

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the situation of human rights defenders; the Chair-Rapporteur of the Working Group on the use of mercenaries; the Special Rapporteur on the human rights of migrants; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

REFERENCE: UA
AUS 4/2014:

17 November 2014

Excellency,

We have the honour to address you in our capacity as 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; Chair-Rapporteur of the Working Group on the use of mercenaries; Special Rapporteur on the human rights of migrants; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to Human Rights Council resolutions 25/2, 25/18, 24/13, 26/19 and 25/13.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning alleged **acts of intimidation and ill-treatment of two asylum-seekers**, following their statements regarding the violent attacks against asylum-seekers, which allegedly took place between 16 and 18 February 2014 at the Manus Regional Processing Centre, a immigration detention centre located in Manus Island, Papua New Guinea, whose internal security is operated by a company on behalf of Australian Government.

Mr. [REDACTED] is an Iranian asylum-seeker held in the centre who has advocated for an investigation into the violent attacks against asylum-seekers that allegedly took place between 16 and 18 February 2014 at the Manus Regional Processing Centre. He has also advocated for an improvement in the living conditions at the centre. Mr. [REDACTED] has participated in both formal and informal complaints processes on behalf of himself and other asylum seekers in Papua New Guinea, Australia and abroad. He has also been in communication with the media and Australian human rights defenders about these matters.

Mr. [REDACTED] is an Iranian asylum-seeker and was a witness to the killing of Mr. [REDACTED], an Iranian asylum-seeker, in the centre in February 2014.

The Manus Island Regional Processing Centre is a closed immigration detention centre which was set up on Manus Island in Papua New Guinea. The Regional Resettlement Agreement adopted in 2013 by Australia and Papua New Guinea requires that asylum seekers travelling to Australia by boat be sent to the immigration detention centre on Manus Island for further processing of their status. It is reported that the security within the perimeter of the Centre is ensured by unarmed agents of the private security firm G4S, which was contracted for these purposes by the Government of Australia. The Police of Papua New Guinea is reportedly in charge of providing security outside the perimeter of the Centre. In March 2014, the Australian Government consolidated accountability for and management of key garrison, security and welfare services under a single, integrated service provider, Transfield Services.

The violent attacks against asylum-seekers at the centre, which took place between 16 and 18 February 2014, following the asylum-seekers' peaceful protests regarding their living conditions, were the subject of an allegation letter sent to the governments of both Papua New Guinea and Australia by 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, and the Special Rapporteurs on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; on extrajudicial, summary or arbitrary executions; on torture and other cruel, inhuman or degrading treatment or punishment; and on the human rights of migrants, dated 27 March 2014, case no. Papua New Guinea 2/2014, AUS 1/2014.

We acknowledge the receipt of a response by the Government of Australia on 26 May 2014 indicating that the issue had been the subject of an investigation by both Governments, and referring the mandate holders to the report of the Australian Department of Immigration and Border Protection by Robert Cornall, *"Review into the events of 16-18 February 2014 at the Manus Regional Processing Centre"*, that was released on 23 May 2014. The Australian authorities indicated that they would submit more information once the report had been properly analysed. However, we regret that this information has not yet been received. We further regret that no response has been received from the Government of Papua New Guinea.

The above-mentioned report issued by the Australian authorities into the violent incidents that took place between 16 and 18 February 2014, is publically available¹. According to its findings, these violent incidents led to the death of Mr. [REDACTED] and the injury of at least 69 asylum-seekers. The report also concludes that departmental officers and service providers at the centre acted appropriately, although some individuals

¹ The report is available at <https://www.immi.gov.au/about/dept-info/files/review-robert-cornall.pdf>.

employed by the service providers, including G4S employees and Salvation Army personnel, which provide welfare services, committed criminal offences. The report declares that responsibility for offences committed, causing death, injury, loss of personal property and damage, lay with the offenders, which included members of the service providers, Papua New Guinea police and asylum-seekers. The report also finds that offences were committed by neighbouring Papua New Guinea civilians who entered the centre during the riots. Finally, the report states that, following the violent incidents, nationals of Papua New Guinea employed by the service providers in the centre were not allowed to enter the centre and, at the time of publication of the report, had not been reintegrated into the normal operation of the centre. Recommendation 8 of the report states that the Transfield Services should carefully consider all the information with which it had been provided in order to ascertain whether it had engaged employees who allegedly perpetrated acts of violence against asylum-seekers in the centre during the violent incidents of February 2014. Where such individuals have been engaged, the report recommends that appropriate action be taken, including dismissal.

