United Nations A/HRC/45/9

General Assembly

Distr.: General
9 July 2020

Original: English

Human Rights Council
Forty-fifth session
14 September–2 October 2020
Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Impact of the use of private military and security services in immigration and border management on the protection of the rights of all migrants

Report 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

Summary

The present report covers the activities 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 since its previous report to the Council (A/HRC/42/42). It also highlights the impact on the protection of the human rights of all migrants of the increased use of private military and security services in immigration and border management.

In the report, the Working Group outlines the overall context in which these services are provided and the relevant normative framework. It examines four main categories of services: provision of research and technical expertise; border security technologies and monitoring services; immigration detention, returns and removals; and the implementation of "externalization" policies. It shines a light on the impact of these services on the human rights of all migrants. It then looks at the lack of transparency, oversight and accountability of companies operating in this sector, and the impact on effective remedies for victims of violations and abuses by these companies.

It concludes that, at times, companies are directly responsible for human rights abuses of migrants, notably in situations of deprivation of liberty; while in other instances, they are complicit in widespread human rights violations and abuse caused by other actors, such as immigration and border authorities.

The Working Group ends its report with recommendations addressed primarily to States and private military and security companies, aimed at triggering a fundamental evaluation of the role that companies play in reinforcing security over humanitarian approaches to immigration and border management, as well as the specific security services they provide in this sector.

GE.20-09154(E)
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I. Introduction

1. The present report is submitted pursuant to Commission on Human Rights resolution 2005/2, in which the Commission established the mandate 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, and Human Rights Council resolution 42/9, in which the Council renewed that mandate. The report covers the activities of the Working Group since its previous report to the Council (A/HRC/42/42). It also analyses the impact on the protection of the human rights of all migrants, including refugees and asylum seekers, of the increased use of private military and security services in immigration and border management.

2. During the reporting period, the Working Group was composed of Chris Kwaja (Chair), Jelena Aparac, Lilian Bobea, Sorcha MacLeod and Saeed Mokbil.

II. Activities of the Working Group

A. Annual sessions

3. The Working Group held its thirty-eighth and thirty-ninth sessions in Geneva from 25 to 29 November 2019 and from 30 March to 3 April 2020 respectively. During the sessions, members of the Working Group held bilateral meetings with representatives of Member States, international and non-governmental organizations and other relevant interlocutors, and convened expert meetings, panel events and consultations. The March/April session was held virtually owing to the travel restrictions related to the coronavirus disease (COVID-19) pandemic.

B. Communications and statements

4. The Working Group sent several communications jointly with other special procedure mandate holders. An urgent action and a joint media statement were issued highlighting allegations of human rights violations and abuses in an immigration detention centre in the United States of America in the context of the COVID-19 pandemic. Allegation letters were addressed to two Governments and a company regarding the alleged role of a private military company in violations of international humanitarian law and violations and abuses of international human rights law allegedly committed during the armed conflict in Sri Lanka between 1984 and 1988, as well as the related lack of accountability and remedies for victims. Allegation letters were also addressed to Governments and one non-State actor regarding the use of mercenaries and related actors in the context of hostilities near Tripoli, Libya, followed by a joint media statement.[1]

C. Country visits

5. The Working Group places great importance on undertaking country visits. Despite sending numerous requests for country visits and reminders to follow up on previous letters, most requests did not receive a response. Nevertheless, three letters of acceptance were received, from the Governments of Bosnia and Herzegovina and of Australia to conduct visits in 2020 and 2021 respectively, and from the State of Palestine.

D. Selected activities

6. In September 2019, the Working Group made a submission to the open-ended intergovernmental working group to elaborate the content of an international regulatory framework, without prejudging the nature thereof, to protect human rights and ensure accountability for violations and abuses relating to the activities of private military and

[1] Communications are available at https://spcommreports.ohchr.org.

security companies, held pursuant to Human Rights Council resolution 36/11. The submission outlined key elements for an international regulatory framework for private military and security companies, arguing that a legally binding international instrument is needed.[2]

7. In September and October 2019, the Chair of the Working Group, Mr. Kwaja, presented its thematic reports to the Human Rights Council and General Assembly, respectively.

8. In November 2019, the Working Group organized an event entitled "The use of private military and security companies in migrant detention centres" at the Forum on Business and Human Rights, held in Geneva. Ms. Bobea chaired the panel, and Ms. Aparac presented an expert statement alongside other experts and practitioners. The panel highlighted the appalling human rights abuses in such facilities in some States in the Americas, Europe and Oceania, while a refugee recounted his first-hand experience of mistreatment suffered at the hands of private security providers while held in offshore detention.[3] In May 2020, Mr. Kwaja delivered a statement at an expert virtual consultation, organized in conjunction with the Office of the High Commissioner for Human Rights (OHCHR) Regional Office for South-East Asia, on the role of private military and security companies in immigration and border management in Asia-Pacific.

9. During the Forum on Business and Human Rights in November 2019, Ms. MacLeod participated in an interactive round table entitled "Gender guidance for the Guiding Principles on Business and Human Rights: from paper to practice". Also that month, the Working Group held a panel event, in conjunction with DCAF – Geneva Centre for Security Sector Governance, on gender and private military and security companies, focusing on the role of States, companies and clients in addressing human rights challenges. Mr. Kwaja chaired the panel and Ms. MacLeod delivered a statement on the gendered human rights impacts of private military and security companies.[4] Another panellist presented a policy brief on gender and private security that had been produced by DCAF, the United Nations Entity for Gender Equality and the Empowerment of Women and others,[5] and lessons she had learned while working in that sector in Guatemala. Ms. MacLeod also participated in events in London, Kharkiv, Ukraine, and Geneva on behalf of the Working Group.

10. In April 2020, the Working Group convened an expert virtual consultation on the evolving forms, trends and manifestations of mercenaries and mercenary-related activities. The consultation fed into the preparation of the Working Group's 2020 report to the General Assembly.

III. Thematic report

11. The substantive report of the Working Group focuses on the use of private military and security services in immigration and border management. Over the years, the Working Group, alongside other human rights actors, has contributed to raising awareness about the human rights impacts of certain aspects of this business sector, notably privatized immigration detention facilities, and has expressed deep concerns about its impacts on the human rights of all migrants. Other subsectors of the border security market are, however, less well-known, despite their profound ramifications for the human rights and dignity of migrants. The thematic report will shine a critical light on them.

12. The thematic report begins by laying out the contexts in which this business sector emerged and functions, highlighting the negative consequences of State approaches to migration governance in recent years,[6] and describing the multitude of corporate actors

[2] See www.ohchr.org/EN/HRBodies/HRC/WGMilitary/Pages/IGWG.aspx (in "Submissions by other stakeholders").

[3] See www.ohchr.org/EN/NewsEvents/Pages/SecurityPrivatisationMigrationContexts.aspx.

[4] See A/74/244.

[5] See https://dcaf.ch/sites/default/files/publications/documents/GSPolicyBrief_2%20EN%20FINAL_0.pdf.

