

Mandates of the Working Group on the issue of human rights and transnational corporations and other business enterprises; the Special Rapporteur on the right to food; 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; the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; the Special Rapporteur on freedom of religion or belief; the Special Rapporteur on contemporary forms of slavery, including its causes and consequences; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE:
AL OTH 60/2018

12 October 2018

Dear Mr. McConnell

We have the honour to address you in our capacities as Working Group on the issue of human rights and transnational corporations and other business enterprises; Special Rapporteur on the right to food; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; 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; Special Rapporteur on the human rights of migrants; Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; Special Rapporteur on freedom of religion or belief; Special Rapporteur on contemporary forms of slavery, including its causes and consequences; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 35/7, 32/8, 33/9, 33/4, 34/21, 34/35, 31/16, 33/1 and 34/19.

We are sending this letter under the communications procedure of the Special Procedures of the United Nations Human Rights Council to seek clarification on information we have received.¹ Special Procedures mechanisms can intervene directly with Governments and other stakeholders (non-state actors) on allegations of abuses of human rights that come within their mandates by means of letters, which include urgent appeals, allegation letters, and other communications. The intervention may relate to a human rights violation that has already occurred, is ongoing, or which has a high risk of occurring. The process involves sending a letter to the concerned actors identifying the facts of the allegation, applicable international human rights norms and standards, the concerns and questions of the mandate-holder(s), and a request for follow-up action. Communications may deal with individual cases, general patterns and trends of human rights abuses, cases affecting a particular group or community, or the content of draft or existing legislation, policy or practice considered not to be fully compatible with international human rights standards.

¹ Further information about the communication procedure is available at:
<http://www.ohchr.org/EN/HRBodies/SP/Pages/Communications.aspx>

In this connection, we would like to bring to your attention information we have received concerning **human rights abuses committed at the Irwin Immigration Detention Center, including the lack of provision of adequate food and water, lack of adequate health care, racial and religious discrimination, solitary confinement as a form of punishment, which may be amounting to cruel, inhumane and degrading treatment, abuses of due process guarantees and of the right to maintain a family life.**

According to the information received:

It has been reported that the Irwin County Detention Center is run privately by for-profit organization LaSalle Southwest Corrections, with very limited reporting to the government.

Reportedly, migrants detained at Irwin are deprived of adequate and sufficient food, which seems to be prepared in unhygienic conditions. Irregular meal schedules, increases detained migrants need to purchase supplements at exorbitant fees at the commissary. For instance, dinner is served already at 4:30 pm and leaves detained migrants hungry by 8 or 9 pm. In addition, migrants are allotted only ten to fifteen minutes per meal and are forced to wait until the next meal if they are late or if they miss one meal.

In terms of the adequacy of the food served, meals in Irwin are non-nutritious, with only very little variation, mostly consisting of potatoes, white rice and bread. Fresh produce is neither available in the general meals nor the commissionaires. Fruits are reserved for those migrant detainees, who qualify for special medical diets. What concerns the hygienic and sanitary requirements of food preparation, allegedly the food is often undercooked and worms, hair, plastic, nails, rocks, teeth, maggots and mice were found in the food. If migrant detainees complain about cooking flaws or foreign objects in their food, they are no granted additional time to finish their meals.

It has further been reported that detained migrants' religious dietary requirements were often ignored by Irwin officials. Muslim detainees were told that their meals were halal, only to find out later that the food they were given was not halal. In addition, Muslim detainees are not provided any supplementary meals after fasting for religious reasons. It has further been alleged, that Muslim migrants often are interrupted during prayer time and they are required to purchase rugs at high costs from the commissary. Several detained migrants, including Catholics, Hindus, and Muslims, face difficulties in accessing religious texts.

Allegedly, migrants held in Irwin lack access to adequate mental and physical health care. The medical units at Irwin are understaffed, so that the standard wait time for migrants held at Irwin wanting to visit the medical staff is between two days and two weeks. Medical units fail to provide adequate medical care and health conditions are often loosely diagnosed, complaints ignored and painkillers easily prescribed for all sorts of symptoms. Detention facility doctors list people under

their care as healthy, regardless of any pain reported by detained migrants, and prescribe rest as treatment. Detained migrants insisting on additional medical care, have been placed in solitary confinement on repeated occasions and segregated from fellow detained migrants. Pregnant women at Irwin do not benefit from prenatal care and receive the same health treatment as the general population.

