

Mandates of the Special Rapporteur on the human rights of migrants and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance.

REFERENCE: AL
MDA 2/2014:

8 July 2014

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the human rights of migrants and Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance pursuant to Human Rights Council resolutions 26/19 and 25/32.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **punishment of four Israeli medical students, and related public statements by Mr. [REDACTED], a high-ranking official in the Bureau on Migration and Asylum, about foreign students.**

According to the information received:

On 3 May 2014, a group of allegedly drunk Moldovan men, provoked four Israeli citizens – Mr. Matani Muhammad, Mr. Abu Ahmad Jihad, Mr. Dallashi Abd Alkader and Mr. Dallasheh Hamzeh – with ethnically tainted statements outside of a restaurant in Chişinău, and a fight ensued. Following the fight, the Israelis were each issued 400 MDL in administrative fines, expulsion orders and five-year residence bans for constituting threats to the State. Since the Israelis were in the Republic of Moldova to study at the medical faculty of the State University of the Republic of Moldova, their careers as medical students have effectively been terminated.

It is further reported that, as of 27 June 2014, the administrative fines in 3 of the 4 cases had been annulled upon appeal. However, as of the date of this letter, the expulsion orders and residence bans reportedly remain in force. In addition, the migration status documents of the four persons concerned have already reportedly been destroyed by Moldovan migration authorities, despite appeals lodged by the four men.

Additionally, on 30 May 2014, following a fight in a nightclub between foreign students and Moldovans, Mr. [REDACTED], a high-ranking official in the Bureau on

Migration and Asylum, reportedly made public statements biased against foreign students. In effect, Mr. [REDACTED] allegedly remarked that often foreign students do not attend classes and that it is well-known that they pay to pass their exams. He then urged that rules relating to foreign students be tightened.

Concern is expressed over the evident lack of an effective investigation into the possible ethnic or racial animus into the acts initially triggering the incidents, in particular acts by the Moldovan parties who initiated the fight on 3 May 2014. Impunity for discrimination based on ethnicity or perceived race violates the provisions of the International Convention on the Elimination of All forms of Racial Discrimination (ICERD). Moreover, the disproportionately harsh punishment of the foreign students manifestly constitutes discrimination against non-citizens. We also express concern regarding the physical and psychological security and integrity of Mr. Matani Muhammad, Mr. Abu Ahmad Jihad, Mr. Dallashi Abd Alkader and Mr. Dallasheh Hamzeh, for these discriminatory measures have the effect of restricting the students' ability to contest their sentences and seek effective remedies.

Concern is also expressed over Mr. [REDACTED]'s public statements against foreign students because they discriminate on the basis of national origin. Given that Mr. [REDACTED] is one of the highest-ranking officials in the Republic of Moldova charged with the development of policy concerning foreigners, this expression of hate speech against non-citizens is particularly worrisome.

In connection to the above alleged facts and concerns, please refer to the **Reference to international law Annex** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

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 observations on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please provide the full details of any investigation, judicial or other inquiries and prosecution carried out against individuals responsible for provoking the alleged xenophobic and racist attacks against migrants, and specify whether in this context racial motivation was retained. If not, please explain why.
3. Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?
4. Please provide information with regard to how the actions of the four Israeli citizens constituted as threats to the State, if they were given any legal assistance and whether they have been informed of their rights and process of judicially appealing the administrative fines, expulsion orders and five-year residence bans. ?

5. What measures are envisioned to ensure that public officials do not incite to racial, ethnic or other forms of discrimination or hatred, particularly as concerns non-citizens?

6. Please provide information on the measures taken to prevent the recurrence of racist and xenophobic acts, to guarantee their rights and freedoms without discrimination, and to foster tolerance, mutual understanding and social harmony between citizens and non-citizens, and promote respect for cultural diversity.

We would appreciate a response within 60 days.

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.

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.

François Crépeau
Special Rapporteur on the human rights of migrants

Mutuma Ruteere
Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia
and related intolerance

Annex
Reference to international human rights law

In connection with the above concerns, it is relevant to recall the domestic legal framework. Specifically, Article 77 of the Criminal Code stipulates for “social, national, ethnic or religious hatred” as grounds for aggravating circumstances for any of the criminal acts listed in the Special Part of the Criminal Code.

