

Mandates of the Working Group on Arbitrary Detention; 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:
UA IND 22/2018

2 October 2018

Excellency,

We have the honour to address you in our capacity as Working Group on Arbitrary Detention; 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 33/30 34/21, and 34/35.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning seven Rohingya men in detention in Assam, shortly to be refouled to Myanmar.

According to the information received:

Seven Rohingya men originally from [REDACTED] Rakhine State, Myanmar will be refouled by the Indian Government back to Myanmar. The men have allegedly been detained since 2012 in the Silchar central prison, in Cachar district in the State of Assam, on charges of irregular entry. Myanmar allegedly agreed to receive these men and the Indian Government plans to implement the deportation order by 3 or 4 October 2018. This act may amount to a violation of the principle of non-refoulement given the ethnic identity of the concerned individuals.

It is feared that the men may be sent to the Transit and Reception Centres that were built to receive returnees from Bangladesh or to IDP camps in Central Rakhine, where prisoners who are released from Sittwe and Buthidaung prisons have been sent recently. Further, concerns have been expressed that they may be sent to a military camp in Mandalay or Yangon.

It is not clear whether the men have been informed of the escalation of the crisis in Rakhine, including the mass killings and displacements that took place while they were already in detention. The men had very little communication with family members and in fact were incommunicado until very recently. It is our understanding that the detainees do not presently have access to legal counsel.

It is unsure whether there is now a formal agreement between the Governments of Myanmar and India for the return of Rohingyas detained on charges of irregular entry into India. However, already On 8 August 2017, the Government of India

issued an order for the mass deportation of Rohingyas refugees which is currently being challenged before the Supreme Court of India as being unconstitutional. During the hearings, the Court observed the need to maintain status quo during the pendency of its decision and had permitted the petitioners to approach it in the event of a contingency. Therefore, if verified, this agreement between the Governments of India and Myanmar would be in contravention of Supreme Court's directions.

Finally, it has come to our knowledge that there are two hundreds Rohingya persons known to be in detention in India on charges of irregular entry, including thirty-two in the state of Assam including some in Tezpur jail, who may face the same risk of deportation.

Without prejudging the accuracy of the facts stated above we would like to raise concerns and urgent alarm at the risk that the seven men face if deported back to Myanmar given their identity as Rohingyas. We would like to bring your attention to the September 2018 report of the United Nations International Independent Fact Finding Mission on Myanmar which found that the indiscriminate killing of Rohingya children, women and men, rise to the level of both war crimes and crimes against humanity. The report further highlights that the manner in which they were perpetrated, were found to be similar in nature, gravity and scope to those that have allowed for genocidal intent to be established in other contexts. These violations mainly happened in Rakhine State where the seven men in question originate. The reported facts refer to a number of violations including non-guarantee of security of persons, arbitrary detention, inhuman and degrading treatment, denial of due process of law and denial of humanitarian protection. These allegations are in contravention of provisions of the ICCPR ratified by the government of your Excellency on April 1979, and International Humanitarian law.

We are concerned that the abovementioned individuals have not benefitted from an adequate identification of their protection needs. We wish to express our grave concern over the risk of a return to Myanmar, where they might face attacks and other forms of persecution because of their belonging to the Rohingya ethnic group. Such a return could be in violation of the principle of non-refoulement as outlined in the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol. We would also like to refer to **paragraph 9 of the General Comment No. 20 of the Human Rights Committee** in which it 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."

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 on the factual and legal basis for the arrest and detention, including the length of detention, of the seven Rohingyas detained in the prisons of Silchar in Assam.
3. Kindly provide information on the formal agreement between the Governments of India and Myanmar on the planned deportation of Rohingyas back to Myanmar
4. Kindly provide information on whether Rohingya who are subject to deportation are fully informed of the situation in their place of origin. What are the protection need assessments that the Government performs before issuing such orders when it comes to Rohingyas specifically?
5. Kindly explain what due process guarantees are in place for migrants and asylum-seekers who are facing a deportation order, including the right to be heard by relevant authorities, the right to interpretation and translation, the right to legal representation, as well as access to an effective remedy to appeal a deportation decision.
6. Kindly explain what mechanisms are available to ensure that they are able to exercise their right to seek asylum and determine whether they are in need of international protection.

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 going public to express our concerns 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 Excellency's Government's to clarify the issue/s in question.

We would like to inform your Excellency's Government that after having transmitted an urgent appeal to the Government, the Working Group on Arbitrary

Detention may transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such urgent appeals in no way prejudice any opinion the Working Group may render. The Government is required to respond separately for the urgent appeal procedure and the regular procedure.

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.

Elina Steinerte
Vice-Chair of the Working Group on Arbitrary Detention

Felipe González Morales
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