



# General Assembly

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## Human Rights Council

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Agenda item 3

**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development**

## **Written statement\* submitted by International-Lawyers.Org, a non-governmental organization in special consultative status**

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[20 August 2020]

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\* Issued as received, in the language(s) of submission only.



## **Violations of the Right to Health of Migrants by Private Detention Center Operators in the United States of America**

International-Lawyers.Org (INTLawyers) and the Refugee and Immigrant Center for Education and Legal Services<sup>1</sup> (RAICES) respectfully draw the attention of the Council to the violations of human rights by private detention center operators carrying out these action under the responsibility of the United States of America (U.S.) Government. The State responsibility of the U.S. Government is incurred by the State's duty to properly supervise and control these private detention center operators.

The United States government has often outsourced the task of detaining migrants—including asylum seekers, children, women, families, and others deserving protection—to private companies, which are referred to as non-State actors (NSA). As discussed below NSAs often have a record of abusing the rights of noncitizens who are under their control. As a consequence, the above non-governmental organizations (NGOs) urge the Council to request the special mechanisms of the Council to examine the practices of NSAs that are involved in the detention of noncitizens and demand that the U.S. government end its violations of their rights and compensate them for the already-occurred violations.

The U.S. government agency Immigration and Customs Enforcement (ICE) is part of the Department of Homeland Security and has been given the primary responsibility for the detention of noncitizens as civil (pre-trial) detainees to ensure their attendance at their immigration hearings or for their removal. This agency sometimes delegates this responsibility to NSAs that make significant profits from running detention centers.

### **Violations of Noncitizens' Rights During the Pandemic**

The current global pandemic of the Novel Coronavirus, or COVID-19, has highlighted the inadequacy of private detention centers' healthcare and health emergency preparedness. Neither Karnes, Dilley, nor Berks, the three family detention centers run by private contractors under the supervision of ICE, had prepared emergency protocol, nor had they taken adequate emergency measures to deal with the outbreak, even months after it had started. These detention centers lack adequate isolation rooms, medical staff, and basic hygiene products or equipment. Moreover, the living quarters—for sleeping, eating, and leisure—are often overcrowded and social distancing is impossible.

Several lawsuits related to the failure of the U.S. Government and its contractors to protect detainees from contracting COVID-19 are pending in various U.S. courts. The absence of adequate preparedness led to an outbreak in several detention centers, including eighty-one cases of COVID-19 in the family detention centers.<sup>2</sup>

To date, eight noncitizens have died due to COVID-19 while in ICE custody. Five of the individuals were detained in privately owned, operated and/or managed detention centers, including three deaths of noncitizens detained in CoreCivic facilities.<sup>3</sup> As of 9:12 PM on Wednesday, August 19, 2020, ICE reports that 1,040 of its current 21,402 detainees are COVID-positive and under isolation or monitoring, and that a total of 4,721 ICE detainees have been diagnosed with COVID-19.<sup>4</sup> At least 3,378 – 71.26% – of those COVID-positive individuals are or were detained in privately owned and/or run detention centers. ICE also reports that “there have been 45 confirmed cases of COVID-19 among ICE employees working in detention facilities.”<sup>5</sup> This data is dangerously misleading, as it does not include any private contractors or their employees. Several lawsuits related to COVID-19 are

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<sup>1</sup> RAICES is a non-profit organization representing noncitizens in their immigration proceedings, especially in claims for asylum and other forms of protection from serious human rights abuses. Many of the examples in this statement have been drawn directly from cases with which this organization of human rights defenders is directly aware.

<sup>2</sup> U.S. Immigration and Customs Enforcement, ICE Guidance on COVID-19, U.S. Immigration and Customs Enforcement. Aug. 19, 2020.

<sup>3</sup> American Immigration Lawyers Association, *Deaths at Adult Detention Center*, AILA. Aug. 12, 2020.

<sup>4</sup> Supra note 2.

<sup>5</sup> Id.

currently pending in various U.S. courts. The absence of adequate preparedness protocols coupled with inadequate steps to protect detainees constitutes a violation of the right to health of the detainees.

