



Andrew Wilkie MP
INDEPENDENT MEMBER FOR DENISON

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Mrs Fatou Bensouda
International Criminal Court Prosecutor
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Office of the Prosecutor
Post Office Box 19519
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Dear Mrs Bensouda

I refer to my previous correspondence with your office requesting that you initiate an Article 15 investigation into the Australian Government for crimes against humanity in relation to asylum seekers (your reference OTP-CR-322/14).

I wish to draw your attention to the recent announcement by the Australian Prime Minister, the Hon Malcolm Turnbull MP, that the Government will introduce legislation to ban refugees and asylum seekers in offshore detention from ever coming to Australia. Under the new law people who enter Australia by plane can seek protection under the Refugee Convention but those who enter, or attempt to enter, by boat will have their access denied indefinitely, irrespective of their refugee status. Children would be excluded from this law. Essentially this law bans a category of person from seeking protection in Australia on the basis of mode of transport, which is a ludicrous proposition.

The new law will apply to those who attempted to reach Australia by boat from 19 July 2013, meaning it can be used against nearly 1,300 people. The Government has confirmed that 72 per cent of these people have been assessed as genuine refugees. I respectfully submit that this proposed legislation is yet another example of the Australian Government breaching provisions of Article 7 of the Rome Statute. Specifically, it is a breach of Article 7(1)(d) as it puts into domestic law the deportation and forced transfer of persons against their will to foreign nations. This is particularly relevant to the retrospectivity of the law as some people who have arrived by boat and been brought to Australia may be now forced to leave again. It

also breaches Article 7(1)(e) as the consequence of banning refugees from ever coming to Australia is mandatory and prolonged indefinite detention in Australia's offshore detention centres. In addition, this proposed law is clearly in breach of Australia's obligation under the Refugee Convention that specifically requires Australia to apply domestic laws that establish border integrity in such a way that persons fleeing persecution for specific reasons will be protected.

There is genuine concern in the Australian community that by not offering a viable resettlement option, the Australian Government is further exacerbating the deteriorating mental health of those currently in offshore detention. It will also have the effect of forcibly separating families, as the legislation applies a lifetime ban, and many in offshore detention have immediate family in Australia.

I respectfully suggest this proposed legislation to be in breach of Article 7(1)(k) of the Rome Statute. The Prime Minister and his Cabinet are intentionally continuing to inflict a systemic attack on "boat people" even though the suffering and serious physical and mental injury of this group of people is well documented.

I believe the suffering of asylum seekers subjected to the Australian Government's cruel and inhumane policies is escalating and I remain available to meet with your Office at any time.

Yours sincerely



Andrew Wilkie MP

Independent Member for Denison