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OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of the Special Rapporteur on the human rights of migrants; the Special Rapporteur on extrajudicial, summary or arbitrary executions; and the Special Rapporteur on trafficking in persons, especially women and children.

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the human rights of migrants; Special Rapporteur on extrajudicial, summary or arbitrary executions; and Special Rapporteur on trafficking in persons, especially women and children pursuant to Human Rights Council resolutions 17/12, 17/5, and 17/1.

On 8 December 2010, we sent you an urgent appeal concerning the situation of migrants from Eritrea, Sudan and Ethiopia who were held hostage and abused by alleged traffickers in Sinai. We note the response of your Excellency's Government of 17 December 2010 that the authorities conducted the investigation into this matter and found no information supporting the allegation. Nevertheless, we continue to receive information that a large number of migrants are still held captive by alleged traffickers in Sinai who demand a large amount of ransom money and subject them to ill-treatment, including torture, rape and physical abuse, if they are unable to pay the ransom.

According to the information received:

Migrants and asylum seekers, mostly from Eritrea, Ethiopia and Sudan, are allegedly held hostage at various locations in Sinai by "traffickers" who demand a large amount of ransom in exchange for their release and journey to Israel. The reported amount of ransom ranges from \$3,000 to \$40,000. Testimonies report that victims are often required to pay a second or third sum of money in order to be released. If the hostages or their families and friends cannot pay the ransom, they are allegedly tortured and severely beaten by the traffickers. It is reported that the hostages are blindfolded, chained to each other and forced to stand all the time. They are often hung upside down and beaten with metal chains or plastic rods. Many are given electric shocks or burnt with white-hot irons or flaming plastic bags. Many of the hostages reportedly died as a result of severe beatings and burns. The hostages are not given adequate water and food. The survivors reported that they were given only one piece of bread per day and given no or very little water while they were held captive. Some victims reportedly have starved to death. The female hostages are allegedly raped and sexually abused by the traffickers and/or the guards in a systematic manner. In addition, there are allegations indicating a pattern of sexual harassment, whereby the women were forced to be naked and the traffickers were touching the women without their

consent. Male victims are also reportedly victims of rape, as punishment for trying to prevent the rape of young women. Many victims are also allegedly subject to forced labour, and other victims have reportedly been threatened with or experienced their organs being removed.

While many of the alleged victims of these abuses were reportedly victimized on their journey to Israel through the Egyptian border, there are also reports that some victims had no plans to enter Israel and that they were kidnapped from Sudan or Egypt for ransom.

It is reported that despite these allegations, the Egyptian authorities have not conducted investigation into these matters and appear unwilling to intervene.

Furthermore, the information received suggests that the Egyptian border guards routinely shoot at migrants trying to cross the Israel-Egypt border. Since 2010, at least 178 survivors who arrived in Israel reported that they were shot at by the Egyptian border guards at the Israel-Egypt border as they made their way to Israel.

The Special Rapporteur on the human rights of migrants and the Special Rapporteur on extrajudicial, summary or arbitrary executions raised the concern about the killing of migrants at the Egypt-Israel border in their joint communication of 9 April 2010. The Special Rapporteur on trafficking in persons, especially women and children, also expressed concern that migrants are often shot dead by the border guards as they try to cross the Israel-Egypt border (A/HRC/17/35 Add.2, paragraph 27). It is of concern that we continue to receive information that migrants are shot at by the border guards in an indiscriminatory manner and the authorities do not take the necessary measures to identify victims of trafficking among the migrants.

While we do not wish to prejudge the accuracy of these allegations, we would like to refer your Excellency's Government to the relevant principles of international law. The International Covenant on Civil and Political Rights (ICCPR) (ratified by your Excellency's Government on 14 January 1982) provides that every individual has the right to life, and that no person shall be arbitrarily deprived of his or her life (article 6). The prohibition on the arbitrary deprivation of the right to life applies to all persons, regardless of citizenship. Article 2 of the ICCPR requires that states "respect and ... ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. The State must exercise due diligence to prevent violations of the right to life. This includes due diligence in protecting persons from interference and human rights violations by non-state actors. In this connection, Human Rights Council resolution 9/5 "requests States to effectively promote and protect the human rights and fundamental freedoms of all migrants, especially those of women and children, regardless of their immigration status, in conformity with the Universal Declaration of Human Rights [UDHR] and the international instruments to which they are party".

In its General Comment No. 31, the Human Rights Committee has observed “the positive obligations to ensure Covenant rights will only be fully discharged if individuals are protected by the State, not just against violations of Covenant rights by its agents, but also against acts committed by private persons or entities There may be circumstances in which a failure to ensure Covenant rights as required by article 2 would give rise to violations by States Parties of those rights, as a result of States Parties' permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities. As with failure to investigate, failure to bring to justice perpetrators of such violations could in and of itself give rise to a separate breach of the Covenant. These obligations arise notably in respect of those violations recognized as criminal under either domestic or international law, such as summary and arbitrary killings”.