It is further alleged that guards at Irwin display disrespectful and prejudicial racial treatment towards migrant detainees. They take advantage of migrants' lack of English proficiency and ignore requests for clarifications

It has further been reported that solitary confinement is imposed by officials, without conducting proper hearings, abiding by due process standards and that solitary confinement may be used to prevent detained immigrants from filing complaints. No distinction is made between administrative and disciplinary confinement and solitary confinement has allegedly been used for minor reasons, such as not tucking in a t-shirt, for talking too much, for arguing during soccer matches or for participating in hunger strikes. Some migrants at Irwin have been placed in administrative confinement upon arrival, because the facility lacks enough housing units for all new detainees. Solitary confinement may last well over a month, with some solitary confinements lasting up to six months. Solitary confinement units at Irwin allegedly are dusty, infested with bugs and flies, there is toilet smell and facilities lack cold water.

It is further alleged that solitary confinement is disproportionately used for migrants who manifest mental health conditions and seek counselling. Rights-compliant health care and essential psychosocial support that persons with psychosocial disabilities may need and seek are not available to them. Instead, the staff at the detention centers resort to solitary confinement.

Finally, we have been informed that migrants access to proper legal resources are hampered by Irwins' isolated location, as well as by arbitrary visitation procedures. Detained migrants access to legal counsel is obstructed and lawyers find it difficult to travel to the isolated detention centers and navigate around frequently and arbitrarily changing visiting rules. Attorney-client privilege is infringed by meetings conducted through glass partitions with often malfunctioning phones. They lack privacy as attorneys and their clients are unable to hear each other without yelling. Migrants detained at Irwin are charged for making calls to legal counsel in order to arrange meetings prior to court hearings. In addition, the remote location makes visits for family members more complicate. Exorbitant costs of making a phone call from the facilities further hampers communication with family members.

While we do not wish to prejudge the accuracy of these allegations, we wish to express our concern over grave human rights abuses for which your company may be responsible, by failing to meet its responsibility to respect the rights of migrants detained at Irwin. We also wish to express our grave concern over the apparent lack of measures to

prevent human rights abuses, ensure proper monitoring, as well as the apparent absence of an accountability mechanism for human rights abuses.

Particular concern is raised over the use of solitary confinement, which is lacking due process standards and which may amount to cruel, inhumane and degrading treatment, if it is inflicted as punishment, as it can exacerbate the physical and mental wellbeing of the immigrants detained. Solitary confinement is a harsh measure which may cause serious psychological and physiological adverse effects on individuals regardless of their specific conditions. We are concerned, that the use of solitary confinement increases the risk that acts of torture and other cruel, inhuman or degrading treatment or punishment will go undetected and unchallenged. Solitary confinement may only be used under exceptional circumstances, as a measure of last resort, and for the shortest time possible. When solitary confinement is used in exceptional circumstances, minimum procedural safeguards must be followed. These safeguards reduce the chances that the use of solitary confinement will be arbitrary or excessive, as in the case of prolonged or indefinite confinement.

Furthermore, we are deeply concerned of the heightened risks to the right to life of persons with psychosocial disabilities due to the lack of essential and adequate support and mental health care. Denying access to the necessary psychosocial support and mental health care to those who seek it and imposing solitary confinement, of any duration, when the adequate interventions are not available is incompatible with the right to health and may constitute torture and ill-treatment. It is essential, therefore, that an absolute ban on all coercive measures, including solitary confinement of people with psychological disabilities, should apply in all places of deprivation of liberty, including the detention center run by your company.

