

Mandates of the Special Rapporteur on trafficking in persons, especially women and children; the Working Group on Arbitrary Detention; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on the human rights of migrants; the Special Rapporteur on minority issues and the Special Rapporteur on contemporary forms of slavery, including its causes and consequences

Ref.: AL LBY 1/2023
(Please use this reference in your reply)

2 May 2023

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on trafficking in persons, especially women and children; Working Group on Arbitrary Detention; Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on the human rights of migrants; Special Rapporteur on minority issues and Special Rapporteur on contemporary forms of slavery, including its causes and consequences, pursuant to Human Rights Council resolutions 44/4, 51/8, 45/3, 43/6, 43/8 and 51/15.

In this connection, we would like to bring to the attention of your Excellency's Government the situation of 120 persons who were allegedly released by Libyan authorities, from a place where they had been allegedly held in captivity by traffickers, in February 2023, and subsequently transferred to an undisclosed location which could meet the definition of enforced disappearance, where it is alleged, they continued to be detained, without being provided with access to lawyers, or to any assistance or protection, and with limited investigations undertaken in relation to the allegations of trafficking in persons and other serious human rights violations, including torture, inhuman and degrading treatment, rape and sexual violence, and the risk of enforced disappearance, forced labour and sexual slavery. In this context we would also like to bring to your Excellency's Government attention information we have received concerning alleged trafficking of a group of more than 700 people, including children, allegedly trafficked and detained under the control of traffickers, in locations in Tazirbu, and who have been allegedly released by Libyan authorities in previous operations.

According to the information received:

On 6 February 2023, the Subil Al- Salam Battalion, acting on received information about the presence of a large group of people in a 'trafficking warehouse' in Tazirbu, reportedly conducted a raid operation on this warehouse (which is also referred to as a farm). As a result of the operation, 120 migrants and refugees, including 100 men and 20 women, were reportedly removed from the warehouse by the Battalion, and transferred to an undisclosed location for safety. This group was reportedly found in a very distressed condition, having been deprived of their liberty for an extended period of time by an alleged trafficking network. During captivity, they were reportedly tortured by the alleged traffickers for the purpose of extorting ransom from their families. Members of the group may also have been at risk of forced labour or sexual slavery, as highlighted previously in relation to the situation endured by trafficked migrants and refugees in Libya, previously communicated in AL LBY 6/2017 and UA LBY 1/2017. No information has

been received on whether any of the persons held, as a result of this raid or any previous raids in locations in Tazirbu have been identified as victims of trafficking and provided with assistance and protection. According to information received, no access was granted to humanitarian agencies to assess their assistance and protection needs, and no access has been granted to lawyers or to civil society.

Background information in relation to alleged trafficking in persons in Tazirbu prior to the February 2023 raid, including information related to two raids in August 2022:

Tazirbu is located in the district of Al Kufra, in the south-east of the country. While there are several routes from which African migrants and refugees travel towards the coastal region, on the so called Central Mediterranean route, the usual route taken through the Al Kufra district is allegedly controlled by traffickers from Sudan, who coordinate the movement of people with traffickers operating in Al Kufra.

Migrants and refugees, including victims of trafficking, are reportedly taken through the border and the checkpoints in “pickups cars” to locations in Tazirbu, passing through the Aljof area. The area around Aljof is an expansive area of desert, and many migrants and refugees, including trafficked persons, pass through to Tazirbu where they are subsequently held captive in these warehouses/farms.

According to information received, the first reports regarding human rights violations, including trafficking in persons, deprivation of liberty, torture, inhuman and degrading treatment, enforced disappearances, of people detained in the Tazirbu location (referred to as a warehouse or farm) date from October 2020. These reports include information on the situation of over 700 people (men, women and children), including migrants and refugees, victims of trafficking, detained in warehouses/farms in Tazirbu. The alleged owner of one of these warehouses/farms is [REDACTED] who is reported to be a member of the Agriculture Police and was promoted to the position of lieutenant. According to information received, [REDACTED] hired a group of Sudanese men and two Eritrean men, named [REDACTED] and [REDACTED] allegedly to control the persons held captive in the warehouse/farm. These men allegedly participated in the perpetration of violations of human rights and abuses against the persons held captive. [REDACTED] reportedly also assigned a group of Libyan nationals to work with the Sudanese and Eritrean men. The persons held captive were reportedly subjected to repeated torture, including physical beatings, and electric shocks, and were video-taped while being tortured, for the purpose of extorting ransom from the families. It is reported that the video recordings were sent to the families of the persons held captive.

