

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.: AL PAK 13/2021

(Please use this reference in your reply)

23 December 2021

Excellency,

We have the honour to address you in our capacities 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 Pakistan, including the ongoing risk of *refoulement***.

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.

We understand that official border crossings between Afghanistan and Pakistan are only open for those Afghan nationals holding valid travel documents and visas, while few exceptions were provided for some undocumented individuals due to medical reasons.

According to the information received, between 27 August and 9 September 2021, Pakistani authorities reportedly deported 230 undocumented Afghan nationals, while around 1,800 Afghan individuals were deported to Afghanistan during September and October 2021.

Without prejudging the accuracy of the information received, we are deeply concerned about the situation of Afghan nationals in Pakistan. 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 recent and ongoing risk of *refoulement* of Afghan nationals 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*. This cardinal principle of international protection is codified in article 3 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, to

which Pakistan is a party since 2010. This article 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.

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.

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 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 law and other relevant international standards. In particular, please indicate measures taken or to be taken by your Government to ensure the full respect of the principle of non-*refoulement*.
3. Please explain measures taken or to be taken to ensure that Afghan individuals, regardless of their migration status, have effective access to asylum procedures in Pakistan.

We would appreciate receiving a response within 60 days. Past 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

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 Pakistan on 23 June 2021, 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.

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 Pakistan is a party since 2010. 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 relation to the 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

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".