The Chauka Compound, also known as the 'Managed Accommodation Area' for the 'Behavioural Management Program', is reportedly composed of several window-less shipping containers – each containing a bed – forming a central courtyard covered by a shade cloth. Allegedly, communication by those in the compound, which is set apart from the rest of the detention centre, is severely restricted and medical staff rarely visit. The Mike Compound has telephone and internet access and accommodates over 400 men in a facility built in the design and standard of an Australian mining camp. The Oscar Compound has telephone access and accommodates over 300 men in hard-walled marquee accommodation with separate shower blocks.

According to the new information received:

Since the violent attacks against the asylum-seekers in February 2014, the asylum-seekers in the Manus Regional Processing Centre have allegedly experienced regular threats and intimidation. Reportedly, Papua New Guinea civilians, former Transfield Services personnel and Papua New Guinea police, have made threatening gestures at the asylum-seekers on a number of occasions, including gestures indicating that they will cut their throats. In addition, at least four of the alleged perpetrators of violence between 16 and 18 February have reportedly resumed their work in the centre.

In early July 2014, a group of asylum-seekers were asked by personnel at the centre whether they had communicated with an Iranian human rights defender who was previously held in the centre. They were reportedly told that communication with him was prohibited and that internet and phone usage was being monitored. The group was also allegedly told that the names of anyone who was in contact with this person would be "put on a list", without explaining the

consequences. According to reports, the Iranian human rights defender was threatened by a member of the personnel that he would be reported to the Australian Federal Police if he continued to communicate with the asylum-seekers at the centre.

On 14 July 2014, Messrs. [REDACTED] and [REDACTED] went to the gatehouse at the Mike Compound to complain about the restrictions regarding the use of the internet in the Manus Regional Processing Centre. The time that the asylum-seekers were allowed to access the internet had reportedly been restricted from an hour every two or three days to 40 minutes once a week. Messrs. [REDACTED] and [REDACTED] allegedly met with Transfield Services staff and the Wilson compound Manager. After the meeting, Messrs. [REDACTED] and [REDACTED] went to another meeting in the Chauka compound.

According to reports received, members of the Transfield Services allegedly tied Messrs. [REDACTED] and [REDACTED] to chairs and threatened them with physical violence, rape and criminal prosecution for "becoming aggressive" if they refused to retract the statements that they had made to the Royal Papua New Guinea Constabulary and to G4S regarding the violent attacks against the asylum-seekers in February 2014 and their complaints against individual staff members at the centre. They were allegedly forced to sleep on the floor and were only provided with bread and water.

Mr. [REDACTED] and Mr. [REDACTED] were allegedly returned from the Chauka Compound to the Mike Compound on 17 July 2014 and 18 July 2014 respectively. Allegedly, members of the Transfield Services also threatened that they would be raped and deported if they reported what had happened to them. Following this incident, Messrs. [REDACTED] and [REDACTED] have reportedly been under heightened surveillance by the Transfield Services. Furthermore, it is reported that both men subsequently retracted their previous statements regarding the violent attacks against the asylum-seekers in February 2014.

On 9 August 2014, Mr. [REDACTED] was reportedly transferred from the Mike Compound to the Oscar Compound.

On 28 October 2014, Mr. [REDACTED] and Mr. [REDACTED] were allegedly informed that they would be required to testify in the trial of the killing of Mr. [REDACTED] in Lorengau Court in the following days.

Serious concern is expressed at the intimidation and ill-treatment of Messrs. [REDACTED] and [REDACTED] following the statements that they made regarding the violent attacks of asylum-seekers and the killing of Mr. [REDACTED] in Manus Regional Processing Centre between 16 and 18 February 2014. Further concerns are expressed

regarding their physical and psychological integrity in Manus Regional Processing Centre. Concerns are also expressed regarding the impact of these acts of violence and intimidation on the enjoyment of their right to freedom of opinion and expression and on their activities in the promotion of human rights. Given the facts, we have also transmitted a similar urgent appeal to the Government of Papua New Guinea.

