

Impact case study (REF3)

Institution: City, University of London		
Unit of Assessment: 18: Law		
Title of case study: Criminalising As-Deterrent Migrant Processing		
Period when the underpinning research was undertaken: Jan 2015 – Apr 2020		
Details of staff conducting the underpinning research from the submitting unit:		
Name(s):	Role(s) (e.g. job title):	Period(s) employed by submitting HEI:
Dr Ioannis Kalpouzos	Lecturer in Law	Oct 2011 – present
Period when the claimed impact occurred: Feb 2017 – Mar 2019		
Is this case study continued from a case study submitted in 2014? N		
1. Summary of the impact (indicative maximum 100 words)		
<p>Dr Kalpouzos clarified the liability of state agents and contractors at migrant processing centres (MPCs) for crimes against humanity, under current statutory and case law of the International Criminal Court (ICC). It led to the following impact: (1) A <u>change to the public perception of the role of the ICC</u> in the UK and Australia. The public feels that mistreatment of migrants at MPCs could be punishable by ICC prosecution (2) A <u>benefit to the economy</u> in Australia and the UK. Charitable giving to legal aid charities capable of migrant-repatriation from MPCs has increased, partly due to research (3) A <u>change to public policy</u> in Australia and within key intergovernmental organisations. Influenced by the underpinning research, the Australian Parliament, UN bodies and the ICC have concluded that the ICC can designate MPC malpractice a crime against humanity.</p>		
2. Underpinning research (indicative maximum 500 words)		
<p>The primary motivation for this research was the refugee crisis in Europe that followed the onset of civil war in Syria in March 2011. By December 2014, a total 4,000,000 had registered as refugees. This significant new displaced population put immense pressure on countries along primary migration corridors e.g. Turkey and Greece. Not adequately prepared to handle this dramatic rise in migration, these states hastily constructed MPCs at their borders, which soon became notorious for unsanitary conditions and institutionalised mistreatment of migrants.</p> <p>In this context, Dr Kalpouzos investigated whether the nature of migrant processing in detention centres might, in itself, constitute a crime against humanity according to existing ICC jurisprudence. Funded by an Institute for Global Law and Policy (IGLP) collaborative grant in January 2015, Dr Kalpouzos was one of six academics working on the project, which spanned Europe and the USA, and worked in German, French, Greek and Finnish as well as in their common language, English.</p> <p>Between January and June 2015 Dr Kalpouzos and a close collaborator at Georgetown University reviewed more than 150 documents including the ICC's founding instrument (the <i>Rome Statute</i>), more than half of ICC's 44 decided cases, and a further 124 documents including judgments from other courts and academic and practitioner texts. They applied their findings to reported incidents of mistreatment in Greek MPCs and published this work in June 2015 [3.1]. Following this, Dr Kalpouzos analysed a further 9 ICC cases and 160 documentary resources to incorporate cases along three other principal migration corridors: Italy-Libya, US-Mexico and Australia-Indonesia. This work was written up and published in April 2020 [3.2]. Overall a central key insight emerged from this body of work:</p>		
Key Finding 1:		

Because of the ICC's extensive record of prosecuting cases of violence in Africa as "crimes against humanity" (e.g. late 2000 cases against Darfur militants responsible for death tolls in the 100,000), in the West, by 2015, the general public had ceased to see the ICC as a deterrent against so-called 'banal' crimes against humanity - e.g. systemic violence at MPCs - by Western actors. However, notwithstanding public opinion, existing ICC law at that time already implied liability for crimes against humanity, in cases of detainee abuse, for both MPC staff and their political overseers, in any ICC signatory state.

In parallel with Dr Kalpouzos' research, in May 2016 Stanford Law School's International Human Rights Clinic (IHRC) – a faculty-led student advocacy initiative – undertook more than 70 interviews with former detainees of two Australian MPCs. Dr Kalpouzos and the co-author of his June 2015 paper assisted this 15-faculty team as expert advisors. They oversaw both the analysis of the interviews and, by combining this evidence with the results of their theoretical analysis, the compilation of a 115-page report structured according to their 2015 findings [3.3]. This report contributed a second important finding to the body of research underpinning the three impacts:

Key Finding 2:

Combined with evidence, the research's theoretical framework produced a viable case for a crimes against humanity prosecution of MPC staff and their political backers within the current ICC framework.

