

Mandates of the Special Rapporteur on the human rights of migrants; the Working Group on Arbitrary Detention; the Working Group on Enforced or Involuntary Disappearances; 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 CYP 2/2021

12 July 2021

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the human rights of migrants; Working Group on Arbitrary Detention; Working Group on Enforced or Involuntary Disappearances; 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, 42/22, 45/3, 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 **allegations of pushbacks of migrants from Cyprus to Lebanon and Turkey carried out at sea by the Republic of Cyprus Port and Marine Police, and the alleged unreasonable use of force involved in some of these pushback operations.**

According to the information received:

On 16 May 2021, a boat departing from Tripoli, Lebanon, with some 56 migrant persons on board entered the territorial waters of Cyprus. Amongst the persons on board, there were 10 children, 7 women and 39 men. The boat was identified when it was 16 miles south from Cape Greco and was intercepted by two vessels of the Republic of Cyprus coast guard (Cyprus Port and Marine Police). Subsequently, the boat was prevented from docking in Cyprus. None of the 56 migrants was allowed to disembark, and they were forcibly returned in a collective manner to Lebanon, where at least 18 of them were detained by Lebanese authorities.

Since March 2020, there have been similar reports of alleged pushbacks of boats carrying migrants departing from Lebanon and Turkey, mainly individuals of Syrian, Lebanese and Palestinian origin. According to these reports, the boats were intercepted by the coast guard of the Republic of Cyprus before they could reach the shore, preventing them from docking or disembarking in Cyprus. The boats were directed to go back to Lebanon or Turkey by authorities of the Republic of Cyprus, who forcibly returned the migrants on board without any individual assessment of their protection needs and without allowing them to apply for international protection. In some cases, the authorities of the Republic of Cyprus directed people on the boats to the northern part of the island. In other instances, while still at sea, the coast guard of the Republic of Cyprus allegedly transferred people to civilian passenger vessels guarded by the marine police and directly returned them to Lebanon.

One recorded incident took place on 20 March 2020, when a boat that had departed from Turkey carrying 175 Syrian migrants was prohibited from entering Cyprus. Amongst the 175 migrants on board, there were 80 children.

The boat was intercepted at sea and boarded by coast guard officers of the Republic of Cyprus, who reportedly wielded their guns and seized the mobile devices of migrants on board. Then, the officers allegedly threw the devices overboard and directed the boat to leave the territorial waters of the Republic of Cyprus.

Similar practices occurred through 2020 and 2021. In September 2020 alone, officials of the Republic of Cyprus allegedly returned at least 229 migrants from Cypriot territorial waters to Lebanon, in at least five separate instances. The use of violence towards migrants was reported in many of the recorded pushback operations. Officials of the coast guard of the Republic of Cyprus have been reported to act violently towards migrants, threatening them and wielding weapons to prevent the boats from reaching the shores. Some reports additionally allege that coast guard officials have beaten migrants who attempted to resist being collectively returned. On a boat carrying around 80 migrants that was returned to Lebanon on 8 September 2020, a Syrian man who did not agree to be returned raised his voice to the coast guard officials. Consequently, these officials reportedly handcuffed and beat him, using batons and electric stun guns. There were numerous witnesses to this incident, including children. In addition, coast guard vessels have been reportedly undertaking dangerous manoeuvres, such as encircling boats carrying migrants at high speeds, allegedly with the intention of creating waves to swamp or overturn them, risking the lives of those on board.

Based on the allegations received, authorities intentionally inflicted harm to migrants. On 3 September, at approximately 6:00 a.m., a boat of the Republic of Cyprus' coast guard with the number 21 written on its side intercepted a wooden boat three miles away from the shore of Larnaca. There were 52 migrants on board, including men, women, and children. The armed authorities allegedly pointed their weapons at the migrants and asked the migrants to turn the boat back. At 7:15 a. m., the coast guard vessel reportedly rammed the wooden boat with migrants on board, injuring several of them, including a child who hit his head, and opening a hole on the starboard side of their boat. Individuals on board called for help and tried to bail out the sea water. After four hours, the boat was towed ashore. Several children and two women, one of them pregnant, were reportedly taken to a hospital.

