



Andrew Wilkie MP
INDEPENDENT MEMBER FOR DENISON

19 MAR 2015

Mrs Fatou Bensouda
ICC Prosecutor
C/- Information and Evidence Unit
Office of the Prosecutor
Post Office Box 19519
2500 CM The Hague, The Netherlands

Dear Mrs Bensouda

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

I wish to draw your attention to the findings contained in the United Nations Report of the Special Rapporteur, Juan Méndez, on torture and other cruel, inhuman or degrading treatment or punishment. The Report was released in Geneva by the Human Rights Council on 6 March 2015.

In particular I respectfully draw the attention of the Office of the Prosecutor to the conclusions of the Special Rapporteur about the ongoing detention of 203 Sri Lankan asylum seekers and their incommunicado detention. I also note the Special Rapporteur's conclusions about the impact of legislation drafted and introduced in the Australian Parliament by the members of the Cabinet of Prime Minister Tony Abbott. The Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Bill 2014 and the Migration Amendment (Character and General Visa Cancellation) Bill 2014 are now Australian law.

The Special Rapporteur concludes that the above legislation violates the rights of a group of persons, namely asylum seekers and migrants, to be free from torture and cruel, inhuman or degrading treatment.

I would also like to take this opportunity to draw your attention to the Prime Minister's response to this Report. In a public statement he said that "Australians are sick of being lectured by the United Nations, particularly given that we have stopped the boats and by stopping the boats we have ended the deaths at sea".

It is respectfully submitted that the Prime Minister's comments in relation to the Report indicate a state of mind that is, at the very least, reckless as to whether or not breaches of the Rome Statute are occurring as a consequence of his and the Cabinet's policies. The issue of intent is of course one for your office.

The Prime Minister and his Cabinet have also repeatedly rejected the findings by the United Nations Human Rights Committee that the continued detention of refugees subject to adverse security assessments constitutes arbitrary detention.

For instance recently their government failed to comply with, and missed by almost a year the 180-day deadline to respond, the Committee's July 2013 ruling regarding more than 30 recognised refugees. These people were subject to indefinite detention without trial and the Committee recommended they be released and compensated.

I remain available to meet with you and your office at any time.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Andrew Wilkie', with a small dot above the 'i'.

Andrew Wilkie MP

Independent Member for the Federal Division of Denison