



FROM THE PERMANENT REPRESENTATIVE

AUSTRALIAN PERMANENT MISSION  
TO THE UN GENEVA

3 June 2019

Ms Beatriz Balbin Chamorro  
Special Procedures Branch  
Office of the High Commissioner for Human Rights  
Palais des Nations  
1211 Geneva 10  
SWITZERLAND

Dear Madam,

**Joint Communication of 2 April 2019 from the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination; the Special Rapporteur on the human rights of migrants; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (Ref# AL AUS 4/2019).**

I refer to the joint communication dated 2 April 2019, regarding access to health care by the asylum seekers and refugees in Nauru and Manus in Papua New Guinea (PNG). The Australian Government has always engaged in good faith with United Nations Special Procedure Mandate holders, and, in this spirit, we have endeavored to respond comprehensively to your enquiry.

Australia maintains that regional processing arrangements and the management of individuals under those arrangements is the responsibility of the host regional processing country. The Australian Government are committed to supporting the Governments of Nauru and PNG by providing specialist and wide-ranging health, welfare and support services to refugees and asylum seekers in Nauru and PNG, and therefore respectfully does not accept the allegations that asylum seekers and refugees lack access to appropriate health care in Nauru and PNG.

The Australian Government notes the concerns expressed in the joint communication and provides the following response to the matters outlined in the communication.

*Please provide any additional information and/or comment(s) you may have on the allegations.*

As at 3 May 2019, there were 884 individuals in Nauru and PNG under regional processing arrangements: 351 in Nauru and 533 in PNG. The management of these individuals is the responsibility of the Governments of Nauru and PNG, with arrangements implemented in accordance with international law and respect for human rights.

Kindly explain how the continued indefinite confinement of asylum seekers and refugees in Australia's custody in its offshore facilities on Manus in PNG is compatible with international human rights law.

The Governments of Nauru and PNG have responsibility for individuals under regional processing arrangements. Individuals in Nauru and PNG under regional processing arrangements are not subject to detention. These individuals are safely accommodated in independent living arrangements in the community, are able to move freely and have access to an allowance to support daily living.

Individuals who have been determined to be refugees by the Governments of Nauru and PNG have a range of durable migration outcomes, such as:

- refugees in Nauru may choose to reside in Nauru for up to 20 years;
- refugees in PNG may settle in PNG;
- refugees may express an interest in the United States resettlement pathway;
- individuals can return to their home country at any time and will receive financial assistance to help them re-establish their lives; and
- refugees in PNG can also move to Nauru to await third country resettlement.

Individuals who have been determined to be refugees also have the right to work while they await resettlement.

The health and welfare of individuals in regional processing countries is of paramount importance to the Governments of Australia, Nauru and PNG. The Australian Government has contracted appropriately trained and experienced service providers to support the host country Governments to ensure the needs of the refugee and asylum seekers are adequately met. These individuals are treated with respect and dignity and in accordance with human rights standards.

Please provide information on the measures taken to ensure the access to appropriate physical and mental health care, including urgent and specialised treatment, by all asylum seekers and refugees in Australia's custody in its offshore facilities.

The Australian Government provides significant support to the Governments of Nauru and PNG to ensure individuals under regional processing arrangements have access to a range of comprehensive physical and mental health and welfare services.

Healthcare on Nauru is available 24 hours a day, which includes emergency and telehealth services. The Australian Government supports the Government of Nauru by contracting specialist health services, which include, but are not limited to, psychology, psychiatry, trauma counselling, dentistry, radiography, pharmacy services and physiotherapy. As at 3 May 2019, there are 51 contracted health professionals on Nauru, which includes 21 mental health professionals providing services to individuals in Nauru under regional processing arrangements. This is a ratio of approximately one health care professional to every seven individuals and one mental health professional to every 17 individuals.

In addition, the Australian Government contracts International Health and Medical Services (IHMS) to complement the existing health care services in Nauru, through the provision of specialist and urgent healthcare services which are not usually available in Nauru.

Healthcare in PNG is delivered through the Pacific International Hospital (PIH). PIH provides a range of general and specialised health care services through qualified medical professionals. This includes a dedicated mental health care facility equipped to treat individuals in PNG under regional processing arrangements with serious mental illnesses. Other services include, but are not limited to, general and trauma surgery, dialysis, eye care and cardiology. As at 3 May 2019, there are 26 contracted health professionals available to individuals via PIH, which includes eight mental health professionals providing services to individuals. This is a ratio of approximately one health care professional to every 21 individuals, and one mental health professional to every 67 individuals.

Please indicate the measures taken to prevent that the lack of access to appropriate medical treatment by those in the offshore facilities result in permanent disability or even death.

