

**Mandates of the Special Rapporteur on the human rights of migrants; the Working Group on the issue of human rights and transnational corporations and other business enterprises; 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 torture and other cruel, inhuman or degrading treatment or punishment; and the Special Rapporteur on the human rights to safe drinking water and sanitation**

REFERENCE:  
UA USA 7/2020

22 April 2020

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the human rights of migrants; Working Group on the issue of human rights and transnational corporations and other business enterprises; 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 torture and other cruel, inhuman or degrading treatment or punishment; and Special Rapporteur on the human rights to safe drinking water and sanitation, pursuant to Human Rights Council resolutions 34/21, 35/7, 42/16, 42/9, 34/19 and 42/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the lack of necessary protection measures in light of the COVID-19 pandemic for migrants in detention, including at the Northwest Processing Center (NWPC) in Tacoma, Washington (formerly known as "the Northwest Detention Center").

We have repeatedly highlighted our concerns regarding the human rights of migrants in the U.S., notably in connection with widespread use of immigration detention (USA 23/2017, USA 12/2018), alleged human rights abuses in privately-run immigration detention facilities (USA 18/2018), and lack of access to health care in Immigration and Customs Enforcement (ICE) custody (USA 25/2018 and USA 7/2019).

We thank your Excellency's Government for the reply dated 7 May 2018 to the Urgent Appeal (USA 2/2018) highlighting concerns about the conditions in the NWPC that is privately owned and run by the GEO group, a for-profit company. In its answer, Your Excellency's Government refers to annual inspections, an onsite ICE Detention Services Manager present at the NWPC, and an investigation by the Department of Homeland Security's Office for Civil Rights and Civil Liberties conducted in 2014. In light of the current health pandemic and of the following new information received, we would appreciate an update on the situation and procedures in place at the NWPC, including in relation to oversight by your Excellency's Government.

According to the information received:

Since 2018, the health and hygienic situation at the NWPC has reportedly deteriorated. Migrants in detention went on hunger strikes on several occasions to demand better conditions, including better health care. There have been reports that severe medical needs are being ignored and unattended. At times, individuals must go to considerable lengths to obtain sufficient medical attention and to be taken seriously. When detainees are able to access NWPC medical services, they are allegedly not provided with adequate follow-up treatment or with clear and unconflicting information regarding their health conditions.

For instance, we have received reports of a person detained at the NWPC with a neck tumor who, for nearly one year, was not provided with adequate medical attention and fell severely ill. Another case reported relates to a person being shackled allegedly by the medical staff employed by the NWPC during the regular dialysis treatments, and afterwards being placed for hours in filthy and unhygienic holding cells rather than being allowed to return to the pod. There are reports that NWPC medical staff deprive migrants from previously prescribed medications, mismanage prescriptions, and overuse painkillers to treat various conditions. We have also received reports about the lack of adequate mental health care, including the overuse of tranquilizers.

Migrants are reportedly scared to complain about health care fearing it might negatively affect their immigration and asylum cases. Stories of retaliation, transfers, and express deportations are allegedly used to deter complaints.

Since the outbreak of the global COVID-19 pandemic, there have allegedly been over a dozen accounts of persons with symptoms indicative of the virus in NWPC, and at least 2 persons have been reportedly placed in isolation due to the virus. At the same time, there are reports about several new arrivals of migrants in NWPC. Concerns are raised that the lack of preventive measures, such as quarantine, could potentially expose the other detainees at the facility to the virus.

The facility is reportedly overcrowded with around 1,500 detainees, making it impossible for detainees to observe physical distancing. For example, in one unit of the facility there are approximately 70 individuals in an area of 400 square meters. There are only three toilets, four urinals, and four showers for these 70 persons. When provided outdoor time, detainees must share a cramped space with other units at the same time. During religious services, there are reportedly more than 50 people, who congregate in the same area.

