

Mandates of the Working Group of Experts on People of African Descent; the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material; the Special Rapporteur on minority issues; Independent Expert on human rights and international solidarity; 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 contemporary forms of slavery, including its causes and consequences; the Special Rapporteur on trafficking in persons, especially women and children; and the Special Rapporteur on violence against women, its causes and consequences

REFERENCE:
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Dear Mr. Shaltut,

We have the honour to address you in our capacities as Working Group of Experts on People of African Descent; Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material; Special Rapporteur on minority issues; Independent Expert on human rights and international solidarity; Special Rapporteur on the human rights of migrants; Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; Special Rapporteur on contemporary forms of slavery, including its causes and consequences; Special Rapporteur on trafficking in persons, especially women and children and Special Rapporteur on violence against women, its causes and consequences, pursuant to Human Rights Council resolutions 36/23, 34/16, 34/6, 35/3, 34/21, 34/35, 24/3, 35/5 and 32/19.

In this connection, we would like to bring to the attention of your Government information we have received concerning **the enslavement and auctioning of enslaved African migrants in markets in Libya, which increasingly expose them to trafficking and forced labour**. A case of Libyan individuals selling two African migrants publicly in Benghazi was reported as early as 2013. Recent information suggests the perpetuation, and possible extension, of a slave market of migrants in Libya.

According to the information received:

Many migrants, some of whom may have been trafficked, are subjected to forced labour and forced prostitution through fraudulent recruitment, confiscation of identity and travel documents, withholding or non-payment of wages, and debt bondage. After working during the day in farms, as domestic workers, construction and road paving workers, and rubbish collectors, some are reportedly taken back to detention centres in the evenings; others are held at the workplace for weeks or months at a time until they are able to buy their way out of detention. In some cases, employers give money to smugglers, traffickers, or guards, including allegedly from the Libyan Department of Combating Illegal Migration (DCIM) as payment for the work – though the full amount never reaches the trafficked persons. Working conditions are often inhumane and employers often provide inadequate food and potable water. As a result, the health conditions of

these workers deteriorate rapidly, making them unsuitable to work and therefore further exposing them to trafficking.

Migrants, among whom are trafficked persons, also recount that in order to force them to work, employers, smugglers, traffickers and DCIM staff often threaten them, beat them with sticks, metal bars and gun butts, or shoot at them.

Information received indicates that racism, forced labour, rape and sexual exploitation also take place in detention, including by or with the complicity of the Libyan detaining authority. As per information received, in Shuhadaa Al Nasr Detention Centre, the largest in West Libya and run by DCIM, sexual exploitation and rape against female detainees are widespread, including by authorities in charge of the detention centre. A similar situation was reportedly registered in Surman Detention Centre and Sebratha Detention Centre, where rape resulted in pregnancies with no access to medical or legal assistance for victims.

In particular, migrants from Sub-Saharan Africa are at a heightened risk of abuse and exploitation, allegedly due to widespread racial discrimination and xenophobia in Libya. After crossing the border between Niger and Libya, migrants are repeatedly sold from one militia to another. During these transactions, migrants are detained, including in caves or “holes” in the ground, where they are forced to wait for several days before their journey to their new destination is organized and where they face serious human rights abuses, including gang rape. Migrants are then transferred from one Libyan city to another in trucks and cargo vans. It is reported that they are often hidden under piles of bricks that they themselves had to build and pile up before departure. During the journey, their lives are constantly threatened; other than lack of water and food, they are also confined in very limited spaces, which makes it hard for them to breathe. It has been alleged that migrants have repeatedly been sold and bought as labour workforce. It is reported that forced labour is always accompanied by long and very harsh periods of detention, during which migrants, among which are trafficked persons, are held in inhuman and degrading conditions, including in government-run detention facilities and following their interception at sea. They are often abducted by militias who forced them to work while held at gunpoint but also by private armed individuals who force them to work without any payment and with the promise of a future, uncertain liberation.

