

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 situation of human rights defenders; the Special Rapporteur on the human rights of migrants; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and the Special Rapporteur on violence against women, its causes and consequences

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Excellency,

We have the honour to address you in our capacity 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 situation of human rights defenders; Special Rapporteur on the human rights of migrants; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and Special Rapporteur on violence against women, its causes and consequences pursuant to Human Rights Council resolutions 24/6, 25/18, 26/19, 25/13, and 23/25.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the alleged sexual violence against Ms. [REDACTED] and ill-treatment faced by her and her brother [REDACTED] in the context of their detention in the Australian Regional Processing Centre in Nauru and their interaction with the Nauru National Police force.

Background information:

There are currently three detention facilities for the holding of asylum seekers on the island of Nauru (designated as RPC1, RPC2 and RPC3). All three detention facilities were established under the control of the Government of Australia, through a Memorandum of Understanding between the Governments of Australia and the Government of Nauru, signed into force on 29 August 2012.

All three of the above-mentioned detention facilities, in their day-to-day operation, are managed by Transfield Services under contract by the Government of Australia, and Wilson Security, a private company sub-contracted by Transfield Services currently provides security services at the detention facilities at Nauru.

In November 2014, the Committee against Torture stated in its concluding observations on Australia that "all persons who are under the effective control of the State party, All persons who are under the effective control of the State party, because *inter alia* they were transferred by the State party to centres run with its financial aid and with the involvement of private contractors of its choice, enjoy the same protection from torture and ill-treatment under the Convention".

In its report of 31 August 2015, the Australian Senate Committee Inquiry of Nauru agreed that "the level of control exercised by the Government of Australia over the RPC supports a strong argument that the primary obligation rests with Australia under international law for protecting the human rights of the asylum seekers, and for compliance with the Refugees Convention. At a minimum, the committee is convinced that Australia holds joint obligations with the Government of Nauru in that regard". The Committee also endorsed "the recommendation made by the Senate Legal and Constitutional Affairs References Committee in 2014 about the comparable situation at the Manus Island RPC, that the Australian Government should 'acknowledge its responsibility to respect, protect and fulfil the human rights of individuals detained' at the RPC in Nauru." In its submission to the Committee, UNHCR has also stated that "the physical transfer of asylum-seekers, refugees and stateless persons from Australia to Nauru does not extinguish the legal responsibility of Australia for their protection."

According to the information received:

In May 2015, Ms. [REDACTED], a 23 years old [REDACTED] woman, was assaulted and raped while she was on a community visit outside the Australia Regional Processing Centre of Nauru. Members of the Nauru Police Force found her at around 9pm; she was naked and had suffered physically from the sexual assault. According to the information received, members of the NPF put her in the back of their car, ignored her and drove around the island and also watched fireworks while she was still in the car. Afterwards, she was taken to the police station and questioned for several hours while she was only wearing underwear. Immense pressure was placed on [REDACTED] in order to receive a statement before she was taken to the Republic of Nauru (RON) Hospital. Ms. [REDACTED]'s brother and mother, who at the time of the incident were detained at the Australia Regional Processing Centre (RPC), were only informed about the incident and [REDACTED]'s stay at the police station several hours later.

From the RON Hospital, [REDACTED] was transferred to a separate accommodation unit at RPC1 because of her deteriorating mental condition. At the accommodation unit, she was held in isolation. It was reported that most of her doctors advised her evacuation to Australia because she experienced serious symptoms of trauma and needed mental treatment. However, the Australian Department of Immigration and Border Protection did not reply to the International Health and Medical Services (IHMS) with regard to the requests made. In addition, it is alleged that her family was not allowed to visit her during the first few days in isolation. Eventually, her brother [REDACTED], was allowed to visit her for only a few minutes. [REDACTED]'s family members were not allowed to visit her regularly during the first month after the alleged rape occurred and only during the second month, short visits were granted regularly. Allegedly, IHMS staff did not provide any information to [REDACTED]'s family about the treatment which was given to her.

During the first month of being held in isolation at RPC1, Ms. [REDACTED] attempted suicide but her family was not informed accordingly and only found out about the incident at a later stage.

Two months after the alleged rape occurred, [REDACTED]'s doctor and medical team reportedly changed. While the medical team initially in charge of looking after Ms. [REDACTED] had reportedly tried to medically evacuate her to Australia, the second team decided that she would be treated in Nauru.

At that time, [REDACTED] reportedly attempted suicide the second time. Her brother, [REDACTED], was at the clinic at RPC1 when [REDACTED] attempted suicide for the second time and he wanted to go see her. However, he was not given access and stopped by security guards who allegedly pushed him to the ground. Subsequently, members of the Nauru Police Force arrived and took Mr. [REDACTED] to the police station. According to information received, Mr. [REDACTED] suffered ill-treatment while he was held in a cell at the police station: he was allegedly urinated on by a Nauruan police officer in uniform and verbally abused while held in the cell for 48 hours. Mr. [REDACTED], reportedly fearful about repercussion in case of his filing a complaint, but also not having confidence that the matter would be taken seriously by the police and prioritizing his sister's health over his own situation, did not file a complaint to the Nauru Police.

