

Mandates of the the Working Group on Arbitrary Detention; the Special Rapporteur on the human rights of migrants; and the Special Rapporteur on minority issues

REFERENCE:
AL LBN 4/2019

9 August 2019

Excellency,

We have the honour to address you in our capacities as Working Group on Arbitrary Detention; Special Rapporteur on the human rights of migrants; and Special Rapporteur on minority issues, pursuant to Human Rights Council resolutions 33/30, 34/21 and 34/6.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the administrative detention of [REDACTED] and his family, including children, as well as threat of imminent deportation.**

According to the information received:

On 14 February 2019, [REDACTED] was stopped for a traffic violation and detained at Baydoun Police station. Upon discovery of his lack of documentation, he was subsequently moved to the General Security administrative detention centre where he is still detained as of today.

[REDACTED] was reportedly born on [REDACTED], in Lebanon, to [REDACTED], born in Sudan, and [REDACTED], born in Sri Lanka. He does not have any documentation from either Sudan or Sri Lanka and has no birth registration. He nonetheless has, along with his four other siblings, a birth document issued by the local mukhtar (mayor). Both parents are allegedly without valid residence permits. [REDACTED] has requested asylum due to fears for his life if he were to return to Sudan while [REDACTED] requested asylum due to fears of persecution in Sri Lanka for having married a Muslim.

On 3 July 2019, [REDACTED] and [REDACTED], along with their four other children were arrested. [REDACTED] and the two older boys, aged 15 and 13 respectively, have also been placed in the General Security administrative detention centre. [REDACTED] and the two younger children, aged 11 and 5 respectively, have been placed in a Caritas-run shelter.

All members of the family reportedly face imminent deportation due to their undocumented status. Furthermore, [REDACTED] has allegedly been made to sign papers agreeing to his deportation to Sudan.

While we do not wish to prejudge the accuracy of the information made available to us, we express our concern regarding the detention of [REDACTED] and his family. The prolonged detention of the former could be arbitrary in the absence of a particular reason specific to the individual, such as an individualized likelihood of absconding, a danger of crimes against others or a risk of acts against national security. In addition, we are preoccupied by the alleged absence of review or appeal for administrative detention, in violation of the right to challenge the legality of detention.

Moreover, we express our grave alarm regarding the detention of minors. The best interests of the child should be the paramount consideration, including in the context of asylum or migration procedures, and children should never be detained for reasons related to their own or their parents' migration status, as it would constitute a human rights violation.

Lastly, we express our disquiet regarding the potential deportation of these members of minorities to countries where they could be in danger, in clear violation of the non-refoulement principle. We would also wish to express our serious concern regarding the reported lack of due process guarantees for asylum seekers, other vulnerable migrants and minorities who seek protection, lacking proper individual assessment, as well as in respect to the deportations that may result in family separation.

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 mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would therefore be grateful for the observations of Your Excellency's Government on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information about existing avenues for review or appeal for administrative detention in the context of asylum or migration procedures;
3. Please provide updated information about existing policies regarding the detention of minors and possibilities for alternatives to detention;
4. Please provide information on steps taken to ensure that comprehensive and effective individual assessments of protection needs, including risks faced upon deportation, are conducted for each individual migrant or asylum seeker, in order to comply with the international principle of non-refoulement;

5. Please indicate how the obligations to register a child's birth and guarantee the rights to a name, to acquire a nationality and to know and be cared for by their parents, as far as possible, are enforced;
6. Please provide information on existing measures to prevent statelessness and possibilities for stateless individuals to obtain Lebanese nationality.

We would appreciate receiving a response within 60 days. Following this period, this communication and any response received from your Excellency's Government will be made public via the communications reporting website. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

We would like to inform your Excellency's Government that after having transmitted an allegation letter 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 letters in no way prejudice any opinion the Working Group may render. The Government is required to respond separately to the allegation letter and the regular procedure.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their recurrence 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.

Please accept, Excellency, the assurances of our highest consideration.

Leigh Toomey
Vice-Chair of the Working Group on Arbitrary Detention

Felipe González Morales
Special Rapporteur on the human rights of migrants

Fernand de Varennes
Special Rapporteur on minority issues

Annex
Reference to international human rights law

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

We call to the attention of your Excellency's Government the international standards regarding the protection of minorities, in particular article 27 of the International Covenant on Civil and Political Rights (hereafter "ICCPR"), acceded to by Lebanon in 1972. Article 27 of the Covenant states that: "In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language". Article 26 of ICCPR also prohibits any discrimination and guarantee to all persons equal and effective protection against discrimination on any grounds, including race, language, religion, national or social origin, property, birth or other status.

It is also pertinent to recall article 13 of the ICCPR, which determines that an alien has the right to be heard before the competent authority in cases of expulsion. As the Human Rights Committee determined in General Comment No. 31, the principles of impartiality, fairness and equality of arms stated in article 14 are also applicable in cases of deportation "where expulsion takes the form of a penal sanction or where violations of expulsion orders are punished under criminal law".

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), acceded to by Lebanon in 2000, provides that no State shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds to believe that he or she would be in danger of being subjected to torture (article 3).

We would also like to refer your Government to paragraph 9 of the General Comment No. 20 of the Human Rights Committee, which states that States 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 their extradition, expulsion or refoulement. We further would like to draw the attention of your Government to paragraph 16 of the resolution A/RES/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."

In addition, the Convention on the Rights of the Child, ratified by Lebanon in 1991, under article 7 obliges States to register children immediately after birth and to

guarantee the rights to a name, to acquire a nationality and to know and be cared for by their parents, as far as possible. This article also provides that “States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.”

Moreover, under article 9 of the Convention on the Rights of the Child “States Parties shall ensure that a child shall not be separated from his or her parents against their will” unless it is determined to be necessary for the best interests of the child. The following article 10 adds that, in line with article 9, “applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner.”

Regarding detention, the Joint general comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return, states that “the detention of any child because of their or their parents’ migration status constitutes a child rights violation and contravenes the principle of the best interests of the child. In this light, both Committees have repeatedly affirmed that children should never be detained for reasons related to their or their parents’ migration status and States should expeditiously and completely cease or eradicate the immigration detention of children. Any kind of child immigration detention should be forbidden by law and such prohibition should be fully implemented in practice.”

Furthermore, the Working Group on Arbitrary Detention has underlined that deprivation of liberty in the immigration context must be a measure of “last resort and permissible only for the shortest period of time and that alternatives to detention should be sought whenever possible. Grounds for detention must be clearly and exhaustively defined and the legality of detention must be open for challenge before a court and regular review within fixed time limits.” (A/HRC/10/21, para. 67)

Similarly, the Human Rights Committee in its General Comment No. 35 determined that “[d]etention in the course of proceedings for the control of immigration is not per se arbitrary, but the detention must be justified as reasonable, necessary and proportionate in the light of the circumstances and reassessed as it extends in time. Asylum seekers who unlawfully enter a State party’s territory may be detained for a brief initial period in order to document their entry, record their claims and determine their identity if it is in doubt. To detain them further while their claims are being resolved would be arbitrary in the absence of particular reasons specific to the individual, such as an individualized likelihood of absconding, a danger of crimes against others or a risk of acts against national security.”

Finally, we wish to recall the 1992 Declaration on Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, which refers to the obligation of

States to protect the existence and the identity of minorities within their territories (article 1), as well as to adopt the required measures to ensure that persons belonging to minorities can exercise their human rights without discrimination (article 4).