

**Mandates of the Special Rapporteur on the human rights of migrants; the Special Rapporteur on the rights of persons with disabilities and the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material**

Ref.: UA TJK 4/2022  
(Please use this reference in your reply)

31 October 2022

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the human rights of migrants; Special Rapporteur on the rights of persons with disabilities and Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material, pursuant to Human Rights Council resolutions 43/6, 44/10 and 43/22.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the ongoing risk of *refoulement* of Afghan nationals, including women, children and persons with disabilities and the denial of their access to justice in Tajikistan.**

Similar concerns regarding the situation of Afghan nationals in Tajikistan has been subject to previous communications: UA TJK 3/2021 and UA TJK 4/2021 transmitted by Special Procedures' mandate holders on 7 September 2021 and 22 December 2021. We regret that, to date, no reply has been received to these communications.

According to the information received:

Since 16 August 2021, a number of Afghan refugees and asylum seekers have been facing sudden detention and immediate deportation carried out by the Tajik law enforcement bodies. Deportations were unexpected and through the Panji Poyon border crossing point. Allegedly, refugees and asylum seekers were taken from home or their working places directly to the nearest Security Office with further escort to the Afghan border, at times with no possibility to inform their relatives nor take their personal belongings, including identity documentation.

On 3 September 2022, a mass deportation would have taken place and an estimated total number of 30 Afghan nationals, including women and children were sent to the border with Afghanistan with two vans including refugees, asylum seekers and also Afghans with expired visas. Several families were allegedly separated: some family members were deported and some were left in Tajikistan. Concerns have been raised about deportation of women, children and persons with disabilities and that these deportations were carried out without individual assessment of the international protection needs or observing the right to access to justice. Information indicates that since the Taliban takeover in August 2021 and until 4 September 2022, an estimated

104 refugees and asylum seekers were deported by Tajikistan authorities.

Reports indicate that conditions in Afghanistan remain highly unpredictable, with widespread concerns about targeted violence and human rights violations, including economic collapse, humanitarian crisis and food insecurity. Concerns have also been raised about the potential risks the Afghan women and girls would face, if deported, due to high levels of violence against women and girls, including domestic violence, the collapse of mechanisms for victims to seek protection, support and accountability, and the use of the informal justice system to deal with such cases. It is alleged that children may also suffer from hunger and may be projected to face high levels of acute food insecurity. As a consequence, many families are currently utilizing harmful coping strategies, including the sale of children, child marriage, child labor, exploitation and decreased spending on health care and education.

Without prejudging the accuracy of the information received, we are deeply concerned about the situation of Afghan nationals, including women, children and persons with disabilities 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 express our grave concern regarding the deportation of 30 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, including your Excellency’s Government 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 women, children and persons with disabilities 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 of each woman, child and persons with disabilities, who find themselves in vulnerable situations, which may give rise to irreparable harm in the country of return.

Additionally, the principle of *non-refoulement* should be interpreted to apply to a wide range of risks of irreparable harm, and should be applied to prevent the return of persons in cases of risk of serious human rights violations, such as risks to the rights to life, integrity or freedom of the person, and of torture and ill-treatment. In certain circumstances, the individual assessment of risk of irreparable harm should include, among other elements, individual protection needs of each migrant, access to or the level of enjoyment of migrants’ economic and social rights.

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 continued risk of irreparable harm faced upon return in Afghanistan, **we concur with the UNHCR Guidance Note on the International Protection Needs of People Fleeing Afghanistan and reiterate our call upon your Excellency's Government as a matter of urgency to halt deportations of Afghan nationals including women, children and persons with disabilities** and to ensure respect for the principle of non-*refoulement*, until the circumstances in Afghanistan has stabilized and human rights situation in the country are secured for safe, voluntary and dignified returns.

Similarly, we are deeply concerned by the alleged obstacles faced by Afghan nationals in exercising their right to access to justice in Tajikistan. In relation to the alleged denial of access to justice, we would like to stress that access to justice for migrants including refugees and asylum seekers is severely compromised by the lack or failure of internal oversight mechanisms to adequately address and prevent violations. Independent human rights monitoring at borders is sporadic and cannot in itself prevent violations or abuses without the cooperation of the State. In this regard, we wish to refer to articles 7 and 8 of the Universal Declaration of Human Rights (UDHR); articles 2(3)(a), 9(4), 14(1) of the International Covenant on Civil and Political Rights (ICCPR) and articles 5 and 6 of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), which establish that the right to access justice applies to everyone without discrimination, by virtue of their humanity - including migrants.

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 stressed that effective access to mechanisms should be provided for migrants who have suffered human rights violations or abuses as a result of border governance measures to seek remedies and redress, including by establishing accessible and adequate complaint and reparation procedures, and refraining from raising territorial or other restrictions that effectively prevent applicants from accessing justice.

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 7 (g) refers

to the commitment of States to “ensure that migrants have access to public or affordable independent legal assistance and representation in legal proceedings that affect them, including during any related judicial or administrative hearing, in order to safeguard that all migrants, everywhere, are recognized as persons before the law and that the delivery of justice is impartial and non-discriminatory”.

Finally, we would like to recall the Human Rights Council resolution A/HRC/RES/47/12 , which addresses the issue of the human rights of migrants, “deeply concerned about the large and growing number of migrants, especially women and children, including children who are unaccompanied or are separated from their parents, who have lost their lives, have been injured or have gone missing in their attempt to cross international borders, including at sea, and recognizing the obligations that States have to protect and respect the human rights of those migrants, regardless of their migration status, and reaffirming the commitment to take action to avoid the loss of life of migrants, including by preventing human rights violations resulting from pushback practices, in particular collective expulsions and refoulement”.

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 any comment you may have on the above-mentioned allegations.
2. Please provide the legal basis for the alleged deportation of the 104 refugees and asylum seekers since August 2021, 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*.
3. Please also provide detailed information on the assessment carried out by the Tajik authorities to ensure that Afghan nationals, including women, children and persons with disabilities are not at risk of being subjected to torture or other cruel, inhuman or degrading treatment or punishment, arbitrary detention or other life-threatening factors if returned to Afghanistan, and indicate how this assessment process is consistent with the international human rights obligations of your Excellency's Government, in particular with the principle of non-*refoulement*.

4. Please outline the preventive measures taken to combat the risks of abuse, sale and sexual exploitation of children, which may have been exacerbated due to their status of being undocumented or unaccompanied during the course of the alleged deportation. Please outline the measures envisaged to ensure adequate child protection, including for the access to rehabilitative services for the child victims and survivors.
5. Please explain measures taken or to be taken to ensure that Afghan individuals are able to exercise their right to access to justice in Tajikistan, including by ensuring them accessible and adequate complaint and reparation procedures.

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

Gerard Quinn  
Special Rapporteur on the rights of persons with disabilities

Mama Fatima Singhateh  
Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material