After Ms. [REDACTED]'s second attempted suicide, her physical and mental health condition continued to decline significantly, as she refused to eat, to drink, walk and to speak. As a result, she suffered from kidney failure and other serious health issues. According to information received, due to her rapid deterioration of health Ms. [REDACTED] was medically evacuated to a hospital in Brisbane on 14 August 2015. It is alleged that Ms. [REDACTED] was placed in total isolation at the

hospital. IHMS staff had reportedly promised to also transfer Ms. [REDACTED]'s brother and mother to Brisbane in order to accompany her but for reasons not explained to Ms. [REDACTED]'s family, this did not take place.

Reportedly, IHMS did not allow Ms. [REDACTED]'s brother and mother to enquire about Ms. [REDACTED]'s health status. They were given permission to call her every two days for two minutes each. The lack of information about [REDACTED]'s situation and the family separation has caused further distress to her family. Recent reports state that her mother, Ms. [REDACTED] (age 48) also tried to commit suicide on the weekend of 3 October 2015. In reaction, [REDACTED] and his mother were placed in isolation at RPC1 and are constantly watched by security guards.

On 8 September 2015, the Police Commissioner of Nauru reportedly stated that the investigation carried out with the support of an Australian police officer specialized in sexual offences did not yield any conclusive evidence as to whether a sexual assault took place and consequently, the case was closed. The Nauruan police officers were reportedly very concerned about the negative impact and the negative publicity brought to Nauru when the allegations were made public. Reportedly, an RPC staff member threatened to [REDACTED] that he might lose his protection visa, because of the media interest to the case.

As of 30 September 2015, Ms. [REDACTED] was at the Prince Charles hospital in Brisbane but the family was not given information about her health status. On 5 October 2015, two IHMS staff resigned in connection to the way the family has been treated. On 28 October, Ms. [REDACTED] was moved to the Brisbane Immigration Transit Accommodation Centre (BITA). She has been separated from her family for over two and a half months now and her mother and brother are increasingly distressed about her mental and physical health.

Serious concerns are expressed about the physical integrity, safety and allegations of ill-treatment of asylum seekers held in Australia Regional Processing Centre in Nauru, their lack of protection, access to justice, and inadequate access to health care and information. Particular concern is expressed about [REDACTED]'s physical and mental health situation and her access to adequate and timely medical treatment. Concern is raised regarding the separation of the family in such difficult circumstances which has further deteriorated and affected the already critical mental and physical health of Ms. [REDACTED] and that of her family members, in particular her mother. Further concern is expressed about the ill treatment that Mr. [REDACTED] suffered from the Nauru Police Force when he was held at the police station. Additional concern is expressed regarding impunity and lack of access to justice for asylum seekers who are victims of serious human rights violations in Nauru, such as sexual violence and ill-treatment. There is also concern regarding the targeting of human rights defenders, including asylum seekers who defend rights within these detention facilities.

While we do not wish to prejudge the accuracy of these allegations, they appear to be in contravention of the right to the right of everyone to the highest attainable standard of physical and mental health. This right is reflected, *inter alia*, in article 12 of the International Covenant on Economic, Social and Cultural Rights, ratified by your Excellency's Government on 10 December 1975, and supported in the General Comment No. 14 of the Committee on Economic, Social and Cultural Rights.

In addition, we would also like to bring to your Excellency's attention Article 4 (c & d) of the Declaration on the Elimination of Violence against Women which notes the responsibility of States to exercise due diligence to prevent, investigate and, in accordance with national legislation punish acts of violence against women, whether those acts are perpetrated by the State or by private persons and to ensure that women subjected to violence are provided with mechanisms of justice and to just and effective remedies for the harm that they have suffered.

We would also like to recall the Convention on the Elimination of all form of Discrimination against Women, ratified by your Excellency's Government on 28 July 1983, and its Committee's General Recommendation No. 19 on violence against women and General Comment No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women.

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; and to ensure that "no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". These rights are set forth *inter alia* in the Universal Declaration for Human Rights and Article 7 of the International Covenant on Civil and Political Rights, ratified by your Excellency on 13 August 1980. Further, the absolute and non-derogable prohibition of torture and other ill-treatment as codified in articles 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which Australia ratified on 8 August 1989.

We would like to refer your Excellency's Government to the fundamental principles set forth in 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 and 2.

In connection to the allegations presented above, 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 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 as soon as possible on the initial steps taken by your Excellency's Government to safeguard the rights of the above-mentioned persons 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.
2. What actions have been taken to prevent any further acts of sexual violence and ill-treatment against asylum seekers in the country?
3. Please provide the full details of any prosecutions which have been undertaken in relation to human rights violations which have taken place at the abovementioned detention facility?
4. Please provide information regarding the reunification of the [REDACTED] family, as their separation in such difficult circumstances has strongly deteriorated the mental and physical health of Ms. [REDACTED] and that of her relatives, in particular [REDACTED]'s mother and brother.
5. Please provide information on the steps your Excellency's Government has undertaken to assure the enjoyment of the right to the highest attainable standard of physical and mental health of [REDACTED] and her mother, mentioned above, and please inform us about the access of the family to this information.
6. Please provide information on measures taken to prevent ill treatment of asylum seekers by private security companies.
7. Please kindly indicate what measures have been taken to ensure that human rights defenders working on issues relating to the detention of asylum seekers in immigration facilities are able to carry out their legitimate work in a safe and enabling environment without fear of threats or acts of intimidation and harassment of any sort.

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 would like to inform you that a letter addressing similar allegations and concerns as those mentioned above has also been sent to the authorities of Nauru.

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.

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