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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 contemporary forms of racism, racial discrimination, xenophobia and related intolerance; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

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12 July 2013

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the human rights of migrants; Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health Sand pursuant to Human Rights Council resolution 15/22, 17/12, 16/33, and 16/23.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the treatment foreign nationals including migrants in Libya.

According to the information received:

Following the mass exodus of foreign nationals from Libya during the armed conflict of 2011, migration flows have appeared to have resumed as the country has once again become a destination country for migrants, particularly from the sub-Saharan African and North African and Middle Eastern region, who are in search of economic opportunities or for international protection as they flee persecution, violence and armed conflicts in the region and beyond. Furthermore, it is alleged that thousands of individuals arrive in Libya every year in the hope of continuing their journey to European shores.

However, due to a lack of human rights protections for these persons, is alleged that tens of thousands of foreign nationals, including asylum-seekers, refugees and migrants, find themselves at constant risk of exploitation, arrest and indefinite detention pending deportation in Libya.

Criminalization of Migration

Libyan law criminalizes all irregular entry, stay or leaving Libya, without the appropriate visa or through unofficial border posts. More recently, Libyan authorities appear to have increased their efforts to combat irregular migration. By the end of 2012, a decision was issued to seal the country's borders with Algeria, Chad, Niger and Sudan and the country's southern regions were declared to be closed military areas subject to "special measures". In effect, this has allegedly enabled military commanders in the south to arrest foreigners and deport them across the border. In January 2013, the Ministry of Interior announced the introduction of visas for all foreigners wishing to enter the country.

In February, the Ministry of Labour further announced that it would take tough measures against any foreign national found to be in Libya irregularly, and announced the halting of all procedures related to the entry of foreign workers to Libya until the labour market was regulated.

Allegations Regarding Conditions of Detention

Combined with the broad provisions of the law criminalizing all irregular migration, the 2010 Law on Combating Irregular Migration allows for the indefinite detention, followed by deportation, of those considered to be irregular migrants.

Arrests allegedly take place anywhere, at any time, although foreign nationals are most often picked up from their homes, at checkpoints and on the street. After a short period, foreign nationals are handed over to larger "holding centres" for "migration-related offences" pending deportation. It is alleged that the Government, militias and in some cases ordinary citizens, allegedly motivated by xenophobia and misguided fears about diseases, arrest and detain foreign nationals.

Seventeen such 'holding centers' are officially recognized by the Libyan Government; however an unknown number of detainees are allegedly also held by militias formed during the 2011 armed conflict, which continue to operate without state oversight. The number of detainees fluctuates as the cycles of arrests and deportations continue. It is estimated that between 4,000 and 6,000 foreign nationals are detained at any given time, including children.

Information received indicates that these holding centers allegedly fall short of international standards, with limited access to fresh air, lack of clothes, and irregular access to washing and sanitary facilities, lack of access to hygiene products, insufficient potable water and other basic necessities. In some centers, migrants are held in poorly ventilated and overcrowded rooms and some detainees sleep on the floor without blankets. Allegedly, in some centers, there is little access to natural sunlight, and migrants are only allowed to leave their rooms for a few minutes three times a day to collect their meals.

Poor hygiene standards and detention conditions have reportedly led to the spread of skin diseases and other medical problems, such as chest infections, fever, dehydration and chronic diarrhoea. Other health complaints include lice, flea bites, scabies and other illnesses. These illnesses are allegedly exacerbated by insufficient treatment, and at times the denial of treatment altogether.

Unaccompanied or separated children are also at risk of arrest and indefinite detention. Migrant children allegedly do not receive any preferential treatment in terms of family contact, access to fresh air or general conditions, and are said to be detained together with adults.

Allegedly, apart from the Tweisha holding center, most holding centers lack functioning medical services and rely on visits by doctors from nearby hospitals or provided by international humanitarian agencies. Allegedly, these visits are sporadic, and do not always meet the needs of the detainees. Furthermore, there appears to be widespread xenophobic accusations that sub-Saharan African detainees are the source of diseases.

