

Mandates of the Special Rapporteur on the situation of human rights in Eritrea; the Special Rapporteur on the human rights of migrants; and the Special Rapporteur on trafficking in persons, especially women and children

REFERENCE:
AL EGY 9/2020

23 July 2020

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights in Eritrea; Special Rapporteur on the human rights of migrants; and Special Rapporteur on trafficking in persons, especially women and children, pursuant to Human Rights Council resolutions 38/15, 34/21 and 35/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the situation of two Eritrean nationals who are currently held at Al Qanater prison, in Egypt.

The two individuals, Mr. [REDACTED] and Mr. [REDACTED], fled Eritrea to avoid indefinite military conscription in the Eritrean national service. The national service is one of the main drivers of migration out of the country due to its open-ended duration and to the regular abuses that conscripts are subjected to during service (A/HRC/41/53, paras. 28–29 & A/HRC/44/23, paras. 32-39).

According to the information received:

Mr. [REDACTED] fled from Eritrea to eastern Sudan in mid-2013, while serving in the national service. Near Kassala, human traffickers allegedly belonging to the Rashida ethnic group abducted him and his travel companion and took them to an unknown location in the Sinai desert, in Egypt. The men were then sold to a second group of human traffickers. This second group held the two men for several months and tortured them in a bid to obtain a ransom from their families. While his travel companion succumbed to the torture, Mr. [REDACTED] was eventually released by the traffickers in poor health condition, after being unable to secure the ransom. A Bedouin man found him and provided him with shelter for a month, and eventually handed him over to the Egyptian police who detained him in late 2013. After being detained, Mr. [REDACTED] was transferred in 2014 to Al Qanater prison, and he has been held there since, without having been charged. He was not given access to a lawyer and has on multiple occasions informed the authorities that he wishes to submit an asylum application, but his requests have been ignored. He is currently 36 years old.

Mr. [REDACTED] fled from Eritrea in 2005 while serving for the military, first travelling to Sudan and later to Egypt. In March 2012, as he attempted to cross from Egypt into Libya, he was arrested and detained by the Egyptian police. Mr. [REDACTED] was transferred to Al Qanater prison that month, and he has been held

there since, without having been charged, without having had access to a lawyer, and without having been able to submit an asylum application. He is currently 41 years old.

Additionally, we have been informed that both of these men are not in immigration detention, but are held together with prisoners who have been convicted for criminal offences. Furthermore, they have been unable to register their asylum application with the United Nations High Commissioner for Refugees. Given that they left Eritrea without the required government authorization, if they were to return, they will likely face arrest and mistreatment in prison and will eventually be reintegrated into the national service.

We have also been informed about worrisome conditions in Al Qanater prison, including overcrowding, lack of access to food and non-food items, and lack of access to health care. Allegedly, the two detainees have not been able to receive visits since the end of 2019, and a local organization providing them with food, was also denied access to them since at least November 2019.

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 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 allegations.
2. Please provide information on the measures taken to protect the life, physical and psychological integrity and security of Mr. [REDACTED] and Mr. [REDACTED] at Al Qanater prison.
3. Please provide information on the measures taken to provide adequate protection and support to Mr. [REDACTED] as a victim of human trafficking.
4. Please provide information on the access granted to the United Nations High Commissioner for Refugees (UNHCR) to meet with Mr. [REDACTED] and Mr. [REDACTED], so they can submit their asylum application. What access does UNHCR have to imprisoned migrants and asylum seekers?
5. Please kindly indicate what measures have been adopted under Egyptian legislation to ensure that the human rights of all migrants are protected and that victims of human trafficking are identified, protected and referred to

appropriate services. Have these measures have been applied in the cases of Mr. [REDACTED] and Mr. [REDACTED]?

6. Please provide information regarding all measures taken in response to the COVID-19 pandemic in al Qanater prison in order to protect the physical and mental integrity of the detainees, the staff and the wider community.

We would appreciate receiving a response within 60 days. Passed this delay, 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.

While awaiting a response, 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 contained in this letter are correct, to ensure the accountability of any person(s) responsible for the alleged violations.