We have also received reports that conditions, including access to health care and health protection measures have not really changed in the NWPC since the

outbreak of the pandemic. In some units guards are apparently wearing masks, but none are given to the detainees. The reported hygienic conditions at the NWPC were already of concern before the global pandemic and had allegedly led to a lice outbreak. Detainees are largely in charge of cleaning the facility, including showers, dining areas and living areas. However, they are not provided with adequate cleaning supplies to disinfect these critical areas.

The measures taken in response to the COVID-19 pandemic include restrictions on external visitors, including legal counsel, and the cancellation of family visits. Legal visits, previously conducted in small cells, have been restricted and transferred to non-contact areas, jeopardising client confidentiality and making it difficult to discuss legal matters and sign documents. Court hearings at NWPC are allegedly taking place under unfavourable circumstances for migrants, without the physical presence of lawyers, or conducted by phone while detainees have limited access to phones that work properly.

In response to the COVID-19 pandemic, ICE has released a Guidance on COVID-19<sup>1</sup>. The Guidance sets out a focus of enforcement on public safety risks and detentions on criminal grounds, and specifically mentions alternatives to detention in order to reduce the number of detainees and allow for the necessary physical distancing. ICE also held an expert roundtable to identify additional enhanced steps to minimize the spread of the virus. Based on the information received, the implementation of this guidance has already led to the release of some migrants from ICE detention, notably older persons and pregnant women.

While we do not wish to prejudge the accuracy of the information made available to us, we are concerned that previous concerns and recommendations made by Special Procedures mandate holders and other United Nations human rights mechanisms regarding immigration-related detention in the U.S. have not been adequately addressed. We would like to express our utmost concern about the physical and mental integrity of migrants detained in the NWPC and in other similar facilities, notably in light of the existing risk of an outbreak of COVID-19 in such facilities. We are particularly concerned about the unhygienic conditions, coupled with the overcrowding that does not allow detainees to observe physical distancing, the lack of protective items allocated to detainees including those completing cleaning tasks, and the lack of access to adequate healthcare. We are additionally concerned about the impact of the restriction of receiving visits from legal counsel and family members, notably on due process rights and on the mental integrity of the detainees.

We are concerned about the reports that there continue to be new arrivals at the NWPC, despite the reference in the aforementioned ICE Guidance on COVID-19 to

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<sup>1</sup> <https://www.ice.gov/coronavirus#wcm-survey-target-id>

reduce the number of migrants in detention, and that these individuals are not being quarantined. At the same time, there are no official figures of the number of people who have been released from the NWPC into alternative measures, based on the ICE Guidance on COVID-19. Given that no detainee at the NWPC is serving a criminal sentence, but are all awaiting an administrative decision on their immigration status, alternatives to detention should be used to relieve the overcrowding situation and allow for the necessary physical distancing.

A significant reduction of the number of migrants in administrative detention can be reached through the use of readily available alternative measures, and the exploration of further alternative options. Human rights-compliant alternatives should focus on and prioritize strategies for prevention, ensuring a holistic use of non-custodial preventive measures in accordance with the core concepts and principles of the UN Standard Minimum Rules for Non-Custodial Measures, the so-called Tokyo Rules<sup>2</sup>. We would like to highlight that in developing alternatives, States must ensure that alternative measures do not unnecessarily restrict migrants' access to other rights, including health, education, adequate housing, food, water and sanitation.

We would like to underline that everyone has a right to liberty and security of person, as laid out in the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR). This right is applicable to all people, at all times, including non-citizens being deprived of their liberty on immigration-related grounds. There are specific challenges of facing this pandemic in places of detention, and we would like to refer Your Excellency's Government to the related Interim Guidance<sup>3</sup> published by the United Nations High Commissioner for Human Rights and the World Health Organisation.

