

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 OTH 31/2020

22 April 2020

Dear Mr. Zoley,

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.

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. 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.

In this connection, we would like to bring to your attention 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).

George C. Zoley
Chief Executive Officer
The GEO Group Inc.

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 23/2017¹, USA 12/2018²), alleged human rights abuses in privately-run immigration detention facilities (USA 18/2018³), and lack of access to health care in Immigration and Customs Enforcement (ICE) custody (USA 25/2018⁴ and USA 7/2019⁵).

We would like to bring to your attention a previous Urgent Appeal addressed to the Government of the United States (USA 2/2018⁶) highlighting concerns about the conditions in the NWPC that is privately owned and run by your company. In its answer, the Government refers to annual inspections, an onsite ICE Detention Services Manager present at the NWPC, and the investigation by the DHS 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 updated detailed information on the situation and procedures in place at the NWPC:

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.

¹ <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=23363>

² <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=23913>

³ <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24075>

⁴ <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24279>

⁵ <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24472>

⁶ <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=23626>

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-19⁷. The Guidance sets out a focus of enforcement on public safety risks and detentions on criminal grounds, and specifically mentions alternatives to detention

⁷ <https://www.ice.gov/coronavirus#wcm-survey-target-id>

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 would like to express our concern about the health of migrants detained in the NWPC and in other similar facilities run by GEO Group, notably in light of a possible outbreak of the COVID-19 in these facilities. We are particularly concerned about the apparent failure by your company to ensure that the rights of migrants detained at the NWPC are respected, in particular in relation to the unhygienic conditions, 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 health of the detainees. We also wish to express our grave concern over the apparent lack of measures to prevent human rights abuses, to ensure proper monitoring, as well as the apparent absence of an accountability mechanism for human rights abuses.

We are concerned about the reports that, despite the reference in the aforementioned ICE Guidance on COVID-19 to reduce the number of migrants in detention, there continue to be new arrivals at the NWPC 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, based on the ICE Guidance. 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.

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). This is applicable also in deprivations of liberty occurring in the immigration context. We recognise the specific challenges of facing this pandemic in places of detention, and we would like to refer you to the related Interim Guidance published by the United Nations High Commissioner for Human Rights and the World Health Organisation.

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, clearly state the obligation of States to ensure the health care of people in places of detention. The United Nations Guiding Principles on Business and Human Rights (the Guiding Principles) provide the authoritative global standards for all States and businesses with regard to preventing and addressing the risk of business-

related human rights impact. 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 and to address adverse human rights impacts with which they are involved. Therefore, under the Guiding Principles, companies that manage and run immigration-related detention facilities have an independent responsibility to respect the rights of those detained, including their physical and mental health and well-being. In addition, “[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” (Guiding Principle 22).

In this regard, we would like to highlight the UN Standard Minimum Rules for the Treatment of Prisoners⁸ (otherwise known as the Mandela Rules), which provide guidance on the treatment of detainees and prisoners, the recruitment of trained and skilled personnel, and inspections and contact with the outside world, among other things. We draw your attention to rules 12 to 18 and 24 to 35 of 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 would also like to highlight that conditions of detention can amount to cruel, inhuman or degrading treatment, or even to torture. In this context, we also 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). Further information and recommendations on operating privatized prisons and immigration-related detention facilities can be found in a report by the Working Group on the use of mercenaries (A/72/286)⁹.

We understand the reasoning and importance of limiting outside visits. However, this cannot impact the access to legal counsel as well as communication with family members. We consider that there are numerous alternative options available to keep communication channels open without physical visits, and urge you to ensure such options are made available to all detainees, including those in isolation.

We would like to bring to your attention 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.” During the current global health

⁸ <https://www.ohchr.org/Documents/ProfessionalInterest/tokyorules.pdf>

⁹ https://www.un.org/en/ga/search/view_doc.asp?symbol=A/72/286

crisis, such measures would address many concerns related to overcrowding of places of detention.

As immigration courts have been suspended and it is foreseeable that cases will be further delayed, prolonging unnecessarily the detention of people in immigration detention facilities such as NWPC, which are supposedly designed for temporary detention.

We are concerned that the response of your company to COVID-19 may not be sufficient to respect the health of the persons detained and contain an outbreak of the pandemic into the NWPC, in line the the United Nations Guiding Principles on Business and Human Rights.

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 on the initial steps taken by your company 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 comments you may have on the above-mentioned allegations.
2. Please provide 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 your company could have caused, contributed to or been directly linked in immigration detention facilities, including at the NWPC, as set out in the United Nations Guiding Principles on Business and Human Rights. In particular, please indicate any specific measures that have been introduced to respond to the concerns raised above regarding access to appropriate health care and unhygienic conditions, in the context of the COVID-19 pandemic.
3. What operational-level grievance mechanisms has your company established, or participated in, to effectively address the grievances identified above and remediate them directly?

4. 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.
5. Please provide information on the number of detainees released from the NCPW to non-custodial alternatives to detention.
6. 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.
7. Please provide information on the measures in place to ensure that detainees with symptoms of COVID-19 who are separated in single cells are not being held in solitary confinement, as well as that measures are in place to ensure that the mental health of all migrants detained in the NCPW is cared for, and that they all have access to communication with family and legal counsel.
8. Do company staff receive any training on relevant national and international human rights law and standards, including the United Nations Guiding Principles on Business and Human Rights?

This communication and any response received from you 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 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 responsible of the alleged abuses and to help enable the remediation of adverse human rights impacts.

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 your company to respect the rights of these individuals and prevent the recurrence of further abuses. 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 in contact with you to clarify the issues in question.

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 Mr Zoley the assurances of our highest consideration.

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Special Rapporteur on the human rights of migrants

Githu Muigai
Chair-Rapporteur of the Working Group on the issue of human rights and transnational corporations and other business enterprises

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