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 any comment you may have on the above-mentioned allegations.
2. Please provide detailed information on the process of human rights due diligence taken by your company in order to identify, prevent, mitigate, and remedy the negative human rights impact that employees of LaSalle Southwest Corrections could have caused, contributed to or been directly linked as set out in the United Nations Guiding Principles on Business and Human Rights.
3. How is LaSalle Southwest Corrections meeting its responsibility to respect human rights in a way that complies with international human rights

standards, as set forth by the UN Guiding Principles on Business and Human Rights? More specifically:

- a) Does your company have a policy commitment (approved at the most senior level of the company) that is reflected in its operational policies and procedures?
 - b) Please explain what your company is doing to carry out its human rights due diligence in order to identify, prevent, mitigate and account for how it addresses adverse human rights impacts such as those referred in this letter.
 - c) What operational-level grievance mechanisms has your company established, or participated in, to effectively address the grievances identified above and remediate them directly?
4. Have you considered membership in the International Code of Conduct Association for Private Security Providers Service Providers' Association?
 5. Do company staff receive any training on relevant national and international human rights law and standards?

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 abuses 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 abuses.

Your response will be made available in a report to be presented to the Human Rights Council for its consideration. We would also like to inform that a letter addressing similar allegations and concerns as mentioned above has also been sent to the Government of the United States of America. Accordingly, some of the alleged abuses stated in the letter may not have been undertaken by or on behalf of your company and we wish to reaffirm that each stakeholder must be accountable for its part of the responsibility for alleged abuses.

Please accept, Sir McConnell, the assurances of our consideration.

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Special Rapporteur on the right to food

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Nils Melzer
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 take this opportunity to draw your attention to applicable international human rights norms and standards, as well as authoritative guidance on their interpretation. These include:

- The Universal Declaration of Human Rights (UDHR);
- The UN Guiding Principles on Business and Human Rights;
- The UN Global Compact Principles;
- International Code of Conduct for Private Security Service Providers
- The International Covenant on Economic, Social and Cultural Rights (ICESCR);
- The International Convention on the Elimination of All Forms of Racial Discrimination (CERD);
- The International Covenant on Civil and Political Rights (ICCPR);
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).
- The United Nations Convention on the Rights of Persons with Disabilities (CRPD).

In particular, would like to bring to your attention the UN Guiding Principles on Business and Human Rights (contained in A/HRC/7/31), which the Human Rights Council unanimously adopted in 2011 following years of consultations with Governments, civil society and the business community. The Guiding Principles have been established as the authoritative global standards for all States and businesses with regard to preventing and addressing the risk of business-related human rights impact.

In this connection, we recall that Guiding Principle 22 states that “[w]here business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes”. The Guiding Principles 25 to 31 provide guidance to business enterprises and States on steps to be taken to ensure that victims of business-related human rights abuse have access to effective remedy.

The Guiding Principle 29 states that “[t]o make it possible for grievances to be addressed early and remediated directly, business enterprises should establish or participate in effective operational-level grievance mechanisms for individuals and communities who may be adversely impacted”. Moreover, as underlined in the commentary to Guiding Principle 29, operational-level grievance mechanisms should reflect certain criteria to ensure their effectiveness in practice (as set out in Guiding Principle 31) and they should not be used to preclude access to judicial or other non-judicial grievance mechanisms.

The Guiding Principles clearly outline that private actors and business enterprises have a responsibility to respect human rights, which requires them to avoid infringing on the human rights of others to address adverse human rights impacts with which they are involved. The responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate. It exists independently of

States' abilities and/or willingness to fulfil their own human rights obligations, and does not diminish those obligations. Furthermore, it exists over and above compliance with national laws and regulations protecting human rights.

The Guiding Principles 11 to 24 and 29 to 31 provide guidance to business enterprises on how to meet their responsibility to respect human rights and to provide for remedies when they have cause or contributed to adverse impacts.

In this connection, we recall that the Guiding Principles have identified two main components to the business responsibility to respect human rights, which require that “business enterprises: (a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur; [and] (b) Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts” (Guiding Principle 13). This dual-requirement is further elaborated by the requirement that the business enterprise put in place:

1. A policy commitment to meet their responsibility to respect human rights;
2. A human rights due-diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights. The business enterprise should communicate how impacts are addressed; and
3. Processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute (Guiding Principle 15).

Each of these is elaborated below.

Policy Commitment:

The first of these requirements, a policy commitment, must be approved by the company's senior management, be informed by human rights expertise (internal or external) and stipulate the human rights expectations of personnel, business partners and other parties directly linked to its operations, products or services. The statement of policy must be publicly available and communicated internally and externally and reflected in operational policies and procedures necessary to embed it throughout the business enterprise (Guiding Principle 16).