It was reported that a group of approximately 60 Somali nationals who were being held captive, were released after payment of the ransom demanded (i.e., up to 15,000 USD).

According to the information received, the relevant authorities in Al Kufra, operating under the Ministry of Interior, specifically the Directorate for

Combating Illegal Migration (DCIM), have been aware of the allegations of trafficking and other human rights violations, including torture, disappearance and arbitrary detention, in the Tazirbu warehouse/farm since October 2020. In May 2022, concerns about the situation of migrants held in Tazirbu were published in the Final report of the Panel of Experts established pursuant to resolution 1973 (2011) concerning Libya. This report raised concerns about human rights abuses against four people held in secret detention facilities, created and controlled by networks of traffickers in the areas of Tazirbu and Bani Walid (S/2022/427, para. 46). However, despite the information received and the above-mentioned report to the Security Council, the authorities in Al Kufra were only able to locate the warehouse/farm on 15 August 2022, after the escape of 14 alleged victims of trafficking. The alleged victims of trafficking confirmed reports of torture and extortion of ransom. Reportedly, after the warehouse/farm was identified, the authorities requested authorization to raid the warehouse/farm, which was obtained on 18 August 2022. As a result of this raid, 231 persons, of Sudanese, Somali, Ethiopian and Eritrean nationalities, including 3 women and 100 children, aged between 10 and 16 years old, were rescued by the DCIM and the Security Directorate of Al-Kufra. However, in accordance with Law No. (19) of 2010 on combatting illegal immigration, which criminalizes irregular entry and stay of migrants in Libya (articles 6 and 11), they were subsequently transferred to Al Kufra detention centre.¹ It has been reported that several children, who were among those rescued from the warehouse/farm, were transferred for treatment to the intensive care unit of Al Kufra hospital. Eight adult women, who reported having been raped by the alleged Sudanese traffickers, were also transferred to Al Kufra hospital for medical treatment.

According to information received and the investigations undertaken as a result of the raid in August, it is alleged that 30 people had died in the past three years in the warehouse/farm. The cause of death could not be verified but released persons reportedly showed signs of gunshot wounds, physical beatings and electrical shocks. The information received also alleges that the detainees were repeatedly raped and subjected to sexual violence. Information received also indicated forced starvation, malnutrition and lack of access to water, despite the high temperatures in Al Kufra, for extended periods. On 29 August 2022, according to information received, a graveyard was discovered near the location of the warehouse / farm where the remains of 20 dead bodies were found buried. It was confirmed that the bodies were those of migrants from other African States and, according to the investigations and

¹ Regarding the national legislation, under Law No. (19) of 2010 on combatting illegal immigration, all migrants entering irregularly to Libya can be penalized for irregular entry and/or stay in the country. Article 6 explicitly states that “Foreign illegal immigrants shall be penalized by detention with hard labour or by a fine not exceeding 1,000 LYD. In all cases, a foreigner convicted of any of the crimes set forth in this law shall be expelled from the territory of the Great Jamahiriya immediately upon execution of the sentence”. Furthermore article 11 provides that “All persons who reside in the Great Jamahiriya in violation of the provisions of this law shall seek settlement of their status within a period not exceeding two months from the entry in force of this law. Otherwise, they shall be deemed illegal immigrants and the penalties prescribed in this law shall be applied”. The law also imposes penalties for smugglers, as provided in Article 4 to “Anyone who deliberately obtains for himself or another person a material or non-material benefit, whether directly or indirectly, by commission of any of the acts considered illegal immigration shall be penalised by detention for a period not exceeding one year and a fine of no less than 5,000 LYD and not exceeding 10,000 LYD. If it is proven that the perpetrator belonged to an organised gang for smuggling immigrants at the time the crime was committed, the penalty shall be imprisonment for a period of no less than five years and a fine of no less than 5,000 LYD and not exceeding 30,000 LYD. The law also foresees fines for employers of migrants illegally in the country in article 3, which can be between 1,000 LYD and 3,000 LYD. See the full piece of legislation in English here: <https://security-legislation.ly/law/32174>

testimonies of the alleged traffickers, the burials took place at different times. Further information on their nationalities and identities is not available, or on the efforts undertaken to trace the next of kin, and families of the dead, and to repatriate the bodies.

