

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

REFERENCE: UA NRU 1/2016:

1 June 2016

Excellency,

We have the honour to address you in our capacity as 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 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 26/22, 24/6, 24/13, 26/19 and 25/13.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the deteriorating health condition of **Mr. Milad Zonar Saghar, Ms. Nages Alizadeh, Mr. Daryosh Alizadeh, Mr. Jabar Hamvadi and Mr. Mosa Hamvadi** while being based at the Regional Processing Centre on Nauru.

According to the information received:

Background information

There are currently three facilities for the processing of asylum seekers on the island of Nauru (designated as RPC1, RPC2 and RPC3). All three facilities were established under the control of the Government of Australia, through a Memorandum of Understanding between the Governments of Australia and Nauru, signed into force on 29 August 2012.

The above mentioned facilities, in their day-to-day operation, are managed by Broadspectrum under contract by the Department of Immigration and Border Protection (DIBP) of the Government of Australia. Wilson Security, a private company sub-contracted by Broadspectrum, currently provides security services for the detention facilities on Nauru.

During the course of recent months, several incidents of self-immolation and attempted suicides have been reported in these facilities on Nauru. Together with

the cases described below, these incidents highlight the desperate situation faced by asylum seekers on Nauru.

The situation in the mentioned facilities on Nauru was subject to two previous communications sent on 12 November 2015 (see A/HRC/31/79, case no. NRU 2/2105) and on 16 November 2015 (see A/HRC/31/79, case no. NRU 3/2015). Both communications were sent to the Governments of Australia and Nauru. We regret that, to date, no response from your Excellency's Government has been received in relation to these communications.

According to the information received:

Mr. Milad Zonar Saghar

Mr. Milad Zonar Saghar is a 20-year-old Iranian national who belongs to an Arab minority based in the city of Ahvaz. In February 2014, Mr. Saghar, his sister and her husband were transferred from Christmas Island to Nauru, where they were held at the Regional Processing Centre 3 (RPC3).

While detained at RPC 3, Mr. Saghar's sister became pregnant and gave birth to twins. On 17 April 2015, she and her family were thus transferred to community immigration centre in Brisbane. Following the transfer of his sister, Mr. Saghar was transferred to RPC2 for single adult men.

As Mr. Saghar's refugee status determination is connected to the application of his sister, it will reportedly not be processed until she returns to Nauru. However, it is unclear if and when his sister will be able to return to Nauru.

It is alleged that the material conditions on Nauru, the indefinite family separation and the uncertainty regarding his future have led to the deterioration of Mr. Saghar's mental health condition. He therefore submitted multiple requests for family reunification to the Department of Immigration and Border Protection (DIBP) of Australia, the last one on 30 March 2016. On 1 April 2016, Mr. Saghar received a reply stating that a family reunion will not occur at this time.

During a recent visit, an official of the Australian Government reportedly presented Mr. Saghar with the following three options: (1) to wait for up to two more years in RPC2 until his sister and her family may return to Nauru; (2) to return to Iran voluntarily; or (3) to settle in Cambodia. Since none of these options are viable for Mr. Saghar, his mental health condition has reportedly deteriorated significantly over the past weeks.

On 29 April 2016, Mr. Saghar doused himself in petrol and held a lighter above his head. After an interpreter intervened and prevented his self-immolation attempt, Mr. Saghar was allegedly arrested and held in police custody for 24 hours. Although he was released without charge, Mr. Saghar was reportedly told that he would be charged with attempted suicide.

Upon his release from police custody, Mr. Saghar was taken to a supervised accommodation unit in the health clinic of RPC1. On 11 May 2016, he was transferred to a managed accommodation unit at RPC1. According to information received, Mr. Saghar currently presents a catatonic state and refuses to eat and to speak or engage with anyone.

It is further reported that communication with his family is difficult due to the slow internet connection, the banning of social media sites, such as facebook and skype, and the limited availability of cell phones on Nauru. Moreover, as Mr. Saghar's mental health condition prevents him from engaging in activities at the centre, he is not able to accumulate the points necessary to obtain a phone card.

Relevant authorities were reportedly informed about the deteriorating mental health condition of Mr. Saghar over one year ago. However, it is alleged that he does not receive adequate specialized treatment. Although Mr. Saghar was referred to a mental health team, he engages with them only sporadically. It is alleged, that the appointments fail to properly address Mr. Saghar's mental health condition as he is merely advised to sleep and drink water.

Ms. Narges Alizadeh and Mr. Daryosh Alizadeh

Ms. Narges Alizadeh and her brother Mr. Daryosh Alizadeh are Afghan nationals who arrived on Nauru in October 2013. They are currently held at Nauru's RPC 3.

It is reported that the siblings have been separated from their family for almost two years. Initially, they were held on Nauru together with their mother. However, she was medically evacuated to Darwin on 31 August 2014 and is currently held in a community immigration centre in Sydney together with another sister of Ms. Narges Alizadeh and Mr. Daryosh Alizadeh. Although their father lives in Australia on a permanent visa, he was reportedly unable to sponsor his family due to a disability.

The refugee status determination of Ms. Narges Alizadeh and Mr. Daryosh Alizadeh was reportedly put on hold due to family separation. It is unclear if and when they will be reunited with their family.

The indefinite family separation and the living conditions on Nauru allegedly have a detrimental impact on the mental health of Ms. Narges Alizadeh and Mr. Daryosh Alizadeh. It is reported that both of them are on antidepressants and sleep medication. In March and May 2016, Ms. Narges Alizadeh reportedly attempted suicide three times by drinking mosquito repellent. She does not leave the tent and she has stopped eating and drinking for a period of three days in two occasions. Although a nurse visits their tent once a week, the siblings reportedly do not receive adequate treatment for their mental health condition.

