

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
OTH 18/2016:

1 June 2016

Dear Mr. Graeme Hunt,

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 your attention information we have received concerning the **deteriorating health condition of Mr. Milad Zonar Saghar, Ms. Nages Alizadeh, Mr. Daryosh Alizadeh, Mr. Jabar Hamdavi and Mr. Mosa Hamdavi while being based at the Regional Processing Centre on Nauru.**

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 your company 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.

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 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 from your company 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 he 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 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. 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 in these facilities on Nauru on the physical and mental health of Mr. Saghar, Ms. Narges Alizadeh, Mr. Daryosh Alizadeh, Mr. Jabar Hamdavi and Mr. Musa Hamdavi. 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 the 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, and Mr. Daryosh Alizadeh, Mr. Jabar Hamdavi and Mr. Musa Hamdavi 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.

We have written to the Governments of Australia and Nauru to express our concern about, and to request more information on, the allegations described above.

In connection to the above alleged facts and concerns, please refer to the **Reference to international law Annex** attached to this letter which cites international human rights instruments and standards relevant to these allegations. The full texts of the human rights instruments and standards are available on www.ohchr.org or can be provided upon request.

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. Has your company received any guidance from the Governments of Australia and Nauru on its corporate responsibility to respect human rights, specifically on its expected due diligence process, in line with the UN Guiding principles on Business and Human Rights?
3. Do company staff receive any training on human rights and humanitarian law and standards?
4. How is Broadspectrum meeting its responsibility to respect human rights in a way that complies with international human rights standards? More specifically:
 - a. Does your company have a policy commitment (approved at the most senior level of the company) that is reflected in its operational policies and procedures?
 - b. Please explain what your company is doing to carry out its human rights due diligence in order to identify, prevent, mitigate and account for how it addresses adverse human rights impacts such as those referred in this letter.
 - c. How does the company track the effectiveness of its measures to prevent and mitigate adverse human rights impacts, including through consultation with affected stakeholders?
 - d. What operational-level grievance mechanisms has your company established, or participated in, to effectively address the grievances identified above and remediate them directly?

While awaiting a reply, we urge that all necessary interim measures be taken to address the situation of the individuals named above and prevent the re-occurrence of the alleged violations of their rights. In the event that any investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible of the alleged violations.

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

Please accept the assurances of our highest consideration.

Juan Ernesto Mendez
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

François Crépeau
Special Rapporteur on the human rights of migrants

Patricia Arias
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

Dainius Pūras
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

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

Annex

Reference to international human rights law and principles

In connection with above alleged facts and concerns, we would like to take this opportunity to draw your attention to applicable international human rights norms and standards, as well as authoritative guidance on their interpretation. These include:

- The Universal Declaration of Human Rights (UDHR);
- The UN Guiding Principles on Business and Human Rights;
- The UN Global Compact Principles;
- International Code of Conduct for Private Security Service Providers
- The International Covenant on Economic, Social and Cultural Rights (ICESCR);
- The International Convention on the Elimination of All Forms of Racial Discrimination;
- The International Covenant on Civil and Political Rights (ICCPR); and
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

In particular, would like to bring to your attention the UN Guiding Principles on Business and Human Rights (contained in A/HRC/7/31), which the Human Rights Council unanimously adopted in 2011 following years of consultations with Governments, civil society and the business community. The Guiding Principles have been established as 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 to address adverse human rights impacts with which they are involved. The responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate. It exists independently of States' abilities and/or willingness to fulfil their own human rights obligations, and does not diminish those obligations. Furthermore, it exists over and above compliance with national laws and regulations protecting human rights.

The corporate responsibility to respect human rights covers the full range of rights listed in the UDHR, the ICCPR and the ICESCR. In this regard, we wish to refer to article 25 of the UDHR which recognizes the right of everyone to a standard of living adequate for the health and well-being of himself and of his family, including medical care. This right is further elaborated in article 12 of the ICESCR, which guarantees the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. Moreover, we would like to remind you that everyone has the right to life and the protection of their physical and mental integrity as well as the right to be free from torture or cruel, inhuman or degrading treatment or punishment. These rights are set forth, *inter alia*, in the UDHR, the ICCPR and the CAT.

