



FROM THE PERMANENT REPRESENTATIVE

AUSTRALIAN PERMANENT MISSION  
TO THE UN GENEVA

11 December 2017

Mr Karim Ghezraoui  
Officer-in-charge  
Special Procedures Branch  
Office of the High Commissioner for Human Rights  
United Nations Office at Geneva  
Palais Des Nations  
1211 Geneva 10  
Switzerland

Dear Mr Ghezraoui

**RE: Joint Urgent Appeal from Special Procedures Mandate Holders**

I refer to the Joint Urgent Appeal dated 11 November 2017 sent by: the Working Group on Arbitrary Detention (WGAD); the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on the human rights to safe drinking water and sanitation; and the Special Rapporteur on the human rights of migrants.

I reiterate the Australian Government's longstanding commitment to cooperating with the United Nations and the Australian Government's strong human rights record.

Before responding to the substance of this communication, I would like to take the opportunity to make some preliminary observations.

Australia takes its obligations under international refugee and human rights law seriously, and is a longstanding party to the *1951 Convention relating to the Status of Refugees* as amended by the *1967 Protocol* (Refugees Convention), the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) and the *International Covenant on Civil and Political Rights* (ICCPR). Australia is firmly committed to upholding its obligations under these instruments.

Australia also reiterates its firm support of the rights of persons to submit communications about alleged breaches of human rights.

Australia recognises the competence of the United Nations Human Rights Committee, the Committee on the Elimination of Racial Discrimination, the Committee against Torture and the Committee on the Rights of Persons with Disabilities to receive and consider communications from individuals who claim to be victims of a violation by Australia of any of the rights contained in the ICCPR, the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT) and the *Convention on the Rights of Persons with Disabilities* (CRPD). Australia considers that the communications procedures established under these treaties are the primary mechanisms for considering alleged violations of Australia's international human rights obligations.

The Australian Government has always engaged in good faith with Special Mandate Holders. In this spirit, we have endeavoured to respond comprehensively to your enquiry concerning the situation of refugees and asylum seekers on Manus Island in connection with the closure of the Manus Regional Processing Centre (Manus RPC).

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

Australia's border protection policies aim to deter people from engaging people smugglers and attempting dangerous and illegal journeys to Australia by boat. Australia's policies including the re-introduction of regional processing in Nauru and Papua New Guinea (PNG) were implemented in response to a dramatic increase in the number of people attempting illegal migration to Australia by boat between 2008 and 2013. Regional processing countries are currently designated as the Independent State of PNG and the Republic of Nauru (Nauru).

Regarding arrangements in PNG, the Government of PNG is responsible for managing regional processing arrangements and assessing the refugee status of unauthorised maritime arrivals transferred to PNG in accordance with PNG domestic law. It is relevant to note in this regard that PNG is party to the Refugees Convention. PNG has also committed to treating people transferred with dignity and respect and in accordance with relevant human rights standards, under the *Memorandum of Understanding between the Government of the Independent State of Papua New Guinea and the Government of Australia, relating to the transfer to, and assessment and settlement in, Papua New Guinea of certain persons, and related issues*, signed 6 August 2013 (PNG MoU).

It continues to be the Australian Government's position that it does not exercise effective control over unauthorised maritime arrivals taken to PNG, including those taken to the former Manus RPC.

Although unauthorised maritime arrivals in PNG are outside Australia's territory, jurisdiction and its effective control, Australia has provided support and assistance to the Government of PNG to meet its commitments under the PNG MOU.

*2. Please provide any information about the urgent measures being taken to ensure that essential services, such as water, food supplies, electricity, sanitation, medical facilities and care, and security are provided to the residents held in the Manus Regional Processing Centre,*

*until adequate and long-term solutions are worked out to address their specific situation. In this regard, please explain the hand-over arrangements in place between the Australian service providers and their successors in Papua New Guinea in order to ensure that the basic rights and humane treatment of the residents in the centre are respected. Please also explain how exposing asylum seekers and refugees to such conditions is in line with Australia's international obligations.*

On 8 April 2017, the Prime Minister of PNG, Hon Peter O'Neill CMG MP, and the Prime Minister of Australia, the Hon Malcolm Turnbull MP, announced during a joint press conference that the (former) Manus RPC would close by the end of the year. On 9 April 2017, the Minister for Immigration and Border Protection, the Hon Peter Dutton MP, announced that Australia was working with PNG to close the Manus RPC by 31 October 2017.