Furthermore, it is alleged that deportation is regularly carried out without any procedural safeguards, and migrants do not have any means of challenging the decision to deport them. Few detainees are brought before a judge, and, once in detention, few are given access to a lawyer, interpreter, consular assistance or UNHCR, allegedly due to the failure of the authorities to contact appropriate services, relevant embassies or international organisations.

Allegations of Torture

Moreover, it has been reported that the treatment of migrants during their arrest and within these holding centres can at times amount to torture or cruel, inhuman and degrading treatment.

Allegations received of acts that could amount to torture include repeated beatings of migrants, the use of electric shocks and wires, being forced to strip, the use of firearms, including firing at detainees and injuring them, or firing overhead to incite fear, beating as a disciplinary measure, and verbal abuse, including the use of insulting and degrading language. There have also been reports that, in some centers, migrants are allowed to use sanitary facilities in the compound only once or twice a day, and beaten if they make further requests.

It is noted that, in early 2013, the Ministry of Interior issued instructions calling for the humane treatment of all foreign nationals held under its authority, and forbidding physical ill-treatment. Some improvements in the treatment of foreign nationals in detention have since been reported, including an internal investigation at the holding centre in Sabha, where an internal investigation led to the removal of the director and other people suspected of ill-treatment. Nevertheless, allegations continue to be received that torture and other ill-treatment persist, both in other holding centres and during the arrest of migrants. Furthermore, victims of

torture and other ill-treatment have alleged that they were denied medical care following their ill-treatment and torture, leading to permanent injury.

Moreover, the holding centers were formally controlled by militias during the 2011 conflict. However, since the handover of these centers to the Government, many of the militias has been admitted as staff of the holding centers. However, these individuals allegedly have not received any adequate training in prison management or human rights. Furthermore, no vetting system has been put in place to remove those who have been reasonably suspected of ordering, committing or allowing the use of torture and other ill-treatment during the conflict.

Treatment of Refugees and Asylum Seekers

Although Article 10 of the 2011 Constitutional Declaration stipulates that the “state shall guarantee the right to asylum by virtue of the law”, Libya is reportedly still lacking a national asylum system. In this context, the law criminalizing irregular migration continues to do so without distinguishing between refugees, victims of trafficking or other persons in need of international protection.

Thus, potential asylum seekers allegedly do not receive any of the protections they require and often end up in the migration detention holding centers. It has been alleged that approximately 1,700 detained asylum-seekers are being held indefinitely in holding centres. Their detention appears to be in breach of international refugee law, and there is allegedly no individual assessment of the protection claims of detainees.

On 22 January 2013, the country’s border crossing with Egypt at Salloum-Musaid was closed to all foreign nationals, with the exception of Egyptians holding a visa. It has been alleged that the border closure will mainly affect Syrian refugees who had previously been able to enter Libya by land, provided they had a valid passport. UNHCR has to date registered some 8,100 Syrian refugees in Libya, but estimates the overall Syrian population in the country at over 100,000.

Allegations regarding deportation practices

Between May 2012 and the end of April 2013, Libya’s Department of Combating Irregular Migration (DCIM) within the Ministry of Interior allegedly deported close to 25,000 foreign nationals primarily on the grounds that they were in Libya irregularly. Approximately 2,000 persons are reportedly deported every month by land or by plane. Detainees in certain facilities are also required to pay their own deportation, and are kept in detention when they are unable to pay such fees. Given the lack of a functioning asylum system, it is unclear whether some of these persons deported are in fact asylum seekers.

Other allegations received include that migrants with regular status are also sometimes arrested and detained.

It has further been reported that Libyan authorities have started deporting migrants diagnosed with infections such as hepatitis B and C or HIV. With the reported reintroduction in 2013 of a law that requires a valid health certificate for foreigners, there is now compulsory HIV and Hepatitis testing for foreign nationals. However, it has been reported that individuals that test positive for these diseases, even including individuals who entered Libya and lived in the country with valid travel documents, have been deported. The deportation of migrants with other illnesses including malaria, syphilis and tuberculosis has also been reported.

