

Mandates of the Special Rapporteur on freedom of religion or belief and the Special Rapporteur on minority issues

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Excellency,

We have the honour to address you in our capacity as Special Rapporteur on freedom of religion or belief and Special Rapporteur on minority issues pursuant to Human Rights Council resolutions 22/20 and 25/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the allegations of arbitrary detention and forceful deportation of Pakistani refugees in Sri Lanka**. In the light of the information received we urge your Excellency's Government not to deport and immediately release them from detention allowing them to live in dignity and peace at least until the completion of processing their refugee status, or possible voluntary repatriation, or resettlement in a third country.

According to the information received:

At present, there are around 1400 Pakistani asylum seekers in Sri Lanka registered with the United Nations High Commissioner for Refugees (UNHCR). The Pakistani asylum seekers belong to religious minorities in Pakistan, including Ahmadiyya Muslims, Christians and Shias. Some of them have been in Sri Lanka for a few years now.

Allegedly, over 200 Pakistani asylum seekers have been detained. A special operation to arrest asylum-seekers and refugees reportedly began on 9 June 2014. According to sources, on 1 August 2014, the government of Sri Lanka started to forcefully deport detainees to Pakistan, about 10 people per day, and it has been alleged that the immigration department is planning to deport all Pakistani asylum seekers in detention.

It has also been alleged that on 3 August 2014, immigration officers went to a house of Pakistani Christian asylum seekers and confiscated their passports and UNHCR documents. Reportedly, this family was deported a week after. It is alleged that many asylum seekers registered in 2013 and 2014 are still waiting for their first instance interviews even though they have been registered for several years and reportedly possess evidence showing that they endured persecution in Pakistan. Concerns are raised with regard to UNHCR's lack of access to the individuals in detention and those who are being deported and the denial or access of these individuals to asylum process. By 11 August, 88 Pakistani asylum-seekers have reportedly been deported to Pakistan.

According to sources, reportedly, on 10 February 2014, the leader of the Muslim League (N) group minority wing, Karachi, Farrukh Harrison Saif, issued a First Information Report (FIR) against Pakistani Christians who have left Pakistan and sought asylum in another country, including Sri Lanka. According to the FIR, Pakistani Christian asylum seekers are considered as traitors and should be charged with high treason under article 6 of Pakistan Penal Code.

According to sources, members of the Ahmadiyya Muslim, Christian and Shia minority communities, face persistent and large scale of persecution in Pakistan on blasphemy charges or sectarian violence, which may be related to their choice and peaceful practice of their religious beliefs. In this context, allegedly personal security and safety of all members of religious minorities who have been and will be returned to Pakistan from Sri Lanka raises grave concern due to a large number of reported cases of threats by the militant extremists, as well as what appears to be a systematic persecution, discrimination, hostility and violence against them, in particular through arbitrary enforcement of Pakistani blasphemy legislation and police failure to fulfil its responsibility to protect religious minorities in Pakistan. Reportedly 687 members of religious minorities were killed in 200 targeted faith based attacks in 2013 in Pakistan.

Without prejudging the accuracy of the information made available to us, we would like to express grave concern that many Pakistani asylum seekers belonging to religious minorities in Pakistan, including Ahmadiyya Muslims, Christians and Shias, despite the fact that they are registered asylum seekers in Sri Lanka, are at imminent risk of being forcibly returned to Pakistan, where they risk being persecuted, tortured and killed.

Information received indicates that most Pakistani asylum seekers affected by recent detentions and deportation belong to religious minorities, however our concerns

with regards to the lack of due process necessary for the consideration of asylum claims extends to all asylum seekers.

In this context, we would like to draw your Excellency's Government attention to article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, acceded by Sri Lanka on 3 January 1994, 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".

We would also like to bring to the attention of your Excellency's Government that the General Assembly has repeatedly urged States not 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, and recognized that diplomatic assurances, where used, do not release States from their obligations under international human rights, humanitarian and refugee law, in particular the principle of non-refoulement (General Assembly resolutions A/RES/60/148, A/RES/61/153, A/RES/62/148, A/RES/63/166, A/RES/64/153, A/RES/65/205, A/RES/66/150, A/RES/67/161 and A/RES/68/156).

In this context, we would like to draw to your Excellency's Government attention to the UNHCR eligibility guidelines for assessing the international protection needs of members of religious minorities from Pakistan, including the Ahmadiyya Muslim, Christian and Shia minority communities, which may be in need of international protection and require particularly careful examination of possible risks.

Without expressing at this stage an opinion on the facts of the case and on whether the detention of around 200 Pakistani asylum seekers is arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee their right not to be deprived arbitrarily of their liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 10 of the Universal Declaration of Human Rights (UDHR) and articles 9 and 14 of the International Covenant on Civil and Political Rights (ICCPR).

Furthermore, recognizing that those individuals affected constitute persons belonging to minorities in both Sri Lanka (while many are more newly arrived and seeking permanent asylum status) and Pakistan, and that minority issues are highly relevant to the information provided, we would like to bring to your Excellency's

government attention the provisions of the 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. Article 1 of the Declaration requires States to protect the existence and identity of national or ethnic, cultural, religious and linguistic minorities within their territories and to “adopt appropriate legislative and other measures to achieve those ends”. Additionally, article 4.1 notes the obligation of States to ensure that persons belonging to minorities may exercise their human rights without discrimination and in full equality before the law.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

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 above-mentioned persons in compliance with international instruments.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify the facts in all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above mentioned allegations and concerns.
2. Please, provide information on the process of assessment of individual asylum claims and any risk assessment carried out in relation to Pakistani asylum seekers. Please indicate which concrete measures are being taken by your Excellency’s Government to fulfill its obligations under the principle of non-refoulement.
3. Please provide information concerning the legal grounds for the arrest and detention of around 200 Pakistani asylum seekers and how these measures are compatible with international norms and standards as stated, inter alia, in the UDHR and the ICCPR.
4. Please, provide information on whether access to legal representatives has been facilitated by the authorities. If not, explain why.
5. Please indicate which concrete measures are being taken to protect the rights of asylum seekers in Sri Lanka, including Pakistani asylum seekers.

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

We are intending to publicly express our concerns in the near future as we are of the view that the information upon which the press release is going to be based is sufficiently reliable to indicate a matter warranting immediate attention. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue in question.

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

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

Heiner Bielefeldt
Special Rapporteur on freedom of religion or belief

IZSÁK Rita
Special Rapporteur on minority issues