

**Mandate of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment**

REFERENCE:  
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8 October 2018

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolution 34/19.

In this connection, I would like to bring to your attention information we have received concerning the alleged imminent deportation of Syrian national, Mr. **al-Kontar** from Malaysia to Syria where he is likely to face torture and other cruel inhuman or degrading treatment or punishment.

According to information received:

Mr. al-Kontar is a Syrian national currently detained in Malaysia. He is recognized by UNHCR in Malaysia as a person of concern. For the past 7 months, until the beginning of this week, he was residing in the international transit zone of the Kuala Lumpur International Airport, unwilling to return to Syria where he is at risk of persecution and torture.

Mr al-Kontar attempted to relocate to third countries, twice, however unsuccessfully, he was facing potential arrest and detention in Malaysia as a person without status, and lacking legal status anywhere else.

On 1 October, the Malaysian authorities arrested Mr. al-Kontar. The Director General of Immigration has publicly stated an intention to return Mr. al-Kontar to Syria, saying he has embarrassed Malaysia through his social media activities.

Mr al-Kontar is now under the jurisdiction of the immigration department and thus at risk of immediate removal.

If Mr. al-Kontar is returned to Syria, he will be exposed to a very serious risk of torture based on his failure to report for, and refusal to participate in, military service, as well as his public media profile as a critic of Syria.

The UNHCR has been advocating on Mr. al-Kontar's behalf for several weeks, but as of October 5, they have no longer received any information from the concerned authorities.

While I do not wish to prejudge the accuracy of these allegations, I am concerned that the forcible return of Mr. al-Kontar to Syria may result in serious violations of his human right not to be subjected to torture or other cruel and inhuman and degrading treatment or punishment.

I would like to draw your attention to the absolute and non-derogable nature of the prohibition of torture and other cruel, inhuman or degrading treatment or punishment. The prohibition of torture as an international norm of jus cogens in a wide range of international instruments including, inter alia, in Human Rights Council Resolution 25/13 and General Assembly Resolution 68/156. Likewise, the principle of non-refoulement is universally recognized as a principle of international customary law and, as such, constitutes an indispensable component of the customary prohibition on torture and other cruel, inhuman and degrading treatment or punishment.

Paragraph 16 of the Resolution A/RES/65/205 of the United Nations General Assembly 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”. Furthermore, paragraph 7d of Human Rights Council Resolution 16/23 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, [...]”.

Finally, I would like to recall the report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (A/HRC/25/60), which states that the non-refoulement obligation is a specific manifestation of the more general obligation of States to ensure that their actions do not lead to a risk of torture anywhere in the world.

The full texts of the human rights instruments and standards referred to above are available on [www.ohchr.org](http://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 to safeguard the rights of Mr. al-Kontar in compliance with applicable international standards.

As it is my responsibility, under the mandates bestowed upon me by the Human Rights Council, to seek to clarify all cases brought to my attention, I 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 detailed information on how the assessment of the risks both in terms of procedural safeguards, and analysis of the country of return situation, has been undertaken to ensure that Mr al- Kontar will not be subjected to violations of his fundamental rights and freedoms upon return.
3. Please provide information regarding any legal, procedural and other safeguards to prevent forcible deportations from Malaysia towards any country or territory where the deportee may be at risk of being subjected to torture or other cruel, inhuman or degrading treatment or punishment.

While awaiting your reply, I respectfully urge that Mr.al- Kontar is not forcibly returned to Syria, pending the proper assessment of the risks he may face if deported.

Given the seriousness of the risks faced by Mr. al-Kontar I may express my concern publicly in the near future as I am of the view that the information in my possession on the basis of which my concerns are expressed in this letter, is sufficiently reliable to indicate a matter warranting immediate attention. Any public statement on my part will indicate that I have been in contact with you to clarify the case and seek assurances that the rights of Mr. al-Kontar are effectively protected.

Your 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 my highest consideration.

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