We would also like to remind your Excellency’s Government of its obligations under the *International Convention on the Elimination of All forms of Racial Discrimination* (ICERD), to which it acceded on 26 January 1993. In particular, articles 2, 4, 5 and 6 address applicable States’ obligations. With regards to the discriminatory practice of public matters, we recall article 2, paragraph 1 (c) on effective State review of policies which create or perpetuate racial discrimination. Article 4 outlines criminalizing the dissemination of ideas based on racial superiority and prohibiting public authorities from promoting racial discrimination. Article 5 enumerates States’ obligations to protect persons’ rights to security, protection against bodily harm, and to nationality. Article 6 describes how States will assure every person within its jurisdiction effective protection against racial discrimination and remedies.

Furthermore, we would like to draw the attention of your Excellency’s Government to *General Recommendation No. 30 on Discrimination Against Non-Citizens* of the Committee on the Elimination of Racial Discrimination (CERD). The Committee recommends addressing xenophobic attitudes and behaviour towards non-citizens; ensuring that legislative protections against racial discrimination apply to non-citizens regardless of their immigration status; and guaranteeing non-citizens equal protection of the law. On issues specific to this case, the Committee advises:

21. To 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.

25. To 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.

The Committee has also elaborated relevant States’ obligations in *General Recommendation No. 35 on Combating racist hate speech*. Paragraphs 6 and 13 address States’ measures to combat manifestations of hate speech. Paragraph 22 specifies that States ought to combat public expressions of racism, especially those of high-ranking officials, with disciplinary actions such as removal from office. Paragraph 47 encourages States to legislate against hate speech.

In 2011, the Committee specifically recommended that Moldova:

(a) ensure the proper implementation of the existing anti-discrimination provisions and the effective investigation and persecution of racially motivated offences;

(b) actively assist victims of racial discrimination seeking remedies and inform the public about legal remedies in the field of racial discrimination;

(c) assess reasons for the very low number of complaints relating to racial discrimination, including whether it may be due to victims' lack of awareness of their rights, fear of reprisals, limited access to available mechanisms, lack of confidence in the police and the judiciary, or the authorities' lack of attention or sensitivity to cases of racial discrimination.

We would also like to remind your Excellency's Government that the enjoyment of the rights guaranteed in the *International Covenant on Civil and Political Rights* (ICCPR) to which the Republic of Moldova acceded on 26 January 1993, are not limited to citizens of States parties but "must also be available to all individuals, regardless of their 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" (ICCPR/C/21/Rev.1/Add. 13 (2004), para. 10). Thus, article 2, paragraph 1, of the ICCPR obligates each State party to respect and ensure to all persons within its territory and subject to its jurisdiction the rights recognized in the 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.

Moreover, article 6 imposes an obligation for states to "assure to everyone within their jurisdiction effective protection and remedies...against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination." Article 20, paragraph 2 further states: "Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law." Additionally, article 26 entitles all persons to equality before the law, as well as equal protection.

Furthermore we recall paragraph 30 of the Durban Programme of Action which "urges States to develop and implement policies and action plans and to [...] implement preventive measures in order to foster greater harmony and tolerance between migrants and host societies, with the aim of eliminating manifestations of racism, racial discrimination, xenophobia and related intolerance, including acts of violence, perpetrated [...] by individuals or groups [...]; (c) implement specific measures involving the host community and migrants in order to encourage respect for cultural diversity, to promote the fair treatment of migrants and to develop programmes, where appropriate, that facilitate their integration into social, cultural, political and economic life".

Finally, Human Rights Council Resolution 15/16 and General Assembly Resolution 68/179 call upon States "to respect the human rights and the inherent dignity

of migrants” and to “strongly condemn the manifestations and acts of racism, racial discrimination, xenophobia and related intolerance against migrants and the stereotypes often applied to them including on the basis of religion or belief, and urges States to apply and, where needed, reinforce the existing laws when hate crimes, xenophobic or intolerant acts, manifestations or expressions against migrants occur in order to eradicate impunity for those who commit those acts.”