

Mandates of the Special Rapporteur on the human rights of migrants and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Ref.: UA TJK 4/2021

(Please use this reference in your reply)

23 December 2021

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the human rights of migrants and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 43/6 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 situation of Afghan nationals in Tajikistan, including obstacles they face in exercising their right to seek and enjoy asylum and the ongoing risk of *refoulement*.**

Similar concerns regarding the situation of Afghan nationals in Tajikistan had been subject to previous communication UA TJK 3/2021, transmitted by Special Procedures' mandate holders on 7 September 2021. We regret that, to date, no reply has been received to this communication.

According to the information received:

Following the deterioration of the security situation in Afghanistan, thousands of Afghan nationals, including families and children, had fled towards neighbouring countries. However, some countries in the region have reportedly closed their borders or their land border-crossing points, either completely or partially to those individuals who do not hold valid travel documentation. In addition, and despite the ongoing critical humanitarian and security situation in Afghanistan, neighbouring countries are allegedly forcibly returning Afghans back to their country, where they would be at risk of irreparable harm as they could be subjected to grave human rights violations.

According to the source, Tajikistan's land border is currently closed to the arrival of Afghan nationals who do not hold valid travel documentation and visa. There is allegedly a risk of pushbacks and denial of entry at the border for those asylum seeking Afghans who do not hold valid travel documents and visa. In August 2021, 80 individuals, including 32 children, were reportedly stranded in a buffer zone at the Tajik-Afghan border for two months in dire conditions, after being denied access into Tajikistan (UA TJK 3/2021). Reportedly, despite having requested asylum in Tajikistan, they were not allowed to access asylum procedures. According to the reports received, they were eventually returned to Afghanistan.

Additionally, deportations have allegedly escalated in Tajikistan since August 2021. According to the information received, in November 2021, 23 Afghan asylum seekers, including women and children, were deported from Tajikistan to Afghanistan, while other 14 have been reportedly deported since the beginning of December 2021. Deportations are allegedly conducted outside relevant court proceedings. According to the information received, about 45 Afghan families are currently at risk of deportation from Tajikistan.

According to the source, newly arrived asylum seeking Afghans face obstacles to submit asylum claim. Access to asylum procedures in Tajikistan requires compliance with several preconditions, including registration with local authorities and evidence of residence. In addition, undocumented asylum-seeking Afghans face barriers to access to asylum procedures since the registration with local authorities requires the possession of travel documents. On the other hand, since July 2021, Tajik local authorities have reportedly suspended certain **registration procedures** in all refugee populated areas, thus further restricting access to asylum for the newly arrived.

Furthermore, Presidential *Resolution 325 (2000)* and *328 (2004)*, which are enforced by the Government of Tajikistan, allegedly ban asylum seekers and refugees from residing in certain urban areas, including the two main cities of Tajikistan, namely Dushanbe and Khujand. Asylum-seekers and refugees are only allowed to reside in cities designated by these presidential resolutions. Non-compliance with these resolutions will result in the rejection of the registration of asylum claims, revocation of refugee status, refusal to issue or extend the validity of documents, and administrative penalties, leading to the consideration of asylum seekers as illegally residing foreigners, which may result in their deportation.

Without prejudging the accuracy of the information received, we are deeply concerned about the situation of Afghan nationals in Tajikistan. We wish 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 would also like to stress our grave concern regarding the imminent risk of *refoulement* of 45 Afghan families to Afghanistan, where the situation remains critical and where they would be at risk of serious human rights abuses. We wish to stress that States should uphold the absolute and non-derogable principle of non-*refoulement*.

The principle of non-*refoulement* is codified in articles 3 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, to which Tajikistan is a party since 1995. Article 3 of the Convention 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, ill-treatment or other irreparable harm. As an inherent element of the prohibition of torture and other forms of ill-treatment, the prohibition of *refoulement* under international human rights law is also more expansive than the protections afforded under refugee law insofar as it applies to any form of removal or transfer of persons, regardless of their status or grounds for seeking protection, and is characterised by its

absolute nature without any exception. Heightened consideration must also be given to children in the context of return, whereby actions of the State must be taken in accordance with the best interests of the child and States must also consider the particular needs and vulnerabilities of each child, which may give rise to irreparable harm in the country of return.

We would also like to 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.

In view of the risk of irreparable harm faced upon return in Afghanistan, **we concur with UNHCR's global non-return advisory for Afghanistan and call upon your Excellency's Government as a matter of urgency to halt deportations of Afghan nationals**, including those undocumented, and to ensure respect for the principle of non-refoulement, until the circumstances and human rights situation in Afghanistan allow for safe and dignified returns.

Similarly, we are deeply concerned by the alleged obstacles faced by Afghan nationals in exercising their right to seek and enjoy asylum in Tajikistan. In relation to alleged denial of entry of asylum-seeking Afghan nationals at the border, we wish to stress that evidence shows that increasing barriers to regular migration do not stop human mobility, especially in the case of forced migration, when migrating is a matter of survival for themselves or their families. On the contrary, far from deterring migrants or reducing forced migration, these measures tend to push migrants to seek irregular, clandestine and riskier routes. We would also like to draw the attention of your Government 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 and refugee protection needs, including access to asylum. Effective access to territory is an essential precondition for exercising the right to seek asylum (para. 43).

We also wish to refer to the Global Compact for Safe, Orderly and Regular Migration, in particular to Objective 7, according to which States commit to respond to the needs of migrants who face situations of vulnerability, which may arise from the circumstances in which they travel or the conditions they face in countries of origin, transit and destination, by assisting them and protecting their human rights, in accordance with obligations under international law. In addition, Objective 8 refers to the commitment of States to review the impacts on migration-related policies and laws to ensure that these do not raise or create the risk of migrants going missing, including by identifying dangerous transit routes used by migrants, by working with other States,

relevant stakeholders and international organisations to identify contextual risks and establishing mechanisms for preventing and responding to such situations.

Finally, we would like to recall the Human Rights Council resolution 9/5, which addresses the issue of the human rights of migrants, "requests States to effectively promote and protect the human rights and fundamental freedoms of all migrants, especially those of women and children, regardless of their immigration status, in conformity with the Universal Declaration of Human Rights and the international instruments to which they are party". Resolution 9/5 also "reaffirms that, when exercising their sovereign right to enact and implement migratory and border security measures, States have the duty to comply with their obligations under international law, including international human rights law, in order to ensure full respect for the human rights of migrants" and "urge States to ensure that repatriation mechanisms allow for the identification and special protection of persons in vulnerable situations, including persons with disabilities, and take into account, in conformity with their international commitments, the principle of the best interest of the child and family reunification".

The full texts of the human rights instruments and standards recalled above are available on 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 persons 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-mentioned allegations.
2. Please provide detailed information on the current situation of the 45 Afghan families that are reportedly at risk of being forcibly returned to Afghanistan, including information on their access to asylum.
3. Please indicate measures adopted by your Excellency's Government to protect the human rights of arriving Afghan nationals, regardless of their migration status; and how these measures are in accordance with international human rights and refugee laws. In particular, please indicate measures taken or to be taken by your Excellency's Government to ensure the full respect of the principle of *non-refoulement*.
4. Please explain measures taken or to be taken to ensure that Afghan individuals are able to exercise their right to seek and enjoy asylum in Tajikistan, including by ensuring their effective access to asylum and other relevant procedures for persons in need of protection under international human rights and refugee laws.

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.

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 accept, Excellency, the assurances of our highest consideration.

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