Furthermore, since the introduction of this law, it is reported that migrants in detention are regularly subjected to medical tests. In some cases, migrants have allegedly been forced to pay for these tests. Others reported that they had not been shown the results, and were worried about their health. For those migrants diagnosed in detention, they are allegedly not provided with treatment following their diagnosis.

Moreover, there are allegations that migrants are bribed to work within the holding centers, and do so under exploitative conditions without pay in the hope of early release.

Exploitation of Migrants

It is further alleged that Libya continues to attract large numbers of foreign workers, especially in the agriculture and construction sectors, as well as in the services industry. Although these workers reportedly are relied upon by these industries, there is an alleged absence of a coherent migration policy to protect the rights of these workers and regularize their status. Thus migrant workers are allegedly regularly exploited, yet the exploiting employers operate in a climate of impunity.

Given the climate of xenophobia and increasing criminalization of migration, migrants are particularly vulnerable. In this context, there are allegations that migrants with regular status are sometimes arrested and detained despite their legal right to be in Libya. There are allegations that migrant workers are physically abused, have their documents stolen and are sent to holding centers as reprisal for speaking out against exploitation.

Without in any way making a determination on the accuracy of these allegations, we would like to recall your Excellency's Government obligations under international human rights treaties to respect and protect the human rights of all individuals within its territory and subject to its jurisdiction, regardless of citizenship, nationality or immigrant status.

In this connection, we refer your Excellency's Government to the principle of non-discrimination enshrined in article 2 of the Universal Declaration of Human Rights (UDHR), and article 2 and 26 of the International Covenant on Civil and Political Rights

(ICCPR), which your Excellency's Government acceded on 15 May 1970, as well as in several other United Nations declarations and conventions which provide that every individual is entitled to the protection of their rights and freedoms without discrimination or distinction of any kind, and that all persons shall be guaranteed equal and effective access to remedies for the vindication of those rights and freedoms.

Regarding the allegations of detention of migrants and asylum seekers, we would like to remind your Excellency's Government that the enjoyment of the rights guaranteed in the International Covenant on Civil and Political Rights (ICCPR) is not limited to citizens of States parties but "must also be available to all individuals, regardless of nationality or statelessness, such as asylum seekers, refugees, migrant workers and other persons, who may find themselves in the territory or subject to the jurisdiction of the State Party" (General Comment 31, para. 10). The ICCPR further stipulates that all persons deprived of their liberty must be ensured the right, without delay, to control by a court of the legality of the detention (art. 9 (4)).

The human rights legal framework governing detention is guided by the principles of necessity, reasonableness in all the circumstances, and proportionality. No one shall be subject to arbitrary or unlawful detention (ICCPR article 9(1)). Detention should accordingly be a measure of last resort and as the result of an individual determination, must only be applied in exceptional circumstances, be prescribed by law, meet human rights standards, be subject to periodic and judicial review and, where used, last only for the minimum time possible.

In this context, regarding the allegations of detention of certain categories of migrants and asylum seekers, in particular children, we would like to remind your Excellency's Government that the Committee on the Rights of the Child, in its report of the 2012 Day of General Discussion on the rights of all children in the context of international migration, has noted that detention of children on the sole basis of their migration status or that of their parents is a violation of children's rights, is never in their best interests and is not justifiable (para 32).

Additionally, we would also like to recall your Excellency's Government of its obligations under the International Convention on the Elimination of All Forms of Racial Discrimination, acceded to by Libya in July 1968. In particular, we would like to draw your Excellency's Government's attention to General Recommendation No. 30 of the Committee on the Elimination of Racial Discrimination which recommends States parties "18. To ensure that non-citizens enjoy equal protection and recognition before the law [...]" and "19. To ensure the security of non-citizens, in particular with regard to arbitrary detention [...]"

In its General Recommendation the Committee further recommends, in paragraph 21, that States "combat ill-treatment of and discrimination against non-citizens by police and other law enforcement agencies and civil servants by strictly applying relevant legislation and regulations providing for sanctions and by ensuring that all officials dealing with non-citizens receive special training, including training in human rights."