[6] See www.ohchr.org/Documents/Issues/Migration/MigrationHR_improvingHR_Report.pdf.

involved. Against this backdrop, it recalls State obligations to respect, protect and fulfil human rights and the responsibility of business entities to respect human rights laid out in the international human rights framework. It then delves into the various security-related services provided by companies in immigration and border management, and assesses their impact on these rights. It goes on to explain the fundamental lack of transparency around these operations and the consequences it has on effective oversight, accountability and effective remedies for victims of human rights violations and abuses resulting directly or indirectly from them, before ending with recommendations to States and companies.

IV. Methodology and definitions

13. The thematic report, which relied on extensive desk research and submissions, builds on previous work undertaken by the Working Group, notably its 2017 report on the use of private security providers in places of deprivation of liberty, including immigration detention facilities (A/72/286), and the above-mentioned events (see para. 8 above). In January 2020, the Working Group issued a call for submissions, seeking contributions from all relevant stakeholders.[7] The Working Group is grateful to all those who contributed to the preparation of this thematic report by submitting information and participating in the related events.

14. The Working Group faced research challenges because of the lack of transparency surrounding many private military and security company operations, and the difficulty identifying the respective roles and responsibilities of the multiple State and non-State actors involved. The Working Group is conscious that gaps in information remain, particularly for some regions. Where possible, the Working Group has highlighted the differentiated and disproportionate impacts on specific groups of the migrant populations, such as unaccompanied children, women and older persons.

15. Two terms used repeatedly throughout the thematic report are worth defining. Firstly, the Working Group uses the term "private military and security companies" to refer to corporate entities providing, on a compensatory basis, military and/or security services by physical persons and/or legal entities. This definition focuses on the activities performed by corporate entities rather than the way a company may self-identify. Services include, for example: knowledge transfer with security, policing and military applications; development and implementation of informational security measures; land, sea or air reconnaissance; satellite surveillance; and manned or unmanned flight operations of any type.[8] In line with this definition, the thematic report focuses on those companies that provide private military and security services, including not only private military and security companies, but also defence companies, corporations specialized in information and advanced technologies, and airlines. While identifying under a different label, these companies are major providers of security-related services for immigration and border management purposes.

16. Secondly, in the absence of a universal legal definition and for ease of reference, the Working Group uses the term "migrants" to refer to all persons who are outside the State of which they are a citizen or national, or, in the case of stateless persons, their State of birth or habitual residence. The term includes migrants who intend to move permanently or temporarily and those who move in a regular or documented manner, as well as migrants in irregular situations. The term "migrants" encompasses different categories of persons, such as asylum seekers, refugees and migrant workers. The term is without prejudice to the protection regimes that exist under international law for specific legal categories of non-nationals (see para. 25 below).[9]

[7] See www.ohchr.org/EN/Issues/Mercenaries/WGMercenaries/Pages/Callroleprivatemilitary.aspx.

[8] For the full definition, see A/HRC/15/25, annex, art. 2.

[9] See www.ohchr.org/Documents/Issues/Migration/OHCHR_Recommended_Principles_Guidelines.pdf; and www.ohchr.org/Documents/Issues/Migration/PrinciplesAndGuidelines.pdf.

V. Privatization and securitization of immigration and border management

17. The involvement of private military and security companies in immigration detention and border control is part of a broader process of outsourcing inherent State functions to private actors across all areas of governance. Their operations in this domain have grown in parallel with the securitization[10] of State approaches to handling migration supported by large increases in State budgets to fund these approaches.

18. With severe restrictions imposed on regular migration pathways around the world, migrants with varying protection profiles have been increasingly forced to travel by irregular means amid complex and mixed migration movements, often in large numbers. States, particularly countries of destination, have adopted laws and policies to tighten border controls and further reduce irregular entry. These responses have failed to address root causes, and diverge from a human rights-based approach that considers migrants as rights holders under international human rights law and in some instances international refugee law.

19. Rather, laws, policies and other measures taken by many States in recent years have significantly reduced protections for migrants, including refugees and asylum seekers. Such measures include: laws enacted to make leaving, entering or staying in a country irregularly or using the services of a smuggler criminal offences, including criminalizing the mere act of crossing a border; increased recourse to detention without seeking alternatives; restricted access to asylum; and rapid returns and removals, including of unaccompanied children, with insufficient due process guarantees resulting in violations of the principle of non-refoulement and collective expulsion. More recently, several States have also criminalized organizations and individuals that have provided humanitarian assistance to migrants, such as search and rescue operations, or subjected them to political attacks or other punishments. In addition, the creation of so-called hotspots in some European countries has raised concerns. Established in order to ensure the identification, registration and fingerprinting of migrants arriving on European shores, to avail asylum seekers of an asylum procedure, and to coordinate the return of those migrants who are not granted permission to remain, they allegedly operate without a clear national legal framework and are often used more as detention centres than registration centres.[11]

20. Another disturbing phenomenon has been the development of State "externalization" policies, under which border control no longer takes place at the physical borders of countries of destination. Rather, through a variety of means, these countries compel countries of first arrival, transit or departure to enforce border controls and prevent irregular entry to their territory. In so doing, countries of destination seek to circumvent their obligations to uphold the principle of non-refoulement and to guarantee the human rights of persons attempting to reach their territories. Consequently, migrants, including asylum seekers and refugees, often find themselves trapped in countries of first arrival or transit that have comparatively less capacity to provide them with the appropriate protection and process asylum claims in accordance with international law. Increasingly, countries of transit are also seeking to enforce externalization measures to prevent entry into their territory. This combination of policies has been disastrous for migrants, resulting in countless deaths along sea, lake, river, mountain and desert crossings and in the violation and abuse of migrants' rights on a massive scale.

21. Today, immigration and border management has become a multibillion-dollar business, with global border security identified as a potential market for further growth in the coming years. The amount of outsourcing to private security has surged with migrants used to justify privatization of State security functions. Diverse corporate actors have positioned themselves to benefit from the aforementioned security approaches to migration and the corresponding hikes in public budgets for border security, with privatized border

[10] "Securitization" refers to the process by which migration and border control have been increasingly integrated into security frameworks that emphasize policing, defence and criminality over a rights-based approach (see A/HRC/23/46).

[11] See www.ohchr.org/Documents/Issues/Migration/InSearchofDignity-OHCHR_Report_HR_Migrants_at_Europes_Borders.pdf.

management and security now a lucrative source of contracts. While the biggest markets have traditionally been concentrated in countries of destination as part of policies to stem migration, demand for such services in countries of transit and/or departure is steadily growing, spurred by externalization and other measures.[12]

22. In recent years, a growing number of States have contracted national or local construction and infrastructure companies to erect physical barriers in the form of walls, fences, often fitted with razor wire, and watchtowers along their land borders. Border guards are deployed at various points along these physical structures, and in some locations, private security guards are also present. In addition, guards tasked with preventing entry by land, air and sea are equipped with physical assets, such as maritime patrol vessels, drones, helicopters and airplanes, purchased from large defence companies and national, and sometimes transnational, shipbuilders.[13] As explained below, high-tech tools are deployed in support of this physical infrastructure and equipment. These businesses have thus become de facto part of the policies of securitization of borders and criminalization of migrants.

