

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

REFERENCE:  
AL AUS 4/2019

2 April 2019

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; 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; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 33/9, 33/4, 34/21 and 34/19.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the continued effective confinement of, and inappropriate access to health care by, the asylum seekers and refugees who remain in Australia's custody in its offshore facilities in Nauru and on Manus Island in Papua New Guinea.**

The situation of asylum seekers and refugees in Australia's offshore facilities has been the subject of various communications from Special Procedures mandate holders (JAL AUS 1/2014, JUA AUS 4/2014, JAL AUS 6/2015, JUA AUS 5/2016, and JUA AUS 7/2017). We appreciate the continued dialogue with your Excellency's Government on this issue and we reiterate our concerns expressed in the above-mentioned communications.

According to the information received:

There are approximately 1,000 asylum seekers and refugees remaining in Australia's offshore facilities in Nauru and on Manus Island in Papua New Guinea. Since 2014, there has been several reported cases of death resulted from lack of health care and/or medical treatment in these offshore facilities. Among the remaining individuals, many suffer from physical and mental conditions, which seem to have been caused and exacerbated by their prolonged and indefinite confinement as well as the lack of appropriate health care in these offshore facilities over the years. A number of them suffer from diseases particular to the climate or location where these centres are situated, which include malaria, typhoid, dengue fever, kidney stones, tuberculosis, chronic fungal infections, and other parasitic infections.

Although some of them have allegedly managed to consult a doctor, prescribed medications are often not available in local pharmacies, which have led to these individuals effectively going without any treatment. There are reported cases of individuals being refused to be taken to the hospital by Paladin personnel, a private security company contracted by the Government of Australia to provide garrison and security services in the East Lorengau Refugee Transit Centre as well as services at other sites on Manus Island and Port Moresby. The publicly available governmental contract with Paladin Holdings PTE Ltd includes a section on the services that Paladin will provide in relation to the ‘health of residents’. This section covers how Paladin should respond in case of non-urgent and emergency medical concerns of the asylum-seekers and refugees as well as a commitment that it will ensure the Australian Department of Home Affairs and the Papua New Guinea’s Immigration and Citizenship Services Authority (ICSA) “are informed of all Resident health matters that the Service Provider is aware of”.

Reportedly, in many cases, even those who are sent to local hospitals are not provided with appropriate medication or treatment. For example, dozens of individuals on Manus Island were recently kept at the Pacific International Hospital at Port Moresby where they allegedly received inadequate care and medication. Despite having severe medical issues, mostly related to mental health, they were allegedly only given merely sleeping tablets every six hours, while Panadol was the only painkiller available to them. According to the information available, the Pacific International Hospital has been contracted by the Government of Australia to provide comprehensive health services to the asylum seekers and refugees remaining in the offshore facilities in Papua New Guinea. However, local medical facilities lack specialists and resources for the treatment of some of the medical conditions suffered by these individuals. Torture and trauma counselling services were discontinued on Manus Island following the closure of the Regional Processing Centre in October 2017.

A number of individuals have serious or chronic medical problems that have remained untreated for months or even years. These include chronic diseases, heart diseases, nerve injuries and different types of severe and frequent abdominal pains, amongst others. Some of them have limited mobility due to untreated wounds or injuries, which date back to years ago. For example, a few of them are reported to have mal-aligned broken bones, which require immediate medical attention and for which further delays in treatment may result in permanent disabilities. Others have been waiting for years for specialised treatment including surgery, even after they have received a medical referral. There are also reported cases of inappropriate interruption of treatment. In November 2018, dozens of individuals who were waiting to receive or were in the process of receiving medical treatment at Port Moresby were removed back to the Manus Island because of the Asia-Pacific Economic Cooperation Summit.

In addition, the prolonged and indefinite confinement has had a serious impact on the mental health of these individuals. Many of them suffer from, inter alia,

depression, anxiety and post-traumatic stress disorder. There are multiple reports of self-harm and suicide attempts. According to the information received, the asylum seekers and refugees remaining on Manus Island do not trust the companies contracted by the Government of Australia to provide them with services as they have faced mistreatment and lack of understanding of their situation and needs by these contractors. Some of the individuals reportedly refuse medical care for fear of retribution by contractor personnel, including from the Pacific International Hospital and Paladin.

In response to the health care needs of these individuals, the Government of Australia is reportedly planning to transfer them to Christmas Island or Port Moresby. However, it has been reported that the facilities to be used are not equipped with appropriate health care facilities, goods or specialised personnel to meet the health care needs of them. In addition, some of these facilities are detention like, for example, the securitized immigration detention centre in Bomania.

While we do not wish to prejudge the accuracy of the information made available to us, we express our serious concern about the continued indefinite confinement of asylum seekers and refugees in Australia's custody, and the impact this has in their mental and physical integrity. We are deeply concerned about their alleged lack of access to appropriate health care, including lack of access to urgent and specialized treatment, which may result in permanent disability or even death. We are equally concerned about the reported plan of your Excellency's Government to transfer these individuals to Christmas Island or Port Moresby where appropriate medical facilities and specialised medical personnel to address their medical needs are allegedly lacking.

In this regard, we refer to the country visit report of the Special Rapporteur on the human rights of migrants on his visit to Australia and the regional processing centres in Nauru in 2016 (A/HRC/35/25/Add.3). In his report, the Special Rapporteur called on your Excellency's Government to "quickly close down the regional processing centres in Papua New Guinea and Nauru and terminate the offshore processing policy, in order to remedy the systemic human rights violations that this policy creates".

