become.<sup>14</sup>

The political justification for the existence of the offshore detention camps is that they act as a deterrent to people seeking asylum by boat and thus "stop the boats." Arguments made for these camps range from humanitarian ("preventing deaths at sea")<sup>15</sup> to appeals to national sovereignty ("we will decide who comes to this country and the circumstances in which they come").<sup>16</sup>

While the issue remains controversial in Australia, indefinite detention in extraordinarily harsh conditions is the cornerstone of a set of policies aimed at preventing unauthorised sea entry to Australia.

There can be no justification for conduct that amounts to cruel, inhuman and degrading treatment.<sup>17</sup> This principle is non-derogable at international law,<sup>18</sup> that is, states are not permitted under any circumstances to subject people to such treatment.

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<http://www.news.com.au/national/breaking-news/refugee-attacked-on-manus-island/news-story/4615752f3095f6074dc85db61eda4a82>.

<sup>14</sup> "Think Australia's Treatment of Refugees and Asylum Seekers Is OK? Read This.," accessed September 20, 2016, <http://www.smh.com.au/comment/think-australias-treatment-of-refugees-and-asylum-seekers-is-ok-read-this-20160919-grjjz2.html>.

<sup>15</sup> Sharon Pickering, "Preventing Deaths at Sea: Asking the Experts on Asylum Seekers," *The Conversation*, accessed May 29, 2016, <http://theconversation.com/preventing-deaths-at-sea-asking-the-experts-on-asylum-seekers-8315>.

<sup>16</sup> John Howard, "Election Speech, Delivered at Sydney, NSW, October 28th, 2001," October 28, 2001, [http://electionspeeches.moadoph.gov.au/speeches/2001-john-howard.](http://electionspeeches.moadoph.gov.au/speeches/2001-john-howard.;); Whether harsh detention policies actually prevent boat journeys is disputed. Indeed, some have argued that boat turnbacks by military force have the greatest effect on the number of arrivals. Boat turnbacks however deny the assessment of protection claims to those on intercepted vessels, a breach of Australia's international obligations. See eg Natalie Klein, "Assessing Australia's Push Back the Boats Policy Under International Law: Legality and Accountability for Maritime Interceptions of Irregular Migrants 1," *Melbourne Journal of International Law* 15 (2014), <http://heinonline.org/HOL/LandingPage?handle=hein.journals/meljil15&div=17&id=&page=>.

<sup>17</sup> Juan E. Mendez, "Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment," March 6, 2015.



Meanwhile, people who arrive by plane and seek asylum are afforded a legal process under Australian law. Differential treatment based on mode of arrival amounts to a penalty for asylum seekers who arrive by sea and thus a breach of Article 31 of the Refugee Convention, to which Australia is a signatory.<sup>19</sup>

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<sup>18</sup> Arts. 4(2) and 7, United Nations General Assembly, "International Covenant on Civil and Political Rights" (United Nations, Treaty Series, vol. 999, p. 171, December 16, 1966), <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

<sup>19</sup> "Convention and Protocol Relating to the Status of Refugees," *UNHCR*, accessed August 17, 2015, <http://www.unhcr.org/3b66c2aa10.html>.

# Human rights abuses

Australia's system of offshore detention has become notorious for human rights abuses, which have been condemned by leading local and international authorities. This section provides detailed quotes taken from the numerous forceful criticisms of the offshore detention system. (*Emphasis in these quotes is added by the author, in bold*).

In May 2016, the United Nations High Commissioner for Refugees released the following statement:

There is no doubt that the current policy of **offshore processing and prolonged detention is immensely harmful**. There are approximately 2000 very vulnerable refugees and asylum-seekers on Manus Island and Nauru. These people have already been through a great deal, many have fled war and persecution, some have already suffered trauma. Despite efforts by the Governments of Papua New Guinea and Nauru, arrangements in both countries have proved **completely untenable**.

The situation of these people has **deteriorated progressively over time**, as UNHCR has witnessed firsthand over numerous visits since the opening of the centres. The consensus among medical experts is that conditions of detention and offshore processing do **immense damage to physical and mental health**. **UNHCR's principal concern today is that these refugees and asylum-seekers are immediately moved to humane conditions with adequate support and services.**<sup>20</sup>

The United Nations High Commissioner for Human Rights commented in June 2015:

Australia's response to migrant arrivals has **set a poor benchmark** for its regional neighbours. The authorities have also engaged in turn-arounds and push-backs of boats in international waters. **Asylum-seekers are incarcerated in centres in Papua New Guinea and Nauru, where they face conditions that the Special Rapporteur on Torture has reported as amounting to cruel, inhuman or degrading treatment** as defined by [the Convention Against Torture]. They also **violate the Convention on the Rights of the Child**, as the Australian Human

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<sup>20</sup> UNHCR, "Statement - UNHCR Calls for Immediate Movement of Refugees and Asylum Seekers to Humane Conditions," May 2, 2016, <http://unhcr.org.au/wp-content/uploads/2015/05/UNHCR-Calls-for-Immediate-Movement-of-Refugees-and-Asylum-Seekers-to-Humane-Conditions-.pdf>.