With regard to the allegations regarding the conditions of detention, we would like to draw the attention of your Excellency's Government to the Standard Minimum Rules for the Treatment of Prisoners (adopted by the Economic and Social Council by resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977). Rule 22(2) provides that, "(s)ick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals. Where hospital facilities are provided in an institution, their equipment, furnishings and pharmaceutical supplies shall be proper for the medical care and treatment of sick prisoners, and there shall be a staff of suitable trained officers. Furthermore, Rule 25(1) provides that, "(t)he medical officer shall have the care of the physical and mental health of the prisoners and should daily see all sick prisoners, all who complain of illness, and any prisoner to whom his attention is specially directed". We would also like to draw your attention to the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment adopted by the General Assembly on 9 December 1988 (adopted by General Assembly resolution 43/173 of 9 December 1988). The Committee against Torture and the Human Rights Committee have consistently found that conditions of detention can amount to inhuman and degrading treatment.

With regard to the allegations of torture and ill-treatment, we further recall paragraph 1 of Human Rights Council Resolution 16/23 which "Condemns all forms of torture and other cruel, inhuman or degrading treatment or punishment, including through intimidation, which are and shall remain prohibited at any time and in any place whatsoever and can thus never be justified, and calls upon all States to implement fully the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment."

In this context, we would also like to draw the attention of your Excellency's Government to paragraph 7a of Resolution 8/8 of the Human Rights Council, which reminded Governments that corporal punishment, including of children, can amount to cruel, inhuman or degrading punishment or even to torture. We would also like to draw your Government's attention to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment's report to the 60th session of the General Assembly, in which he, with reference to the jurisprudence of UN treaty bodies, concluded that any form of corporal punishment is contrary to the prohibition of torture and other cruel, inhuman or degrading treatment or punishment. He also noted that States cannot invoke provisions of domestic law to justify violations of their human rights obligations under international law, including the prohibition of corporal punishment and called upon States to abolish all forms of judicial and administrative corporal punishment without delay (para.28 A/60/316). Both the Human Rights Committee and the Committee against Torture have called for the abolition of judicial corporal punishment. In paragraph 5 of General Comment No. 20 (1992), the Human Rights Committee stated that the prohibition of torture and ill-treatment must extend to corporal punishment, including excessive chastisement ordered as punishment for a crime or as an educative or disciplinary measure.

In this context, we would like to draw the attention of your Excellency's Government to article 12 of the Convention Against Torture (CAT), which your Excellency's Government acceded on 16 May 1989, which requires the competent

authorities to undertake a prompt and impartial investigation wherever there are reasonable grounds to believe that torture has been committed, and article 7 of the CAT, which requires State parties to prosecute suspected perpetrators of torture. We would also like to draw your Excellency's Government's attention to paragraph 7b of Human Rights Council Resolution 16/23, which urges States "(t)o take persistent, determined and effective measures to have all allegations of torture or other cruel, inhuman or degrading treatment or punishment investigated promptly, effectively and impartially by an independent, competent domestic authority, as well as whenever there is reasonable ground to believe that such an act has been committed; to hold persons who encourage, order, tolerate or perpetrate such acts responsible, to have them brought to justice and punished in a manner commensurate with the gravity of the offence, including the officials in charge of the place of detention where the prohibited act is found to have been committed; and to take note, in this respect, of the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the updated set of principles for the protection of human rights through action to combat impunity as a useful tool in efforts to prevent and combat torture."

With regard to the deportation practices, we further refer to article 3 of the CAT, which provides that no State party shall expel, return (*refouler*), or extradite a person to another State where there are substantial grounds for believing that the person would be in danger of being subjected to torture. In this regard, paragraph 9 of General Comment No. 20 on the prohibition of torture and other cruel, inhuman or degrading treatment or punishment, in which the Human Rights Committee states that State parties "must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of extradition, expulsion or *refoulement*." Furthermore, paragraph 7d of Human Rights Council Resolution 16/23 urges States "(n)ot to expel, return (*refouler*), extradite or in any other way transfer a person to another State where there are substantial grounds for believing that the person would be in danger of being subjected to torture, [...]."