On 26 August 2022, DCIM Al Kufra reportedly raided another farmhouse in Tazirbu. The DCIM reportedly acted after receiving information, on 25 August 2022, that other trafficked persons, in a different location in Tazirbu, had been held captive for several days without food after the raid on 18 August 2022. However, when the raid was carried out, the farmhouse was reportedly empty, and the persons who had allegedly been held there had allegedly been transferred to an unknown location, where they may be at risk of continued abuses, including trafficking in persons, torture, disappearance, forced labour and sexual slavery.

According to the information received, approximately 400 of the released migrants, who had been transferred to Al Kufra detention center were forcibly returned to Sudan by DCIM in December 2022. It is alleged that the persons returned may have included victims of trafficking. No information is available on the measures taken to prevent refoulement or trafficking or re-trafficking of those returned, or of any measures of assistance or protection provided. No information is available on the measures taken to ensure effective implementation of the obligation of non-refoulement, or on provision of access to lawyers prior to the removal, or on any individual assessment process undertaken prior to the removals. As a result of the second raid, it is reported that the alleged Eritrean and Sudanese traffickers guarding the second warehouse/farm were immediately arrested. However, [REDACTED], the alleged owner of the warehouse/farm, was not arrested, despite reports that an investigation was ongoing in relation to his alleged involvement in trafficking in persons and other human rights violations alleged to have occurred at the warehouse/farm. According to the information received, on 17 October 2022, [REDACTED] remained in Tazirbu, and migrants, allegedly including victims of trafficking, continued to be brought to a warehouse/farm on the northern side of Tazirbu. According to the information received, the residence of [REDACTED] is located on the property of one of his warehouses/farms on the Northern side of the main road through Tazirbu. We have also received information that the migrants, including alleged trafficked persons, who were reportedly removed from the warehouse/farm, were subsequently returned to the same warehouse/farm, after the raids were concluded and it is alleged that they continued to be held captive.

According to information received, there have been previous incidents where investigations and prosecutions have targeted alleged traffickers of non-Libyan nationality only, while Libyan nationals are allegedly not subject to investigation or prosecution.

The information received raises concerns in relation to the alleged connection of [REDACTED] with officials at the Ministry of Interior, and the failure to ensure effective investigation into [REDACTED] alleged involvement in trafficking in persons and other human rights violations. It is noteworthy that the Independent Fact-Finding Mission on Libya in their report

to the Human Rights Council in March 2023 states: “the Mission found reasonable grounds to believe that high-ranking staff of the Libyan Coast Guard, the Stability Support Apparatus and the Directorate for Combating Illegal Migration colluded with traffickers and smugglers, which are reportedly connected to militia groups, in the context of the interception and deprivation of liberty of migrants. The Mission also found reasonable grounds to believe that guards demanded and received payment for the release of migrants. Trafficking, enslavement, forced labour, imprisonment, extortion and smuggling generated significant revenue for individuals, groups and State institutions” (A/HRC/52/83 para. 44).

The Report of the Fact-Finding Mission also raises concerns regarding evidence of torture in detention centres under the control of the Directorate for Combating Illegal Migration (para. 48), as well as evidence of rape and sexual slavery (paras. 50-52). Finally, the Report raises concerns in relation to the lack of accountability or mechanisms to report rape and sexual abuse (para. 82). These concerns are relevant to the information received concerning alleged trafficking in persons and other human rights violations, including rape and sexual violence².

While we do not wish to prejudge the accuracy of the information made available to us, we are concerned that the alleged facts raise serious concerns relating to possible breaches of international law, including international human rights law, international humanitarian law, international refugee law, and international criminal law. Regarding the alleged detention of migrants in Al Kufra detention center, we would like to refer to articles 6, 7, 9, 10 and 16, read alone and in conjunction with 2(3) of the International Covenant on Civil and Political Rights (ICCPR), which the Government of Libya ratified on 15 May 1970. In particular, we would like to draw your Excellency’s Government’s attention to article 9.1 of the ICCPR which provides that everyone has the right to liberty and security of person. 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 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” (CCPR/C/21/Rev.1/Add. 13 (2004), para. 10). The detention of migrants should thus be a measure of last resort. The ICCPR further stipulates that all persons deprived of their liberty be ensured the right without delay to control by a court of the lawfulness of the detention (art. 9(4)). In addition, in the particular case of children, the Committee on the Rights of the Child, together with the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families explicitly state that, “Any kind of child immigration detention should be forbidden by law and such prohibition should be fully implemented in practice.” (CMW/C/GC/4-CRC/C/GC/23, para. 5). We recall your Excellency’s Government ratification of the Convention on the Rights of the Child on 15 April 1993 and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families on 18 June 2004.