23. The market is dominated by a few large transnational companies, many of which have complex forms of ownership, such as conglomerates and joint ventures, with frequent acquisitions and branching off or subcontracting.[14] This manner of functioning enables these companies to maximize profits by providing services through multiple subsidiaries across several markets. Some of those companies enjoy partial State ownership facilitating an alignment of company strategies and priorities with the State's agenda. Financial investors, such as private equity companies, also profit from this market by buying and selling companies delivering these services.[15] Overall, the considerable and growing corporate involvement in this sector has led to a commodification of immigration and border management services, with such services being seen primarily as economic, profit-making activities rather than as an essential function of the State to ensure security and appropriate protection, as guaranteed by international law, for all those on its territory.

VI. Normative framework

24. The international human rights framework sets out clear obligations for States to respect, protect and fulfil the human rights of all people, including migrants, under their jurisdiction, and responsibilities for companies to respect these rights. International human rights law instruments provide guarantees concerning the full range of human rights that are at risk as a result of the services provided by private military and security companies in immigration and border management and in relation to which States assume obligations and commit to take domestic measures and adopt national legislation reflecting those obligations.

25. All migrants, regardless of their status, are entitled to equal protection of their rights under international human rights law. Specific groups are entitled to protections established under international human rights law and other bodies of international law. Refugees and asylum seekers must benefit from specific protection guaranteed by the Convention relating to the Status of Refugees (1951) and the Protocol relating to the Status of Refugees (1967). Migrant workers and members of their families, and children, are entitled to specific protection under specific Conventions.[16] Within the framework of these instruments, States have a duty to protect the rights of all migrants, including against any form of discrimination, and are expected to undertake individual assessments of the circumstances of each person in order to ensure the appropriate protection of their rights.

26. The right to leave any country and the right to freedom of movement and residence within the borders of each State is articulated in the Universal Declaration of Human Rights

[12] See submission by Transnational Institute (all submissions will be available at www.ohchr.org/EN/Issues/Mercenaries/WGMercenaries/Pages/Callroleprivatemilitary.aspx).

[13] See submission by Transnational Institute.

[14] See submission by Lemberg-Pedersen and Rübner Hansen.

[15] Ibid., and submission by Kumar.

[16] The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and the Convention on the Rights of the Child.

(art. 13) and the International Covenant for Civil and Political Rights (art. 12). The Universal Declaration further provides for the right to seek and to enjoy asylum (art. 14). The principle of non-refoulement, contained in international human rights, refugee, humanitarian and customary law with some variation in scope, prohibits the transfer of all persons to a country where there are substantial grounds for believing that the person would be at risk of irreparable harm, including persecution, torture or ill-treatment, or other serious human rights violations. Protection from collective expulsions is provided in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment[17] and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (art. 22). International human rights law and international refugee law place narrow restrictions on the resort to deprivation of liberty of migrants, refugees and asylum seekers, and encourage the use of non-custodial alternatives to detention.[18]

27. Under the international human rights framework, States retain their obligations when they privatize the delivery of services that may have an impact on the enjoyment of human rights, including when they contract out to the private commercial sector activities involving the use of force and the detention of persons.[19] States should protect against human rights abuses by third parties, including private companies, and take positive steps to fulfil human rights. Specifically, they must ensure that "any delegation of border management functions to private actors … does not undermine human rights", and that "private actors engaged by the State in migration governance are held accountable" for human rights abuses.[20] In so doing, States must take appropriate measures "to prevent, punish, investigate or redress the harm caused by … acts of private persons or entities".[21]

28. In the case of private military and security companies, States have a duty to act appropriately to meet these obligations by, inter alia, adopting or amending legislation and regulatory frameworks, and establishing or strengthening national oversight mechanisms. In reality, States often overlook these duties when it comes to private military and security companies, as noted by the Working Group in its 2017 global study of 60 States, in which it concluded that national regulation of these companies is generally weak or non-existent and accountability is severely lacking (A/HRC/36/47). Companies operating in immigration and border management may, however, fall within the scope of immigration laws or regulations.[22]

29. In the absence of an international legally binding instrument for the regulation, monitoring and oversight of the activities of private military and security companies, two main initiatives have been developed to raise standards within the industry: the Montreux Document on pertinent international legal obligations and good practices for States related to operations of private military and security companies during armed conflict (2008); and the International Code of Conduct for Private Security Service Providers (2010). Both initiatives, however, have notable gaps in relation to the immigration and border

[17] Committee against Torture, general comment No. 4 (2017) on the implementation of article 3 in the context of article 22, para. 13.

[18] See A/HRC/30/37; Human Rights Committee, general comment No. 35 (2014) on liberty and security of person; joint general comment No. 4 of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families / No. 23 of the Committee on the Rights of the Child (2017) on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return; and Convention relating to the Status of Refugees (art. 31).

[19] A/HRC/17/31, commentary to guiding principle No. 5. See also Committee on Economic, Social and Cultural Rights, general comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, para. 22; Human Rights Committee, general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, para. 8; and *Cabal and Pasini Bertran v. Australia* (CCPR/C/78/D/1020/2001), para. 7.2.

[20] See www.ohchr.org/Documents/Issues/Migration/OHCHR_Recommended_Principles_Guidelines.pdf, guideline 2.12; and www.ohchr.org/Documents/Issues/Migration/PrinciplesAndGuidelines.pdf, principle 1, guideline 6.

[21] Human Rights Committee, general comment No. 31, para. 8.

[22] For example, Estonia, Obligation to Leave and Prohibition on Entry Act (submission on behalf of the Chancellor of Justice, Estonia).

management sector; neither document mentions this sector specifically. Additionally, the former is applicable in armed conflict situations and the latter in so-called complex environments (see the definition in sect. B of the Code). They therefore fail to capture the broad range of companies that provide security-related services for immigration and border management and the variety of contexts and environments in which they operate. These companies are thus often left unregulated.

30. The Guiding Principles on Business and Human Rights[23] state that the corporate responsibility to respect human rights requires that companies "avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur" and that they "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" (principle 13). In order to do this, companies should exercise human rights due diligence.[24] Heightened human rights due diligence may be required, commensurate with the level of risk of severe human rights impacts and the nature and context of the business operations, for example, when operating in high-risk environments.[25] Moreover, businesses should "treat the risk of causing or contributing to gross human rights abuses as a legal compliance issue wherever they operate" (principle 23).