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

Daniela Kravetz
Special Rapporteur on the situation of human rights in Eritrea

Felipe González Morales
Special Rapporteur on the human rights of migrants

Maria Grazia Giammarinaro
Special Rapporteur on trafficking in persons, especially women and children

Annex
Reference to international human rights law

In connection with above alleged facts and concerns, we would like to refer to the International Covenant on Civil and Political Rights (ICCPR), which the Government of Egypt ratified on 14 January 1982. In particular, 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. 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)). For a more detailed overview of the international human rights standards governing the detention of migrants, including the obligation of States to always resort to alternatives to detention first, we would like to draw your attention to the 2012 report to the Human Rights Council on the human rights of migrants (A/HRC/20/24).

We recall that detention should never be used as a punitive or deterrent measure against migrants and asylum-seekers. In this connection, we would like to refer your Excellency's Government to article 14(1) of the Universal Declaration of Human Rights which provides that 'Everyone has the right to seek and to enjoy asylum from persecution in other countries'. We also recall that, in 2016, the 193 Member States of the United Nations unanimously adopted the New York Declaration for Refugees and Migrants to protect those forced to flee, and support countries that shelter them.

Moreover, we would like to remind your Excellency's Government of the principle of non-refoulement as codified in article 3 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which Egypt ratified on 25 June 1986. Article 3 provides that no State shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds to believe that he would be in danger of being subjected to torture. This absolute prohibition against refoulement is broader than that found in refugee law, meaning that persons may not be returned even when they may not otherwise qualify for refugee status under article 33 of the 1951 Refugee Convention or domestic law.

In addition, the Recommended Principles and Guidelines on Human Rights and Human Trafficking provides that "Trafficked persons shall not be detained, charged or prosecuted for the illegality of their entry into or residence in countries of transit and destination, or for their involvement in unlawful activities to the extent that such involvement is a direct consequence of their situation as trafficked persons. States shall ensure that trafficked persons are protected from further exploitation and harm and have access to adequate physical and psychological care. Such protection and care shall not be made conditional upon the capacity or willingness of the trafficked person to cooperate in

legal proceedings”. Reference is further made to Guideline 9 recalling the international legal rights of trafficked persons as victims of human rights violations to adequate and appropriate remedies, including compensation.

We would also like to draw the attention of your Excellency’s Government to the paragraph 7 (c) of Human Rights Council resolution 8/8 of 18 June 2008, which reminds all States that “Prolonged incommunicado detention or detention in secret places may facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and can in itself constitute a form of such treatment, and urges all States to respect the safeguards concerning the liberty, security and the dignity of the person”.

We understand that due to the measures taken in response to the COVID-19 pandemic, all visits to the prison are suspended. However, we are concerned about reports indicating that there is a local spread of the virus inside the prison, and would therefore like to refer your Excellency’s Government to the Policy Brief by the UN Network on Migration’s Thematic Working Group on Alternatives to Detention entitled “COVID-19 & Immigration Detention: What Can Governments and Other Stakeholders Do?”¹, the Joint Guidance Note on the Impacts of the COVID-19 Pandemic on the Human Rights of Migrants² issued by the Committee on Migrant Workers and the Special Rapporteur on the human rights of migrants, and the guidance provided by OHCHR on COVID-19 and the human rights of migrants³.

Lastly, under international law, States have a due diligence obligation to identify, assist and protect trafficked persons. This includes ensuring full respect for the principle of non-punishment, such that victims of trafficking in persons should not be detained, charged or prosecuted for activities that are a direct consequence of their situation as trafficking in persons, including for illegal entry into, exit out of or stay in States of origin, transit or destination (OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking). Additionally, States have the due diligence duty to ensure that trafficked persons are protected from further exploitation and harm and have access to adequate physical and psychological care.

¹ Available at: https://migrationnetwork.un.org/sites/default/files/docs/un_network_on_migration_wg_atd_policy_brief_covid-19_and_immigration_detention_0.pdf

² Available at: <https://www.ohchr.org/Documents/Issues/Migration/CMWSPMJointGuidanceNoteCOVID-19Migrants.pdf>

³ Available at: https://www.ohchr.org/Documents/Issues/Migration/OHCHRGuidance_COVID19_Migrants.pdf