While we do not wish to prejudge the accuracy of these allegations, we would like to reiterate the concerns expressed in our communication of 27 March 2014 and await your Excellency's Government detailed response. In addition, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

We wish to recall your Excellency's Government of the recommendations made by international human rights mechanisms directly on similar issues and with respect to Australia – notably the Committee on Economic, Social and Cultural Rights (E/C.12/AUS/CO/4 (2009), para. 25), the Human Rights Committee (CCPR/C/AUS/CO/5 (2009), para. 23), the Special Rapporteur on the human rights of migrants (A/HRC/20/24) and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (A/HRC/14/20/Add.4, p. 23) – as well as by the Australian Human Rights Commission (AHRC), that policies of mandatory detention be reviewed, reconsidered and repealed. We fully support these recommendations which still remain relevant today.

Regarding the Manus Island Detention Center, we wish to recall that a number of UN human rights mechanisms have expressed concern about the use of detention facilities for irregular migrants in remote or off-shore locations where their access to legal aid and other support services may be curtailed. More specifically, we would like to remind your Excellency's Government that in 2008 the Committee against Torture, while noting that “excised” offshore locations were still used for detention of asylum-seekers, welcomed information from the State party indicating the recent end of the policy of transferring asylum-seekers to offshore processing centres. In this respect, the Committee recommended Australia to end the use of “excised” offshore locations for visa processing purposes in order allow all asylum-seekers an equal opportunity to apply for a visa (CAT/C/AUS/CO/3, paragraph 12).

With regards to the physical or psychological threats, intimidation, and violence, we would like to remind your Excellency's Government of the absolute and non-derogable prohibition of torture and other forms of ill-treatment, as codified in article 1 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which Australia accessed on 8 August 1989.

Moreover, we would like to draw the attention of your Excellency's Government article 13 of the CAT, which states that, “steps shall be taken to ensure that the

complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given", and to paragraphs 22 and 23 of General Assembly Resolution 68/156. With regard to the conditions of detention, we would like to draw the attention of your Excellency's Government to the Standard Minimum Rules for the Treatment of Prisoners (adopted by the Economic and Social Council by resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977). Rule 22(2) provides that, "(s)ick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals. Where hospital facilities are provided in an institution, their equipment, furnishings and pharmaceutical supplies shall be proper for the medical care and treatment of sick prisoners, and there shall be a staff of suitable trained officers. Furthermore, Rule 25(1) provides that, "(t)he medical officer shall have the care of the physical and mental health of the prisoners and should daily see all sick prisoners, all who complain of illness, and any prisoner to whom his attention is specially directed". We would also like to draw your attention to the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment adopted by the General Assembly on 9 December 1988 (adopted by General Assembly resolution 43/173 of 9 December 1988).

Furthermore, we would like to stress that Your Excellency's Government has the obligation to protect the right to life, physical and mental integrity of all persons. This right is set forth inter alia in the UDHR, the ICCPR and the CAT.

We would also like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above. In particular, we would like to refer to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders, in particular articles 1, 2, 5, 6 and 12.

Furthermore, we would like to refer to your Excellency's Government to take all necessary steps to ensure the rights to freedom of opinion and expression, as recognized in article 19 of the Universal Declaration of Human Rights.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the above-mentioned person(s) in compliance with international instruments.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations relating to asylum-seekers in Manus Regional Processing Centre.
2. Please indicate if a complaint has been lodged by or on behalf of the alleged victims.
3. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries which may have been carried out in relation to this case. If no inquiries have taken place, or if they have been inconclusive, please explain why.
4. Please provide the full details of any prosecutions against Transfield Services personnel which have been undertaken. Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?
5. Please indicate what measures have been taken to ensure the protection of the asylum-seekers who witnessed the violent attacks and who may be at risk of retaliatory attacks or threats and intimidation, particularly in relation to the trial.
6. Please provide information with regard to how and when the Australian Department of Immigration and Border Protection's findings in the report "*Review into the events of 16-18 February 2014 at the Manus Regional Processing Centre*", that was released on 23 May 2014 will be implemented.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible of the alleged violations.

We are considering to publicly express our concerns in future as we are of the view that the information upon which the press release is going to be based is sufficiently reliable to indicate a matter warranting immediate attention. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issues in question.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

David Kaye
Special Rapporteur on the promotion and protection of the right to
freedom of opinion and expression

Michel Forst
Special Rapporteur on the situation of human rights defenders

Patricia Arias
Chair-Rapporteur of the Working Group on the use of mercenaries

François Crépeau
Special Rapporteur on the human rights of migrants

Juan E. Méndez
Special Rapporteur on torture and other cruel, inhuman or degrading
treatment or punishment