Rights Commission has justifiably declared. Even recognized refugees in urgent need of protection are not permitted to enter Australia, which has set up relocation arrangements with countries that may be ill-prepared to offer them any durable solution.

Such policies **should not be considered a model by any country**. Given that most of today's Australians themselves descend from migrants – and given that the country maintains sizeable regular programs for migration and resettlement – I am **bewildered by the hostility and contempt for these women, men and children** that is so widespread among the country's politicians.<sup>21</sup>

In a 2015 report, the United Nations Special Rapporteur on Torture stated:

the Government of Australia, by failing to provide adequate detention conditions; end the practice of detention of children; and put a stop to the escalating violence and tension at the Regional Processing Centre [on Manus Island], **has violated the right of the asylum seekers, including children, to be free from torture or cruel, inhuman or degrading treatment**, as provided by articles 1 and 16 of the [Convention Against Torture].<sup>22</sup>

In their joint report on Nauru published in August 2016, Amnesty International and Human Rights Watch stated:

About 1,200 men, women, and children who sought refuge in Australia and were forcibly transferred to the remote Pacific island nation of Nauru **suffer severe abuse, inhumane treatment, and neglect**, Human Rights Watch and Amnesty International said today. The Australian government's failure to address serious abuses **appears to be a deliberate policy** to deter further asylum seekers from arriving in the country by boat.

Refugees and asylum seekers on Nauru, most of whom have been **held there for three years, routinely face neglect by health workers** and other service providers who have been hired by the Australian government, as well as **frequent unpunished assaults** by local Nauruans. They endure unnecessary delays and at times **denial of medical care, even for life-threatening conditions**. Many have dire mental health problems and suffer **overwhelming**

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<sup>21</sup> "Statement by UN High Commissioner for Human Rights Zeid Ra'ad Al Hussein," June 15, 2015, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16076&LangID=E>.

<sup>22</sup> Juan E. Mendez, "Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment," 8.

**despair – self-harm and suicide attempts are frequent. All face prolonged uncertainty** about their future.<sup>23</sup>

In its 2016 World Report, Human Rights Watch said that:

the [Australian] government's **failure to respect international standards** for asylum seekers and refugees continues to take a **heavy human toll**. In 2015, Australia's practices of mandatory detention of asylum seekers, abuses related to offshore processing, and outsourcing of refugee obligations to other countries were heavily criticized by United Nations experts, foreign governments, and even some Australian government-funded inquiries.<sup>24</sup>

In a September 2016 report, the Australian Human Rights Commission stated that:

Since the processing of asylum claims in Nauru and Papua New Guinea's Manus Island recommenced in 2012, numerous reports and inquiries as well as the Commission's own research have documented a **range of serious shortcomings** in third country processing arrangements. Key issues of concern have included:

- the **discriminatory** nature of third country processing (it applies only to people who arrived by boat to seek asylum within a specific time period)
- inadequate pre-transfer assessment processes, which **fail to adequately consider the best interests of the child and lack sufficient safeguards against *refoulement*** (with particular concern having been raised about **same-sex attracted people being sent to countries which criminalise same-sex sexual activity**)
- **prolonged, indefinite and potentially arbitrary immigration detention (including of children)**
- **harsh living conditions, including inadequate accommodation and sanitation facilities, limited privacy, extreme heat and overcrowding**
- access to adequate health care services, including maternal, paediatric and mental health care services

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<sup>23</sup> Amnesty International and Human Rights Watch, "Australia: Appalling Abuse, Neglect of Refugees on Nauru," August 2, 2016, <https://www.hrw.org/news/2016/08/02/australia-appalling-abuse-neglect-refugees-nauru>.

<sup>24</sup> Human Rights Watch, "World Report 2016: Australia," January 8, 2016, <https://www.hrw.org/world-report/2016/country-chapters/australia>.

- physical safety, particularly in relation to reports of **physical and sexual assault of people in detention** and the Nauruan community (with women and children at particular risk) and a **violent incident** at the Manus Island detention facility in 2014 which **left one person dead and dozens injured**
- **delays** in the processing and finalisation of asylum claims
- **limited access** to sustainable durable solutions, with the vast majority of people who have been found to be refugees still waiting for a solution and several of the refugees resettled in Cambodia having subsequently returned to their countries of origin
- **the cumulative negative impacts of these conditions on the development of children and on the physical and mental health of all people subject to third country processing** (which may also impact on their ability to present their asylum claims)
- **lack of independent and transparent monitoring** of third country processing facilities and arrangements.

These issues **engage numerous human rights obligations** under international treaties to which Australia is a party as well as under the *Convention Relating to the Status of Refugees* (Refugee Convention).<sup>25</sup>

In its report released on 17 October 2016, Amnesty International stated:

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 — **amounts to torture under international law**.

A traumatologist with experience counselling those affected by terrorism and natural disasters called Australia's system of offshore detention "**an atrocity**." He said it was the worst situation of trauma he'd ever seen, over a 43 year career.<sup>26</sup>

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<sup>25</sup> Australian Human Rights Commission, "Pathways to Protection: A Human Rights-based Response to the Flight of Asylum Seekers by Sea," 31.

