

Mandates of the Special Rapporteur on the human rights of migrants; the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

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(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; Special Rapporteur on the situation of human rights in the Islamic Republic of Iran and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 43/6, 46/18 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, particularly those who are undocumented, in the Islamic Republic of Iran, including the ongoing risk of refoulement and obstacles they face in exercising their right to seek asylum.**

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 sources, official border crossings between Afghanistan and Iran are closed for Afghan nationals, except for those holding valid travel documents and visa, and with few exceptions provided for medical reasons. Therefore, it has been reported that those Afghans arriving in Iran without valid documentation are at risk of being arrested, detained and deported. Allegedly, Iranian law enforcement officials are conducting round-up operations targeting those Afghan nationals without valid documentation, on the basis of the 1931 Act on the Entry and Residence of Foreign Nationals. This Act criminalises irregular entries of migrants, by providing that “[a]liens who enter the Iranian soil without required documents but through illegal routes, shall be sentenced to 1 to 3 years imprisonment or a fine of 500,000 to 3 million Rials (IRR) [approximatively 12 to 72 USD] and may be expelled from the country.”

Under these provisions, Afghans in an irregular situation are allegedly being summarily deported to Afghanistan. According to the information received, over 58,000 undocumented Afghans were deported from Iran to Afghanistan between 27 August and 9 September 2021, with around 3,000 individuals being returned daily between August and November 2021. Reportedly, deportation on account of irregular entry and residence has become in practice an administrative procedure without any judicial review. In addition, these deportations are reportedly enforced in an expedited manner, and Afghan persons subjected to them are not allowed to challenge the deportation decision.

According to the reports received, forced returns of Afghan nationals including those apprehended at the border are still being carried out by Iranian authorities. Moreover, newly arrived Afghan who are undocumented are reportedly not allowed to apply for asylum in Iran prior to their deportation.

Without prejudging the accuracy of the information received, we are deeply concerned about the situation of undocumented Afghan asylum-seeking in Iran. 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”, and also to Article 155 of the Iranian Constitution which states that “[t]he government of the Islamic Republic of Iran may grant political asylum to those who seek it (...)”. Particularly, we would like to stress our most grave concern regarding allegations of the ongoing and daily deportations of thousands of individuals 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 principle of non-refoulement.

The principle of non-refoulement forms an essential protection under international human rights, refugee, humanitarian and customary law. Non-refoulement prohibits all forms of removal and transfer of any individual, regardless of their status, when there are substantial grounds for believing that the individual would be at risk of 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. In this regard, we would like to draw the attention of your Excellency’s Government to General Comment No. 31 of the Human Rights Committee, which specifies that State obligations under Article 2 of the International Covenant on Civil and Political Rights entail “an obligation not to extradite, deport, expel or otherwise remove a person from their territory, where there are substantial grounds for believing that there is a real risk of irreparable harm.” The principle of non-refoulement under international human rights law is characterised by its absolute nature without any exception, applying to all persons, including all migrants, at all times, irrespective of their citizenship, nationality, statelessness or migration status. 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.

Furthermore, we are concerned by relevant provisions under 1931 Act on the Entry and Residence of Foreign Nationals, which criminalise the entry and residence of undocumented migrants and asylum seekers in the Islamic Republic of Iran. In this regard, we would like to recall that, in accordance with provisions of international human rights law, irregular entries should not be treated as criminal offences: the act of seeking asylum is legal. Criminalising irregular entries based on their immigration status can lead to other human rights violations. We also wish to remind Article 31 of the 1951 Convention relating to the Status of Refugees, ratified by Iran in 1976, which provides that States shall not impose penalties on account of their illegal entry on refugees who, come directly from a territory where their life or freedom was threatened. In this connection, we would like to refer the attention of your Excellency's Government to the 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, which highlights that States have an obligation to respect, protect and fulfil the human rights of everyone on their territory or within their jurisdiction or effective control, irrespective of migration status and without discrimination of any kind (para. 39, A/HRC/47/30).

Similarly, we are deeply concerned by the alleged obstacles faced by Afghan nationals in exercising their right to seek asylum in the Islamic Republic of Iran. In relation to alleged denial of entry of undocumented 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 leaving the country of origin 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 steps taken by your Excellency's Government to safeguard the rights of Afghan asylum seekers in Iran 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 indicate measures adopted by your Excellency's Government to protect the human rights of arriving Afghan asylum-seekers 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 Government to ensure the full respect of the cardinal principle of non-refoulement.

3. Please explain measures taken or to be taken to ensure that Afghan individuals, regardless of their migration status, are allowed to effectively access asylum procedures in Iran. Please indicate how individuals seeking international protection can access such procedures.
4. Please explain how provisions under the 1931 Act on the Entry and Residence of Foreign Nationals are compatible with Iran's international obligations under 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

Javaid Rehman
Special Rapporteur on the situation of human rights in the Islamic Republic of Iran

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