



FROM THE PERMANENT REPRESENTATIVE

AUSTRALIAN PERMANENT MISSION
TO THE UN GENEVA

15 January 2016

Mr Karim Ghezraoui
Chief a.i.
Special Procedures Branch
Office of the High Commissioner for Human Rights
United Nations Office at Geneva
CH-1211 Geneva 10

Response to Joint Communication from Special Procedures on undue restrictions on human rights defenders and journalists for reporting conditions of immigration detention

Dear Mr Ghezraoui

I refer to the letter of 12 November 2015 from the Chairperson-Rapporteur of the Working Group on the use of mercenaries; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the human rights of migrants; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, regarding concerns about undue restrictions on human rights defenders and journalists documenting and reporting on immigration detention facilities.

Australia's response to the questions raised in the joint communication of 12 November 2015 can be found in the attachment to this letter.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Ian McConville'.

Ian McConville
Chargé d'Affaires

**Attachment: Australian Government Response to Special Procedures Joint Appeal
- Human rights defenders in Manus and Nauru**

See original letter of 12 November 2015 for details of allegations.

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.

Current regional processing arrangements between Australia and the Government of the Republic of Nauru (Nauru) and the Government of the Independent State of Papua New Guinea (PNG) are set out in memoranda of understanding (MOU) dated 3 August 2013 and 6 August 2013 respectively. The dates referred to in the letter relate to earlier MOUs under which arrangements were initially established.

The regional processing centres in Nauru and PNG are under the sovereignty and control of the respective governments of those countries. The Governments of Nauru and PNG are responsible for the administration and management of the regional processing centres in Nauru and PNG, respectively. The Government of Australia provides support to the Governments of Nauru and PNG to implement regional processing by way of funding specialist service provision and undertaking capacity building activities with those governments, including staff training and mentoring or community infrastructure projects.

Australia respectfully suggest that enquiries be made with these governments for further information on the allegations in your letter relating to conditions within the regional processing centres and the treatment of transferees accommodated in them.

Independent scrutiny organisations, including the International Committee of the Red Cross and representatives of the United Nations Office of the High Commissioner on Human Rights, conduct regular visits and inspections of regional processing centres. Consideration of recommendations by these organisations is a matter for the Governments of Nauru and PNG. The Government of Australia considers recommendations insofar as they relate to the delivery of contracted services and works with the Governments of Nauru and PNG to implement those recommendations where appropriate.

- 2. Please provide the full details of any investigation and prosecutions which have been undertaken in relation to above-mentioned allegations that may constitute human rights violations, which have reportedly taken place at the abovementioned detention facilities. In particular, please provide information on the allegations of harassment and acts of intimidation and reprisals against defenders and journalists, as well as on the conditions of detention and alleged ill-treatment of certain asylum-seekers that may amount to torture and other forms of cruel, inhuman and degrading treatment or punishment, within the centres.**

Requests for information about investigations into the abovementioned allegations of intimidation and reprisals against human rights defenders and journalists should be directed towards the Governments of PNG and Nauru as any investigations would be a matter for those countries' law enforcement agencies.

There is no evidence of systemic or systematic cruelty, inhumane or degrading treatment or punishment of transferees by contracted providers as suggested in your letter. However, if you have specific evidence to substantiate these allegations, the Government of Australia will support the Governments of Nauru and/or PNG to fully investigate these allegations.

Contracted service providers are required to deliver services in accordance with contract arrangements. Where inappropriate behaviour by service provider staff is identified, action such as termination of employment could occur. In cases where the conduct may have been unlawful, the matters would be referred to law enforcement agencies of Nauru and PNG.

The Government of Australia is unaware of any individuals being classified as prohibited persons. It is aware of a poster possibly designed to identify a person who might require authority to access particular premises. The management and operations of the Manus Regional Processing Centre are the responsibility of the Government of PNG and this notice was not made, requested to be made, authorised or posted by the Government of Australia.

- 3. Please indicate what measures have been taken to ensure that human rights defenders and journalists working on issues relating to the detention of asylum seekers in Australian controlled immigration facilities are able to carry out their legitimate work in a safe and enabling environment without fear of threats or acts of intimidation, reprisals or harassment of any sort.**

As noted, this is a matter for the Governments of Nauru and PNG.

- 4. Please provide information on the measures taken to prevent the criminalisation of journalists, human rights defenders and other individuals for sharing information on the human rights situation of asylum seekers. In particular, please provide information on the measures taken to ensure the conformity of the Border Force Act with international human rights norms and standards**

Australia is a liberal, pluralistic democracy, with vigorous community debate on a range of political, economic and social issues. This exercise of freedom of expression and opinion is a vital element of Australia's society and includes wide-spread debate about Australia's migration and border protection policies. There has been no effort by the Government of Australia to stifle or limit this debate.

The *Australian Border Force Act 2015* (ABF Act) applies to workers in Australia's Commonwealth Department of Immigration and Border Protection (DIBP). It does not apply to transferees accommodated at regional processing centres, unless they themselves are employed by or in the service of DIBP. It does not apply to journalists, civil society organisations or others that are not DIBP workers. The ABF Act does not prevent DIBP workers, including consultants and contracted service providers engaged by DIBP, from sharing protected information with relevant parties where it is appropriate for them to do so in the course of their employment or service.

The ABF Act does not bring about more onerous requirements than those imposed by existing legislation (i.e. the Commonwealth *Crimes Act 1914*; Crimes Act). The ABF Act does not override or amend other legislation. The provisions in the ABF Act, as it applies to public servants and contractors, are akin to provisions of the Crimes Act in imposing secrecy obligations on public servants and contractors. Most countries place similar caveats upon information sharing.

Claims that the ABF Act will prevent individuals from speaking out about matters of public interest relating to regional processing centres, or from reporting cases of child abuse, are factually incorrect and highly misleading. Medical professionals, teachers and other professionals employed by or on behalf of DIBP are not inhibited from reporting matters in line with their professional obligations. In fact, they remain legally obligated to do so.

Australia's *Public Interest Disclosure Act 2013* (PID Act) is central to democratic, ethical and accountable government in Australia. This legislation allows for current and former public officials, including contracted service providers, to make disclosures that are protected by the PID Act, thus establishing a legislative scheme to investigate allegations of wrongdoing in the Commonwealth public sector and providing robust protections for current or former public officials who make public interest disclosures under this scheme.

5. Please provide us with assurance that all those who meet with Special Procedures mandate holders during the course of their country missions are able to share any relevant information regarding the situation of asylum seekers and shall not be sanctioned under the Border Force Act, thereby allowing us to fully comply with the Terms of reference for fact-finding missions by the special rapporteurs and the Human Rights Council Resolutions (12/2 and /24/24) on cooperation with the United Nations, its representatives and mechanisms in the field of human rights.

Australia respects the terms of reference for fact-finding missions by Human Rights Council Special Rapporteurs and their mandates.

The ABF Act will not impede the work of UN Special Procedures Mandate Holders. The ABF Act allows DIBP workers, including consultants and contracted service providers engaged by DIBP, to share protected information with relevant parties where it is appropriate for them to do so in the course of their employment or service. All DIBP officials and contractors that meet with Special Procedures mandate holders, during meetings arranged by the Government of Australia, will be authorised to meet and talk with Special Procedures in the course of their employment or service. For example, the program (postponed in 2015) prepared for the Special Rapporteur for the Human Rights of Migrants included many DIBP workers, demonstrating the Government of Australia's willingness to facilitate cooperation and open dialogue in support of Special Procedures' mandates.