On 14 February 2017, Dr Kalpouzos and the academic experts brought together by the IHRC team submitted a report (hereafter the communiqué) to the ICC, officially requesting that the Office of the Prosecutor open a formal investigation into migrant processing on Australia's Indonesian border.

The overall body of research which underpins the three impacts described below was a global effort undertaken by academics, legal practitioners and other stakeholders from the full cross-section of society. However, these two key findings, contributed by Dr Kalpouzos, have together made a distinct and significant contribution to the field of ICC accountability for MPC agents. As outlined below, both ideas, exploited by numerous groups and individuals since publication, have significantly influenced how society understands the role of the ICC. This change of perspective has subsequently impacted both the economy and public policy in ways that are also underpinned by Dr Kalpouzos' findings.

3. References to the research (indicative maximum of six references)

3.1 Journal Article: Kalpouzos & Mann, *Banal crimes against humanity: The case of asylum seekers in Greece*, Melbourne Journal of International Law, 16(1) (June 2015). See the journal's online archive: <https://law.unimelb.edu.au/mjil/issues/issue-archive/161> Accessed 04.12.2020

Evidence of the quality of this article:

- It was published following rigorous peer-review.
- Sponsored by a Harvard Law School IGLP grant. According to IGLP data, fewer than 1 in 4 applicants receives an award.
- Published as the lead article of ten in this volume.

3.2 Journal Article: Kalpouzos, *International Criminal Law and the Violence against Migrants*, German Law Journal, 21(3) (April 2020). See Cambridge University Press online archive: <https://doi.org/10.1017/glj.2020.24> Accessed 04.12.2020

Evidence of the quality of this article:

- Rigorous peer-review prior to publication.
- Part funded by the European Research Council.
- Dr Kalpouzos was invited to present the research at the University of Oxford's Refugee Studies Centre in November 2018. Of the four workshop sessions, Dr Kalpouzos was asked to lead the first.

3.3 Research Report: *The Situation in Nauru and Manus Island: Liability for Crimes Against Humanity*. Commissioned in May 2016 by Stanford Law School's International Human Rights Clinic. It was drafted by Drs Kalpouzos, Mann and 15 collaborators from other UK, US and European institutions. <https://law.stanford.edu/publications/communique-to-the-office-of-the-prosecutor-of-the-international-criminal-court-under-article-15-of-the-rome-statute-the-situation-in-nauru-and-manus-island-liability-for-crimes-against-humanity/> Accessed 04.12.2020

Evidence of the quality of this report:

- Used as a template for two subsequent ICC communiqués on MPC detention by:
 - (1) Paris School of International Affairs on Libya-Italy MPCs (June 2019).
 - (2) Syria Justice and Accountability Centre (a DC think tank) on the Turkey-Greece MPCs (31 Dec 2020).
- Dr Kalpouzos was invited to present this work at (i) Goldsmiths, University of London, entitled *Structural Violence and International Criminal Prosecution*, 6 Feb 2017 (ii) Jean Monnet Centre of Excellence, University of Athens, entitled *International Criminal Law and Asylum Seekers in Australia*, 26 February 2018 (iii) Institute of Advanced Legal Studies, London, entitled *The Australian Experience: A Role for the International Criminal Court?* 19 May 2017.

4. Details of the impact (indicative maximum 750 words)

The first of the three impacts of the underpinning research concerns a change to society. Public discourse concerning migrant processing was enriched by introducing the concept of ICC liability for state actors. This evolution in public discourse to include ICC liability for crimes against humanity in MPCs is evidenced by a significant shift in the reporting of ICC cases in the UK press following publication of the communiqué in February 2017.