Furthermore, it has been alleged that when migrant boats are intercepted by the Libyan Coast Guard, migrants are usually transferred to DCIM detention facilities or to private houses and farms, sometimes for a fee, where they are often subjected to forced labour and trafficked for the purpose of sexual exploitation. Migrants who were intercepted at sea were brought back to Libyan shore and recounted being beaten with sticks or gun butts, and robbed of their belongings.

It is further reported that the allegations described above occur in the context of increasing xenophobia as well as widespread racism and racial discrimination

against foreigners in Libya. Relative to other migrants transiting through the country, migrants from Sub-Saharan Africa are at a significantly heightened risk of abuse and exploitation. Racism appears to be an underlying factor behind this discrepancy as migrants from sub-Saharan Africa are reportedly targeted based on their skin colour.

Information received further indicates that confrontations between NGOs active in search and rescue operations and Libyan coastguard are frequent and not just isolated incidents; in October 2016, it was reported that dozens of people drowned after the Libyan coastguard damaged an overloaded rubber dinghy and later tried to tow the dinghy from international waters back into Libyan territorial waters. In May 2017, it was reported that the crew of a Libyan coastguard patrol vessel fired shots from an automatic weapon in the direction of several vessels carrying migrants/refugees during another allegedly illegal refoulement. In this case, an NGO vessel was reportedly caught in the crossfire. Most recently, in November 2017, another incident between an NGO carrying out SAR activities and the Libyan coastguard has been reported, allegedly resulting in the death and disappearance of several migrants, including children. Those that did not die at sea nor were rescued by the NGO were reportedly beaten and ill-treated by the Libyan coastguard and most likely brought back to detention centres, whose conditions have already been described above.

We express grave concerns about the presence of a slave market in Libya, which is intimately related to trafficking, forced labour and sexual exploitation of migrants transiting from sub-Saharan Africa to Europe. The auctioning of migrants in slave markets in Libya, in which perpetrators did not even have to resort to violence and victims did not offer resistance, is an indicator of the level of psychological subjugation to which victims were probably already subjected to, prior to being sold as merchandise.

The outrageous practice of enslavement, which undermines the very essence of humankind and civilisation, represents the ultimate act of dehumanization and deprivation of the human dignity of migrants traveling to Libya with the hope of reaching European shores, in a context already marked by political instability and widespread gross human rights violations and abuses against them, such as racism, torture and other inhumane and degrading treatment, abduction, arbitrary detention, sexual violence, forced labour and trafficking. We are also concerned that migrants in Libya, whether seeking employment in Libya or traveling through Libya *en route* to Europe are extremely vulnerable to racism and trafficking. Abuse of power or of victims' position of vulnerability by traffickers increases migrants' vulnerabilities and puts them at increased risk of trafficking, including for purposes of sexual and labour exploitation and extortion, as is allegedly taking place in Libya.

The auctioning of enslaved Africans are reminiscent of one of the darkest chapters in human history, when millions of Africans were uprooted, enslaved, trafficked and auctioned to the highest bidder. Enslavement was intolerable then, and enslavement is intolerable now, and such acts of cruelty must be condemned by all, and it has no place in

modern society. For your information, a letter of similar content has been transmitted to the Government of Italy.

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

As it is our responsibility, under the mandate 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/or comment(s) you may have on the above-mentioned issues.
2. Please provide information on measures taken to investigate and prosecute groups or individuals involved in the enslavement and auctioning of African migrants in Libya and provide remedies to the victims.
3. Please also provide detailed information on action taken to protect the human rights of migrants and prevent and provide remedy for violations and abuses against them, including racism, torture and other inhumane and degrading treatment, abduction, arbitrary detention, sexual violence, forced labour, trafficking and threats to and violations fo the right to life.
4. Please provide information on measures taken, including those in collaboration with partner States, to ensure migrants' human rights during anti-trafficking and anti-smuggling operations, including during search and rescue operations carried out by the Libyan coastguard can be upheld.

We would appreciate receiving 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(s) responsible for the alleged violations.

We intend to publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Government's to clarify the issue/s in question.

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

Please accept, Mr. Shaltut, the assurances of our highest consideration.