It is further reported that the indefinite family separation has aggravated the physical and mental health problems of their mother as she increasingly concerned about the well-being of her children.

Mr. Jabar Hamdavi and Mr. Musa Hamdavi

Mr. Jabar Hamdavi and his 23-year old son Musa Hamdavi are Iranian nationals who arrived on Nauru in February 2015.

Initially, they were held together with Mr. Musa Hamdavi's mother and sister. However, on 1 November 2014, his mother and sister were transferred to Australia for medical reasons. They are currently held at the Melbourne Immigration Transit Accommodation, a centre in the city of Melbourne. It is alleged that the family has not been provided with a reason for their separation and it remains unclear if and when they will be reunited.

Mr. Musa Hamdavi is reportedly underweight and suffers from depression. Between April and May 2016, he spent five weeks in an isolation block at RPC1 due to his mental health condition and his refusal to eat. In early May, Mr. Musa Hamvadi returned to RPC3. It is reported that he continues to refuse to eat and, as a result, weighs only 43 kilogram. Due to his depression, he does not engage in any activities and he only leaves the tent in order to get his antidepressants and sleeping medications.

It is further reported that Mr. Jabar Hamdavi has diabetes and heart problems. He is currently on anti-depressants as well as medication for high blood pressure, his heart and diabetes. In February 2016, Mr. Jabar Hamdavi was transferred to RPC1 due to his heart problems. However, he reportedly had to return to RPC3 in order to take care of his son. Neither Mr. Jabar Hamdavi nor Mr. Musa Hamdavi engage with the mental health staff as they allegedly feel more distressed after seeing them.

While we do not wish to prejudge the accuracy of these allegations, we express serious concern at the adverse impact of the conditions on Nauru on the physical and mental health of Mr. Saghar, Ms. Narges Alizadeh, Mr. Daryosh Alizadeh, Mr. Jabar Hamdavi and Mr. Musa Hamvadi. Serious concern is expressed that the living conditions on Nauru, the indefinite family separation and the overall lack of perspectives and long-term solutions has further exacerbated the already critical health condition of the five individuals as well as the health of their respective families. In addition, concern is expressed about threats to face criminal charges for attempted suicide and the difficulties in contacting family members abroad may lead to the further deterioration of their mental health. Finally, serious concern is expressed that Mr. Saghar, Ms. Narges Alizadeh, Mr. Daryosh Alizadeh, Mr. Jabar Hamvadi and Mr. Musa Hamvadi do not receive effective treatment that adequately addresses their physical and mental health condition. We consider the situation of these individuals of extreme gravity given the danger of irreparable harm to their physical and mental health.

In connection to the above alleged facts and concerns, we would like to stress that your Excellency's Government has the obligation to protect the right to life, physical and mental integrity of all persons; and to ensure that "no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". These rights are set forth inter alia in the Universal Declaration for Human Rights and in Article 7 of the International Covenant on Civil and Political Rights signed by your Excellency's Government on 12 November 2001. In addition, the absolute and non-derogable prohibition of torture and other ill-treatment is codified in articles 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which Nauru ratified on 26 September 2012.

We would also like to refer your Excellency's Government to article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination, signed by Nauru on 12 November 2001, which indicates that States shall prohibit and eliminate racial discrimination in all its forms and guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the right to public health, medical care, social security and social services (ICERD, Art.5 (e)(iv)).

With regard to the day to day operations managed by Broadspectrum and Wilson Security, we would like to refer to paragraph 20 of Human Rights Council Resolution 30/6 that requested the Working Group on the use of mercenaries to continue to, inter alia, monitor the activities of private military and security companies in different parts of the world. In this context, the Working Group refers to the United Nations Guiding Principles on Business and Human Rights, unanimously endorsed by the Human Rights Council in 2011, which sets out, inter alia, that States must protect against human rights abuse within their territory and/or jurisdiction committed by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish, and redress such abuse through effective policies, legislation, regulations and adjudication, thus ensuring that those affected by the abuses within their territory have access to effective remedy.

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 as soon as possible on the initial steps taken by your Excellency's Government to safeguard the rights of the above-mentioned persons 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 detailed information on the steps your Excellency's Government has undertaken to ensure the enjoyment of the right to the highest attainable standard of physical and mental health of asylum seekers detained on Nauru. In particular, please provide information on any measures taken to ensure that Mr. Saghar, Ms. Narges Alizadeh, Mr. Daryosh Alizadeh, Mr. Jabar Hamvadi and Mr. Musa Hamvadi have access to adequate specialized treatment, including therapy and medication.
3. Given that the indefinite family separation in such difficult circumstances has led to the significant deterioration of the mental and physical health of five individuals mentioned above and that of their relatives, please provide information regarding the steps your Excellency's Government has undertaken to ensure their family reunification.
4. Please provide detailed information on measures taken to ensure that asylum seekers detained on Nauru can regularly communicate with their family members abroad.
5. Please indicate whether Mr. Saghar faces possible charges for attempted suicide.

While waiting for your response, we urge your Excellency's Government to take immediate action concerning the situation of the individuals named above, including by providing adequate medical assistance and treatment through transfer to a non-custodial healthcare facility, and by addressing their family situation. In the event that your investigations support or suggest the above allegations to be correct, we request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts and ensure the accountability of any person(s) responsible for the alleged violations.

We would like to inform your Excellency's Government that a letter addressing similar allegations and concerns as those mentioned above has also been sent to the authorities of Australia, and to Broadspectrum Corporation.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

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

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