<sup>26</sup> Ben Doherty and David Marr, "The Worst I've Seen – Trauma Expert Lifts Lid on 'Atrocity' of Australia's Detention Regime," *The Guardian*, June 19, 2016, <http://www.theguardian.com/australia-news/2016/jun/20/the-worst-ive-seen-trauma-expert-lifts-lid-on-atrocity-of-australias-detention-regime>.

A joint Save the Children Australia and UNICEF Australia report, published in September 2016, detailed the harms to children subjected to Australia's policies:

Children and their families who have sought Australia's protection... have been exposed to the following potential dangers and harms:

- the **anxiety and despair of a life-in-limbo**
- **prolonged exposure to detention and detention-like conditions**
- deterioration in mental health leading to **despair and self-harm**
- **impaired childhood development**
- exposure to **violence, abuse and exploitation**
- indefinite family separation
- impaired access to appropriate education and healthcare
- incapacitation of parents and family break-down
- social isolation, negative stereotyping and discrimination
- in the case of families transferred to Nauru, increased instances of babies born stateless
- in the case of families transferred to Nauru, impaired enjoyment of cultural rights and identity...<sup>27</sup>

A leaked report by the UNHCR into conditions on Nauru, details of which were published in *The Saturday Paper*, stated:

It appears that **PTSD and depression have reached epidemic proportions ...** UNHCR anticipates that **mental illness, distress and suicide** will continue to escalate in the immediate and foreseeable future.<sup>28</sup>

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<sup>27</sup> Save the Children Australia and UNICEF Australia, "At What Cost?," September 2016, 3, <https://www.savethechildren.org.au/about-us/media-and-publications/latest-news/years/save-the-children-and-unicefs-investigation-into-australias-harsh-asylum-seeker-policies>.

<sup>28</sup> Martin McKenzie-Murray, "Leaked UNHCR Report: Manus Island World's Worst," *The Saturday Paper*, October 8, 2016, <https://www.thesaturdaypaper.com.au/news/immigration/2016/10/08/leaked-unhcr-report-manus-island-worlds-worst/14758452003831>.

# A policy of secrecy

The human rights abuses detailed above are both the cause and effect of secrecy at Australia's offshore detention camps. Access to the camps and the people detained there is extremely limited. This has made it difficult to monitor the conditions in the camps.

The Australian *Border Force Act 2015* establishes a criminal offence, punishable by two years' imprisonment, for the unauthorised disclosure of information about the camps by certain people, including contractors, who work in them.<sup>29</sup>

The governments involved have issued blanket refusals of access to the centres for journalists<sup>30</sup> (or even, in the case of Nauru, denial of visas to media).<sup>31</sup> Danish parliamentarians who had planned a visit to the centre had their applications for visas denied.<sup>32</sup>

While on a visit to Nauru, Australian Senator Sarah Hanson-Young, a long-time critic of the centres, was spied on by private security contractor Wilson Security. Wilson representatives then provided false information to an Australian Senate inquiry about the company's activities.<sup>33</sup>

In 2015, the United Nations Special Rapporteur on the Human Rights of Migrants was forced to cancel a planned visit to Australia due to the Australian governments' failure

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<sup>29</sup> (Cth), *Australian Border Force Act 2015, Act No. 40 of 2015*, 2015; Brynn O'Brien, "Australia's Anti-whistleblower Laws for the Immigration Sector: Concerns for Investors and Financiers of Immigration Detention Contractors" (UN Forum on Business and Human Rights, Geneva, November 18, 2015), <https://www.scribd.com/doc/291142600/Australia-s-anti-whistleblower-laws-for-the-immigration-sector-concerns-for-investors-and-financiers-of-immigration-detention-contractors>.

<sup>30</sup> Ben Pynt, "We Need to See Manus Island," *The Sydney Morning Herald*, February 24, 2014, <http://www.smh.com.au/comment/we-need-to-see-manus-island-20140224-33bk1.html>.

<sup>31</sup> "Nauru Government Bans All Media Visits from Country," accessed September 20, 2016, <http://www.aljazeera.com/news/2015/10/nauru-government-refuses-media-visa-applications-151009043225083.html>.

<sup>32</sup> Nicole Hasham, "Nauru Bans Unsympathetic Danish MPs from Detention Centre Visit," *The Sydney Morning Herald*, August 31, 2016, <http://www.smh.com.au/federal-politics/political-news/nauru-bans-unsympathetic-danish-mps-from-detention-centre-visit-20160830-gr4y8g.html>.