Following a London press conference on 13 February 2017, three of the UK's ten national newspapers – *The Guardian*, *Financial Times (FT)* and the *Daily Express* – ran stories based on the research findings in their online editions. The *Evening Standard* also covered the communiqué's release. These stories communicated the principles in the research key findings (see e.g. [5.1]). *The Guardian* and *Daily Express* benefitted by weaving the findings into their regular coverage of Australia's MPCs. The *Standard* saw a 50% increase in its annual output covering Australian migrant processing following their article on the communiqué.

The change in practice of the *FT* is most striking. In the four years before they covered the communiqué, *FT.com* had published 71 articles concerning crimes against humanity prosecutions by the ICC, 80% of which referred to acts of violence in Africa. Only three concerned Western states (Ireland and Israel). After publishing their article discussing Dr Kalpouzos et al.'s first key finding – that the ICC has a role to play in holding Western nations to account – these numbers have increased significantly. In the year following February 2017, two of the *FT*'s five crimes against humanity articles concerned ICC action against the US – the first ever such action documented in the *FT*. To date the percentage of Western to rest-of-world ICC coverage has fallen to 22% of the 40 articles, but this is still markedly above the 3% pre-2017 level. This increase in coverage of ICC cases against Western actors indicates a significant impact of the findings of Dr Kalpouzos' research on the e-papers' 760,000 and 1,200,000 daily readers [5.2] – almost 10% and 2% of London and the UK's populations respectively.

In addition to the overall impact on UK society and the change to UK newspapers' coverage of ICC cases, publishing Dr Kalpouzos' research findings also enriched the performance of these papers. The story was picked up immediately by all four Australian news websites with daily visitor numbers over 1,000,000. The research findings subsequently formed the basis of full articles in leading European and US online magazines (*Der Spiegel* and *Foreign Policy* magazines, which reach 3,000,000 and 1,600,000 Europeans and North American subscribers per month, respectively). The Australian daily visitor figures suggest the key research findings could have

reached anywhere up to 10 million Australian readers on publication day. Similar to the level of awareness raising in the UK, this represents a potential awareness change in 4% of the Australian population. The findings have impacted measurable portions of populations in all three border zones studied in the underpinning research i.e. EU/Libya and Turkey, US/Mexico and Australia/Indonesia.

The key research findings, and subsequent dissemination by the press, also underpinned a measurable impact on the Australian economy. In 2017, the research findings in the ICC communiqué were picked up by two of the country's largest migrant-specialist legal aid charities – the Human Rights Law Centre (HRLC) and the National Justice Project (NJP) – and incorporated into their promotional materials (see e.g. [5.3]). Together these account for around 4% by revenue of the national legal aid sector with specialisation in migration [5.4]. In Melbourne, where HRLC is headquartered, this percentage is almost 10% of the refugee legal aid sector. An indicator of how significant a change to their services HRLC experienced in 2017 is evident from changes between their 2017 and 2018 annual reports. In particular, of their 9 project areas HRLC printed the two concerning migrants' rights as sections 7 and 8 in June 2017; by June 2018, these sections were the 1st and 2nd entries. Similarly, of the five projects detailed in NJP's 2018 annual report, one is based wholesale on concepts of criminal liability outlined in Dr Kalpouzos' and his collaborators' research. Both these charities reported a significant increase in donations between 2017 and 2018 (e.g. HRLC reports AUD 600,000 in June 2018, up from AUD 450,000 in June 2017). A HRLC report – detailing the recent history of Australia's MPCs – includes the communiqué as 1 of the 15 key events of 2017 [5.5]. In London, a charity dedicated to legal aid for migrants and advised by Dr Kalpouzos (its director describes the research as “seminal” and “tremendously helpful” [5.6]) posted a record increase in donations in the year following the communiqué's publication.

The underpinning research led to a change in public policy in Australia and in intergovernmental organisations. The Australian government was influenced directly by the key findings, referring to the communiqué both in the House of Representatives and the Senate. Evidence of the significance of the impact in the House is indicated by the fact that the Minister for Immigration and Border Protection critiqued the communiqué directly the day after its release [5.7]. The utility of the communiqué to the Senate is clear also – the Legal and Constitutional Affairs Committee produced a comprehensive report in April 2017 urging both houses to abolish Australian-backed MPCs. This report relied heavily on the research findings embodied in the communiqué, which was cited 36 times in the 245-page report [5.8]. One of the two MPCs operating on the Indonesian border at that time was closed within six months of this report.