In this connection, we further refer to article 13 of the ICCPR, which provides that "An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority." In its General Comment 15, the Human Rights Committee reaffirms this principle (Paragraphs 9 and 10).

General Recommendation No. 30 of the Committee on the Elimination of Racial Discrimination moreover recommends that States:

- "25. Ensure that laws concerning deportation or other forms of removal of non-citizens from the jurisdiction of the State party do not discriminate in purpose or effect among non-citizens on the basis of race, colour or ethnic or national origin, and that non-citizens have equal access to effective remedies, including the right to challenge expulsion orders, and are allowed effectively to pursue such remedies";

- “26. Ensure that non-citizens are not subject to collective expulsion, in particular in situations where there are insufficient guarantees that the personal circumstances of each of the persons concerned have been taken into account”; and

- “28. Avoid expulsions of non-citizens, especially of long-term residents, that would result in disproportionate interference with the right to family life”.

With regard to the right to the highest attainable standard of health, we would like to recall that this right is reflected, *inter alia*, in article 12 of the International Covenant on Economic, Social and Cultural Rights (acceded by Libya on 15 May 1970), which provides for the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. This includes an obligation on the part of all State parties to ensure that health facilities, goods and services are accessible to everyone, especially the most vulnerable or marginalized sections of the population, without discrimination.

We would also like to draw your attention to General Comment No. 14 of the Committee on Economic, Social and Cultural Rights, which provides that States are under the obligation to respect the right to health by, *inter alia*, refraining from interfering directly or indirectly with the enjoyment of the right to health, from denying or limiting equal access for all persons, including minorities, asylum seekers and illegal migrants, to preventative, curative and palliative health services, and from enforcing discriminatory practices as a State policy (para.34). Moreover, the right to health is closely related to and dependent upon the realization of other human rights, as contained in the International Bill of Rights, including human dignity, non-discrimination, privacy and right to information (para.3). And finally, the right to health contains both freedoms, including from interference and non-consensual medical treatment, and entitlements, including the right to a system of health protection which provides equality of opportunity for people to enjoy the highest attainable level of health (para.8).

With regard to the conduct of medical tests on migrants, we would further like to draw the attention of your Excellency’s Government to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment’s 2009 report to the Human Rights Council, which states that “If testing is indispensable, the way in which it is undertaken needs to be least intrusive and respect the dignity of the person subjected to the testing. [...] If forcible testing is done on a discriminatory basis without respecting consent and necessity requirements, it may constitute degrading treatment, especially in a detention setting” (A/HRC/10/44, paras. 64 and 65).

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. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged in the summary provided accurate?

2. Please provide details of any measures your Excellency's Government has undertaken to guarantee the full respect of the human rights of all migrants in Libya who are at risk of arrest, detention and/or deportation.

3. Please provide details of the rules applicable to the management of the holding centres, including the situations in which any use of force is authorized. Please also provide any details of any mechanisms that exist to investigate any abuses.

4. Please provide details about all migrant holding centers in Libya, including those run by the Government and others. Please also provide details of the staffing of those centers, including any relevant human rights training provided by the State or other actors. Please also indicate whether any independent monitoring of these centers takes place, either by international organizations, civil society organizations, or national investigative bodies.

5. Please provide any details of any protection measures that are put in place for asylum seekers and refugees, including avoiding violation of the principle of non-refoulement.

6. Please provide the details, and where available the results, of any investigation, and judicial or other inquiries which may have been carried out in relation to these allegations. If no inquiries have taken place, or if they have been inconclusive, please explain why.

7. In the event that any alleged perpetrators are identified, please provide the full details of any prosecutions which have been undertaken. Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?

8. Please provide details of any measures taken to ensure adequate detention conditions and health standards, access to health care and availability of essential medicines for foreign nationals in Libyan prisons.

8. Please provide information relating to the fate of foreign nationals detained in Libya.

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.

While waiting for your response, we urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of foreign nationals, including asylum-seekers, refugees and migrants are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person or persons responsible for the alleged violations should be ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

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

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