31. Given the heightened risk of gross human rights abuses associated with the provision of private military and security services in immigration and border management, companies in this sector should pay particular attention to the human rights risks that their business activity or business relationships may pose, particularly to individuals or groups in vulnerable situations. Owing to the nature of the sector itself, as well as particular risks in a given geographic context, enterprises operating in this environment face the risk of becoming complicit in human rights abuse caused by other actors, such as State border authorities. They therefore need to exercise adequate due diligence to avoid causing, contributing to or becoming directly linked to such impacts, acts that may amount to gross human rights violations and abuse. Furthermore, "where business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes" (principle 22). Where crimes are alleged, this "typically will require cooperation with judicial mechanisms" (commentary to principle 22).

32. Furthermore, through the Global Compact for Safe, Orderly and Regular Migration, States agreed to adopt a holistic and comprehensive approach to migration that is "based on international human rights law and upholds the principles of non-regression and non-discrimination" (preamble, para. 15 (f)). The Compact, which covers several areas in which private military and security companies are active, importantly includes a section on immigration detention, in which it recalls that private actors should act in a way consistent with human rights and should be held accountable for human rights abuses.

VII. Impact of private military and security services on the enjoyment of the human rights of all migrants

A. Provision of research and technical expertise

33. Private military and security companies operating in immigration detention and border control exert considerable influence over national, regional and international policymaking through the provision of technical and policy expertise, reinforced through lobbying. This phenomenon appears most pronounced within the institutions of the European Union and in the United States of America.

34. These companies are actively involved in setting the research, policy and regulatory agendas of States and regional organizations and institutions, notably the European Union. Public-private forums involving representatives of public bodies and private industry

[23] A/HRC/17/31, annex.
[24] A/73/163, para. 2.
[25] Ibid., para. 14 (c).

determine research priorities on the basis of which public funding is channelled to corporate entities in programmes dedicated to financing "research and development" projects. Moreover, through their participation in committees, forums and other bodies, they also ensure that their favoured technical requirements are integrated within policies, calls for proposals, tenders, bids and project specifications. This is a win-win situation for these companies, as they are awarded funding to undertake research to pilot their equipment and technologies and then benefit from subsequent contracts when Governments and regional organizations roll them out.[26]

35. This process has also contributed to the positioning of industry representatives as legitimate and unrivalled experts on border security who claim to deliver productivity, efficiency and effectiveness. Through this expertise, these companies frame the response to migration as one necessarily characterized by emergencies, crises and perceived threats, feeding and reinforcing the exclusionary, hard-line immigration narratives of a number of Governments. On this basis, they push for security, and often militarized, "solutions" through new and dual-use technologies.

36. Moreover, these companies have considerable in-house and external lobbying capacity, enabling a wider sphere of direct and indirect influence. In several countries, and in institutions of regional organizations, corporate representatives and public officials responsible for developing and implementing migration policies have regular interaction, for example during industry days, commercial fairs and corporate conferences. Companies also use their access to media outlets to influence the narrative, and at times, produce papers with recommendations to guide policy directions. This is facilitated by companies' executive hiring decisions, with government officials often recruited to leadership positions in these companies. One glaring example is that of a senior government official who was instrumental in further tightening national security-focused migration policies that resulted in increased use of immigration detention, before joining the board of a company operating immigration detention centres.[27]

37. In Europe and North America, where most of the companies providing security services for immigration detention and border control are concentrated, industry lobby organizations representing arms and security companies have developed. Profit making provides a strong incentive to push for repressive immigration laws and practices, such as further criminalization of migration and increased use of immigration detention. Owing to their size and economic power, these companies exert significant influence over regulatory and policy decisions in different ways, ranging from discussions in the corridors of power to campaign contributions to relevant parliamentary or other decision-making bodies or individuals.[28] For example, since 2009, the United States Congress has authorized appropriation bills that require the relevant authorities to maintain a quota of beds (currently 34,000) in immigration detention centres on a daily basis, irrespective of the actual number needed, reportedly following significant lobbying and financial contributions by companies running such centres.[29]

38. Over the years, such companies' influence has become pervasive and entrenched. Many States have become dependent on private military and security companies for a wide range of aspects of immigration and border management. This has resulted in a regressive shift of expertise away from States and towards the private sector. The increasing reliance on technological "solutions" that are constantly updated in line with new innovations has also made the companies behind them indispensable to the practical development and implementation of State security-centric migration policies. This has not only paved the way for the massive growth of the border security industry, but also ensured a steady

[26] See submissions by Lemberg-Pedersen and Rübner Hansen, Transnational Institute and porCausa Foundation.

[27] See submission by the Center for International Human Rights of Northwestern Pritzker School of Law.

[28] Ibid., and submissions by Transnational Institute and porCausa Foundation.

[29] References are made throughout the present report to urgent appeals and allegation letters sent by special procedures of the Human Rights Council. All such communications are available from https://spcommreports.ohchr.org/TmSearch/Results. In the present case, see USA 18/2018. See also submissions by Transnational Institute, Transnational Legal Clinic of the University of Pennsylvania Carey School of Law, Detention Watch Network and Project South.

demand for its services. Thus, a system with self-reinforcing dynamics and lock-in effects has been created,[30] with wide-ranging negative human rights impacts.

B. Border security technologies and monitoring services

39. Border security technologies and monitoring services accompany and reinforce the visible physical border infrastructure. Purchased primarily from companies specializing in information and advanced technologies, technologies such as radar and ground sensor systems, cameras equipped with night vision, electro-optical systems and high-resolution imaging are part of high-tech surveillance and detection systems that track regular and irregular movements, often providing real-time information on virtually all movements within an area of coverage. Dual-use items, sold as having been battlefield tested, have been put to increasing use in immigration and border management. One of the most commonly used technologies is drones, which are also employed in armed conflict. Operated by national or regional border officials or by private contractors, they have become a central tool in border surveillance operations. This has had the dangerous effect of bringing military concepts and technologies into the field of migration.

40. Today, an essential component of this regime is biometric data. Data gathered enables States to identify and verify or authenticate migrants based on physiological and behavioural characteristics. It is used for a variety of purposes, including in airport and other border controls, visa applications, age determination assessments, asylum procedures, refugee registration and deportation decisions. Combined with other personal and private information obtained through a myriad of sources, companies facilitate the collection and storage in databases of vast amounts of data about migrants that is then processed, analysed and exchanged. Companies have developed platforms that enable users to search across databases, allowing them to cross-reference data collected for different purposes. This push towards interoperability carries risks, for example, due to greater interactions between law enforcement and immigration databases. Among other things, immigration authorities have allegedly used this information to track, detain and deport migrants, including children.[31]

41. In the absence of adequate privacy safeguards in many countries, there are risks that data is gathered in a non-transparent manner and without informed consent, stored for long periods, and becomes outdated even while the database is still in use. Decisions taken during screening processes for migrants, including refugees and asylum seekers, that rely heavily on such technology with its presumed rationality and superiority, lack nuanced human judgment and risk potentially serious errors. Given the high-tech nature of such systems, States may lack adequate legislation, knowledge and expertise to provide effective oversight of these operations. Moreover, abuses of the right to privacy generated by these systems are likely to go underreported as migrants may be unaware of their rights or unable to exercise them due to the vulnerable situations in which they find themselves.[32]

42. Border control implemented through advanced technologies may often be invisible to the public, but it has a far greater reach than physical barriers, and the potential to violate rights in very particular ways. It not only enables the transmission of real-time information on the movement of people and vessels along coastal and land borders, but often penetrates into border regions and further afield.[33] This information is shared among border, security and other authorities within the same country, and increasingly between States. Companies are making constant advances in technologies, creating demand for more sophisticated and updated models that promise greater effectiveness, thereby ensuring a constant flow of business.

