

**Mandates of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Special Rapporteur on the human rights of migrants**

REFERENCE: AL  
MUS 1/2015:

11 August 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 and Special Rapporteur on the human rights of migrants pursuant to Human Rights Council resolutions 24/6 and 26/19.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning a [REDACTED] student, [REDACTED], living with HIV who was initially to be deported from Mauritius on the basis of [REDACTED] health status and pursuant to the Immigration Act, Section 8 (1)(b). Upon challenging [REDACTED] deportation in a Mauritian court on the basis of the Constitution of Mauritius protecting [REDACTED] from any form of discrimination, [REDACTED] deportation was suspended pending the judgment of the case by the Supreme Court. The hearing has been set for September 2015.

According to the information received:

[REDACTED] landed in Mauritius on [REDACTED] in order to attend a private tertiary institution as part of a study abroad program. As part of the application, [REDACTED] was tested on [REDACTED] in a private laboratory and was informed of [REDACTED] HIV positive status the next day. [REDACTED] shared the results of this test with [REDACTED] university.

On [REDACTED] 2015, the university ordered [REDACTED] to immediately go to the Passport and Immigration Office in Port Louis, Mauritius. Upon doing so, [REDACTED] received a letter of deportation, allowing [REDACTED] two weeks to leave the country. On [REDACTED] 2015, the Passport and Immigration Office sent a second letter of deportation.

After the failure of [REDACTED] pleas to your Excellency's Government, [REDACTED] has turned to the Supreme Court of Mauritius to challenge the decision to deport [REDACTED] and to challenge the current law in place. On [REDACTED] 2015, the court heard a demand for judicial review and decided that the case will be taken on its

merits. A hearing date has been set for [REDACTED] 2015. The deportation of [REDACTED] [REDACTED] has been suspended pending the judgment of the Supreme Court.

Serious concern is expressed about allegations that [REDACTED] was initially to be deported from Mauritius on the basis of [REDACTED] health status as HIV positive and according to the Immigration Act, Section 8 (1)(b), which specifies that persons with infectious diseases are prohibited from entering the country.

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.

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/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information on the steps taken by the competent authorities with a view to ensuring [REDACTED]'s right to the highest attainable standard of health.
3. Please provide information on measures taken to ensure the right to the enjoyment of the highest attainable standard of physical and mental health of international students, in particular of those who are medically vulnerable.
4. What steps, if any, have been taken to ensure that the Immigration Act, Section 8 (1) (b) complies with Mauritius' international obligations to protect and promote the enjoyment of the right to health?
5. Please provide the details, and where available the results, of any inquiries or reform proposals that may have been carried out in relation to the allegations. If no inquiries have taken place, or if they have been inconclusive, please explain why.

We would appreciate receiving a response within 60 days. Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

While awaiting a reply, we urge that all necessary interim measures be taken to ensure that international students in a medically vulnerable position are not discriminated against in relation to the enjoyment of their right to health and that plans are made to reform laws that are not in compliance with international human rights law and standards.

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

Dainius Pūras

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

**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 relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

We wish to draw the attention of your Excellency's Government to article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by your country on 12 December 1973, which provides for the right of everyone to the enjoyment of the highest attainable standard of mental and physical health. This includes an obligation on the part of all State parties to ensure that health facilities, goods and services are accessible to everyone, especially the most vulnerable or marginalized sections of the population, without discrimination of any sort. Moreover, in 2000, the Committee on Economic, Social and Cultural Rights advised that "States are under an obligation to respect the right to health by refraining from denying or limiting equal access for all persons including...asylum seekers and illegal immigrants, to preventive, curative and palliative health service".

This Committee, in its General Comment No. 14, provides that the right to health contains both freedoms and entitlements and holds that States are required to respect, protect and fulfill the right to health. In particular, the obligation of the State to respect the right to health requires it to refrain from enforcing discriminatory practices, denying or limiting equal access for all persons, including minorities, asylum seekers and illegal immigrants, to preventive, curative and palliative health services (para. 33). The Committee further reiterates the Covenant's prohibition of any discrimination in the realization of the right to health on the grounds of national or social origin, sexual orientation, health status, and civil, political, social or other status (para. 18). The principle of non-discrimination applies to all aspects of the right to health and constitutes an immediate obligation (para. 30).

We also wish to recall the 2001 United Nations General Assembly Declaration of Commitment on HIV/AIDS, which stated the commitment of countries to eliminate all forms of discrimination against persons living with HIV/AIDS and to ensure their full enjoyment of all human rights and fundamental freedoms.

Finally, we would like to refer your Excellency's Government to the Human Rights Council report of the Special Rapporteur on the right to health (A/HRC/23/41), which considers issues concerning the right to health of foreign nationals. In the report, the Special Rapporteur notes that ensuring the availability, accessibility, acceptability and quality of health facilities, goods and services on a non-discriminatory basis is a core obligation under the right to health (para.38). He also observes that laws linking immigration control and health systems are a direct barrier to accessing health care, and perpetuate discrimination and stigma rather than promote social inclusion (para.5). The fear of detention and deportation prevents foreign nationals, including foreign students, from accessing health care, which may endanger their health and that of the broader

population, thereby undermining public health justifications for detention and deportation (para.37).

Travel restrictions are often justified on the grounds of protecting public health and avoiding treatment and care-related costs for persons living with HIV. Contrary to popular belief, evidence shows that HIV-related travel restrictions do not protect public health but may indeed impede such efforts, while violating the right to health of persons living with HIV (see report of the International Task Team on HIV-related Travel Restrictions, Findings and Recommendations, December 2008, pp.17-20). Transmission of HIV occurs through specific behaviours, the risk of which can be mitigated through well-evidenced prevention steps. However, the threat of deportation may drive the disease underground, undermining prevention and treatment efforts to control the spread of HIV. Moreover, interruptions in anti-retroviral treatment due to detention and deportation, or the threat thereof, may lead to drug resistance and treatment failure in persons living with HIV.

