

Mandates of the Special Rapporteur on the human rights of migrants; the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE:
AL MLT 2/2020

9 December 2020

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the human rights of migrants; Special Rapporteur on extrajudicial, summary or arbitrary executions and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 43/6, 44/5 and 43/20.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **alleged pushback leading to collective expulsion at sea of 51 migrants by the Maltese Armed Forces to Libya, via private vessels, and the death of 12 migrants reportedly due to the delay in search and rescue operations.**

Concerns regarding this specific incident, that took place on 15 April 2020, were raised in a communication addressed to your Government, as well as to the Government of Italy, on 20 July 2020 (MLT 1/2020 and ITA 3/2020). We are grateful for the response received from your Excellency's Government on 22 September 2020. In the reply, it was stated that the Government of Malta did all within its ability, available resources and remit to coordinate SAR operations and that a magisterial inquiry was launched to ascertain the details and responsibilities in relation to the incident. We take this opportunity to follow up on our first communication with additional information received on this issue.

According to the additional information received:

On 10 April 2020, competent maritime authorities in the region, including relevant authorities in Malta, as well as the European Border and Coast Agency (Frontex), were informed about a group of 63 migrants, including seven women and three children, in distress at sea and timely notified of the exact location of the boat within international waters. By 12 April, the boat in distress had reportedly drifted into the Maltese Search and Rescue (SAR) zone. Nonetheless, reportedly all the informed authorities had initially refused to engage or coordinate in conducting search and rescue operations.

On 13 April 2020, after having lost contact with the boat in distress for over 36 hours, the Italian and Maltese authorities finally launched air surveillance missions in the concerned area.

On 14 April 2020, at around 10.30 p.m., the Maltese Rescue Coordination Centre (RCC) communicated via Navtex message to all ships transiting in the area 'to keep sharp lookout and assist if necessary'. However, the same message also reportedly stated that Malta would not be able to provide a 'place of safety'

to those rescued. The message was promptly received by a Portuguese cargo ship, the Ivan, which around 1 a.m. stopped a mile away from the boat in distress but was, however, requested by Maltese authorities to stay at the scene and monitor until rescue arrived. Reportedly, approximately seven passengers drowned in a desperate attempt to reach safety overnight. According to the information received, an aerial asset of the Armed Forces of Malta was on scene during the entire operation.

On the same day, at approximately 5 a.m., two privately-owned commercial vessels (Dar Al Salam 1 and Tremar) reached the area of the SAR event. Both vessels, alongside a third one (Salve Regina), had reportedly departed from Grand Harbour in Valletta, at the request of Maltese authorities, on the evening of 12 April. They were instructed to switch off their satellite tracking devices shortly after departure. The three vessels had been allegedly enlisted by the Government of Malta to coordinate and oversee international operations at sea.

Under coordination of the Maltese Armed Forces, 56 migrants were taken on board of the fishing boat Dar Al Salam 1, while the cargo ship Ivan was ordered to leave. Subsequently, Maltese authorities declared there were no open cases in the SAR area under their responsibility, without providing further information on the fate of the survivors. According to the information received, no medical care or emergency evacuations were ordered for the individuals rescued, including those in need of particular medical attention.

Based on the information received, on 15 April 2020, the migrants on board of the Dar Al Salam 1 were returned to Libya and disembarked at the port of Tripoli. Reportedly, a second vessel, the Salve Regina, accompanied the Dar Al Salam 1 with a cargo of goods to be delivered to the Libyan authorities. Among the group of migrants, there were the bodies of five people who had died during the journey due to dehydration and hunger. The 51 survivors, including children, were later transferred to Tarik Al Sikka detention center in Tripoli, a detention facility run by a pro-government militia where migrants are reported to be routinely tortured, held for ransom or subjected to slavery-like practices. In an official public statement released on 15 April, Maltese authorities confirmed to have coordinated the rescue of a migrant boat during the night of 13 and 14 April.

According to the source, prosecutors in Malta have launched an investigation into the above mentioned allegations. Statements by former officials and commanders involved have confirmed the enlistment of private vessels by the Government of Malta for the purpose of pushing migrants back to Libya, following instructions from the prime minister's office.