43. The focus on security approaches, realized through a reliance on surveillance technologies developed, maintained and sometimes operated by private companies, facilitates physical and moral distancing. It renders migrants as objects of surveillance and

[30] Georg Menz, "The neoliberalized State and the growth of the migration industry", in *The Migration Industry and the Commercialization of International Migration*, Thomas Gammeltoft-Hansen and Nina Nyberg Sorensen, eds. (London and New York, Routledge, 2013).

[31] See submission by Mijente.

[32] See submission by Privacy International.

[33] See submission by Transnational Institute.

serves to dehumanize them, and thereby to legitimize State policies to "combat" so-called "illegal" migration, which is framed as an inherent threat to sovereignty and national security. This process of dehumanization is exacerbated by the shift towards the use of drones and the push towards automation.

44. Moreover, the use of drones in maritime surveillance enables States and regional organizations to focus on detection and to distance themselves from search and rescue operations that may result in migrants reaching safe harbours. Reports suggest that information gathered by drones and other air assets used in surveillance operations by countries of destination has been sent to coastguards in countries of transit so that the latter conducts the rescue operations in lieu of the former, resulting in returns of migrants to the country of transit. This has included return to a country of transit where migrants are at serious risk of arbitrary detention, torture, ill-treatment and other forms of abuse.[34]

45. These surveillance tools also play an instrumental role in changing migration routes away from detectable areas and into those that are beyond the range of the surveillance equipment. Thus, migrants are compelled to take less direct and more dangerous routes, increasing the physical difficulty of the movement and the physiological and mental toll, pain and suffering that results frequently in death due to heat stroke, severe dehydration and other illnesses on migration journeys by water or land. In addition, migrants are forced to rely increasingly on smugglers to successfully navigate ever more difficult routes. Not only does this often raise the financial costs of their journey, it can also expose the migrants to a higher risk of abuse, such as trafficking by organized criminal groups, sexual violence and death.

C. Immigration detention, returns and removals

1. Immigration detention

46. In recent decades, privatized immigration detention has developed in an increasing number of countries of destination. The privatized immigration detention market is worth billions of dollars across just a handful of these countries, in which companies own, construct, manage, and/or operate detention facilities for irregular or undocumented migrants.

47. In 2017, the Working Group published a report on privatized places of detention (A/72/286), in which it raised concerns about the appalling conditions in immigration detention centres. It highlighted the mistreatment of migrants by company personnel, manifesting at times in sexual violence, deaths in custody, the use of solitary confinement as punishment, and other serious human rights abuses. Other concerns were lack of adequate physical and mental health care of detainees, economic exploitation, restrictions on religious freedom, and lack of access to legal representation and other due process violations. In light of these concerns, and of the risks to respect for human rights generated by outsourcing services relating to the deprivation of liberty, the Working Group called on States to terminate the practice of outsourcing the overall operation of immigration detention facilities to private security companies.

48. These calls have gone unheeded. Some three years later, the Working Group continues to receive credible reports demonstrating that serious human rights abuses continue to occur, or in some cases, that conditions in these facilities have deteriorated further. In countries that outsource the overall operation of immigration detention centres to private security companies, there are persistent and widespread reports of abuse by company personnel.

49. The COVID-19 pandemic confirmed the glaring shortcomings of the systems in place and reinforced the need for prompt action to address the concerns raised in the Working Group's 2017 report and by other United Nations human rights mechanisms.[35] The appalling conditions of many of these centres meant that they were seriously ill-

[34] See ITA 4/2017. See also https://c5e65ece-003b-4d73-aa76-854664da4e33.filesusr.com/ugd/14ee1a_e0466b7845f941098730900ede1b51cb.pdf; and https://statewatch.org/news/2019/jun/eu-icc-case-EU-Migration-Policies.pdf.

[35] See, for example, USA 18/2018, OTH 60/2018 and OTH 61/2018.

equipped to deal with the emergency situation that the health pandemic presented. In the Northwest Processing Center, for example, the Government of the United States of America and the company that owns and operates the centre, the GEO Group, failed to take adequate steps to address concerns that had been raised by special procedure mandate holders since 2018,[36] exposing migrants detained there to harm.

50. Migrants held in immigration detention centres are especially vulnerable to COVID-19. Persons with disabilities, older persons, pregnant women and lesbian, gay, bisexual, transgender and gender-diverse persons are at particular risk of complications should they become infected, due to underlying health conditions or inadequate access to appropriate routine medical care.[37] Overcrowding has meant that basic health protection measures to prevent the spread of the virus, such as physical distancing and hygiene rules, are not observed. Furthermore, transportation of migrant detainees between detention centres reportedly also continued, despite the spread of the virus. These actions, as well as the failure to act, pose a risk not only to the migrants but also to the employees at this centre and others like it, those carrying out the transportation services, and the general population. The companies running these centres have chosen to continue to cut costs in order to maximize profits while Governments turn a blind eye.

51. Broader legal and policy developments have also resulted in greater recourse to immigration detention, including of children, despite repeated concerns. A stark example is the adoption in 2018 in the United States of the zero-tolerance policy and the consequent separation of children and their families,[38] and the adoption in 2016 of the Immigration Act in the United Kingdom of Great Britain and Northern Ireland (see para. 54 below). This and related measures have allegedly resulted in serious human rights violations and abuses and simultaneously provided additional business opportunities for companies that have made financial gains as a result.

52. In several countries, alternatives to detention also provide a lucrative business market. Services include various levels of monitoring and supervision of those migrants released from detention, which may include reporting by telephone, Global Positioning System tracking through ankle monitors or electronic ankle bracelets, and smartphone applications. In addition, in one country, as an alternative to secure facilities, the Government houses asylum seekers in temporary accommodation run by private military and security companies, which have been accused of providing poor quality accommodation and of mistreatment.[39]

53. Privately run immigration detention facilities also have an impact on the local communities in which they are located. The centres are often situated in remote areas or at times offshore in third countries in communities suffering from marginalization and economic hardship or poverty. Private military and security companies running these centres often present themselves as bringing jobs and prosperity to local communities. In reality, these companies benefit from cheap labour, often provided by migrants, women and indigenous peoples. This can create dependency by communities on these companies as the main source of employment, in what may be exploitative relationships with companies benefiting from multimillion-dollar contracts while paying their local employees very poorly.[40]

2. Returns and removals

54. Private military and security companies and airlines provide secure transportation services to move migrants between places of detention and for deportations, forced returns and so-called voluntary returns of individuals and groups. In general, Governments do not routinely disclose information about deportations, and often more precise information is published only in response to “freedom of information” requests, or other non-

[36] See OTH 31/2020.