<sup>33</sup> Martin McKenzie-Murray, "Wilson Security's appalling record on Nauru," *The Saturday Paper*, April 9, 2016, <https://www.thesaturdaypaper.com.au/news/politics/2016/04/09/wilson-securitys-appalling-record-nauru/14601240003105>.

to cooperate “regarding protection concerns and access to detention centres [including offshore centres].”<sup>34</sup> He stated:

In preparing for my visit, it came to my attention that the 2015 Border Force Act, which sanctions detention centre service-providers who disclose ‘protected information’ with a two-year court sentence, would have an impact on my visit as it serves to discourage people from fully disclosing information relevant to my mandate... This threat of reprisals with persons who would want to cooperate with me on the occasion of this official visit is unacceptable,... Since March 2015, I have repeatedly requested that the Australian Government facilitate my access to its off-shore processing centres... I was also extremely disappointed that I was unable to secure the cooperation needed to visit any off-shore centre, given the international human rights and humanitarian law concerns regarding them, plus the Australian Senate Inquiries on the off-shore detention centres in Nauru and Papua New Guinea, which raised concerns and recommendations concerning these centres.<sup>35</sup>

A joint September 2016 report by Save the Children Australia and UNICEF Australia criticised these “policies of operational secrecy” as means to hinder public debate in Australia and to impair Australians’ ability “to assess whether these policies are necessary or appropriate, nor to understand the true quantum of the human, economic and strategic costs they entail.”<sup>36</sup>

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<sup>34</sup> Office of the High Commission for Human Rights (UN), “Migrants / Human Rights: Official Visit to Australia Postponed Due to Protection Concerns,” September 25, 2015, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16503&LangID=E>.

<sup>35</sup> Ibid.

<sup>36</sup> Save the Children Australia and UNICEF Australia, “At What Cost?”.



# Worsening situation

Conditions in the camps have deteriorated and it is inevitable that, over time, the situation will worsen. Rates of self-harm in Australia's detention camps are already at "epidemic" levels.<sup>37</sup> Medical research indicates that the mental and physical health of people held in Australia's immigration detention centres deteriorates the longer they are detained,<sup>38</sup> a fact acknowledged by the Australian Department of Immigration and Border Protection as well as IHMS, the government's health contractor on Manus Island and Nauru.<sup>39</sup> (*Emphasis in these quotes is added by the author, in **bold.***)

In May 2016, UNHCR stated:

The situation of these people [subjected to offshore detention by Australia] has **deteriorated progressively over time**, as UNHCR has witnessed firsthand over numerous visits since the opening of the centres. The consensus among medical experts is that **conditions of detention and offshore processing do immense damage to physical and mental health**. UNHCR's principal concern today is that these refugees and asylum-seekers are immediately moved to humane conditions with adequate support and services.<sup>40</sup>

This statement was released following a UNHCR visit to Nauru during which UNHCR representatives witnessed the self-immolation of a 23-year-old Iranian man who later

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<sup>37</sup> Nicole Hasham and Michael Koziol, "Self-harm in Detention Centres at Epidemic Levels, Internal Documents Show," *The Sydney Morning Herald*, January 15, 2016, <http://www.smh.com.au/federal-politics/political-news/selfharm-in-detention-centres-at-epidemic-levels-internal-documents-show-20160115-gm74q3.html>.

<sup>38</sup> Janette P. Green and Kathy Eagar, "The Health of People in Australian Immigration Detention Centres," *Medical Journal of Australia* 192, no. 2 (2010), <https://www.mja.com.au/journal/2010/192/2/health-people-australian-immigration-detention-centres>.

<sup>39</sup> Jane Lee, "Asylum Seekers' Mental Health Linked to Length of Detention," *The Sydney Morning Herald*, July 2, 2014, <http://www.smh.com.au/federal-politics/political-news/asylum-seekers-mental-health-linked-to-length-of-detention-20140702-zstsy.html>.

<sup>40</sup> UNHCR, "Statement - UNHCR Calls for Immediate Movement of Refugees and Asylum Seekers to Humane Conditions."

died from his injuries.<sup>41</sup> A young Somali woman set herself alight only days later, suffering burns to 70% of her body.<sup>42</sup>

The environment of offshore detention is profoundly harmful to children. 13-year old refugee Misbah said in an interview broadcast on 17 October 2016 by *4 Corners*:

We feel very sad. **Most of the people even think they will suicide and that's better for them, than having like this much stress.**<sup>43</sup>

At the time of broadcast, Misbah had been on Nauru for 1179 days.

Another child refugee, 17-year old Shamim, who had spent 1090 days on Nauru at the time of broadcast, spoke about self-harming:

I wasn't feeling ok, and **it was so, so bad, and I want to feel the pain which I'm having in my like heart and it's so bad, so I'm just taking it out.** But still when I did it, did it, it wasn't painful. But I still did it, I wasn't ok and I just did some stupid things. Maybe just for a while I forgot the feeling pain, but so bad, but after the pain from my hand gone, it started back again.<sup>44</sup>

Two teachers who had worked on Nauru described the environment to *4 Corners*:

GABBY SUTHERLAND: Well **it's death by slow torture.** It's, it's just how to, **the place is set up to make people go mad or just make people, just make people die inside.**

JUDITH REEN: You know what, because **the harm is permanent.** It's the damage is done for these children. It is done. Three years of their lives has been- have been spent, sorry, in the camp - sorry [crying] I just want to make sure it doesn't happen to another generation.<sup>45</sup>

Both women risked prosecution under the *Border Force Act* and a sentence of 2 years' imprisonment for disclosing information to the program. They spoke out anyway.<sup>46</sup>

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<sup>41</sup> Ben Doherty and Helen Davidson, "Self-immolation: Desperate Protests Against Australia's Detention Regime," *The Guardian*, May 3, 2016, sec. Australia news, <https://www.theguardian.com/australia-news/2016/may/03/asylum-seekers-set-themselves-alight-nauru>.