Impact on intergovernmental bodies occurred in the component institutions of the United Nations and also at the International Criminal Court itself. The OHCHR was urged in February 2018, by the UN Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment (SR for CIDT), to compel the ICC's Prosecutor to (his final remark): “examine whether investigations for crimes against humanity are warranted in view of [...] serious human rights violations suffered by refugees [at MPCs] as a direct or indirect consequence of deliberate state policies”. According to his colleague, the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, the SR for CIDT built his submission on Dr Kalpouzos' and colleagues' research. The research was of significant value to her work (by providing “the perfect conceptual frame [...] to describe the almost casual nature in which [refugees'] rights are violated [at MPCs]” [5.9]).

Lastly, the ICC itself has been impacted by the key research findings. Indicators of the significance include that 4 of the ICC Prosecutor's 30 statements to the UN Security Council in May 2019 refer to her mandate to protect migrants. Although the court's formal response to the communiqué in February 2020 stated that the Prosecutor would not investigate Australia's management of the MPCs, it concluded that violations of human rights at Australian MPCs had constituted one element of an ICC crime against humanity. The response directly addressed each of the arguments set out in the underpinning research [5.10]. The second of the two Australian MPCs was formally retired in March 2019 after new Australian legislation enabled medical evacuation of remaining detainees.

5. Sources to corroborate the impact (indicative maximum of 10 references)

5.1 The *Financial Times* carried the most in-depth coverage of the communiqué in their article entitled “Lawyers urge ICC to probe Australia over refugee abuse claims”. See <https://www.ft.com/content/cfc1cce8-f193-11e6-8758-6876151821a6> Accessed 04.12.2020.

5.2 Web page visitor statistics are sourced from *SimilarWeb.com*, a London-based web analytics company.

5.3 *National Justice Project's* 2018 annual report describes a class action lawsuit modelled on the underpinning research. The report is here: https://justice.org.au/wp-content/uploads/2019/04/NJP_Annual-Report_2018.pdf Accessed 04.12.2020.

5.4 Financial data on Australian charities is sourced from the *Australian Charities and Non-for-Profits Commission* web tools at <https://www.acnc.gov.au/> which include recent financial statements on all registered Australian charities. Accessed 04.12.2020.

5.5 *Human Rights Law Centre's* 2017 report “Four Years Too Many” includes a comprehensive timeline of events relating to the Australian MPCs. <https://www.hrlc.org.au/reports/2017/7/31/report-four-years-too-many-offshore-processing-on-manus-island-and-auru> Accessed 04.12.2020.

5.6 A testimonial letter from the Director of the London legal aid charity *Global Legal Action Network* speaks of the value of the underpinning research to their refugees and migrants team.

5.7 The Immigration and Border Protection Minister’s response to the immediate endorsement of the communiqué by pressure group *GetUp* was widely reported e.g. on Australia’s most popular news site www.news.com.au. Search on their home page for *Immigration Minister GetUp! asylum seekers*. Accessed 04.12.2020.

5.8 The Senate’s *Legal and Constitutional Affairs Committee* report entitled ‘Serious allegations of abuse, self-harm and neglect of asylum seekers in relation to the Nauru Regional Processing Centre, and any like allegations in relation to the Manus Regional Processing Centre’ can be accessed on the *Australian Parliament's* web pages: https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/NauruandManusRPCs Accessed 04.12.2020.

5.9 The letter of support from the United Nations Human Rights Council’s *Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions*.

5.10 Letter from the *International Criminal Court's* Office of the Prosecutor, responding to the communiqué. The Australian legal-aid charity Human Rights for All Pty Ltd posts the response on their web pages: <https://www.hr4a.com.au/jcc-communique> Accessed 04.12.2020.