Furthermore, other reports refer to the alleged failure by the Republic of Cyprus to assist people in distress at sea. According to these reports, on 4 September, a Republic of Cyprus military vessel with the word 'Limassol' written on its side encountered an inflatable Zodiac-type boat that had departed the day before from Lebanon with five men on board. The inflatable boat had ran out of fuel between 12-13 hours after its departure. One of the individuals on board, a 33-year-old Syrian refugee, was in poor physical condition with a high fever and suffering from dehydration worsened by seasickness. Officials of the military vessel brought him on board, where a nurse examined him and made him rest on the floor of the boat with his feet elevated. After an hour and a half, without further treatment or assistance, the Syrian man was returned to the inflatable boat. The authorities gave the five migrant men on board of the inflatable boat two bottles of water and allegedly left them to drift at sea without fuel.

A significant number of migrants traveling to Cyprus by boat have fled armed conflict and/or intended to reunify with their family members who reside in the country. Reports received indicate that some of the migrants on the intercepted boats have explicitly and repeatedly asked for asylum from the Republic of Cyprus. However, the authorities ignored migrants' expressed requests and did not allow them to apply for protection under international human rights and refugee laws. The majority of individuals arriving on board have been Syrian migrants – from July to October 2020, Syrian nationals accounted for the 80% of migrants leaving from Lebanon to Cyprus by boat. Syrian migrants and refugees returned to Turkey and Lebanon may face the risk of chain refoulement to Syria, where they are reportedly being arrested, detained, tortured and/or forcibly disappeared. In addition, some of the returned Syrian are currently being detained in Lebanon.

Without prejudging the accuracy of the information received, we are deeply concerned about the alleged pushback at sea of migrants to Lebanon and Turkey by the Republic of Cyprus, which seem to occur repeatedly and are still ongoing. We note with concern that migrants were collectively returned to Lebanon and Turkey without any individual assessment of their protection needs, including in relation to their safety and lives. In the absence of such examination, these forced returns may amount to collective expulsions.

We are particularly concerned about the alleged involvement of the Republic of Cyprus in acts that seem to have endangered the safety and lives of migrants and asylum seekers. We are also concerned by reports on the alleged unreasonable and unnecessary use of force by officers of the Republic of Cyprus against migrants during some boat interceptions. We would like to stress 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 (CAT).

Furthermore, we are gravely concerned by the alleged failure of authorities of the Republic of Cyprus to provide immediate assistance to people in distress at sea, which has put human lives at risk. In this respect, we wish to highlight that under international human rights law, the absolute right to life entails both a positive obligation on the State to protect the right to life and security of the person and a negative obligation not to engage in acts that would jeopardise the enjoyment of that right.

In addition, we are concerned that the lack of an individual evaluation of the risk of irreparable harm that each migrant person might face upon return in the country of departure, such as death, torture or cruel, inhuman or degrading treatment or punishment, arbitrary detention, persecution, enforced disappearance or other serious human rights violations, could violate the principle of non-refoulement under article 3 of the CAT. In this regard, we are gravely concerned about the particular risk of chain-refoulement of Syrian migrants from Lebanon and Turkey to Syria, where according to the reports they could be subject to detention, torture and/or forced disappearances. 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.

Finally, we would also wish to express our grave concern regarding allegations of violations of the right to seek asylum. In this regard, we would like to refer to article 14 of the Universal Declaration of Human rights which provides that “everyone has the right to seek and to enjoy in other countries asylum from persecution”. 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 or collective expulsions.

