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UNITED NATIONS
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 and the Special Rapporteur on
torture and other cruel, inhuman or degrading treatment or punishment**

REFERENCE: AL G/SO 214 (106-10) G/SO 214 (53-24)
MLT 1/2013

12 August 2013

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the human rights of migrants and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to Human Rights Council resolutions 17/12 and 16/23.

In this connection, we would like to bring to your Excellency's Government's attention information we have received regarding the **refusal by Malta to allow the tanker M/V SALAMIS to disembark the 102 migrants rescued at sea on 4 August 2013.**

According to information received:

On Sunday evening, 4 August 2013, a Liberian-flagged dinghy style vessel carrying 102 migrants was spotted by the Maritime Rescue Coordination Centre Rome. The Italian rescue coordination center ordered a nearby tanker, MT Salamis, operated by Greek shipping company Mantinia, to rescue the 102 migrants onboard and take them back to the nearest safe port of call. The MV Salamis effectively carried out the rescue operation, disembarking the migrants from their dinghy and onto the tanker. Amongst the migrants rescued, there were allegedly four pregnant women, one injured woman as well as a five month-old baby. The majority of the migrants rescued are Eritreans, who reportedly departed from Libya. Following the rescue, the MV Salamis continued with its planned route towards Malta as the originally intended destination.

During its voyage towards Malta, the Maltese government allegedly informed the captain of the MV SALAMIS that access to Maltese waters would be denied. At 24 nautical miles off the Maltese coast, the Armed Forces of Malta intercepted the vessel and refused it entry.

From 4 to 7 August, the MV SALAMIS was sitting 24 nautical miles off the Maltese Coast with the 102 persons on board. Patrol vessels from the Armed Forces of Malta

provided assistance to those aboard the tanker, including the provision of water and medical support; however concerns were raised by the shipmaster about lack of adequate supplies aboard including food and water.

On 5 August the Maltese Attorney General communicated with the shipmaster, proposing that he return to the place of rescue and make contact with nearest place of safety at the time of rescue, allegedly Libya, and disembark the migrants there. The Attorney General also threatened to take legal action against the Master and owners of the MV Salamis.

On 7 August, the third day since the rescue operation, Italy accepted to take in the migrants and the vessel disembarked the migrants at the Italian port of Syracuse.

Without prejudging the accuracy of the information made available to us, we would like to express our serious concern about the approach of the Government of Malta to the situation of the migrants aboard the MV Salamis from 4 – 7 August 2013.

We are aware that there remains some disagreement regarding where the search and rescue operation was carried out. Any dispute about the responsible search and rescue authority, including the involvement of the Italian and Libyan authorities, as well as the place of disembarkation at the time of search and rescue should be clarified at a later stage. Between 4 and 7 August 2013, the ship was closest to Malta, which then became the closest port of safe disembarkment. In such situations, it is first and foremost important to quickly save the lives of the rescued persons by enabling their prompt disembarkation.

We are further concerned about the recommendation by the Government of Malta that the migrants be returned to Libya, where they reportedly departed from, particularly in light of information we have received concerning the treatment foreign nationals including migrants in Libya. Due to a lack of human rights protection, migrants in Libya find themselves at constant risk of exploitation, arrest and indefinite detention pending deportation, indicating that Libya is not a safe port of disembarkation.

In brief, Libyan law criminalizes all irregular entry, stay or departure. These broad provisions, combined with the Law on Combating Irregular Migration (2010) allows for the indefinite detention, followed by deportation, of those considered to be irregular migrants. Detention of migrants is regularly practiced, and information received indicates that the detention centers in which migrants are held fall far 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. Poor conditions have led to the outbreak of disease. Furthermore, unaccompanied and/ 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 detained together with adults. Migrants in detention centers are held indefinitely until they are able to pay for their own deportation, and it is alleged that deportation is regularly carried out without

any procedural safeguards, with migrants having no means of challenging the decision to deport them.

Moreover, it has been reported that the treatment of migrants during their arrest and within these holding centres in Libya 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.

Finally, Libya has not promulgated national legislation or established administrative structures dealing with asylum. No individual assessment of the protection claims of migrants is facilitated. In this context, presently, potential asylum seekers allegedly do not receive any of the protections they require and often end up in the migration detention holding centers, where they may be deported.

It is acknowledged that maritime law does not explicitly provide for a duty of States to disembark persons rescued at sea. However, international human rights law does enshrine rights for all persons including migrants, whatever their status. These rights include not only to be free from torture or other forms of ill-treatment, but also to be free from prolonged, mandatory and indefinite detention and, to ensure that procedural safeguards and minimum standards and conditions are implemented during detention, In accordance with international human rights standards, that migrants must have access to adequate civil and political rights including access to appropriate processes and procedures, and outcomes in accordance with due process of law.

In this context, we would like to draw your Excellency's Government's attention to article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), acceded to by Malta in 1990, 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, we would also like to remind your Excellency's Government of the Human Rights Committee's General Comment No. 20 on the prohibition of torture and other cruel, inhuman or degrading treatment or punishment, paragraph 9, in which it affirmed 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 paragraph 16 of the Resolution 65/205 of the UN General Assembly which urges 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 recognizes 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."

Furthermore, Article 37 of the Convention on the Rights of the Child, ratified by the Government of Malta in 1990, reads: “States Parties shall ensure that: (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment.” Additionally, article 3 of the Convention on the Rights of the Child provides that the best interests of the child shall be a primary consideration in all actions concerning children.

Moreover, allow us to recall that Human Rights Council resolution 9/5, which addresses the issue of the human rights of migrants, "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 and the international instruments to which they are party". Resolution 9/5 further "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" and "urge States to ensure that repatriation mechanisms allow for the identification and special protection of persons in vulnerable situations, including persons with disabilities, and take into account, in conformity with their international commitments, the principle of the best interest of the child and family reunification".

In this context, we would also like to refer to the 2012 regional study of the Special Rapporteur on the human rights of migrants, on the management of the external borders of the European Union and its impact on the human rights of migrants (A/HRC/23/46). In that report, the Special rapporteur observed the phenomenon of the externalization of border control by EU Member States, which was defined as shifting the responsibility of preventing irregular migration into Europe to countries of departure or transit. In this context, while we are aware of the migratory pressure on Malta, we remain concerned that returning the migrants aboard the M/W SALAMIS to Libya would have been an example of externalisation. As noted in that report, ‘shift[ing] border control to other States is not accompanied by appropriate human rights guarantees. Emphasis seems to be increasingly placed on the capacities of countries to stop irregular migrants exiting their territories, rather than ensuring that migrants’ rights are adequately protected within a legitimate migration control process.’ (A/HRC/23/46, para 59).

In this regard, we urge your Excellency’s Government to undertake all necessary steps to ensure that the rights of all migrants, whatever their status, including potential asylum seekers aboard the vessel, are respected in compliance with international law, in particular the international principle of non-refoulement.

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 aboard the MV Salamis during the time the vessel was blocked from entering Maltese territorial waters.
3. Please indicate who instructed the Armed Forces of Malta to intercept the vessel and refuse it entry, and any investigation initiated in this respect.
4. Please indicate any action taken to ensure that this kind of situation does not arise in the future.

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 the above mentioned persons are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of 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.

François Crépeau
Special Rapporteur on the human rights of migrants

Juan E. Méndez
Special Rapporteur on torture and other cruel, inhuman or degrading
treatment or punishment