<sup>42</sup> *Ibid.*, -.

<sup>43</sup> "The Forgotten Children," *4 Corners* (Australian Broadcasting Corporation, October 17, 2016), <http://www.abc.net.au/4corners/stories/2016/10/17/4556062.htm#transcript>.

<sup>44</sup> *Ibid.*

<sup>45</sup> *Ibid.*

<sup>46</sup> *Ibid.*

In the UNHCR report leaked to *The Saturday Paper*, details of which were published in October 2016, the escalating toll of prolonged detention is clear:

UNHCR anticipates that mental illness, distress and suicide will continue to escalate in the immediate and foreseeable future.<sup>47</sup>

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<sup>47</sup> McKenzie-Murray, "Leaked UNHCR Report: Manus Island World's Worst."

# Corporate involvement in offshore detention

Corporations play a central role in Australia's offshore detention system.<sup>48</sup> Because the detention camps are located in other countries with limited resources, the Australian government needs the active participation of companies in order to operate the centres upon which its deterrence policy relies. Australia outsources the operation of these centres to companies through contracts valued at over AU\$1 billion per annum.<sup>49</sup>

**Put simply: without companies willing to do the work of operating, maintaining and providing services to the centres, Australia's offshore detention system would cease to exist.**

The companies involved in the offshore detention system since 2012 include:

- G4S,<sup>50</sup>
- Broadspectrum,<sup>51</sup> formerly known as Transfield Services,<sup>52</sup>

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<sup>48</sup> See Brynn O'Brien, "Extraterritorial Detention Contracting in Australia and the UN Guiding Principles on Business and Human Rights," *Business and Human Rights Journal*, April 21, 2016, doi:10.1017/bhj.2016.12.

<sup>49</sup> Kate Hobbs, "Offshore Processing Centres in Nauru and Papua New Guinea: Procurement of Garrison Support and Welfare Services," Text, (February 9, 2016), <https://www.anao.gov.au/work/performance-audit/offshore-processing-centres-nauru-and-papua-new-guinea-procurement>.

<sup>50</sup> "G4S Website," accessed September 6, 2016, <http://www.au.g4s.com/>; G4S and Australian Government, Department of Immigration and Citizenship, "G4S Manus Island Detention Facility Contract," February 2013, <http://www.scribd.com/doc/155097545/Manus-Island-detention-facility-contract>; Laughland, Oliver and Paul Farrell, "G4S and Serco Fail to Report on Australia's Asylum Centre Conditions," *Guardian Australia*, n.d., <http://www.theguardian.com/world/2013/sep/16/g4s-serco-australia-asylum-centre>; Melissa Davey, "Manus Security Firm, G4S, Responsible for February Violence, Says Law Centre," *The Guardian*, September 23, 2014, sec. World news, <https://www.theguardian.com/world/2014/sep/23/manus-security-firm-g4s-responsible-for-february-violence-says-law-centre>; Human Rights Law Centre, "Complaint Concerning G4S Australia Pty Ltd : Submitted to the Australian and United Kingdom National Contact Points for the OECD Guidelines for Multinational Companies," September 2014, [http://hrhc.org.au/wp-content/uploads/2014/09/HRLC\\_RAID\\_Complaints\\_OECD\\_Guidelines\\_specific\\_instance\\_G4S\\_Sep2014.pdf](http://hrhc.org.au/wp-content/uploads/2014/09/HRLC_RAID_Complaints_OECD_Guidelines_specific_instance_G4S_Sep2014.pdf).

<sup>51</sup> Broadspectrum, "Broadspectrum (formerly Known as Transfield Services) Website," accessed September 6, 2016, <http://www.transfieldservices.com/>.

<sup>52</sup> Ben Doherty, "Detention Centre Operator Transfield Services to Be Renamed 'Broadspectrum'," *The Guardian*, September 25, 2015, sec. Australia news, <http://www.theguardian.com/australia->

- IHMS,<sup>53</sup> and
- Wilson Security.<sup>54</sup>

A report released in November 2015 by human rights campaign group *No Business in Abuse* documented the contribution of Australian listed company Transfield Services Limited (now known as Broadspectrum) to the human rights violations at the camps.<sup>55</sup> This report found that the abuses in the camps (centrally the abuses of arbitrary detention and cruel, inhuman and degrading treatment) are inherent in the operation of the system.

In this context, there is no way that corporations (or other organisations) can profit from such operations as well as meet their responsibilities under the UN Guiding Principles on Business and Human Rights<sup>56</sup> and other relevant standards. There is also no way that contracting companies can mitigate the risk of human rights abuses in offshore detention, given the systemic nature of the abuses.

No company acts in a vacuum in today's global economy. The companies contracting to Australia's detention system rely on material support from other companies – especially in the form of finance and investment – in order to conduct their business activities.