Human Rights Due Diligence:

The second major feature of the responsibility to respect is human rights due-diligence, the procedures for which have been deemed necessary to “identify and assess any actual or potential adverse human rights impacts with which they may be involved either through their own activities or as a result of their business relationships” (Guiding Principle 18). Adequate human rights due diligence procedures must include “meaningful consultation with potentially affected groups and other relevant stakeholders, as

appropriate to the size of the business enterprise and the nature and context of the operation” (Guiding Principle 18).

To prevent and mitigate against adverse human rights impacts, the findings of the human rights impact assessment should be effectively integrated across the relevant internal functions and processes of a company (Guiding Principle 19). Responsibility for addressing such impacts should be assigned to the appropriate level and function within the business enterprise, and internal decision-making, budget allocations and oversight processes should enable effective responses to such impacts.

Any response by a company to address its adverse human rights impacts should be tracked to ensure that it is effective. Tracking should be based on appropriate qualitative and quantitative indicators, and drawing on feedback from internal and external sources including affected stakeholders (Guiding Principle 20). In addition, information about activities taken to address any adverse human rights impacts, and how effective those actions have been, should be communicated externally (Guiding Principle 21).

Remediation:

The Guiding Principles acknowledge that “even with the best policies and practices, a business enterprise may cause or contribute to an adverse human rights impact that it has not foreseen or been able to prevent”. Where a company identifies that it has “caused or contributed to adverse impacts” it “should provide for or cooperate in their remediation through legitimate processes” (Guiding Principle 22).

Business enterprises should establish or participate in operational-level grievance mechanisms “to make it possible for grievances to be addressed early and remediated directly” (Guiding Principle 29). Operational-level grievance mechanisms should reflect eight criteria to ensure their effectiveness in practice, as outlined in Guiding Principle 31: (a) Legitimate, (b) Accessible, (c) Predictable, (d) Equitable, (e) Transparent, (f) Rights-compatible, (g) A source of continuous learning, and (h) Based on engagement and dialogue. Lastly, operational-level grievance mechanisms must not be used to preclude access by individuals and communities to judicial or other non-judicial grievance mechanisms (Guiding Principle 29).

Regarding the International Code of Conduct for Private Security Service Providers, we wish refer to the International Code of Conduct for Private Security (ICOC), a voluntary multi-stakeholder initiative involving representatives of private security companies, states and civil society organizations which articulates the obligations of private security providers particularly with regard to international humanitarian law and human rights law. The ICOC clarifies important provisions for signatory companies regarding, inter alia, the conduct of personnel, management and governance of private security enterprises, including the need to exercise due diligence in the selection, vetting and review of personnel. It is recommended that membership in the ICOC Association be considered by LaSalle Southwest Corrections to strengthen its commitment to its obligations under international humanitarian law and human rights law.

We further wish to draw your attention to Article 9.1 of ICCPR, which provides that everyone has the right to liberty and security of person. The enjoyment of the rights guaranteed in the ICCPR is not limited to citizens of States parties but “must also be available to all individuals, regardless of nationality or statelessness, such as asylum seekers, refugees, migrant workers and other persons, who may find themselves in the territory or subject to the jurisdiction of the State Party” (CCPR/C/21/Rev.1/Add. 13 (2004), para. 10). The detention of migrants and asylum seekers should thus be a measure of last resort. The ICCPR further stipulates that all persons deprived of their liberty be ensured the right without delay to control by a court of the lawfulness of the detention (Article 9 (4)). We further wish to draw your attention to the United Nations’ Working Group on Arbitrary Detention Revised Deliberation No. 5 on deprivation of liberty of migrants.

Concerning the conditions of detention, we wish to draw your attention to the updated United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules, 2015), which lay out generally accepted principles and practice in the treatment of prisoners and prison management, adopted unanimously by the General Assembly on 17 December 2015 (A/RES/70/175). We further wish to draw your attention to the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by General Assembly resolution 43/173 of 9 December 1988.