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Annex

Reference to international human rights law

In connection with the above alleged facts and concerns, we would like to draw the attention of your Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

Slavery and slave trade are in all forms prohibited under international humanitarian and human rights law. State practice establishes this rule as a norm of customary international law applicable in both international and non-international armed conflicts. The first universal treaty outlawing slavery and the slave trade was the Slavery Convention in 1926. This was supplemented in 1956 by the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices similar to Slavery, outlawing debt bondage, serfdom and inheritance or transfer of women or children. The prohibition of slavery, servitude and the slave trade is a non-derogable right under the International Covenant on Civil and Political Rights and the regional human rights conventions.

Similarly, your Government is bound by obligations included in the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime. The Protocol defines trafficking in persons as the recruitment, transportation, transfer, harbouring or receipt of persons, by proscribed means for the purpose of exploitation, which includes, inter alia, forced labour or services, or servitude. In addition, we would like to refer to the Recommended Principles and Guidelines on Human Rights and Human Trafficking (“Recommended Principles and Guidelines”), issued by the Office of the High Commissioner for Human Rights in July 2002. Principle 13 of the Recommended Principles and Guidelines provides that “States shall effectively investigate, prosecute and adjudicate trafficking, including its component acts and related conduct, whether committed by governmental or by non-State actors”. Your government has also ratified and is therefore bound by the ILO Forced Labour Convention (1930) and its Protocol, which define forced labour as all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily (art. 2) and by the ILO Convention No. 182 on the worst forms of child labour (1999), which includes among worst forms of child labour all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict (art. 3).

The Slavery Convention defines slavery as “the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised”. It defines slave trade as including: all acts involved in the capture, acquisition or disposal of a person with intent to reduce him to slavery; all acts involved in the acquisition of a slave with a view to selling or exchanging him; all acts of disposal by sale or exchange of a slave acquired with a view to being sold or exchanged, and, in general, every act of trade or transport in slaves.

These definitions have served as the basis for the definition of “enslavement” in the Statute of the International Criminal Court as “the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children”.

The Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices similar to Slavery defines serfdom as “the condition or status of a tenant who is by law, custom or agreement bound to live and labour on land belonging to another person and to render some determinate service to such other person, whether for reward or not, and is not free to change his status”.

“Enslavement” is also listed as a crime against humanity under the Statutes of the International Criminal Court and of the International Criminal Tribunals for the former Yugoslavia and for Rwanda. Under the Statute of the International Criminal Court, sexual slavery is a war crime in both international and non-international armed conflicts. The elements of crimes for this offence were deliberately drafted to avoid too narrow an interpretation of “sexual slavery”, defining it as the exercise of “any or all of the powers attaching to the right of ownership over one or more persons, such as by purchasing, selling, lending or bartering such a person or persons, or by imposing on them a similar deprivation of liberty” combined with the causing of such person or persons “to engage in one or more acts of a sexual nature”. In relation to the first element of this war crime, the elements of crimes specifies that “it is understood that such deprivation of liberty may, in some circumstances, include exacting forced labour or otherwise reducing a person to servile status” as defined in the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices similar to Slavery and that “it is also understood that the conduct described in this element includes trafficking in persons, in particular women and children”. We would also like to recall the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ratified by Libya on 18 June 2004). In particular, Article 11 states that “No migrant worker or member of his or her family shall be held in slavery or servitude and No migrant worker or member of his or her family shall be required to perform forced or compulsory labour.”

In this context, we would like to bring to your Government’s attention Article 6 of the International Convention on the Elimination of all forms of Discrimination against Women (ratified by Libya on 18 June 2004), which provides that States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women. Reference is also made to the United Nations Declaration on the Elimination of Violence against Women clarifying that violence against women shall be understood to encompass trafficking and forced prostitution.

As sub-Saharan migrants appear to be particularly affected by the allegations described above, we further recall that the prohibition of discrimination and the right of everyone to equality before the law is enshrined in a variety of human rights instruments, including articles 2 and 26 of the International Covenant on Civil and Political Rights

(ICCPR), acceded to by Libya on 15 May 1970; article 2 of the Convention on the Rights of the Child, acceded to by Libya on 15 April 1993; and articles 2 and 5 of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), acceded to by Libya on 3 July 1968.