We would like to recall the right to an adequate standard of living, protected under the UDHR and the International Covenant on Economic, Social and Cultural Rights (ICESCR). While your Excellency's Government has not ratified ICESCR, the United States Government agreed to bind itself in good faith to ensure that nothing is done that would defeat the object and purpose of the international instrument, pending a decision on ratification. Deriving from the right to an adequate standard of living, is the right to safe drinking water, as explicitly recognised by the UN General Assembly (resolution 64/292) and the Human Rights Council (resolution 15/9). In its General Comment No. 15, the Committee on Economic, Social and Cultural Rights clarified that the human right to water means that everyone is entitled to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses in all spheres

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<sup>2</sup> <https://www.ohchr.org/Documents/ProfessionalInterest/tokyorules.pdf>

<sup>3</sup> <https://interagencystandingcommittee.org/system/files/2020-03/IASC%20Interim%20Guidance%20on%20COVID-19%20-%20Focus%20on%20Persons%20Deprived%20of%20Their%20Liberty.pdf>

of life. The UN General Assembly (resolution 70/169) and the Human Rights Council (resolution 33/10) recognized that water and sanitation are two distinct but interrelated human rights. In particular, we would like to underline the explicit recognition that “the human right to sanitation entitles everyone, without discrimination, to have physical and affordable access to sanitation, in all spheres of life, that is safe, hygienic, secure, socially and culturally acceptable and that provides privacy and ensures dignity, while reaffirming that both rights are components of the right to an adequate standard of living”.

Maintaining health in detention centres is in the interest of the persons deprived of their liberty, as well as of the staff of the facility and the community. International human rights law, such as the UDHR and the International Convention on the Elimination of All Forms of Racial Discrimination, clearly state the obligation of States to ensure the health care of people in places of detention. With regard to States’ responsibility to protect the physical and psychological well-being of every person, this is provided by the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In this regard, we would also like to highlight that conditions of detention can amount to cruel, inhuman or degrading treatment or even torture. We draw your attention to rules 12 to 18 and 24 to 35 of the UN Standard Minimum Rules for the Treatment of Prisoners (otherwise known as the Mandela Rules), regarding accommodation and health-care services. In particular, Rule 32 indicates that the relationship between health-care professionals and detainees shall be governed by the same ethical and professional standards as those applicable in the community. Moreover, Mandela Rule 46 indicates that health-care personnel shall not have any role in the imposition of disciplinary sanctions or other restrictive measures.

We further refer to principles 1, 6, 24 and 25 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. In this context, we would also like to refer to the Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on migration-related torture and ill-treatment, and in particular its Section II.C. on migration related detention (A/HRC/37/50).

We understand the reasoning and importance of limiting outside visits in light of the COVID-19 pandemic. However, we would like to recall the concept of due process and access to legal representation as enshrined in the UDHR and the ICCPR. In this context, we would like to refer to the Report of the Special Rapporteur on the human rights of migrants on Access to Justice for Migrants (A/73/178/rev.1). We would like to underline that access to legal counsel should be guaranteed at all times, and that it is feasible considering the current availability of alternative digital communication options. Such alternative communication options should also be made available for detainees to communicate with their families in the absence of family visits in person, as social isolation can have grave impacts on detainee’s mental health and well-being. This is even

more important for individuals in isolation, in order to avoid the conditions amounting to solitary confinement.

We would like to bring to the attention of your Excellency's Government the Revised Deliberation No. 5 on deprivation of liberty of migrants of the Working Group on Arbitrary Detention. Paragraph 16 states that "Alternatives to detention must be sought to ensure that the detention is resorted to as an exceptional measure." We urge your Excellency's Government to resort to non-custodial and community based alternatives to immigration detention. As research shows, such measures are more cost effective and address many concerns related to overcrowding of places of detention, which is especially crucial in light of the current pandemic.

As it is foreseeable that immigration cases will be further delayed due to the current limited operations of immigration courts, prolonging unnecessarily the detention of people in immigration detention facilities such as NWPC, which are supposedly designed for temporary detention.

