

**Mandates 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; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on the human rights of migrants and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment**

REFERENCE:  
AL OTH 80/2020

2 December 2020

Mr. Marjanovic,

We have the honour to address you in our capacities as 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 right of everyone to the enjoyment of the highest attainable standard of physical and mental health; 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 42/9, 42/16, 43/6 and 43/20.

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 the attention of your company information we have received concerning **the alleged ill-treatment and excessive use of force on unaccompanied migrant children living in the Asylum Center in Bogovada by security guards contracted by Dekapolit.**

According to the information received:

In the night of 10 to 11 May 2020, two private security guards have reportedly physically and verbally assaulted three unaccompanied migrant children accommodated at the Asylum Center in Bogovada, located in Lajkovac municipality, Kolubara District in Serbia, which is the primary accommodation facility for unaccompanied minors pending a final decision on their asylum application<sup>1</sup>. The guards are reportedly employees of your private company,

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<sup>1</sup> See <http://www.unhcr.rs/media/docs/2018/LawOnAsylumAndTemporaryProtectionRS.pdf>.

Dekapolit, which renders security services to the Asylum Centre, managed by SCRM.

The alleged misconduct took place in room number 20, where eight unaccompanied boys were being housed during the night of the incident. Reportedly, as the children were unwilling to go to sleep and lower their voices, one security guard slapped three of the children and hit them with a plastic baton, using force when none was necessary or justified, the guard allegedly inflicted physical injuries on one 16 year old boy's back and left arm, in addition to verbally abusing him. He also reportedly injured a second child on his left shoulder, and a third on his face. The second guard present in the room witnessed the incident but did not intervene to stop and protect the children from being beaten by his colleague, thus becoming accomplice to the alleged offenses.

On 13 May 2020, a local civil society organisation filed a criminal complaint on behalf of the abused children with the Lead Public Prosecutor's Office in the town of Ub against the two security guards involved in the incident. However, despite being informed about the complaint, the authorities of the Asylum Centre in Bogovađa reportedly did not take any action to request the immediate suspension of the alleged perpetrators from their functions, pending an investigation. The authorities also allegedly failed to take adequate protective or preventative measures towards the victims.

In the night between 14 and 15 May 2020, upon learning of the existence of video footage and pictures of the incident involving him, one of the two security guards reportedly intimidated and threatened the same group of children, warning them against filming any other videos of him or his colleagues.

On 15 May 2020, the same civil society organization representing the children informed the Principal Public Prosecutor's Office (Osnovno Javno Tuzilastvo) of these new threats. Thereafter, representatives of the Protector of the Citizens visited the Asylum Centre in Bogovađa and the Social Welfare Centre in Lajkovac to conduct an investigation. The Protector of Citizens established that physical harm had indeed been inflicted on the migrant children and that they had not been provided with adequate medical, psychological or other kind of support, thus further aggravating their case.

On 23 June 2020, the Protector of the Citizens issued recommendations to the SCRM and the Ministry of Labour, Employment, Veteran and Social Policy and requested to conduct an investigation to determine the reasons for the established failures to act promptly and protect the children.

On 21 August 2020, another criminal complaint was submitted by a civil society organization against a security guard of the Asylum Center in Bogovađa for acts of violence against another unaccompanied migrant child.

While we do not wish to prejudge the accuracy of this information, we are gravely concerned about the physical and mental integrity of the unaccompanied migrant children residing at Asylum Center in Bogovađa and the apparent lack of

measures taken by Dekapolit to prevent further human rights abuses, ensure proper monitoring, as well as the apparent absence of an accountability mechanism for the alleged facts mentioned above.

We wish to also express our concern over human rights abuses, as per the allegations of ill-treatment and excessive use of force, for which the private security company may be responsible, by failing to meet its responsibility to respect the human rights of children placed in the Asylum Center. We are particularly alarmed by the fact that the private security guards appear to have acted in a manner that does not justify the use of force in the given circumstances, including the requirements of necessity and proportionality.

We wish to further stress that appropriate selection, vetting and training of personnel represent one of the many tools available to business companies to exercise human rights due diligence. The Working Group on the use of mercenaries has repeatedly recalled the need for vetting of past human rights records of personnel and their training on international human rights (see for example A/74/24). These safeguards, as well as overall respect for human rights and international humanitarian law, are also emphasized by relevant international multi-stakeholder initiatives.

