

**Mandates of 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 of migrants; the Special Rapporteur on minority issues; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment**

REFERENCE: AL  
BHS 1/2015:

24 March 2015

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on the human rights of migrants; Special Rapporteur on minority issues; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to Human Rights Council resolutions 24/6, 26/19, 25/5, and 25/13.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the recent immigration reform in the Bahamas and the subsequent alleged detention and deportation of persons living in the Bahamas of Haitian origin.

According to the information received:

On 1 November 2014 the Government of Bahamas initiated the implementation of a new immigration policy approved by the Parliament on 17 September 2014. The new policy establishes that everyone living in the Bahamas is required to have a passport of the country of their nationality and, in the case of non-Bahamian citizens, a residency or work permit previously issued by a consular office in a foreign country. The new policy also establishes that "certificates of identity", which were previously granted to children aged under 18 year and born in the Bahamas to non-citizen parents, will no longer be issued or renewed.

Reportedly, since 1 November 2014, several operations to enforce the new policy were carried out by officials from the Department of Immigration, including raids in workplaces and in neighbourhoods where the majority of the population is of Haitian origin. Allegedly, children of Haitian descent who were born in the Bahamas have also been detained and taken to a detention centre without the knowledge of their parents.

We received information that in January 2015, the Bahamas Minister of Foreign Affairs confirmed that 5,841 people were repatriated during 2014. Reportedly, the measures have had a disproportionate impact on Haitians living in the Bahamas, including children of Haitian descent who were born in the Bahamas.

It is alleged that the process of repatriation has not been conducted in full compliance with international human rights and humanitarian standards. For example, with the absence of individual assessment procedures there is the risk that persons in need of international protection may be returned to a situation of danger. In addition, it has been reported that migrants have had no access to a fair and transparent procedure prior to deportation did not receive legal assistance nor have the possibility to review their case by an independent judicial authority.

We have also received information that detention conditions in the Carmichael Detention Centre, where Haitians are being detained before being forcibly deported to Haiti, are not in compliance with international human rights standards. Reportedly, detainees do not have access to health professionals and are not provided with basic hygiene products, clothes, sufficient beds and adequate food. Additionally, the information received stated that the male section of the Detention Centre has only one functional bathroom and shower and there are no separate facilities for families. Children under the age of 14 are detained with their mothers, while those over the age of 15 are detained with adults.

We wish to express our concern about the recent immigration reform in the Bahamas the implementation of which has had a discriminatory impact on people of Haitian origin and descent. The new immigration reforms have had a subsequent impact on the arbitrary detention and deportation of persons of Haitian origin living in the Bahamas. We are also particularly concerned about the detention of children of Haitian-descent and their families, and the detention conditions in the Carmichael Detention Centre which are reportedly not in compliance with international human rights standards.

While we do not wish to prejudge the accuracy of these allegations, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to these issues brought forth be the situation described above.

In connection with the above alleged facts and concerns, please refer to the **Reference to international law Annex** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

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 therefore be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.

2. Please explain how the immigration reform has been enforced by State authorities and what measures have been adopted to prevent any acts of discrimination against people with Haitian origin.
3. Please provide information on how many people have been detained and how many repatriated since the immigration reform entered into force. Please desegregate the information based on sex, national origin and age (children or adults).
4. Please explain what measures have been adopted to guarantee that each case of repatriation has been analysed by responsible authorities on its individual merits and to guarantee everyone a due process.
5. Please provide information on the measures that have been taken to guarantee the respect of the international principle of non-refoulement.
6. Please provide information on the alternative measures to detention that have been put in place in order to only detain as a measure of last resort and only for the shortest possible time possible
7. Please provide information as to what measures have been put in place to avoid the detention of children and families with children altogether, and provide them with alternative forms of accommodation.
8. Please provide detailed information on the detention conditions of the people being detained at Carmichael Detention Centre, including the situation of women and children.

We would appreciate receiving a response within 60 days.

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(s) responsible for the alleged violations.

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.

Dainius Puras  
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable  
standard of physical and mental health

François Crépeau  
Special Rapporteur on the human rights of migrants

IZSÁK Rita  
Special Rapporteur on minority issues

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

## **Annex**

### **Reference to international human rights law**

In connection with above alleged facts and concerns, we would like to refer Your Excellency's Government to the principle of non-discrimination enshrined in article 2 of the Universal Declaration of Human Rights, and Article 2 and 26 of the International Covenant on Civil and Political Rights, to which Bahamas is a State Party, as well as in several other United Nations declarations and conventions which provide that every individual is entitled to the protection of their rights and freedoms without discrimination or distinction of any kind, and that all persons shall be guaranteed equal and effective access to remedies for the vindication of those rights and freedoms.

The rights set forth in the International Covenant on Civil and Political Rights (ICCPR), to which Bahamas is a State Party, apply to "all individuals within its territory and subject to its jurisdiction" (art. 2, para. 1) irrespective of reciprocity, and irrespective of his or her nationality or statelessness. In this regard we would like to draw the attention of your Excellency's Government to the General Comment No. 15 of the Human Rights Committee which establishes that "the general rule is that each one of the rights of the Covenant must be guaranteed without discrimination between citizens and aliens. Aliens receive the benefit of the general requirement of non-discrimination in respect of the rights guaranteed in the Covenant, as provided for in article 2 thereof". The Committee has also highlighted that although the Covenant does not recognize the right of migrants to enter or reside in the territory of a State party, in certain circumstances migrants may enjoy the protection of the Covenant even in relation to entry or residence, for example, when considerations of non-discrimination, prohibition of inhuman treatment and respect for family life arise.

