

Mandates of the Special Rapporteur on the human rights of migrants; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Independent Expert on the situation of human rights in the Sudan

REFERENCE:
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Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the human rights of migrants; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and Independent Expert on the situation of human rights in the Sudan, pursuant to Human Rights Council resolutions 34/21, 34/19 and 27/29.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the forced returns of Sudanese migrants.

According to the information received:

In September 2017, 103 Sudanese migrants in an irregular situation were arrested by the police in the Park Maximilian and transferred to immigration detention centres.

On 25 September 2017, a delegation of Sudanese officials arrived in Brussels at the invitation of the Government of Belgium. Allegedly, the delegation included members of Sudan's secret service.

The Sudanese officials reportedly interviewed 61 Sudanese migrants in several immigration detention centres. It is alleged that during these interviews, the Sudanese officials threatened some of the Sudanese migrants, indicating they knew their identity and those of their families. Subsequently, travel documents were issued for 43 of those interviewed.

Reportedly, by the time of writing, Belgium officials have forcefully returned eight Sudanese migrants to Sudan since 1 September 2017. Given the situation in Sudan, returnees who are considered to be a threat by Sudanese authorities are at risk of being detained and tortured. Incidents of arrests, torture and prolonged detention of individuals perceived as opponents to the regime, without access to legal representation or their families, by the National Intelligence and Security Service, are regularly reported in Sudan.

The other Sudanese migrants remain in custody in several immigration detention centres and are at risk of impending deportation to Sudan where they are at risk of serious human rights violations.

Belgian immigration authorities have reportedly failed to examine on a case-by-case basis the specific risk potentially faced by each individual upon return to Sudan. The Secretary of State and immigration authorities state that the assessment of a violation of article 3 of the European Convention on Human Rights can only be made when a person requests asylum. The majority of migrants concerned have reportedly not been in contact with a lawyer since they were arrested, after having been informed by social services in the immigration detention centers that they were not in need if they did not want to claim asylum.

Only few of the 103 Sudanese migrants have officially registered as asylum seekers after the interview with Sudanese officials. The majority has reportedly not applied for asylum in Belgium for a variety of reasons; including lack of adequate information, lack of assistance to file the claim, hesitation to file a claim from detention, fear that their protection would not be guaranteed by a state that cooperates with Sudan, and plans to continue their journey to the UK. Prior to their arrest by the police, they had been informed by the authorities about voluntary return. However, brochures distributed at the park did not contain information about the right to seek asylum.

While we do not wish to prejudge the accuracy of these allegations, we express our serious concern regarding the violation of rights of the Sudanese migrants.

We are concerned that due to the lack of an individual assessment, the Sudanese migrants have not benefitted from an adequate identification of their protection needs during the process.

The prohibition of a return to a place where individuals are at risk of torture and other ill-treatment is enshrined in Article 3 of the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), ratified by Your Excellency's Government on 25 June 1999. This absolute prohibition against refoulement is stronger than that found in refugee law, meaning that persons may not be returned even when they may not otherwise qualify for refugee or asylum status under article 33 of the 1951 Refugee Convention or domestic law.

Accordingly, non-refoulement under the CAT must be assessed independently of refugee or asylum status determinations, so as to ensure that the fundamental right to be free from torture or other ill-treatment is respected even in cases where non-refoulement under refugee law may be circumscribed.

We would further like to recall to Your Excellency's Government the para. 10 of the GA res. 62/156 which "urges States to ensure that repatriation mechanisms allow for the identification and special protection of persons in vulnerable situations and take into

account, in conformity with their international obligations and commitments, the principle of the best interest of the child and family reunification”.

We are particularly concerned over the absence of due procedural safeguards, including consideration of individual circumstances that may mitigate the grounds on which an individual is deported; such measures could amount to collective expulsion and violate the non-refoulement principle. Articles 5(a) and 6 of International Convention on the Elimination of All Forms of Racial Discrimination, ratified by Your Excellency’s Government on 7 August 1975, prohibit discrimination in expulsion proceedings on grounds of race, colour, descent, or national or ethnic origin.

In this connection we would like to refer Your Excellency’s Government to the principle of non-discrimination enshrined in article 2 of the Universal Declaration of Human Rights, and Article 2 and 26 of the ICCPR, 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.

The enjoyment of the rights guaranteed in the ICCPR 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).

We would like to draw Your Excellency’s Government’s attention to Article 9.1 of the ICCPR, which provides that everyone has the right to liberty and security of person. The enjoyment of the rights guaranteed in the 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” (CCPR/C/21/Rev.1/Add. 13 (2004), para. 10). The detention of migrants and asylum seekers should thus be a measure of last resort.

We are further concerned over possible violations on the right of access to information, preventing migrants from making an informed decision and in this context wish to draw your attention to article 19 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Your Excellency’s Government on 21 April 1983 stating that “everyone shall have the right to hold opinions without interference” and that “everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice”.

We wish to express our grave concern over the risk of a return to Sudan, in potential violation of the non-refoulement principle. The lack of individual assessments

and of the possibility for migrants to state their claims, outlining the risks they may face when returned to their countries of origin, creates a potential violation of the international principle of non-refoulement.

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 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 information about any measures taken to guarantee the psychological and physical integrity of those Sudanese migrants returned to their home country.
3. Please provide further information on standard procedures concerning information on all rights to be shared with migrants, including ensuring that migrants understand the grounds on which removal orders are based, the execution of removal orders, and remedies available.
4. Please provide further information on whether migrants, regardless of their status, are entitled to legal aid and interpretation, and how this is applied in the cases outlined in this communication.
5. Please inform us as to how individual assessments are carried out in each case, to accurately identify the protection needs of the 43 Sudanese migrants for whom travel documents were issued.
6. Please inform us about measures taken to respect the rights and dignity of the 8 individuals who were allegedly forcibly returned.
7. Please inform us about the number of those that have applied for asylum, including those ordered to leave the country.
8. Please provide information on the legal framework of the collaboration by your Excellency's Government with the Government of Sudan with a view to facilitate the return of Sudanese migrants to their home country?

9. Please provide information about the whereabouts of the 103 Sudanese nationals who were arrested.

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.

Felipe González Morales
Special Rapporteur on the human rights of migrants

Nils Melzer
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

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