Moreover, your company should exercise adequate oversight when providing services that may impact upon the enjoyment of human rights of vulnerable populations such as migrant unaccompanied children.

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 be grateful for the observations of your company 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 measures taken by your company to carry out prompt, impartial, independent and effective investigations into the alleged cases of ill-treatment and excessive use of force against children at the Asylum Center in Bogovada.
3. Please provide detailed information regarding human rights due diligence policies and processes put in place by your company to identify, prevent, mitigate and account for how the company addresses potential and actual impacts on human rights caused or contributed to through the company's activities.
4. Please also indicate how Dekapolit tracks the effectiveness of its measures to prevent and mitigate adverse human rights impacts, including through consultation with affected stakeholders.

5. Please describe selection, vetting and training requirements in place for Dekapolit personnel and how these are implemented, including with respect to personnel previously associated with Dekapolit.
6. Please highlight the steps that Dekapolit is taking, or is considering taking, to ensure non-repetition of past alleged violations and abuses.
7. Please explain what measures your company has taken, or is considering to take to ensure that the individuals affected by the allegations raised in this letter have access to complaint mechanisms without retaliation.

We would appreciate receiving a response within 60 days. After this time, this communication and any response received from your company will be made public via the communications reporting [website](#). 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(s) responsible for the alleged violations.

Please note that a letter expressing similar concerns was sent to the Republic of Serbia.

Please accept, Mr. Marjanovic, the assurances of our highest consideration.

Jelena Aparac  
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

Tlaleng Mofokeng  
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable  
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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 the above-mentioned allegations, we would like to draw the attention of your company to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

In its general comment No. 31 (CCPR/C/21/Rev.1/Add.13), the Human Rights Committee finds that States' obligations to protect and fulfil human rights extend beyond their own agents and also encompass protecting against human rights abuses by third parties, including private companies, and to take positive steps to fulfil human rights. Furthermore, in order to fulfil its obligations, a State must take appropriate measures "to prevent, punish, investigate or redress the harm caused by ... acts of private persons or entities" (para. 8).

On the excessive use of force, we would like to draw your company's attention to Principle 4 of the UN Basic Principles on the Use of Force and Firearms by Law Officials, which provides that, "Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms." Furthermore, Principle 5 provides that, "Whenever the use of force and firearms is unavoidable law enforcement officials shall, (a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate object to be achieved; (b) Minimize damage and injury, and respect and preserve human life; (c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment and (d) Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment."<sup>2</sup> . Principle 14 further states that "in the dispersal of violent assemblies, law enforcement officials may use firearms only when less dangerous means are not practicable and only to the minimum extent necessary." The principle of necessity under international human rights law is interpreted to mean that lethal force may be used as a last resort, with the sole objective of saving life. This is also supported in General Comment No. 37 (2020) on the right of peaceful assembly (article 21) where the issue of private security providers is examined in detail in CCPR/C/GC/37.

We would also like to highlight Articles 30-32 on the use of force by private military security companies as stipulated by the Code of Conduct for Private Security Service Providers, stating that:

- Signatory Companies will require their Personnel to take all reasonable steps to avoid the use of force. If force is used, it shall be in a manner consistent with applicable law. In no case shall the use of force exceed what is strictly necessary, and should be proportionate to the threat and appropriate to the situation.
- Signatory Companies will require that their Personnel not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, or to prevent the perpetration of a particularly serious crime involving grave threat to life.

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<sup>2</sup> Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990

- To the extent that Personnel are formally authorized to assist in the exercise of a state's law enforcement authority, Signatory Companies will require that their use of force or weapons will comply with all national and international obligations applicable to regular law enforcement officials of that state and, as a minimum, with the standards expressed in the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990).

Moreover, we would like to refer your company to the OHCHR Guidance on less lethal weapons in law enforcement<sup>3</sup> and in particular the circumstances of potentially unlawful use of batons, noting that officials should avoid baton strikes to sensitive areas of the body, such as the head, neck and throat, spine, kidneys and abdomen. Batons shall not be used against a person who is neither engaged in nor threatening violent behaviour; such use is likely to amount to cruel, inhuman or degrading treatment, or even torture.