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** 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 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. Kindly explain how the continued indefinite confinement of asylum seekers and refugees in Australia's custody in its offshore facilities on Manus Island in Papua New Guinea is compatible with international human rights law.
3. Please provide information on the measures taken to ensure the access to appropriate physical and mental health care, including urgent and specialized treatment, by all asylum seekers and refugees in Australia's custody in its offshore facilities.
4. Please indicate the measures taken to prevent that the lack of access to appropriate medical treatment by those in the offshore facilities result in permanent disability or even death.
5. Please provide information on the reported plan to transfer the asylum seekers and refugees, who remain in the offshore facilities, to Christmas Island and Port Moresby.
6. Please provide information on any implementation of the recommendations concerning the offshore regional processing centres included in the country visit report of the Special Rapporteur on the human rights of migrants (A/HRC/35/25/Add.3), particularly regarding updates on plans to close down these offshore processing centres.
7. Kindly provide information about monitoring, accountability and remedy mechanisms in place, including oversight by governmental officials through on-site presence, to ensure that private companies contracted by the Government of Australia deliver services in line with their contractual obligations as well as with international human rights standards.
8. Please indicate how respect for international human rights standards is integrated in procurement procedures as well as contracts with service providers, for example through recognized international standards such as those contained in the International Code of Conduct for Private Security Service Providers.

This communication and any response received from your Excellency's Government will be made public via the communications reporting website within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council. A copy of this letter will be shared with the Governments of Nauru and Papua New Guinea.

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.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

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

Saeed Mokbil

Chair-Rapporteur of 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

Felipe González Morales

Special Rapporteur on the human rights of migrants

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 remind your Excellency's Government of the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment 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. Article 7 of the International Covenant on Civil and Political Rights, ratified by Australia on 13 August 1980 provides that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation."

We would also like to refer to the report of the Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment (A/HRC/37/50). In his report, the Special Rapporteur stated that "the longer a situation of arbitrary detention and inadequate conditions lasts, and the less affected detainees can do to influence their own situation, the more intense their mental and emotional suffering will become — and the higher the likelihood that the prohibition of ill-treatment has been breached" (paragraph 27, A/HRC/37/50). He also stressed that "detention based solely on migration status, as such, can even amount to torture, particularly where it is intentionally imposed or perpetuated for such purposes as deterring, intimidating or punishing irregular migrants or their families, coercing them into withdrawing their requests for asylum, subsidiary protection or other stay, agreeing to voluntary repatriation, providing information or fingerprints, or with a view to extorting money or sexual acts, or for reasons based on discrimination of any kind, including discrimination based on immigration status".

We wish to recall that a number of UN human rights mechanisms have expressed heightened concern about the use of offshore processing centres for irregular migrants and declared that the situation may mount to cruel, inhuman and degrading treatment or punishment according to international human rights law standards. According to article 2, 3 and 16 of the Convention against Torture, all persons who are under the effective control of Australia, because they were *inter alia* 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. Hence, Australia has the ultimate responsibility for asylum seekers and refugees transferred by Australia to the Regional Processing Centres in Nauru and Papua New Guinea.

We would like to further refer your Excellency's Government to article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by Australia on 10 December 1975, which establishes the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. Accordingly, States are under the obligation to refrain "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 service (Committee on Economic, Social and Cultural Rights, General Comment 14, para. 34).

Furthermore, the Committee on Economic, Social and Cultural Rights, in its General Comment No. 24 (2017) on State obligations under ICESCR in the context of business activities, refers to the State's positive duty to adopt a legal framework requiring business entities to exercise human rights due diligence in order to identify, prevent and mitigate the risks of violations of ICESCR rights, to avoid such rights being abused, and to account for the negative impacts caused or contributed to by their decisions and operations and those of entities they control on the enjoyment of Covenant rights. The Committee further indicates that States are required to take steps to prevent and redress infringements of Covenant rights that occur outside their territories due to the activities of business entities over which they can exercise control, especially in cases where the remedies available to victims before the domestic courts of the State where the harm occurs are unavailable or ineffective.

Moreover, we would like to bring to your attention the report of the Special Rapporteur on the right to physical and mental health on confinement and deprivation of liberty (A/HRC/38/36) where he elaborates on the ways that confinement, when used as widespread forms of addressing various social and often non-criminal issues including migration, creates an environment that is detrimental to the enjoyment of the right to physical and mental health. He highlights the broad impact that forced confinement and deprivation of liberty has on mental health and raises concerns around the protection of the right to mental health. He urges States to develop measures to address, on a non-discriminatory basis, the barriers faced by confined people in gaining access to health care. In this connection, in his report on people on the move (A/73/216), the Special Rapporteur further calls on States to ensure that detained or confined migrants are held in conditions that satisfy health standards and have access to essential health care services, including mental health care and support services.

We would further wish to bring to your attention the report of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the rights of peoples to self-determination on human rights costs of privatization of deprivation of liberty, including in the context of immigration (A/72/286), which outlines the high risks for the violation of human rights carried by this phenomenon and emphasizes the importance of States ensuring that private operators comply with human rights obligations. The Working Group notably called for the termination of the practice of outsourcing the overall operation of immigration detention facilities to for-profit private security companies. The Working Group further stressed that States should ensure that legislation and contracts between public agencies and private security companies should sufficiently include detailed obligations with respect to international human rights standards as well as establish effective accountability, oversight and remedy mechanisms when contracting with private security companies in places of deprivation of liberty.

We would also like to refer your Excellency's Government to article 11 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which states, inter alia, that: "migrant workers shall enjoy equality of treatment with nationals of the State of employment in relation to access to

social and health services, provided that the requirements for participation in the respective schemes are met”.