No one is denied appropriate health care. The Australian Government provides significant support to the Governments of Nauru and PNG to ensure individuals under regional processing arrangements have access to a range of comprehensive physical and mental health and welfare services.

Where treatment is not possible owing to the infrastructure of medical services in Nauru or PNG, individuals may be considered by Nauru or PNG for temporary medical transfer to another location, including Australia and Taiwan.

Please provide information on the reported plan to transfer the asylum seekers and refugees, who remain in the offshore facilities, to Christmas Island and Port Moresby.

On 2 March 2019, new medical transfer provisions were inserted into the *Migration Act 1958* by the *Home Affairs Legislation Amendment (Miscellaneous Measures) Act 2019*. To manage individuals transferred under these provisions, the Australian Government re-opened the Christmas Island immigration detention facilities. The Australian Government works with service providers to ensure appropriate health care is delivered at any transferred location. The Christmas Island immigration detention facilities are staffed with suitable medical and mental health services providers.

Please provide information on any implementation of the recommendations concerning the offshore regional processing centres included in the country visit report of the Special Rapporteur on the human rights of migrants (A/HRC/35/25/Add.3), particularly regarding updates on plans to close down these offshore processing centres.

Regional processing is a key pillar of Operation Sovereign Borders and supports the Australian Government's strong border protection policies. These policies have successfully stemmed the flow of illegal maritime ventures to Australia, disrupted people smuggling activities in the region and prevented loss of life at sea.

The Australian Government takes its international obligations very seriously, and welcomes constructive and balanced feedback offered by all United Nations mechanisms and the international community.

The Australian Government engaged cooperatively with the Special Rapporteur on the Human Rights of Migrants on his country visit in November 2016. However, as the Australian Government

noted to the Human Rights Council (HRC) when the Special Rapporteur presented his visit report at HRC35, in June 2017, Australia respectfully disagrees with the conclusions made in the Special Rapporteur report, including observations on Australia's compliance with international obligations and the characterisation of the human rights situation of migrants in Australia. Further, the Australian Government regrets the inclusion of the Special Rapporteur's visit to Nauru in Australia's country report as inappropriate.

The Australian Government respectfully reiterates that it does not accept the conclusions of the Report and accordingly has not acted upon its recommendations.

Kindly provide information about monitoring, accountability and remedy mechanisms in place, including oversight by governmental officials through on-site presence, to ensure that private companies contracted by the Government of Australia deliver services in line with their contractual obligations as well as with international human rights standards.

The Australian Government regularly assesses the performance of service providers in line with contractual obligations, which includes obligations to comply with international human rights standards.

Service providers in regional processing countries that are contracted by the Australian Government are required under their contractual obligations to adhere to a Performance Management Framework (the Framework). The Framework consists of a mandatory monthly report, which is based on a self-assessment of performance from the previous month against 14 key performance indicators. Service providers are required to provide documented evidence to substantiate their rating.

Australia's Department of Home Affairs (the Department) also forward deploys officers to Nauru and PNG to monitor service provider performance and assist with the monthly reporting. Once the officers have assessed the monthly reports, they are provided to the Department for further scrutiny.

Regional processing is also subject to regular independent scrutiny by the United Nations High Commissioner for Refugees, the International Committee for the Red Cross, the Commonwealth Ombudsman, Comcare and the Australian National Audit Office. Regional processing arrangements have also been the subject of numerous parliamentary inquiries, and independent reviews. The Department holds regular senior officials meetings with senior Government officials from Nauru and PNG to progress arrangements.

Please indicate how respect for international human rights standards is integrated in procurement procedures as well as contracts with service providers.

The Australian Government ensures that health service providers are obligated under their contracts to comply with all of Australia's obligations under international treaties, charters, covenants and agreements, including:

- International Covenant on Civil and Political Rights;
- Convention relating to the Status of Refugees;
- Convention on the Rights of the Child;
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

- Convention on the Elimination of All Forms of Racial Discrimination;
- Convention on the Elimination of All Forms of Discrimination against Women; and
- Convention on the Rights of Persons with Disabilities.

Service providers have in place complaints management systems that allow transferees to make a complaint or provide feedback. Complaints management systems record the date the complaint or feedback was received, the nature of the complaint or feedback, and the status of the complaint. This includes any alleged breach of relevant laws.

I trust the above information will be of assistance to the Special Procedure mandate holders. I reiterate the Australian Government's longstanding commitment to cooperating with the United Nations and the Australian Government's strong human rights record.

Yours sincerely

A handwritten signature in cursive script that reads "Sally Mansfield".

Sally Mansfield  
Ambassador and Permanent Representative