According to ICCPR, migrants have the full right to liberty and security of person. The Human Rights Committee has established that collective or mass expulsions are incompatible with article 13 of the Covenant. This article establishes that migrants have the "right to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority". Furthermore, we would like to draw your attention to the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol. Article 33 of the 1951 Convention stipulates that no Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion. In this connection, we would also like to recall para. 10 of the GA res. 62/156 which "urges States to ensure that repatriation mechanisms allow for the identification and special protection of persons in vulnerable situations and take into account, in conformity with their international obligations and commitments, the principle of the best interest of the child and family reunification".

General Recommendation No. 30 of CERD also recommends that States ensure: "that laws concerning deportation or other forms of removal of non-citizens from the

jurisdiction of the State party do not discriminate in purpose or effect among non-citizens on the basis of race, colour or ethnic or national origin, and that noncitizens have equal access to effective remedies, including the right to challenge expulsion orders, and are allowed effectively to pursue such remedies”; and “that non-citizens are not subject to collective expulsion, in particular in situations where there are insufficient guarantees that the personal circumstances of each of the persons concerned have been taken into account”; and finally that States “avoid expulsions of non-citizens, especially of long-term residents, that would result in disproportionate interference with the right to family life”.

Furthermore, recognizing that those individuals affected constitute persons belonging to minorities in Bahamas, we would like to refer to your Excellency’s government to the international standards regarding minority rights, in particular to the provisions of the 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. Article 1 of the Declaration requires States to protect the existence and identity of national or ethnic, cultural, religious and linguistic minorities within their territories and to “adopt appropriate legislative and other measures to achieve those ends”. Additionally, article 4.1 notes the obligation of States to ensure that persons belonging to minorities may exercise their human rights without discrimination and in full equality before the law.

We would also like to recall the General Recommendation No. 30 relating to Discrimination against non-citizens, in which the Committee on the Elimination of Racial Discrimination (CERD) recommends States “to ensure that legislative guarantees against racial discrimination apply to non-citizens regardless of their immigration status, and that the implementation of legislation does not have a discriminatory effect on non-citizens”. Furthermore, the Committee states that Government should “take steps to address xenophobic attitudes and behaviour towards non-citizens, in particular hate speech and racial violence, and to promote a better understanding of the principle of non-discrimination in respect of the situation of non-citizens”; an “take resolute action to counter any tendency to target, stigmatize, stereotype or profile, on the basis of ...descent, and national or ethnic origin, members of “non-citizen” population groups, especially by politicians, officials, educators and the media, on the internet and other electronic communications networks and in society at large”.

We would also like to draw the attention of your Excellency’s to General Comment No. 6 of the Committee on the Rights of the Child which has highlights that in application of article 37 of the Convention on the Rights of the Child, to which Bahamas is a State Party, and the principle of the best interests of the child, unaccompanied or separated children should not, as a general rule, be detained. Furthermore, the Committee states that detention of children cannot be justified solely on the basis of their migratory or residence status. Detention could only be used as a measure of last resort and for the shortest appropriate period of time.

In the exceptional case of detention, the Committee on the Rights of the Child has stressed that conditions of detention must be governed by the best interests of the child

and pay full respect to all human rights international obligations. Special arrangements must be made for living quarters that are suitable for children and that separate them from adults, unless it is considered in the child's best interests not to do so. The Committee also notes that children should be provided with the opportunity to receive all basic necessities as well as appropriate medical treatment and psychological counselling where necessary. They shall be provided with prompt and free access to legal and other appropriate assistance, including the assignment of a legal representative. In connection with this, we would like to refer you to the United Nations Rules for the Protection of Juveniles Deprived of their Liberty and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice.

We would like to remind your Excellency's Government that the Committee on the Rights of the Child, in its report of the 2012 Day of General Discussion on the rights of all children in the context of international migration, has noted that detention of children on the sole basis of their migration status or that of their parents is a violation of children's rights, is never in their best interests and is not justifiable (para 32). In this connection, we would also like to draw your attention to the fact that the detention of children together with their parents not only violates the principle of the best interests of the child and the right of the child to be detained only as a measure of last resort, but it may also violate their right not be punished for the acts of their parents as stated in the Convention on the Rights of the Child (art. 2, para. 2).

With regard to the allegations regarding 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). The Committee against Torture and the Human Rights Committee have consistently found that conditions of detention can amount to inhuman and degrading treatment.

Regarding the access to medical treatment and services by detainees, we would like to refer your Excellency's Government to General Comment No. 14 of the Committee on Economic, Social and Cultural Rights, which indicates that States are under the obligation to *respect* the right to health by, *inter alia*, refraining from denying or limiting equal access for all persons, including prisoners or detainees, minorities, asylum seekers and illegal immigrants to preventive, curative and palliative health services. (GC 14,

Para.34) In this connection, the General the Basic Principles for the Treatment of Prisoners, adopted by General Assembly resolution 45/111, establish the right of prisoners to have access to the health services available in the country without discrimination on the grounds of their legal situation (Principle 9).