Involvement in the systemic abuses at the offshore camps is not only the responsibility of companies that operate them, but is also of concern to their investors and financiers. Business risks of association with abuse will flow onto the financial backers of contracting companies, should they fail to take appropriate action.<sup>57</sup>

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news/2015/sep/25/detention-centre-operator-transfield-services-to-be-renamed-broadspectrum?CMP=soc\_568.

<sup>53</sup> "IHMS Contract for Provision of Health Service for People in Detention," n.d.

<sup>54</sup> Transfield and Wilson, "Wilson Subcontract with Transfield," 2013.

<sup>55</sup> No Business in Abuse, "Business in Abuse: Transfield's Complicity in Gross Human Rights Abuses Within Australia's Offshore Detention Regime," November 2015, [https://d68ej2dhub09.cloudfront.net/1321-NBIA\\_Report-20Nov2015b.pdf](https://d68ej2dhub09.cloudfront.net/1321-NBIA_Report-20Nov2015b.pdf).

<sup>56</sup> John Ruggie, "UN Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework," 2011.

<sup>57</sup> No Business in Abuse, Human Rights Law Centre, and GetUp!, "Association with Abuse: The Financial Sector's Association with Gross Human Rights Abuses of People Seeking Asylum in Australia," July 2016, [http://cdn.getup.org.au/1851-Association\\_with\\_Abuse.pdf](http://cdn.getup.org.au/1851-Association_with_Abuse.pdf).

# Ferrovial

Spanish infrastructure company Ferrovial S.A. is currently responsible for the largest contracts to operate the offshore detention system.

Ferrovial had no association with the camps until it bought Broadspectrum in May 2016.<sup>58</sup> At this time, Broadspectrum was operating the camps. In taking over Broadspectrum, Ferrovial acquired responsibility for the detention contracts with the Australian government.<sup>59</sup>

Ferrovial made this acquisition subsequent to being provided with detailed information about the abuses in the camps.<sup>60</sup> When acquiring Broadspectrum, Ferrovial fell short of conducting adequate due diligence on this acquisition, or failed to respond appropriately to human rights concerns.<sup>61</sup> This failure is outlined in a report released in July 2016, *Association with Abuse*.<sup>62</sup>

## **This governance failure should have been a red flag to Ferrovial’s financial backers.**

When the takeover of Broadspectrum proceeded, Ferrovial released a statement indicating that detention centre work “will not form part of its services offering in the future”.<sup>63</sup>

This was widely interpreted to mean that the company would not bid for a new contract after the current contract expires, and that its work at the offshore centres would cease in February 2017 with the expiration of that contract. In August 2016, however, Ferrovial announced that the Australian Government had extended the

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<sup>58</sup> “ASX and Media Release: Ferrovial Completes Compulsory Acquisition of Broadspectrum Shares,” June 27, 2016,

<http://tse.live.irmau.com/irm/showdownloaddoc.aspx?SiteId=254&AnnounceGuid=2e8f3fe9-513c-45b7-a2f2-cda59be92e7f>.

<sup>59</sup> No Business in Abuse, Human Rights Law Centre, and GetUp!, “Association with Abuse: The Financial Sector’s Association with Gross Human Rights Abuses of People Seeking Asylum in Australia,” 4.

<sup>60</sup> No Business in Abuse, Human Rights Law Centre, and GetUp!, “Association with Abuse: The Financial Sector’s Association with Gross Human Rights Abuses of People Seeking Asylum in Australia.”

<sup>61</sup> Ibid.

<sup>62</sup> Ibid.

<sup>63</sup> Jenny Wiggins, “Ferrovial to ‘Fulfil’ Existing Broadspectrum Detention Contracts after Takeover,” *The Sydney Morning Herald*, May 2, 2016, <http://www.smh.com.au/business/ferrovial-to-fulfil-existing-broadspectrum-detention-contracts-after-takeover-20160502-gojr7f.html>; Ferrovial S.A., “Press Release - Ferrovial Reaches 59% of Broadspectrum,” accessed June 2, 2016, [http://www.ferrovial.com/en/press-room/press\\_releases/59-per-cent-offer-broadspectrum/](http://www.ferrovial.com/en/press-room/press_releases/59-per-cent-offer-broadspectrum/).

contract for a further eight months to 27 October 2017 (under an extension clause in the contract), despite Ferrovia's "eagerness to withdraw" from operations at the camps.<sup>64</sup>

Further, it has been reported that, despite the announcement of withdrawal from operations at the camps, "[Ferrovia subsidiary] Broadspectrum has sought to expand its operations on Nauru ..., apparently taking over the role [of providing refugee welfare services to refugees] recently abandoned by Connect Settlement Services."<sup>65</sup> Connect's contract expires in early December, making an announcement on who will take up this role imminent.<sup>66</sup> Should Ferrovia expand its role on Nauru, it will expand the set of risks to which it is exposed.

**In summary: Ferrovia will now be an active participant in the abusive offshore detention system for a total of 18 months, or over 500 days – from the time it assumed responsibility for the camps in May 2016 to the end of its final contract extension on 27 October 2017.**

Ferrovia's continued participation in the system of offshore detention falls foul of its responsibility to respect human rights, a requirement which "exists over and above compliance with national laws,"<sup>67</sup> including contractual obligations.