[37] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25912&LangID=E.

[38] See USA 23/2017, USA 12/2018 and USA 2/2018.

[39] See www.world-psi.org/sites/default/files/documents/research/final_psi_epsu_psiru_privatisation_of_migration_and_refugee_services.pdf; and www.migrantsorganise.org/?p=26878.

[40] As indicated at the expert consultation held in May 2020 (see para. 8 above).

governmental monitoring efforts. Reports suggest that in a number of countries, State policies have resulted in increased, expedited and unlawful deportations without proper individualized assessments. For example, several ethnic minorities and citizens of Commonwealth descent or their descendants, collectively known as the "Windrush generation", were allegedly unlawfully deported from the United Kingdom under escort of private security guards and transported by airplane following the passing of the 2016 Immigration Act.[41]

55. Governments contract charter and commercial airline companies to carry out the deportations and returns. When deportations are carried out by land, or a combination of land and air, a company is contracted to transport the deportees to the border crossing. These companies offer a security service, where the deprivation of liberty of the migrants continues during the period of transportation. Frequently, private security guards escort the deportees. During transport, migrants are reportedly regularly held in restraints, including handcuffs, waist restraint belts, in which people's arms are shackled to their sides, leg restraints and sometimes head restraints.[42]

56. In many countries, deportations reportedly continued despite the COVID-19 pandemic while strict travel restrictions were placed on the general population and borders were effectively closed. This created a risk of spreading the virus from one country to another and put the general populations of these countries, and the employees of airlines, transportation companies and airports, at risk.

57. The broad and unnecessary use of the above-mentioned restraints is among the numerous human rights risks inherent in providing this transportation service. In some cases, restraining the deportee has proven fatal (see para. 71 below) or has caused considerable suffering. There is also a risk for the company of becoming complicit in an act of refoulement by returning individuals to a country where they would be at risk of human rights violations or persecution. This risk is heightened when groups of people are returned without proper individualized assessments, such as in the case of the collective return of persons perceived to be from a particular country to a so-called safe country as part of a specific return agreement. In such cases, companies also risk being complicit in transporting someone who is being separated from their family or a refugee, a victim of trafficking or of torture, or a person who is otherwise in need of protection. In the context of the COVID-19 pandemic, carrying out deportations puts general populations, the individual migrants concerned and the company's own employees at risk.

D. Implementation of "externalization" policies

58. Private military and security companies play a critical role in facilitating State externalization policies. One aspect of such policies is the management and operation of offshore immigration detention facilities by such companies. For example, the Working Group and other United Nations human rights bodies have repeatedly called on the Government of Australia to terminate its policy of offshore detention in Nauru and on Manus Island in Papua New Guinea, and raised concerns regarding access to appropriate health care and mistreatment of the detained persons by the private security companies contracted by the Government to manage and operate the facilities.[43] These companies and their personnel are directly responsible for the harsh conditions and abuse reported at these centres, while the Government of Australia retains its obligations to protect the rights of the detained migrants due to its "effective control" over them.[44] The host country also has obligations to respect human rights.

59. In addition, companies sell and maintain border security technologies and train border guards and other officials in countries of first arrival, transit or departure on how to use them in order to augment patrolling and surveillance capacities. An increasing number of countries has received such services in order to prevent arrivals well before they reach

[41] See GBR 5/2019.

[42] See submission by the Australasian Centre for Corporate Responsibility. See also https://corporatewatch.org/deportation-charter-flights-updated-report-2018.

[43] See A/HRC/35/25/Add.3; and AUS 4/2019.

[44] CCPR/C/AUS/CO/6, especially para. 35.

the borders of countries of destination. Companies have not only seized on the opportunities to enter new and growth markets in relatively unexplored countries and regions, but have also conducted lobbying to generate these opportunities, for example by ensuring that their services are referenced in relevant funding instruments of regional organizations and institutions. Often, measures taken to implement externalization policies are part of broader bilateral or multilateral agreements, delivered through various branches of government and regional bodies, making them difficult to track. Advanced technologies, notably biometric identification technology and systems, are part of the packages donated to these countries, sometimes for other purposes such as voter registration, but in part driven by the aim to facilitate identification of arrivals in Europe and deportations.[45]

60. These developments are taking place without due regard to their human rights implications. Companies do not appear to build in assessment and verification criteria regarding the recipients of their services, as required by their human rights due diligence responsibilities. It has been reported, for example, that Turkey contracted a company to build a wall equipped with high-tech cameras, sensors and advanced technologies, thus creating additional barriers and risks for women, children, the elderly, persons with disabilities and others fleeing conflict.[46] It was also reported that equipment and related training has been provided to members of militia or former militia in at least two countries with recent or ongoing conflicts where members of these militia are known to have committed serious human rights violations. In general, companies working to increase the capacities of countries to apprehend and detain irregular or undocumented migrants may also be putting migrants at risk in cases where those countries do not have adequate protection systems in place.

61. Another way in which Governments have sought to externalize border control is through carrier sanctions. Carrier sanction legislation requires airline personnel to verify travel documents at the point of embarkation and to deny boarding to migrants lacking the necessary documents. Thus, airline companies undertake document checks and passenger profiling, sometimes in consultation with or under the guidance of government immigration officers. The airline company may then take the rejected passengers into custody either in transit or at the point of destination, for example in a privately managed zone at an airport, while they await return, thus effectively depriving them of their liberty and potentially denying them a range of other rights, including the right to seek asylum. Airline company personnel do this in the absence of appropriate training on human rights protections to which migrants are entitled, including non-discrimination and access to asylum procedures. The fines imposed on airlines that take on board undocumented migrants are a disincentive to take all necessary measures to ensure no persons are returned to a country where they may face serious human rights violations and abuses. Similarly, Governments do not systematically publish statistics regarding the implementation of carrier sanctions, making it difficult to monitor. Migrants who are not allowed to board a flight on the basis of carrier sanction legislation have little recourse to appeal the decision, and may have received no prior notification. The risk for the airline of complicity in an act of refoulement is therefore considerable.

VIII. Lack of transparency, oversight, accountability and effective remedies for victims

A. Lack of transparency and challenges in accessing information

62. Like other private military and security business sectors, low levels of transparency[47] severely hamper access to information. In most countries, States do not publish up-to-date, comprehensive and accurate information about these companies and their services, and key operational and financial details of contracts between Governments and the companies tend to be regarded as of a private contractual nature and treated as confidential. The way that

[45] See submission by Transnational Institute.

[46] See CMW/C/TUR/CO/1; and Khalil Ashawi, “For Syrians fleeing Idlib, Turkish border wall becomes symbol of their plight”, Reuters, 26 February 2020.