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 indicate whether the above-mentioned allegations, including the use of force and ill-treatment of migrants by coast guard personnel of the Republic of Cyprus, have been or are the subject of an investigation and/or prosecution by the relevant authorities. Please provide information about their outcomes, including the identification of perpetrators and effective access to justice for victims.
3. Please indicate what measures have been taken by your Excellency’s Government to protect the human rights of migrants at international borders, including to ensure their access to relevant procedures for persons in need of protection under international human rights and refugee laws. These also include measures taken or to be taken by your Government to ensure border management measures are in accordance with the principle of non-refoulement and the prohibition of arbitrary and collective expulsions. In particular, please indicate the measures taken to ensure that the protection needs of migrants, including those of asylum seekers, are examined on an individual basis, and that they are not returned without access to this assessment.
4. Please provide information on the measures taken by your Excellency's Government to protect the human rights of migrant children. In this regard, please also indicate whether your Excellency's Government has adopted or is considering adopting measures such as special protocols for the identification and protection of migrant children at the border.
5. Please provide information on your Government’s current search and rescue capacity at sea. Please also include detailed information on search and rescue procedures in the territorial waters of the Republic of

Cyprus, and how these procedures are in compliance with international obligations.

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.

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

Felipe González Morales
Special Rapporteur on the human rights of migrants

Miriam Estrada-Castillo
Vice-Chair of the Working Group on Arbitrary Detention

Tae-Ung Baik
Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

Morris Tidball-Binz
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 (ICCPR), ratified by Cyprus on 2 April 1969, which guarantees the inherent right to life of every individual, 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).

Furthermore, we wish to refer to Article 14 of the Universal Declaration of Human Rights, which states that "everyone has the right to seek and enjoy in other countries asylum from persecution". 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 or collective expulsions. We further wish to highlight that according to the jurisprudence of the Working Group on Arbitrary Detention, deprivation of liberty resulting from the exercise of, inter alia, the right to seek asylum in Article 14 of the Universal Declaration of Human Rights, may be arbitrary.

The principle of non-refoulement is codified in the 1951 Refugee Convention, to which Cyprus is party since 16 May 1963. The prohibition of return to a place where individuals are at risk of torture and other ill-treatment is also enshrined in Article 3 of the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), ratified by Cyprus on 18 July 1991, 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. Additionally, this principle is implicitly recognised ICCPR and the Convention on the Rights of the Child (CRC), also ratified by Cyprus on 7 February 1991.

We also wish to refer to article 8 of the Declaration for the Protection of All Persons from Enforced Disappearance, which stipulates 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 enforced disappearance. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.

In this context, we wish to draw Your Excellency's Government's attention to the report of the Working Group on Enforced or Involuntary Disappearances on enforced disappearances in the context of migration (A/HRC/36/39/Add.2), which outlines a number of recommendations concerning prevention, investigation, criminalization, prosecution, protection and right to an effective remedy, and international co-operation.

Under international human rights law, the principle of non-refoulement prohibits the expulsion, forced return or extradition of a person by a State within its territory or under its jurisdiction or effective control, to another State where there are substantial grounds for believing that such person would be in danger of being subjected to an irreparable harm, such as death, torture or cruel, inhuman or degrading treatment or punishment, persecution, enforced disappearance or other serious human rights violations, in the place to which they are to be transferred or removed, or of further transfer to a third State where there would be a real risk of such violations (chain refoulement). We would like to stress that the prohibition of refoulement under international human rights law applies to any form of removal or transfer of persons, regardless of their migration 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.

We would also like to draw your attention to the thematic report of the Special Rapporteur on the human rights of migrants on means to address the human rights impact of pushbacks of migrants on land and at sea (A/HRC/47/30). In this report, the Special Rapporteur stresses that migrants arriving at international borders, regardless of how they have travelled, should have access to individualised, prompt examinations of their circumstances, and referral to competent authorities for a full evaluation of their human rights protection needs, including access to asylum, in an age-sensitive and gender-responsive manner. Effective access to territory is an essential precondition for exercising the right to seek asylum (para. 43).

Furthermore, the Special Rapporteur recalls that States are required to take all reasonable precautionary steps to protect life and prevent excessive violence, and have committed to cooperate internationally to save lives and prevent migrant deaths and injuries, in accordance with international law. In this regard, delays in searching for and rescuing migrants in distress on land and at sea, as well as in designating safe ports for disembarkation, may amount to torture or ill-treatment and undermine the right to life (parr. 44). Pushbacks, when carried out violently, or effectively resulting in dire conditions for migrants, may also amount to torture or ill-treatment and violations of the right to life. States cannot point to exceptional or disproportionate operational challenges (e.g. the size of migratory movements, or the existence of a

public health emergency such as COVID-19) to justify such actions (parrs. 44-46). Pushbacks greatly increase the chance of a maritime disaster resulting in loss of life, and abandoning migrants adrift in unseaworthy rafts are incompatible with search and rescue obligations and may also result in other human rights violations, including refoulement (parr.52).