We would also like to note that the heightened duty of care of States to take necessary measures to protect the lives and bodily integrity of individuals deprived of their liberty by the State also extends to individuals held in private incarceration facilities operating pursuant to an authorization by the State, such as the NWPC and other immigration-related detention facilities run by for-profit companies. In this regard, we refer you to the report of the Working Group on the use of mercenaries on the use of private security providers in places of deprivation of liberty, including immigration-related detention facilities (A/72/286). The State is required to monitor privatised immigration-related detention facilities and to intervene whenever necessary to protect the human rights of those deprived of their liberty, irrespective of the private operator's obligations. Business entities running such centres have a responsibility to comply with and respect human rights standards in carrying out their operations.

The United Nations Guiding Principles on Business and Human Rights also clarify that business enterprises have an independent responsibility to respect human rights. However, States may be considered to have breached their international human rights law obligations where they fail to take appropriate steps to prevent, investigate and redress human rights abuses committed by private actors. As part of their duty to protect against business-related human rights abuse, States are required to take appropriate steps to "prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication" (Guiding Principle 1). The Guiding Principles underscore that States should exercise adequate oversight in order to meet human rights obligations when they contract with, or legislate for, business enterprises to provide services that may impact upon the enjoyment of human rights (Guiding Principle 5). States do not relinquish their international human rights law obligations when they privatize the delivery of services that may impact upon the enjoyment of human rights. In

addition, States should “enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights...” (Guiding Principle 3). The Guiding Principles also require States to ensure that victims have access to effective remedy in instances where adverse human rights impacts linked to business activities occur.

We are concerned that the response of ICE and the GEO Group to COVID-19 may not be sufficient to protect the health of the persons detained and contain an outbreak of the pandemic into the NWPC.

The full texts of the human rights instruments and standards recalled above are available on [www.ohchr.org](http://www.ohchr.org) or can be provided upon request.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency’s Government to safeguard the rights of the above-mentioned person(s) 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. Please provide information regarding all measures taken in response to the COVID-19 pandemic in immigration detention facilities, including the NWPC, in order to protect the physical and mental integrity of the detainees, the staff and the wider community.
3. Please provide an update on the result of any independent inspections or investigations carried out in the NWPC, or provide an explanation of the absence of such investigations.
4. Please indicate measures taken by the Government to ensure effective oversight and accountability mechanisms to ensure that the GEO group, as a for-profit company contracted by your Excellency’s Government, complies with its contractual obligations as well as its responsibility to respect human rights. Further, please inform of any steps to hold accountable GEO group personnel for alleged human rights abuses, and to afford victims access to effective remedies.
5. Kindly indicate any specific measures that have been introduced to respond to the concerns related to access to appropriate health care and

preventive measures, including adequate facilities for handwashing, sanitation and other hygiene needs.

6. Please provide information on the number of detainee releases to non-custodial alternatives to detention since the outbreak of COVID-19. Is there a set of criteria used to identify those in administrative detention that could be released to alternative measures? Is the effectiveness of these measures closely monitored so as to draw conclusions for a future application of such non-custodial and community-based alternatives?
7. Please provide information on the measures in place to ensure that detainees with symptoms separated in single cells are not being held in solitary confinement, that their mental health is cared for, and that they have access to communication with family and legal counsel.
8. Please also provide information on the alternative communication options available for detainees to access legal counsel and remain in contact with their family members.

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

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 believe indeed that the concerns expressed in this letter, and which are of a similar nature as those previously shared, warrant immediate attention on the part of the Government to protect the rights of these individuals and prevent the recurrence of further violations. We also believe that this is a matter of public interest, and that the wider public should be alerted to the human rights implications of these allegations. Any public expression of concern on our part would indicate that we have been repeatedly in contact with your Excellency's Government to clarify the issues in question.

We would also like to inform your Excellency's Government that a letter addressing similar allegations and concerns as mentioned above has also been sent to the GEO Group.

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



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