Consistent with this deadline, the PNG Government closed the Manus RPC on 31 October 2017 and returned the site to the PNG Defence Force. Effective 1 November 2017, all critical services infrastructure at the site was terminated. From 1 November 2017, the Australian Government does not hold any service provider contracts for the ongoing operation and maintenance of critical services infrastructure at the former Manus RPC.

All matters pertaining to the closure of the former Manus RPC and the management of refugees and those found not to be refugees are matters for the PNG Government. Accommodation and services provided to residents in the Manus community are of a good standard and sufficient for their daily needs.

For refugees, accommodation options and services are available at the East Lorengau Refugee Transit Centre (ELRTC) and West Lorengau Haus (WLH). Amenities at these sites include:

- accommodation pods with two or three bedrooms and a shared kitchen (ELRTC);
- single beds (WLH);
- modest living allowances to purchase items in the local community;
- potable water;
- security (access control);
- access to cooking and laundry amenities;
- case management support; and
- garrison services – including site maintenance and cleaning.

For persons found not to be refugees, accommodation and services are available at Hillside Haus. Amenities at Hillside Haus for persons found not to be refugees include:

- dormitory style beds and communal bathrooms;

- air conditioning, laundry facilities, fencing and security;
- communal spaces;
- dedicated sewage facilities;
- potable water and catered food;
- case management support (returns and removals only); and
- garrison services – including site maintenance and cleaning.

PNG continues to add capacity to WLH, to ensure that accommodation is available for all persons temporarily transferred to Port Moresby for medical treatment. The ELRTC is the primary health and mental health hub for all Manus-based residents, with treatment available for out-of-hours emergency cases at the Lorengau Hospital. A bus service operates to transport residents to medical appointments.

All residents have now peacefully relocated to accommodation in the Manus community from the former Manus RPC. Prior to its closure, the PNG Government had repeatedly advised residents of the closure and the availability of alternative accommodation. Residents were encouraged to move to the alternative accommodation so they are able to access services and supports in the community.

The Australian Government does not consider that it exposed any person who chose to remain in the former Manus RPC after its closure to 'the present conditions'. Individuals chose to remain at the former Manus RPC site, even in the absence of services. In response to security concerns expressed by individuals, additional security has been provided at the new accommodation sites.

*3. Please describe the process of asylum claim assessment and status determination, including the access opened to the asylum seekers to be informed of their rights and to have legal assistance. In particular, please explain the steps taken by the Government to ensure that asylum seekers in the processing centre are provided with appropriate information so as to make an informed choice and decision about their future.*

The PNG Government is responsible for assessing protection claims. Accordingly, you should refer questions relating to this process to the PNG Government.

*4. Please provide any further information on resettlement options for asylum seekers and refugees, outside of Papua New Guinea, including to mainland Australia. Please explain how your Excellency's Government will ensure that any agreement regarding third-country resettlement is meaningful and viable – in terms of numbers, timeliness and opportunities to rebuild lives.*

The Australian Government has consistently said that people subject to regional processing arrangements will not be settled in Australia. Regional processing of protection claims and resettlement in third countries are critical elements of Australia's strong border protection



policy, and are fundamental to demonstrating that people smugglers cannot offer a path to Australia.

Individuals found to be refugees can settle within PNG, as set out under the *Resettlement Arrangement between Australia and Papua New Guinea*. For those who do not wish to resettle in PNG, the Australian Government has provided reasonable alternative pathways. Specifically, refugees can apply for resettlement in the United States or apply to move to Nauru to await third country resettlement. For those not found to be refugees, they are in PNG illegally and they should return to their country of origin, as hundreds already have done. The Australian Government will continue to support the PNG Government to facilitate voluntary returns.

Australia hopes that the information it has provided in this response is of assistance to the Special Mandate Holders, and respectfully refers the Special Mandate Holders to the Government of PNG for any further information they may require.

Finally, Australia reiterates its view that it does not have effective control in respect of the former Manus RPC in PNG, and that consequently, its human rights treaty obligations are not engaged.

Yours sincerely,



John Quinn

Permanent Representative of Australia to the United Nations in Geneva