[47] See A/74/244.

the industry operates (see para. 23 above) creates a multiplicity of actors and a lack of clarity regarding parent companies, subsidiaries and subcontractors, with regularly changing parameters, such that information gathered about a company and its specific activities may be quickly outdated. This means that basic information, such as which company is providing which service, for how long, for what purpose, and at what cost, is elusive.[48] Access issues also arise in immigration detention settings and privately managed zones at airports, where access to detained migrants is often restricted. This is exacerbated by the remote or inaccessible location of many detention facilities, and even more stark in the case of offshore detention centres.

63. The lack of available and accessible information impedes efforts by media outlets and non-governmental organizations to monitor these operations effectively. One way to seek to overcome this has been through freedom of information requests to Governments, although not to private companies, in those countries with enabling legislation. Those who have availed of this mechanism, however, found it to be onerous and inconclusive as information released is not comprehensive, at times severely lacking, and often released only after long delays. For example, it reportedly took a year and a half, and the filing of a lawsuit, to obtain relevant information from the Government concerned in response to a freedom of information request by a non-governmental organization enquiring about the causes of death of a man who died in custody in an immigration detention centre.[49] Delays of this kind, when related to cases of human rights violations and abuses, have a profound impact on the right of victims and their families to the truth.

B. Oversight and accountability

64. Oversight and accountability for actions by private military and security companies is notoriously weak.[50] The lack of transparency and access to information, coupled with the complex corporate structures described above also complicate efforts to define responsibilities, liability and accountability.

65. In general, States outsource specific aspects of immigration detention and border control to private actors while retaining control and decision-making powers over the overall border management apparatus. Moreover, private actors often operate alongside State security and other officials. It is often difficult to determine the division of labour between private and public actors and to ascribe actions and decisions to specific entities and individuals. This facilitates attempts by the various actors to absolve themselves of their responsibilities.

66. Moreover, even when abuse of migrants' rights has been exposed, there are few, if any, repercussions for the company and individual personnel responsible. Rather, States have frequently renewed or expanded contracts with companies with a long record of human rights abuses, for example in immigration detention. At times, one company is replaced by another, regardless of its track record on human rights. Even in those instances in which a company has lost its contract, it did not lose its share of the market, but was hired for other contracts.

67. Some mechanisms and strategies are, however, being pursued in an attempt to address abuses, notably those occurring in immigration detention centres and during deportations. National oversight mechanisms in the form of government inspectorates, national preventive mechanisms mandated to conduct visits to places where persons are deprived of liberty under the Optional Protocol to the Convention against Torture, and ombudspersons are active in monitoring immigration detention facilities in some countries. In one country, for example, a government inspectorate monitors privately run immigration detention facilities. Recent findings from four unannounced inspection visits include: egregious violations of national immigration detention standards and of contractual requirements and risks thereof; inadequate follow-up to previously identified shortcomings;

[48] See submission by the Center for International Human Rights of Northwestern Pritzker School of Law.

[49] See https://aclu-co.org/wp-content/uploads/2019/09/ACLU_CO_Cashing_In_On_Cruelty_09-17-19.pdf.

[50] See A/HRC/36/47.

and insufficient imposition of financial penalties by immigration authorities despite documenting persistent failure to comply with detention standards. Indeed, the authorities were found to issue waivers from particular detention standards, thereby further undermining accountability for poor detention conditions and abuses.[51] Despite these concerning findings, little action appears to have been taken to address the issues raised. The Working Group received similar accounts from other countries, particularly those in which companies are heavily involved in immigration detention. While national oversight mechanisms are a valuable tool for making concrete recommendations to improve the protection of persons deprived of their liberty, a lack of follow-up to their recommendations and an absence of enforcement mechanisms undermine their effectiveness.

68. Legal avenues have provided opportunities for seeking to pursue accountability and remedies for victims. Companies have been brought to court in relation to abusive labour practices against detained migrants, notably withholding the meagre wages owed to them for exploitative tasks such as cleaning of the premises. Some successful legal actions have required a Government to provide medical care on its territory to detainees held in offshore detention. Class action lawsuits have been brought against national authorities and companies with regard to overall detention conditions and access to food, water and health care, among other things.

69. *Kamasaee v. Commonwealth of Australia and Ors* is an emblematic class action suit brought against the Government of Australia and two companies contracted to run the offshore immigration detention centre on Manus Island, Papua New Guinea. It was alleged that the Government of Australia and the two private contractors repeatedly breached a duty of care owed by them to asylum seekers detained in the centre in relation to, inter alia, the conditions of detention, access to food and water and to health care, and internal and external security measures. In 2017, a settlement was reached for the sum of 70 million Australian dollars plus costs, estimated at 20 million Australian dollars.

70. Despite this substantial settlement, the case was closed without admission of liability and with many issues unresolved. While the settlement agreement provided financial compensation to a number of those who had been detained on Manus Island, it did not address the underlying need to end their detention, ensure their protection after the detention centre was closed, and provide for their resettlement. In addition, details of the settlement were not made public, and it remains unknown who paid for the settlement, leaving open the possibility that the two private contractors may have escaped financial liability.[52]

71. Another emblematic case was the death of Jimmy Mubenga during the course of his forced deportation from the United Kingdom to Angola, raised in a communication by the Working Group.[53] He died in 2010 after being forcibly restrained by private security personnel of G4S contracted by the Government of the United Kingdom to escort his deportation. The three security guards underwent trial for manslaughter and were all acquitted in 2014. Ten years later, there has been no accountability for his death.

72. Ultimately, these and other similar cases have yet to result in legal judgments that address systemic issues and challenge the current model of Governments outsourcing immigration and border management functions to private commercial actors, and the flagrant lack of accountability for human rights abuses committed by companies and their personnel in this domain.

73. Other strategies that have also been pursued have included local legislative reform. In one country, there have been significant, if piecemeal, legislative advances made when local authorities introduced legislation banning new contracts and contract renewals with companies in immigration detention and phased out existing contracts within a deadline of several years. There have been reports, however, of companies suing the local authorities in an attempt to repeal the law. In one case, a new, long-term contract was signed in haste

[51] See www.oig.dhs.gov/sites/default/files/assets/2019-06/OIG-19-47-Jun19.pdf.

[52] Gabrielle Holly, "Transnational tort and access to remedy under the UN Guiding Principles on Business and Human Rights: *Kamasaee v. Commonwealth*", *Melbourne Journal of International Law*, vol. 19, No 1 (2018).