While we do not wish to prejudge the accuracy of the information received, we are gravely concerned about the alleged pushback of migrants to Libya via private vessels under the coordination of Maltese authorities. We are concerned that the deployment of private vessels has been used as a means to circumvent international standards on maritime search and rescue operations and human rights obligations.

We note with concern that migrants rescued at sea were forcibly and unlawfully returned to Libya by private vessels under the instruction of Maltese authorities, without any individual assessment to meet their protection needs. These forced returns carried out by private vessels fell outside any official procedures and may amount to collective expulsions.

In relation to the incident of 15 April 2020, a group of 56 migrants were forcibly returned to Libya, of which five were found dead upon disembarkation, the 51 survivors were transferred to detention centres where they were at risk of acts amounting to torture and ill-treatment, in contravention of the absolute and non-derogable prohibition of torture and ill-treatment codified in Articles 2 and 16 of the Convention against Torture and other Cruel, Inhumane or Degrading Treatment or Punishment, which Malta ratified in 1990. We wish to stress that States should ensure that all border governance measures taken at international borders, including those aimed at addressing irregular migration, are in accordance with the principle of non-refoulement and the prohibition of arbitrary and collective expulsions.

We are also seriously concerned by the increasing number of reports of failure to assist and/or engage in coordinating assistance for people in distress at sea by Maltese authorities, which have put human lives at risk. More specifically, in relation to the reported incident of 15 April 2020, delays in coordinating rescue operations for a group of 63 migrants in distress at sea and the absence of medical care during the transfer of the 56 migrants to Libya have resulted in 12 casualties. In this context, we would also like to recall that article 6 (1) of the International Covenant on Civil and Political Rights (ICCPR), ratified by Malta on 13 September 1990, provides that every individual has the right to life and that no one shall be arbitrarily deprived of one's life.

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 allegations mentioned above.
2. Please indicate whether the above-mentioned allegations, including the multiple casualties related to the incident of April 2020, have been or are subject of any further investigation and/or prosecution by the relevant authorities. Please provide information about their outcomes, in particular as regards remedies for families of the victims.
3. Please clarify the relationship between your Excellency's Government and the private vessels involved in the rescue and the subsequent pushback operation in question, in particular whether the former instructed, requested or in any way cooperated with the latter to return the rescued migrants to Libya.

4. Please indicate measures taken by your Excellency's Government to protect the human rights of migrants at the maritime border, including measures to ensure their access to relevant procedures for persons in need of protection under international human rights and refugee law. These also include measures taken or to be taken in accordance with the principle of non-refoulement and the prohibition of arbitrary and collective expulsions.

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 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.

A copy of this letter will be shared with relevant institutions of the European Union through its delegation to the United Nations and other international organizations at Geneva. A copy will also be transmitted to Libya as concerned State for their information.

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

Felipe González Morales
Special Rapporteur on the human rights of migrants

Agnes Callamard
Special Rapporteur on extrajudicial, summary or arbitrary executions

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

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to refer your Excellency's Government to Article 3 of the Universal Declaration of Human Rights which states that "Everyone has the right to life, liberty and security of person", and Articles 6 (1), 7 and 9 of the International Covenant on Civil and Political Rights, ratified by Malta in 1990, which guarantees the inherent right to life of every individual and provide that this right shall be protected by law and that no one shall be arbitrarily deprived of his life, the prohibition of torture, as well as the right to liberty and security of the person.

In this regard, we would like to highlight that 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 their 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" (ICCPR/C/21/rev.1/Add.13 (2004), Para. 10). States parties are also required to respect and protect the lives of all individuals located on marine vessels and aircraft registered by them or flying their flag, and of those individuals who find themselves in a situation of distress at sea, in accordance with their international obligations on rescue at sea (CCPR/C/GC/36, General Comment No. 36 on Article 6: right to life adopted by the Human Rights Committee, para. 63).

We wish to recall that, pursuant to international maritimes law and human rights law, Malta is under an obligation to respond promptly and effectively to any situation of distress at sea of which it may become aware. The obligation to coordinate search and rescue operations may arise also when the distress situation occurs outside the Maltese search and rescue region, at least until when coordination can be handed over to another State willing and able to assume responsibility in a manner compliant with maritime and human rights law.

We wish to stress that the right not to be arbitrarily deprived of life is a foundational and universally recognized right, applicable at all times and in all circumstances, including during armed conflict or other public emergency. The right to life is protected by international and regional treaties, customary international law and domestic legal systems.