The Guiding Principles 11 to 24 and 29 to 31 provide guidance to business enterprises on how to meet their responsibility to respect human rights and to provide for remedies when they have caused or contributed to adverse impacts.

In this connection, we recall that the Guiding Principles have identified two main components to the business responsibility to respect human rights, which require that “business enterprises: (a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur; [and] (b) Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts” (Guiding Principle 13). This dual-requirement is further elaborated by the requirement that the business enterprise put in place:

1. A policy commitment to meet their responsibility to respect human rights;
2. A human rights due-diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights. The business enterprise should communicate how impacts are addressed; and
3. Processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute (Guiding Principle 15).

Each of these is elaborated below.

Policy Commitment:

The first of these requirements, a policy commitment, must be approved by the company’s senior management, be informed by human rights expertise (internal or external) and stipulate the human rights expectations of personnel, business partners and other parties directly linked to its operations, products or services. The statement of policy must be publicly available and communicated internally and externally and reflected in operational policies and procedures necessary to embed it throughout the business enterprise (Guiding Principle 16).

Human Rights Due Diligence:

The second major feature of the responsibility to respect is human rights due-diligence, the procedures for which have been deemed necessary to “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” (Guiding Principle 18). Adequate human rights due diligence procedures must include “meaningful consultation with potentially affected groups and other relevant stakeholders, as appropriate to the size of the business enterprise and the nature and context of the operation” (Guiding Principle 18).

To prevent and mitigate against adverse human rights impacts, the findings of the human rights impact assessment should be effectively integrated across the relevant internal functions and processes of a company (Guiding Principle 19). Responsibility for addressing such impacts should be assigned to the appropriate level and function within the business enterprise, and internal decision-making, budget allocations and oversight processes should enable effective responses to such impacts.

Any response by a company to address its adverse human rights impacts should be tracked to ensure that it is effective. Tracking should be based on appropriate qualitative and quantitative indicators, and drawing on feedback from internal and external sources including affected stakeholders (Guiding Principle 20). In addition, information about activities taken to address any adverse human rights impacts, and how effective those actions have been, should be communicated externally (Guiding Principle 21).

Remediation:

The Guiding Principles acknowledge that “even with the best policies and practices, a business enterprise may cause or contribute to an adverse human rights impact that it has not foreseen or been able to prevent”. Where a company identifies that it has “caused or contributed to adverse impacts” it “should provide for or cooperate in their remediation through legitimate processes” (Guiding Principle 22).

Business enterprises should establish or participate in operational-level grievance mechanisms “to make it possible for grievances to be addressed early and remediated directly” (Guiding Principle 29). Operational-level grievance mechanisms should reflect eight criteria to ensure their effectiveness in practice, as outlined in Guiding Principle 31: (a) Legitimate, (b) Accessible, (c) Predictable, (d) Equitable, (e) Transparent, (f) Rights-compatible, (g) A source of continuous learning, and (h) Based on engagement and dialogue. Lastly, operational-level grievance mechanisms must not be used to preclude access by individuals and communities to judicial or other non-judicial grievance mechanisms (Guiding Principle 29).

Regarding the International Code of Conduct for Private Security Service Providers, we wish refer to the International Code of Conduct for Private Security (ICOC), a voluntary multi-stakeholder initiative involving representatives of private security companies, states and civil society organizations which articulates the obligations of private security providers particularly with regard to international humanitarian law and human rights law. The ICOC clarifies important provisions for signatory companies regarding, inter alia, the conduct of personnel, management and governance of private security enterprises, including the need to exercise due diligence in the selection, vetting and review of personnel. It is recommended that membership in the ICOC Association be considered by Broadspectrum and Wilson Security to strengthen its commitment to its obligations under international humanitarian law and human rights law.