

**Mandates of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; the Working Group of Experts on People of African Descent; the Working Group on Arbitrary Detention; the Special Rapporteur on the right to food; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; the Special Rapporteur on the human rights of migrants; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Special Rapporteur on violence against women, its causes and consequences and the Special Rapporteur on the human rights to safe drinking water and sanitation**

REFERENCE:  
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28 October 2021

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; Working Group of Experts on People of African Descent; Working Group on Arbitrary Detention; Special Rapporteur on the right to food; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; Special Rapporteur on the human rights of migrants; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; Special Rapporteur on violence against women, its causes and consequences and Special Rapporteur on the human rights to safe drinking water and sanitation, pursuant to Human Rights Council resolutions 43/36, 45/24, 42/22, 32/8, 42/16, 43/14, 43/6, 43/20, 41/17 and 42/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received regarding the allegations of collective expulsion of migrants from sub-Saharan African countries, among them pregnant women and children from Tunisia to Libya. This situation seriously jeopardizes migrants' rights to security, liberty, access to food, shelter, water and medical assistance, putting their lives at serious risk. We are also concerned about reports of racist and xenophobic targeting of these migrants, which constitutes a violation of the principle of equality and non-discrimination.

According to the information received:

Forty-five migrants from Ivory Coast, Guinea, Mali, Cameroon and Senegal, among them 20 women, including three pregnant women and five children under the age of five, are at serious risk due to the lack of access to shelter, food, water and medical care. These migrants are part of a larger group of more than 120 individuals who were arbitrarily expelled by Tunisian border authorities (National Guard) from Sfax, Tunisia to Ras Jedir, Libya, on September 27, 2021.

During the expulsion from Tunisia to Libya, the migrants were reportedly exposed to various forms of threats and violence and were denied access to their human rights. A sub-group of individuals, including at least two pregnant women, remain stranded on the Libyan border side without access to shelter, food, water or medical assistance since 26 September 2021. It appears that migrants in Libya, Zuwara remain in a very vulnerable situation, exposed to different forms of violence such as arbitrary detention, exploitation, extortion, torture, sexual and gender-based violence and human trafficking. According to the Independent Fact-Finding Mission on Libya migrants, asylum seekers, and refugees are particularly at risk of sexual violence. The situation of the aforementioned individuals is deteriorating and the lack of access to shelter, food and water in the heat of the desert may pose a threat to their right to life.

Some people trying to return to Tunisia were reportedly threatened, beaten and pushed back by Tunisian National Guard officers on the Libyan side of the border.

It was also reported that a group of about 10 migrants were reportedly abducted by an unidentified group of armed men and held in a house on the Libyan side of the border. Among them is at least one child under the age of five. Several of them were reportedly victims of extortion and two persons were reportedly released following a payment made to the above-mentioned militia. These persons were reportedly subjected to torture and other cruel, inhuman, or degrading treatment or punishment by the above-mentioned unidentified armed group. In addition, a number of migrants were reportedly arrested by the Libyan authorities and taken to detention centres in Zuwara. According to the reports by the United Nations Support Mission in Libya (UNSMIL), migrants are taken to indefinite detention with no judicial review and they have no opportunity to challenge their detention, they are obliged to pay their way out, extorted, tortured and forced to work. They were reportedly asked to pay their way out. At least one detainee paid 500 euros, before being released.

Without prejudging the accuracy of the information received, we are deeply concerned about the safety, dignity, physical integrity and living conditions of the migrants, in particular pregnant women and children, stranded at the border between Tunisia and Libya since 27 September 2021, where they are subjected to deplorable living conditions without access to shelter, or adequate food, drinking water, sanitation or medical care, which may constitute cruel, inhuman or degrading treatment and seriously endangers their lives and safety. In this regard, we wish to draw the attention of Your Excellency's Government to Article 2 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), ratified by Libya in 1989, which respectively obliges States to prevent torture and other acts of cruel, inhuman or degrading treatment or punishment.

In addition, we refer to Articles 6 (1), 7 and 9 of the International Covenant on Civil and Political Rights (ICCPR), to which Libya has been a party since 1970, and which guarantee the right of everyone to life, to prohibition of torture or other forms of ill-treatment, to liberty and security and to the prohibition against arbitrary detention. In

this regard, we wish to emphasize that the enjoyment of the rights guaranteed by the ICCPR is not limited to citizens of States parties, but "should also be accessible to all persons, regardless of their nationality or stateless status, such as asylum-seekers, refugees, migrant workers and other persons, who may be in the territory or under the jurisdiction of the State party" (ICCPR/C/21/rev.1/Add.13 (2004), paragraph 10).

We would like to remind Your Excellency's Government that under Article 6 of the ICCPR, Libya has an obligation to protect the inherent right to life of all persons within its jurisdiction. The right to life should include not only the deprivation of life, but also the right of individuals to be free from acts and omissions that are intended or likely to cause their unnatural or premature death, as well as to enjoy a life in dignity. In its General Comment No. 36, the Human Rights Committee reaffirms that the obligation to protect life means that States should take measures "to create adequate conditions to protect the right to life may include, where necessary, short-term measures to ensure access to essential goods and services such as food, water, shelter, health care, electricity and sanitation. ". States parties have an obligation "to respect and ensure that the right to life extends to reasonably foreseeable threats and life-threatening situations that may result in loss of life. States parties may violate article 6 even if such threats and situations do not result in loss of lethal life.