During the time in which Ferrovia has responsibility for the detention contracts it will be exposed to the serious business risks (operational, legal, financial and reputational) posed by association with gross human rights abuses.<sup>68</sup>

Ferrovia's continued involvement in the system of offshore detention – especially in the context of an explicit UNHCR recommendation that the camps be immediately

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<sup>64</sup> Jenny Wiggins, "Ferrovia Forced to Run Nauru, Manus Detention Centres Until Late 2017," *Australian Financial Review*, August 7, 2016, <http://www.afr.com/business/ferrovia-forced-fo-run-nauru-manus-detention-centres-until-late-2017-20160805-gqlr2i>.

<sup>65</sup> Helen Davidson, "Broadspectrum Reported to Be Taking over Refugee Welfare Services on Nauru," *The Guardian*, October 26, 2016, sec. World news, <https://www.theguardian.com/world/2016/oct/26/broadspectrum-reported-to-be-taking-over-refugee-welfare-services-on-nauru>.

<sup>66</sup> Adam Morton, "Refugee Welfare Service Provider Connect Abandons Nauru," *The Sydney Morning Herald*, September 19, 2016, <http://www.smh.com.au/federal-politics/political-news/refugee-welfare-service-provider-connect-abandons-nauru-20160919-grjoae.html>.

<sup>67</sup> Ruggie, "UN Guiding Principles on Business and Human Rights" Guiding Principle 11, Commentary.

<sup>68</sup> No Business in Abuse, Human Rights Law Centre, and GetUp!, "Association with Abuse: The Financial Sector's Association with Gross Human Rights Abuses of People Seeking Asylum in Australia."

emptied<sup>69</sup> – poses an unacceptable moral and governance risk to any company with which Ferrovial has business relationships, including Ferrovial’s investors.

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<sup>69</sup> UNHCR, “Statement - UNHCR Calls for Immediate Movement of Refugees and Asylum Seekers to Humane Conditions.”



# The Norwegian Pension Fund

One of the biggest investors in Ferrovial has been Norges Bank Investment Management (NBIM) – the investment arm of the Norwegian Pension Fund Global.

On the most recent available market, NBIM holds approximately 1.71% (valued at US\$283million) of Ferrovial, making NBIM one of Ferrovial’s top ten shareholders.<sup>70</sup> When contacted by The Australia Institute to confirm current holdings, NBIM declined to comment, as per the fund’s “standard policy” not to “comment on individual holdings.”<sup>71</sup>

NBIM has strict expectations, in respect of human rights<sup>72</sup> and children’s rights,<sup>73</sup> of the companies in which it invests.

NBIM previously divested from Broadspectrum.<sup>74</sup> At this time, Broadspectrum was responsible for offshore detention contracts. With Ferrovial’s acquisition of Broadspectrum, the Fund is once again exposed to the human rights abuses occurring at the camps.

NBIM’s *Human Rights Expectations* document expressly refers to the UN Guiding Principles on Business and human rights as the relevant normative standard for companies in which they invest. In particular, it provides that:

Companies should carry out relevant impact and risk assessments prior to for example making significant investments in new business activities, agreeing mergers and acquisitions, entering into new countries, regions or locations and establishing new business relationships.<sup>75</sup>

Ferrovial fell short of its responsibilities in this regard, or failed to appropriately respond to the findings of such assessments.<sup>76</sup>

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<sup>70</sup> Norges Bank Investment Management, “About Us - NBIM,” *Norges Bank Investment Management*, accessed September 21, 2016, <https://www.nbim.no/en/organisation/about-us/>.

<sup>71</sup> Correspondence with NBIM, October 2016.

<sup>72</sup> NBIM, “Human Rights Expectation Document.”

<sup>73</sup> NBIM, “Children’s Rights Expectation Document.”

<sup>74</sup> Correspondence with NBIM, September 2016.

<sup>75</sup> NBIM, “Human Rights Expectation Document.”

<sup>76</sup> No Business in Abuse, Human Rights Law Centre, and GetUp!, “Association with Abuse: The Financial Sector’s Association with Gross Human Rights Abuses of People Seeking Asylum in Australia.”

In addition, under the UN Guiding Principles on Business and Human Rights, NBIM has *its own responsibility* to respect human rights, which requires it to “seek to prevent or mitigate adverse human rights impacts that are directly linked to [its] operations, products or services by [its] business relationships, even if [NBIM has] not contributed to those impacts”.<sup>77</sup>

Continued investment in Ferrovial, while Ferrovial remains responsible for operating detention camps where well-documented human rights abuses are occurring, is inconsistent with these ethical and governance standards.

## COMPANY (CONDUCT-BASED) SCREEN

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NBIM excludes companies based the failure of their conduct to meet certain standards. This is governed by the fund’s Ethical Guidelines.<sup>78</sup> The Guidelines provide that companies may be:

put under observation or be excluded if there is an unacceptable risk that the company contributes to or is responsible for ... serious or systematic human rights violations, such as murder, torture ... and deprivation of liberty.