In this connection, we would like to remind your Government of its obligations under ICERD, which defines racial discrimination as “any distinction, exclusion, restriction or preference based on race, color, descent, or national or ethnic origin [...]” (article 1 (1)). In particular, we recall article 2 on the obligation of States to prohibit and eliminate any act or practice of racial discrimination against persons and/or groups by public authorities or any other person, group or organization. Article 5 requires States Parties to guarantee the right of everyone, without distinction, to equality before the law in the enjoyment of their human rights. This includes the right to personal security and protection by the State against violence or bodily harm, regardless of whether harm is inflicted by government officials or by any individual group or institution (article 5 (b)). In accordance with article 6, States must not only ensure the effective protection against racial discrimination of everyone within their jurisdiction, but also provide access to remedies and adequate reparation to victims.

We would further like to recall that the Committee on the Elimination of Racial Discrimination, in its general recommendation No. 30 on discrimination against non-citizens, urges States to: ensure equal protection and recognition before the law of non-citizens; take action against racially motivated violence and ensure the security of non-citizens, particularly with regards to arbitrary detention; combat ill-treatment of and discrimination against non-citizens by public officials “by strictly applying legislation and regulations providing for sanctions and by ensuring that all officials dealing with non-citizens receive special training, including training in human rights”; and ensure equal access to effective remedies and adequate reparation (section V).

We further refer to CEDAW general recommendation no. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women in which the Committee “reiterate[d] the obligation of States parties to treat women with dignity and to respect, protect and fulfil their rights under the Convention at each stage of the displacement⁸ cycle, as well as in the enjoyment of durable solutions, including integration and/or resettlement in receiving States and/or voluntary repatriation to their State of origin.”

We would like to recall your Government’s attention to Article 28 of the Universal Declaration of Human Rights, which calls on States to create a social and international order in which all human rights and fundamental freedoms can be fully realized, and to Article 2 of the International Covenant on Economic, Social and Cultural Rights (ratified by Libya on 15 May 1970), in which States undertake to take steps through international assistance and cooperation in order to ensure the full realization of covenant rights. We recall that international solidarity and cooperation are key principles underlying international law and are essential to ensuring that States meet their human rights obligations while responding to shared challenges.

We would further like to draw your Government's attention to Article 9.1 of the International Covenant on Civil and Political Rights (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. The ICCPR further stipulates that all persons deprived of their liberty be ensured the right without delay to control by a court of the lawfulness of the detention (art. 9 (4)). We would also like to draw your attention to article 10 of the ICCPR, which provides that all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. The Committee against Torture and the Human Rights Committee have consistently found that conditions of detention can amount to inhuman and degrading treatment. In this context we wish to draw your Government to the absolute prohibition of torture and other ill-treatment as enshrined in Article 3 of the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), ratified by your Government.

With regard to the conditions of detention, we would like to draw the attention of your 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). We would also like to draw your Government's 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 respect to the allegations of lack of access to medical care while also being kept in detention, we would like to recall to your Government that this right is reflected, *inter alia*, in article 12 of the International Covenant on Economic, Social and Cultural Rights, 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.

Finally, we would like to bring your Government's attention to the international standards regarding the protection of minorities, in particular article 27 of the International Covenant on Civil and Political Rights (ICCPR), as well as the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities of 1992, which refers to the obligation of States to protect the existence and the identity of minorities within their territories and to adopt measures to that end (article 1). While many of these migrants are passing through Libyan territory to

seek refuge in Europe, a number of them opt to remain in Libyan territory for work as they flee violence in their own countries. It is the responsibility of the Libyan government to afford those protection and ensure an end to discriminatory practices against them, regardless of the period of their stay within Libyan territory. We consider those to belong to ethnic minorities, in their own right, regardless of their citizenship or duration of stay requiring all necessary measures of protection that can be afforded by the Libyan government.