On numerous occasions, NGOs have publicly raised concerns about the standard of medical care for detained noncitizens. The inadequate medical services in detention centers has been a great concern to groups that works in the detention centers. RAICES clients have frequently complained about inadequate medical care, including lack of translation services, lack of response to clients' requests for medical treatment, inadequacy of the medical treatment itself, mistreatment by medical care providers, and inadequate medical care for children.

Upon arrival at the Karnes Detention Center, A.D.D., a detained noncitizen woman, informed detention center staff that she had been diagnosed with and treated for cysts in her breasts and ovaries in her home country.<sup>6</sup> Approximately one week later A.D.D. informed the medical staff that she was experiencing severe pain and requested an examination. She was told that they could only offer her ibuprofen and that they did not have the right specialist for the examination. She returned to the medical center approximately four times with the same complaints, and each time she was given ibuprofen or acetaminophen and told that they did not have the specialist or equipment to attend to her issues.<sup>7</sup> After submitting four unanswered requests for medical treatment, A.D.D. gave up on trying to get medical care for her diagnosed conditions in Karnes.<sup>8</sup> She was later transferred to a different medical facility, where her symptoms worsened. A.D.D. saw medical staff in the second detention center, but again did not receive adequate treatment. When A.D.D. told nurses that ibuprofen did not work, a nurse said that it was her only option.<sup>9</sup> In a later visit a nurse spoke to A.D.D. in English, although A.D.D. only speaks Spanish. "The nurse talked to me in English and based on her tone, she seemed to be really annoyed by me. I explained to her through the guard that I have ovarian cysts and in pain She told me that my pain was not an emergency and that my only option was to take a *laxante*, which means a laxative. I told her that I did not need or want a laxative, but she made me take it anyway."<sup>10</sup> A.D.D. was finally taken to a hospital, where she received an exam. She was diagnosed with endometriosis, but she continued to receive only ibuprofen to manage the pain, and no other form of treatment or pain management.<sup>11</sup>

### Children's Medical Care

Among the most vulnerable detainees are children, who often arrive in the United States after not only suffering significantly in their home countries but also during their journey to the U.S. Although the United States has refused to ratify the United Nations (U.N.) Convention on the Rights of the Child, it is bound by both international, both in the U.N. and Inter-American context, and domestic law that provides protections for children irrespective of their status as a citizen or noncitizen.

RAICES has noted that parents have often raised concerns about medical care provided to noncitizen children who are in the custody of the U.S. government. In addition to concerns about family detention facilities not having sufficient staff trained specifically for pediatric medical or dental care, detained parents have reported that children, some as young as one year old, are fed the same food as the adults. One father, B.D.C.A., whose son has gastroschisis, stated that his son does not have an appetite and will not eat the food.<sup>12</sup> B.D.C.A. reports that when he asked medical staff for alternative food options for his son, they told him there were no other options.<sup>13</sup> B.D.C.A. goes on to state, "I feel like for the most part, the Karnes medical team has failed him. I find that the medical treatment here is

<sup>6</sup> Advocacy Declaration of A.D.D. 3.

<sup>7</sup> Id. 4-6.

<sup>8</sup> Id. 7.

<sup>9</sup> Medical Declaration of A.D.D. 6.

<sup>10</sup> Id. 10.

<sup>11</sup> Id. 17.

<sup>12</sup> Declaration of B.D.C.A. 4.

<sup>13</sup> Id.

minimal. If children get worse in their care, they cover it up rather than help the children. I do not feel like I can request to have more work done to help my child.”<sup>14</sup>

The Council is urged to specifically mandate the relevant special mechanisms of the Council to examine and report on the practices of NSAs that are involved in the detention of noncitizens in the United States of America. While we are aware of the Report of the Special Rapporteur on migrants’ rights on this subject, we believe it deserves follow-up based on extensive onsite visits. The Council is also urged to demand that the U.S. government end the violations of noncitizens’ rights by NSAs and to compensate victims for the violations of their rights that have already occurred. In this regards, it is necessary that the United States change its laws, policies, and practices to ensure that they are consistent with its international legal obligations related to human rights and for the U.S. courts to uphold such consistency.

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<sup>14</sup> Id. 7.