According to a report in the Guardian: “[NBIM] has acknowledged the potential for an ethical problem [with its investment in Ferrovial], and has referred the issue to Norway’s Council on Ethics for an independent judgment”.<sup>79</sup>

Conduct-based exclusions rely on the availability of credible evidence of a company’s involvement in human rights abuses. The human rights abuses in the offshore detention camps are well-documented by the world’s leading human rights authorities. NBIM and the Ethics Council were provided with detailed information about corporate involvement in human rights abuses at the camps, as well as the high likelihood of success of Ferrovial’s takeover of Broadspectrum, by No Business in Abuse over April and May of 2016.

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<sup>77</sup> Guiding Principle 13(b), United Nations, “Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework,” 2011, [http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf).

<sup>78</sup> Ethics Council for the Norwegian Pension Fund Global, “Guidelines for Observation and Exclusion from the Government Pension Fund Global” (Ethics Council for the Norwegian Pension Fund Global), accessed May 22, 2016, <http://etikkradet.no/en/guidelines/>.

<sup>79</sup> “Refugee camp company in Australia 'liable for crimes against humanity',” accessed September 20, 2016, <https://www.theguardian.com/australia-news/2016/jul/25/ferrovial-staff-risk-prosecution-for-managing-australian-detention-camps>.

Failing to act decisively on this information now would be inconsistent with the Norwegian Pension Fund's internal and external human rights governance frameworks.

## SECTOR (PRODUCT-BASED) SCREEN

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In addition to observation and exclusion of particular companies based on evidence of their conduct, NBIM's Ethical Guidelines provide for the application of a negative screen to certain sectors or operating environments in which the risk of a company's activities resulting in human or environmental harm is very high.

Presently, these sectors include the production of controversial weapons and tobacco, as well as, where certain conditions are triggered, coal mining.<sup>80</sup>

The Norwegian Pension Fund's guidelines do not currently include a negative screen of companies involved in the operation of detention facilities. However the operation of detention facilities by companies is a business activity that carries a significant risk of corporate involvement in harm to human beings.

Specifically, the Australian offshore detention system is an operating environment in which companies contracting to it cannot mitigate the risk of involvement in serious and systematic violations of international human rights standards,<sup>81</sup> including those contained in NBIM's expectation documents on human rights and children's rights and its Ethical Guidelines.

Any company that contracts to this system faces the inescapable proposition that the portions of Australia's present policy framework which it is contracted to implement not only permit but *require* violations of basic tenets of international human rights law. This position is, as outlined above, confirmed by numerous international authorities.

By implementing a sector or product-based screen, NBIM could avoid a repeat of this situation in future. The need for such a screen is shown in NBIM's previous divestment from Broadspectrum, only to find itself holding shares in Broadspectrum's new parent company Ferrovial. Recognition of the risks inherent in the privatised detention sector may have protected the fund against the financial, moral and reputational risk to which it is now exposed.

Privatised detention is an expanding industry. Given the likelihood of increasing involvement of companies within the Fund's investment universe in detention

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<sup>80</sup> "Observation and Exclusion of Companies."

<sup>81</sup> Brynn O'Brien, "Extraterritorial Detention Contracting in Australia and the UN Guiding Principles on Business and Human Rights."

activities, the Norwegian Ministry of Finance may wish to consider adopting a screen to identify companies involved in such operations.

A screen could be designed in a number of ways. It could take the form of a presumption against investment in companies with detention operations, which is rebuttable in cases where it can be demonstrated that a company has taken measures to prevent their involvement in human rights abuse, and has appropriate safeguards in place. Alternatively, it could consist of an automatic, blanket screen on investing in companies conducting certain kinds of detention operations known to pose high risks of involvement in human rights abuses.

# Conclusion and recommendations

The camps that constitute Australia's offshore detention system are, as Amnesty International has stated, places of intentional cruelty.<sup>82</sup> Australia can only maintain its abusive policies with the participation of the companies that operate the camps, and the wilful inaction of those companies' financial backers.

**Without companies' participation in the offshore detention system, the abuses would stop.**

Ferrovial's shareholders have a responsibility to end their linkage to the human rights abuses at the camps. By holding shares in Ferrovial, the Norwegian Pension Fund is directly linked to – and holding a financial stake in – the human rights abuses.

Allowing a financially beneficial relationship to continue in the face of such overwhelming evidence of abuse is inconsistent with NBIM's own standards.

## **Recommendations:**

**In order to act consistently with its ethical standards and to avoid future shareholdings in companies that operate immigration detention centres where human rights standards are not met:**

- 1. The Norwegian Pension Fund should divest its shareholding in Ferrovial;**
- 2. The Norwegian Pension Fund should apply a conduct-based exclusion to Ferrovial for as long as the company is involved in the operation of Australia's offshore detention camps; and**
- 3. The Norwegian Ministry of Finance should consider amending its ethical guidelines to allow for a screen to be applied to companies involved in the operation of detention facilities.**

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<sup>82</sup> Amnesty International, "Australia Has Turned Nauru into an Open-air Prison," October 17, 2016, <https://www.amnesty.org/en/latest/news/2016/10/australia-has-turned-nauru-into-an-open-air-prison/>.