Substantively, international law requires State agents to take "all reasonable precautionary steps to protect life and prevent excessive violence" by States, their agents and by non-State actors. Individuals are entitled not to be arbitrarily deprived of life on grounds "impermissible under international law, or under more protective domestic law provisions". Procedurally, whether committed by the State or by private actors, States must investigate all deaths thoroughly, independently and effectively, provide redress or reparations and ensure that no person acts with impunity. Failure to investigate is in and of itself a violation of the right to life.

The right to life is further protected by the 1951 Convention Relating to the Status of Refugees and 1967 Protocol to the Convention, which impose on States the core principle of non-refoulement, now a rule of customary law. "No Contracting State

shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion"¹.

In this regard, we wish to stress that "push-back" measures, in addition to violating the principle of "non-refoulement," may also amount to excessive use of force whenever officials place refugees or migrants intentionally and knowingly in circumstances where they may be killed or their lives endangered because of the environment².

Furthermore, the prohibition of return to a place where individuals are at risk of torture and other ill-treatment is enshrined in Article 3 of the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which 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. The prohibition of refoulement under international human rights law applies to any form of removal or transfer of persons, regardless of their status. As an inherent element of the prohibition of torture and other forms of ill-treatment, the principle of non-refoulement is characterised by its absolute nature without any exception. Heightened consideration must also be given to children in the context of non-refoulement, whereby actions of the State must be taken in accordance with the best interests of the child.

We draw the attention of your Excellency's Government to OHCHR's Recommended Principles and Guidelines on Human Rights at International Borders. In particular guideline 9, which states that returns or removals should not violate the principle of non-refoulement and/or the prohibition of collective expulsion. In the case of forced returns, the Guideline calls on States to ensure that return procedures are not carried out at all costs, but are interrupted where the human rights of the migrant are compromised, and that migrants whose rights are violated during return processes can file complaints.

With regards to search and rescue operations, we would also like to refer to principle 4 of OHCHR Principles and Guidelines on the human rights protection of migrants in vulnerable situations, according to which States should protect the lives and safety of migrants and ensure that all migrants facing risks to life or safety are rescued and offered immediate assistance. This includes, among others, to (1) ensure that relevant national legal frameworks as well as arrangements for cooperation and coordination between States uphold and strengthen the effectiveness of the search and rescue regime, in accordance with international human rights and refugee law, the international law of the sea, and other relevant standards; (2) to establish, operate and maintain adequate and effective services for search and rescue at sea regardless of presumed nationality or legal status of migrants who are in distress at sea or the circumstances in which they are found; (3) to ensure that search and rescue services and coordinating authorities operate under a broad understanding of distress, so that timely and necessary assistance is provided to migrants in unseaworthy vessels even if they

¹ Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions on the Unlawful death of refugees and migrants (A/72/335):

https://www.un.org/en/ga/search/view_doc.asp?symbol=A/72/335

² Ibid.

are not in immediate danger of sinking; (4) to ensure that all possible State and other resources are mobilized, including by means of cooperation between States where appropriate, for search and rescue responses including proactive patrolling when informed risk assessments suggest that migrants who may require assistance are likely to be present along a particular sea route; (5) to make every effort to protect migrants' right to life, wherever they are at risk on water or on land; (6) to ensure that rescue services are adequately resourced and provided with all necessary equipment such as rescue beacons; and (7) to avoid acts and inaction that are likely or expected to cause the unnatural or premature death of migrants, or deny them a dignified existence.

We wish to refer to the Global Compact for Safe, Orderly and Regular Migration, in particular to Objective 8 (principle 24) according to which States should cooperate to save lives and prevent migrant deaths and injuries through individual and joint search and rescue operations, standardised collection and exchange of relevant information, assuming collective responsibility to preserve the lives of migrants, in accordance with international law.

Finally, we draw attention of your Excellency's Government to the Joint Guidance Note of the UN Committee on Migrants Workers and the Special Rapporteur on the human rights of migrants on the impacts of the Covid19 pandemic on the human rights of migrants. In particular, recommendations for States to continue guaranteeing access to the territory, including non-rejection at the border, for those seeking international protection and continuity of search and rescue operations for persons in distress at sea.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.