Moreover, security, as defined by the Human Rights Committee, concerns freedom from injury to the body and the mind, or bodily and mental integrity. Article 9 of the ICCPR obliges States to take appropriate measures in response to death threats and more generally any foreseeable threats to life or bodily integrity proceeding from any governmental or private actors. According to the information received, not only the security of the migrants who are abducted by the militia, but also that of other migrants who are in dire life conditions is at high risk.

With respect to allegation of detention of migrants in Zuwara, we draw your attention to the prohibition of arbitrary arrest and detention established by article 9 of the ICCPR. The Human Rights Committee in its General Comment No. 35 reiterates that « decisions regarding the detention of migrants must also take into account the effect of the detention on their physical or mental health. Any necessary detention should take place in appropriate, sanitary, non-punitive facilities and should not take place in prisons.” General Comment No. 35 further recalls that States have a “duty to take appropriate measures to protect the right to liberty of person against deprivation by third parties” and “against abduction or detention by individual criminals or irregular groups, including armed or terrorist groups, operating within their territory.”

Furthermore, we emphasize the situation of the child who is abducted together with other migrants by the unidentified armed group. The Human Rights Committee affirms that States should take the extreme vulnerability and need for care of children into consideration and ensure that children are not deprived of their liberty. Additionally, Article 37(a) of the Convention on the Rights of the Child ratified by Libya in 1993, obliges States to ensure that no child is subjected to torture or other cruel, inhumane or degrading treatment.

In light of reports of racism and xenophobia against sub-Saharan migrants in Libya, we are concerned that they have been subjected to violations of their right to liberty and security, right to food, water and shelter, as well as other migratory constraints based on their race, colour, descent or national or ethnic origin. We recall that Libya is a State party to the Convention on the Elimination of All Forms of Racial Discrimination (ICERD), having ratified that Convention in 1968. Article 1 prohibits racial discrimination, which it defined as “any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.”. Article 2 of the Convention requires States parties to condemn racial discrimination and pursue policies to eliminate it, and article 5 affirms “the right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution.” Under these provisions ICERD requires States Parties to take action to combat both intentional or purposeful racial discrimination as well as *de facto* or unintentional racial discrimination. In addition, we would like to direct your Government to Committee on the Elimination of Racial Discrimination’s General Recommendation No. 30 on discrimination against non-citizens.

We wish to draw the attention of Your Excellency's Government to the right of all individuals, including migrants and asylum-seekers, to an adequate standard of living for himself and his family, including adequate food and housing, as set forth in article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by Libya in 1970, and the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (Article 12). In this regard, we would like to recall that the Committee on Economic, Social and Cultural Rights, in paragraph 9 of its Statement "Duties of States towards refugees and migrants under the International Covenant on Economic, Social and Cultural Rights" (E/C.12/2017/1), affirms that "The essential minimum content of each right should be preserved in all circumstances and the corresponding duties extended to all people under the effective control of the State, without exception. ».

The full texts of the human rights instruments and standards recalled 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 by your Excellency’s Government to safeguard the rights of the above-mentioned person(s) in compliance with international instruments.

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 allegations.

2. Please provide information on the location and current situation of this group of people, including women and children. Please include information on the measures taken by your Excellency's Government to immediately remedy their living conditions by providing them with food, water, clothing, adequate medical care, and shelter.
3. Please provide any information on the location and current situation of the migrants detained by Libyan authorities, as well as basis for their detention.
4. Please indicate what measures have been taken by Your Excellency's Government to protect the human rights of migrants at international borders, including by ensuring their access to legal representatives and relevant procedures for persons in need of protection under international human rights and refugee law.
5. Please provide information on measures taken to prevent gender-based violence against women and girls, as well as to prosecute any such acts.
6. Please provide information on the legal grounds for the arrest and detention of the above-mentioned individuals and how these measures are compatible with international norms and standards.
7. Please indicate what measures have been taken by your Excellency's Government to investigate the abovementioned abduction of the migrants and to prosecute and punish the perpetrators.

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 responsible of the alleged violations.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Please note that a letter regarding the aforementioned allegations will be sent to the Government of Tunisia.

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

E. Tendayi Achiume  
Special Rapporteur on contemporary forms of racism, racial discrimination,  
xenophobia and related intolerance

Dominique Day  
Chair-Rapporteur of the Working Group of Experts on People of African Descent

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

Michael Fakhri  
Special Rapporteur on the right to food

Tlaleng Mofokeng  
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable  
standard of physical and mental health

Balakrishnan Rajagopal  
Special Rapporteur on adequate housing as a component of the right to an adequate  
standard of living, and on the right to non-discrimination in this context

Felipe González Morales  
Special Rapporteur on the human rights of migrants

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

Reem Alsalem  
Special Rapporteur on violence against women, its causes and consequences

Pedro Arrojo-Agudo  
Special Rapporteur on the human rights to safe drinking water and sanitation