We wish to refer to the absolute and non-derogable prohibition of torture and ill-treatment as codified in articles 2 and 16 of the CAT. States must respect and ensure the right to be free from torture and ill-treatment without any discrimination. Any intentional infliction of severe pain or suffering “for any reason based on discrimination of any kind”, including based on migration status by definition amounts to torture, regardless of whether it is inflicted by or at the instigation or state officials themselves, or merely with their consent or acquiescence (A/HRC/37/50, para 13).

Furthermore, we wish to draw your attention to the Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions on the unlawful death of refugees and migrants, which stresses 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 environment (A/72/335).

We wish to draw the attention of your Excellency’s Government to the absolute prohibition of arbitrary deprivation of liberty, which also has to be taken into account in the context of the prohibition of non-refoulement referred to above. We also wish to refer to the Revised Deliberation No. 5 on deprivation of liberty of migrants of the Working Group on Arbitrary Detention, and in particular to para. 11 on the prohibition of the deprivation of liberty of an asylum-seeking, refugee, stateless or migrant child, including unaccompanied or separated children.

As per the allegations of pushbacks of migrant children, we wish to draw the attention of your Excellency’s Government to the General Comment N°6 of the Committee on the Rights of the Child (CRC), in which the Committee has considered that in fulfilling obligations under the Convention, States shall not return a child to a country where there are substantial grounds for believing that there is a risk of irreparable harm to the child, either in the country to which removal is to be effected or in any country to which the child may subsequently be removed. The Committee has further established that States should conduct an assessment of the risk of such serious violations in an age and gender-sensitive manner (CRC/GC/2005/6, parr. 27). Furthermore, the Committee has stated that, in the context of best interest assessments and within best interest determination procedures, “children should be granted the right to access the territory, regardless of the documentation they have or lack, and to be referred to authorities in charge of evaluating their needs in terms of protection of their rights, ensuring their procedural safeguards”.¹

The prohibition of collective expulsion is also a rule of general international law. It is distinguishable from the principle of non-refoulement in that it is inherently

¹ 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 (CMW/C/GC/4-CRC/C/GC/23, parr. 17).

a due process right that entitles every non-national to an individualized examination of all arguments militating against his or her expulsion in the first place. All non-nationals enjoy protection from collective expulsion, including those with irregular status. Moreover, the prohibition of collective expulsion applies to the whole territory of the State concerned, including its territorial waters. It also applies, where non-nationals are intercepted on the high seas and brought on a ship registered in the State. A State should not be allowed to evade its human rights obligations merely by advancing its immigration controls to the high seas. The human rights obligations of States must attach to any basis of jurisdiction that warrants a State to intercept non-nationals on the high seas: this is particularly the case as regards the prohibitions of collective expulsion and refoulement.

We would further like to draw the attention of your Excellency's Government to the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. General provision 4 requires that law enforcement officials shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. Further, according to general provision 5, whenever the lawful use of force is unavoidable, law enforcement officials shall exercise restraint and act in proportion to the seriousness of the offence; minimise damage and injury, and respect human life; and ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment. The principle of necessity under international human rights law is interpreted to mean that lethal force may be used as a last resort, with the sole objective of saving life.

We would also like to recall that article 5 (b) of the International Convention on the Elimination of All Forms of Racial Discrimination obliges States to eliminate racial discrimination in all its form and to guarantee the right of everyone, without distinction, to equality before the law in the enjoyment of their human rights. This includes the right to personal security and protection by the State against violence or bodily harm, regardless of whether harm is inflicted by government officials or by any individual group or institution.

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 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; to make every effort to protect migrants' right to life, wherever they are at risk on water or on land; and 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 wish to draw the 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. Forced returns of migrants should be suspended during the pandemic to protect the health of migrants and communities, and uphold the human rights of all migrants, regardless of their status.