We would also like to bring to the attention of your Excellency's Government the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions which set out the State's duty to investigate, prosecute, and punish all violations of the right to life. Pursuant to principle 9, the investigation of such cases “shall be thorough, prompt and impartial. ... The purpose of the investigation shall be to determine the cause, manner and time of death, the person responsible, and any pattern or practice which may have brought about that death”. Principle 17 of the aforementioned instrument further provides that “[a] written report shall be made within a reasonable period of time on the methods and findings of such investigations. The report shall be made public immediately and shall include the scope of the inquiry, procedures and methods used to evaluate evidence as well as conclusions and recommendations based on findings of fact and on applicable law.”

Article 6 of the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, acceded by your Excellency's Government on 1 March 2005, obliges States Parties to adopt legislative and other measures to establish the smuggling of migrants as a criminal offence, when committed intentionally and in order to obtain a financial or other material benefit. Further, article 16 requires States Parties to take all appropriate measures to preserve and protect the rights of smuggled persons, in particular the right to life and the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment, and to afford migrants appropriate protection against violence that may be inflicted upon them by reason of being smuggled. In this connection, we would like to add that article 3 of the ILO Convention (N°143) concerning Migrations in Abusive Conditions, which Egypt has yet to ratify, provides important guidance on international legal standards relating to combatting abuses related to migrant smuggling. It states that “Each Member shall adopt all necessary and appropriate measures, both within its jurisdiction and in collaboration with other Members (b) against the organizers of illicit or clandestine movements of migrants for employment departing from, passing through or arriving in its territory, and against those who employ workers who have immigrated in illegal conditions”.

Furthermore, we would like to recall obligations of your Excellency's Government under the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention Against Transnational Organized Crime ("the Palermo Protocol"). As a State Party to the Palermo Protocol, your Excellency's Government is under an obligation to prevent trafficking in persons, investigate, prosecute and punish traffickers, and to protect victims of trafficking in persons. Article 10 of the Palermo Protocol, *inter alia*, requires State Parties to investigate and exchange information on the means and methods used by organized criminal groups for the purpose of trafficking in persons, including the recruitment and transportation of victims, routes and links between and among individuals and groups engaged in such trafficking, and possible measures for detecting them. The onus therefore resides on State Parties to determine whether individuals crossing or attempting to cross an international border with travel documents belonging to other persons or without travel documents are perpetrators or victims of trafficking in persons. Further, under article 11, State parties undertake without prejudice to international commitments in relation to the free movement of people, to strengthen, to the extent possible, such border controls as may be necessary to prevent and detect trafficking in persons.

We would further like to refer to *the Programme of Action of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance*, which *inter alia* "Urges States to enact and implement, as appropriate, laws against trafficking in persons, especially women and children, and smuggling of migrants, taking into account practices that endanger human lives or lead to various kinds of servitude and exploitation, such as debt bondage, slavery, sexual exploitation or labour exploitation; also encourages States to create, if they do not already exist, mechanisms to combat such practices and to allocate adequate resources to ensure law enforcement and the protection of the rights of victims, and to reinforce bilateral, regional and international cooperation, including with non-governmental organizations that assist victims, to combat this trafficking in persons and smuggling of migrants".

Finally, we wish to recall article 12(2) of the ICCPR, which provides that "Everyone shall be free to leave any country, including his own", and article 13(2) of the UDHR which states that "Everyone has the right to leave any country, including his own, and to return to his country". Furthermore, we wish to refer to Resolution 9/5 which also "reaffirms that, when exercising their sovereign right to enact and implement migratory and border security measures, States have the duty to comply with their obligations under international law, including international human rights law, in order to ensure full respect for the human rights of migrants."

Moreover, 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 cooperation and your observations on the following matters:

1. Are the facts alleged in the summary accurate?

2. Please provide the details and results of the investigation previously carried out by your Excellency's Government in response to our previous communication of 8 December 2010.

3. Please provide details, and where available the results, of any subsequent investigations carried out in relation to the above allegations. In particular, please indicate whether the alleged perpetrators have been identified, apprehended, prosecuted or convicted of the crime.

4. Please provide information on any steps undertaken by your Excellency's Government to identify the hostages and ensure their safety.

5. Please indicate whether the victims or their families have access to adequate procedures of compensation for damages from those legally responsible for the crime.

We would appreciate a response within sixty days. Your Excellency's Government's response will be made available in a report to the Human Rights Council for its consideration.

In the event that your preliminary investigations support or suggest the above allegations to be correct, we urge your Excellency's Government to immediately conduct thorough investigation into these allegations and to take all necessary measures to guarantee that the rights and freedoms of the migrants concerned are respected. In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the migrants concerned in compliance with the above international instruments. We also appeal to your Excellency's Government to ensure that an investigation into the death of the hostages is initiated and accountability of any person guilty of the alleged violations is ensured.

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

François Crépeau
Special Rapporteur on the human rights of migrants

Christof Heyns
Special Rapporteur on extrajudicial, summary or arbitrary executions

Joy Ezeilo
Special Rapporteur on trafficking in persons, especially women and children