In this regard, we wish to refer to article 25 of the UDHR which recognizes the right of everyone to a standard of living adequate for the health and well-being of himself and of his family, including food and medical care. This right is further elaborated in articles 11 and 12 of the ICESCR, which guarantee the rights of everyone to an adequate standard of living, including adequate food, and the enjoyment of the highest attainable standard of physical and mental health, respectively. Article 7 of the ICESCR enshrines the right of everyone to the enjoyment of just and favourable conditions of work. Furthermore, the United Nations General Assembly in its resolution 70/169 of 2015 recognized that “the human right to safe drinking water entitles everyone, without discrimination, to have access to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic use.”

Further, we would like to bring your attention to Article 2 of CERD and which instructs all State Parties to “condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms.” More particularly, Article 5 of the Convention refers to “the right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution”. Further, we would like to direct you to General Recommendation 30 relating to Discrimination against non-citizens of the Committee on the Elimination of Racial Discrimination, as well as the Human Rights Council Resolution 15/16 and General Assembly Resolution 68/179, which refer to the inherent dignity of migrants. And lastly, we also wish to refer you to the paragraph 30 of the Durban Programme of Action.

Moreover, we would like to remind you that everyone has the right to life and the protection of their physical and mental integrity as well as the right to be free from torture or cruel, inhuman or degrading treatment or punishment. These rights are set forth, inter alia, in the UDHR, the ICCPR and the CAT.

Article 6 of ICCPR guarantees the right of every individual to life and security and provides no one shall be arbitrarily deprived of his or her life. With regards to the use of solitary confinement as a form of punishment, we wish to draw your attention to Article 1 CAT, which states that “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as {...} punishing {him or her}”. We further wish to draw your attention to Article 16, which states that “each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in Article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.” We would like to refer you to the Istanbul Statement on the Use and Effects of Solitary Confinement as a useful tool in efforts to promote the respect and protection of the rights of detainees. In addition, we wish to draw your attention to the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules, 2015) Rules 43.1(b), 43.3, 44, 45 and 46 which refer to the use of disciplinary sanctions or restrictive measures, including solitary confinement, and the role of health-care personnel regarding any adverse effect of disciplinary sanctions or other restrictive measures on the physical or mental health of prisoners subjected to such sanctions or measures.

We further would like to draw your attention to Article 9 and 14 of ICCPR, asserting that any person who is deprived of his or her liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his her attention and order his or her release if the detention is not lawful. Detainees are expected to be informed promptly and in detail in a language which they understand of the nature and cause of the charge against them and to have the free assistance of an interpreter if they cannot understand the language. In that regard, we would also like to refer you to the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and its’ principle 14 states that a person who does not adequately understand or speak the language used by the authorities responsible for his arrest, detention or imprisonment is entitled to receive promptly in a language which he understands, information concerning the reason for the arrest, as well as information on and an explanation of his rights and how to avail himself of such rights, and to have the assistance, free of charge, if necessary, of an interpreter in connection with legal proceedings subsequent to his arrest. Principle 15 expands that “communication of the detained or imprisoned person with the outside world, and in particular his family or counsel, shall not be denied for more than a matter of days.”

We would also like to bring to your attention the *Basic Principles and Guidelines on remedies and procedures on the right of anyone deprived of their liberty to bring proceedings before a court*. Principle 17 states that the obligations to guarantee access to the right to bring proceedings before a court encompasses the adoption of specific measures

required under international law to ensure such rights, including for minorities as based on national or ethnic, cultural or linguistic identity, non-nationals, including migrants regardless of their migration status, asylum seekers and refugees.

Furthermore, Principle 21 enforces the above mentioned provision by stating that non-nationals, including migrants regardless of their status, asylum seekers, refugees and stateless persons, in any situation of deprivation of liberty, shall be informed of the reasons for their detention and their rights. These include effective legal assistance, in a language that they use and in a means, mode or format they understand. Proceedings to challenge decisions of immigration detention shall be suspensive to avoid expulsion prior to the case-by-case examination. In addition, the deprivation of liberty as a penalty or punitive sanction in the area of immigration control is prohibited. We would like to further refer you to Guideline 21 for the implementation of such specific measures.

Lastly, we wish to refer to article 23 of the ICCPR which provides that “the family is the natural and fundamental group unit of society and is entitled to protection by society and the State.”