Furthermore, the Special Rapporteur on extrajudicial, summary or arbitrary executions noted in a report on the operational conduct of private security providers on the right to life and the use of force by private security providers in law enforcement contexts (A/HRC/32/39) that where States choose to devolve some of their responsibilities for the provision of security to private entities, it is clear that those actions are attributable to the State, and that at least the same restrictions apply to private security providers operating in such a context as would apply to State law enforcement personnel. He further cautions on the two standards of necessity and proportionality generally applied at the instant of an operation. Necessity is a factual cause and effect assessment that evaluates whether force should be used at all, and if so, how much force is actually unavoidable in order to achieve the desired outcome. The requirement of necessity raises the question of whether the threat could not be averted by resort to less harmful means and, thus, implies a graduated approach to the use of force. Therefore, any use of force can be regarded as necessary only when it constitutes the least harmful means available at the time that can be expected to achieve the desired outcome. The proportionality requirement relates to the question of whether the benefit expected to result from the use of force, that is, neutralizing a threat, justifies the harm likely to be caused by it. While establishing necessity requires a factual cause-and-effect assessment, demanding that the least harmful means be used to achieve a desired effect, proportionality entails a value judgment that balances harm and benefit, demanding that the harm that might result from the use of force is proportionate and justifiable in relation to the expected benefit

Where States directly contract security services from a private security provider, the standards and level of the State's responsibility for the actions of its agents must remain unaffected. Where private corporations or individuals contract a private security provider, or where corporations provide their own security, the standards remain effectively the same, a fact that should be clarified by national legislation. States must impose on private security providers and their personnel a duty of precaution concerning recruitment, training, equipment, planning, command and control, and reporting. Moreover, in circumstances they assess as likely to require the use of force, private security personnel have a responsibility to inform State law enforcement and to follow any instructions they are given.

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<sup>3</sup> [https://www.ohchr.org/Documents/HRBodies/CCPR/LLW\\_Guidance.pdf](https://www.ohchr.org/Documents/HRBodies/CCPR/LLW_Guidance.pdf)

We would also like to highlight the UN Guiding Principles on Business and Human Rights (A/HRC/17/31), which were unanimously endorsed by the Human Rights Council in June 2011, are relevant to the impact of business activities on human rights. These Guiding Principles are grounded in recognition of:

- a. "States' existing obligations to respect, protect and fulfil human rights and fundamental freedoms;
- b. The role of business enterprises as specialized organs or society performing specialized functions, required to comply with all applicable laws and to respect human rights;
- c. The need for rights and obligations to be matched to appropriate and effective remedies when breached. "

According to the Guiding Principles, States have a duty to protect against human rights abuses within their territory and/or jurisdiction by third parties, including business enterprises.

In this regard, Serbia has a duty to ensure that private companies operating within its territory, such as Dekapolit, respect human rights by taking steps to prevent as well as investigate, punish, and redress abuses through legislation, regulations, policies, and adjudication.

Furthermore, Serbia has an obligation to ensure access to effective remedial mechanisms for persons whose rights have been violated by business activities within its territory. 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). This requires States to "state clearly that all companies domiciled within their territory and/or jurisdiction are expected to respect human rights in all their activities" (Guiding Principle 2). 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.

In order to gauge human rights risks, business enterprises should 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 [. . . ] meaningful consultation with potentially affected groups and other relevant stakeholders (Guiding Principle 18).

We would also like to draw your company's attention to the provisions set out in the Global Compact for Safe, Orderly Migration and Regular (A/CONF.231/3) that the government of Serbia adopted on 10 December 2018, which sets out in its Objective 7 f) the commitment of States to protect unaccompanied and separated children at all stages of migration through the establishment of specialized procedures for their identification, referral, care and family reunification, and provide access to health care services, including mental health, education, legal assistance and the right to be heard in administrative and judicial proceedings, including by swiftly appointing a competent

and impartial legal guardian, as essential means to address their particular vulnerabilities and discrimination, protect them from all forms of violence, and provide access to sustainable solutions that are in their best interests.