[53] See GBR 5/2010.

between immigration authorities and a company in order to avoid the application of the new law.[54]

74. In addition, some companies have discontinued certain types of activity due to public outcry or divestment campaigns. For example, several American airline companies reportedly refused to transport children who have been separated from their families in the context of the zero-tolerance policy. Some major American banks apparently took a similar stance by announcing they would cease financing companies that operate private detention centres. Companies have also come under pressure from trade unions as their employees have expressed concerns about the use of airlines in deportations involving forced family separations. An airline in the United Kingdom announced that it would terminate transportation services for deportations as a campaign was mounted regarding alleged unlawful removals of long-term United Kingdom residents from Commonwealth countries (see para. 54 above) and in relation to lesbian, gay, bisexual, transgender and gender-diverse asylum seekers.[55]

IX. Conclusions and recommendations

Conclusions

75. **Corporate involvement in security aspects of immigration and border management has increased exponentially in recent decades. While privatization is neither encouraged nor prohibited by international law, the international human rights framework is unequivocal that, ultimately, States are accountable for the impacts companies have on the enjoyment of human rights. States must be particularly vigilant when they outsource inherent government functions to private commercial actors that are motivated primarily by profit, fostering situations in which human rights are subordinated to goals of efficiency, effectiveness and cost-cutting.**

76. **Profound and long-standing concerns have been expressed by United Nations human rights mechanisms, including this Working Group, and civil society actors regarding the impact of privatization of immigration detention and more broadly of the privatization of the delivery of services that may have an impact on the enjoyment of human rights. The present report highlights the dramatic consequences of States contracting companies to undertake an array of security services to support State policies and measures to tighten border controls and prevent entry to irregular or undocumented migrants. At times, companies are directly responsible for human rights abuses of migrants, including refugees and asylum seekers, notably in situations of deprivation of liberty. In other instances, they are complicit in human rights violations and abuse caused by other actors, such as immigration and border authorities, primarily through the border security technologies they provide and their co-framing of migration as a security threat for which the "solution" is security and military technical and technological tools, which only they can provide.**

77. **Everything points to this practice not only continuing, but also growing, as new markets open up and appetite for constantly updated technologies generates continued demand for these so-called security solutions. In many countries, notably in the global North, dominant political and economic interests around enforcing immigration and border controls have become so tightly interwoven that they will be hard to unravel. A fundamental evaluation of the way that migration is governed, including the role that companies play in reinforcing security over humanitarian approaches and the specific security services they provide in this sector, is urgently needed in order to address the violations and abuses of the rights of migrants, including refugees and asylum seekers, that are taking place on a massive scale. Those countries with several decades of experience of using private security-related**

[54] See submission by the Center for International Human Rights of Northwestern Pritzker School of Law.

[55] See submission by the Australasian Centre for Corporate Responsibility.

immigration and border management services should lead the way in evaluating the current model and its impact on the human rights and dignity of migrants.

Recommendations

78. **States have a duty to respect, promote and fulfil the human rights of migrants without discrimination. They retain this obligation towards all migrants who fall within their jurisdiction or effective control, including extraterritorially, where applicable, irrespective of whether they have outsourced certain immigration detention and border control functions to a private actor. In order to fulfil their obligations in this regard, States must urgently strengthen their legal and regulatory frameworks governing the provision of private military and security services, paying particular attention to companies to whom they have contracted inherent State functions and those whose activities take place in high-risk environments, where the risk of serious human rights impacts is elevated. Specific regulations and related monitoring mechanisms should be crafted for those companies providing such services in immigration and border management.**

79. **States should use all tools at their disposal to enforce human rights standards, including licensing or authorization mechanisms and contracts. Contracts between public agencies and companies regarding immigration and border management functions should include sufficiently detailed provisions on human rights compliance in line with international standards, regular reporting requirements and robust human rights monitoring provisions, and effective means for addressing contractor non-compliance, including contract termination and ensuring that the company is not rehired.**

80. **States should undertake regular and comprehensive reviews of advanced technologies purchased from and maintained by companies for immigration and border management, with the aim of assessing their human rights compliance. Where the use of certain technologies is found to have contributed to or directly caused human rights violations and abuses, States should discontinue or revise their use to ensure they are used in line with their international law obligations only. They should communicate the findings to companies with requirements regarding modifications of their products and services, or notification of the discontinuation of the use of the technologies.**

81. **States must publicly disclose detailed and appropriate levels of information on immigration detention and border control functions outsourced to business entities. They should strengthen national oversight mechanisms and ensure that they, along with national human rights institutions and independent civil society organizations, are mandated and able to monitor human rights compliance of privatized immigration and border security services, including ensuring access to all places where migrants are deprived of their liberty, and adequate access to relevant public research and policy forums.**

82. **States should introduce checks and balances to limit undue influence of these companies on national, regional and international policymaking on migration governance.**

83. **Regarding the collection, storage and use of biometric and other data on migrants, States must require companies to ensure that the systems they provide and manage are regulated by law and comply with international standards and best practice on data protection and privacy. Such data should be, inter alia, proportionate to a legitimate aim, obtained lawfully, accurate and up-to-date, stored securely for a limited time and disposed of safely and securely.**

84. **States should terminate the practice of outsourcing the overall operation of immigration detention facilities to private military and security companies, and**

should take legal and policy measures to favour the use of alternatives to detention, with deprivation of liberty as a last resort.[56]

85. **States must introduce measures to ensure accountability of companies and their personnel for human rights violations and abuses against migrants caused directly or indirectly by their business activities. This should include enabling legislation and other concrete mechanisms, including in relation to investigation, prosecution and punishment of company personnel, and measures to ensure non-repetition.**

86. **Given the heightened risk of gross human rights abuses associated with the provision of private military and security services in immigration and border management, companies in this sector need to exercise heightened human rights due diligence to avoid causing, contributing or becoming directly linked to adverse human rights impacts. This due diligence process should take place at all stages of their operations in order to capture potential and actual human rights impacts. For example, in order to avoid the risk of complicity in the return of migrants to situations in which they will suffer human rights harm, airlines and companies providing secure transportation services should conduct thorough checks to ensure that all migrants under their supervision will not face risks of human rights violations or abuses when returned. Such companies should refuse to transport migrants until they have benefited from a proper individualized assessment of their human rights protection needs. Another crucial part of the human rights due diligence process is adequate vetting and training of security personnel.**

87. **Companies in this sector should be obliged to publicly disclose accessible, clear and non-ambiguous information with regard to their contracts and operations, to the same extent as public entities with similar functions.**

88. **Where companies identify that they have caused or contributed to adverse human rights impacts, they should fully disclose information pertaining to those impacts, and provide or cooperate in their remediation through legitimate processes. In instances in which these impacts amount to gross human rights violations and abuses, including crimes, they should fully cooperate with judicial mechanisms leading to accountability and effective remedies for victims.**

89. **Multi-stakeholder initiatives, such as the International Code of Conduct Association and the Montreux Document Forum, should consider how to overcome current gaps in their founding texts that fail to capture explicitly companies providing private military and security services in immigration and border management. This is of particular importance given the magnitude of this sector, the risks associated with privatization of immigration detention and border control functions, and the absence of an international legally binding human rights instrument for the regulation, monitoring and oversight of the activities of private military and security companies.**

[56] For more detailed recommendations regarding privatized immigration detention, see A/72/286.