² “OHCHR has also received information that hundreds of migrants who have been “freed” by Libyan security forces since 2019 following raids on trafficking compounds in Bani Walid, al-Kufra, Tazirbu and Nesma, were subsequently handed over to either to DCIM, police directorates or Criminal Investigation Departments where they were reportedly automatically placed in detention and subject to imminent deportation. Reportedly, they were all detained in deplorable conditions, without access to medical care, psycho-social support, or legal assistance”. See OHCHR, *Unsafe and Undignified: The forced expulsion of migrants from Libya*, p. 25

In this regard, we further underline the absolute and non-derogable obligation to prohibit and prevent torture under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), acceded by Libya on 16 May 1989. The Committee against Torture found that detention based solely on migration status, may amount to torture, particularly where it is intentionally imposed or perpetuated for such purposes as deterring, intimidating or punishing irregular migrants or their families, coercing them into withdrawing their requests for asylum, subsidiary protection or other stay, agreeing to voluntary repatriation, providing information or fingerprints, or with a view to extorting money or sexual acts, or for reasons based on discrimination of any kind, including discrimination based on immigration status. In these conditions, the detention of migrants would contravene articles 1, 2, and 16 of the UNCAT (.CAT/C/GC/4, paras. 12, 14 and 17)

Furthermore, given the evidence presented in reports of the Independent Fact-Finding Mission on Libya and the Panel of Experts on Libya established pursuant to Security Council resolution 1973 (2011), about the presence of trafficking in persons hubs in the areas concerned, and the evidence of trafficking of migrants, including children, with the purpose of exploiting them for ransom and for other types of exploitation such as enslavement, including sexual slavery (A/HRC/52/83, paras. 50-52), we are concerned that the alleged response by Libyan authorities regarding the initial release and further transfer to a place of detention, may be in breach of the positive obligations to identify and protect victims of trafficking in persons, as provided in the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime, ratified by your Excellency's Government on 24 September 2004. We also highlight the obligation of *non-refoulement*, a customary norm of international law, which includes the obligation to prevent re-trafficking of persons. We highlight the special obligations to ensure protection of children, and to prevent trafficking of children, as stated in the UN Convention on the Rights of the Child. We also highlight the positive obligation on States to undertake effective investigations into allegations of trafficking, and to ensure effective access to remedies for trafficked persons.

We highlight also the principle of non-punishment, specifically that victims of trafficking in persons should not be detained, charged or prosecuted for activities that are a direct consequence of their situation as trafficked persons, including for illegal entry into, exit out of or stay in States of origin, transit or destination as provided in the OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking. We recall recommendations made by the Special Rapporteur on trafficking in persons, especially women and children in her report to the Human Rights Council in 2021 on the Implementation of the non-punishment principle (A/HRC/47/34), as well as recommendations made regarding early identification, referral and protection of victims or potential victims of trafficking in persons in mixed migration movements (A/HRC/38/45), and particularly regarding the establishment of screening procedures carried out by multidisciplinary teams including civil society stakeholders and international organizations and establishment of referral mechanisms (para. 73-78). Additionally, we highlight the obligation of States to exercise due diligence to ensure that trafficked persons are protected from further harm and have access to adequate physical and psychological care.

We are further drawing your Excellency's Government's attention to the absolute and non-derogable prohibition of enforced disappearances which has attained

the status of *jus cogens*. Therefore, when allegations of the potential enforced disappearance are made, States have an obligation to search for the disappeared, in this regard, we recall the 2019 Guiding Principles for the Search for Disappeared Persons and, in particular, principle 4, 8 and 13 and articles 13 of the Declaration on the Protection of All Persons from Enforced Disappearance. Additionally, the Working Group on Enforced or Involuntary Disappearances has noted³ the increasing practice of forced returns by States in violation of article 8 of the 1992 Declaration on the Protection of all Persons from Enforced Disappearance and the principle of *non-refoulement*. It further underlined the importance of preventing human rights violations by ensuring procedural safeguards upon detention and during the first hours of deprivation of liberty, including immediate registration, judicial oversight of the detention, prompt notification of family members, and the availability of a defence lawyer of one's choice. Moreover, articles 9 to 12 of the Declaration further spell out the rights of detained persons to a prompt and effective judicial remedy to determine the whereabouts of persons deprived of their liberty. Access by competent national authorities to all places of detention must be ensured and any deprivation of liberty be held in officially recognized places of detention. Detainees have the right to be released also in a manner permitting verification of whether their human rights have been fully ensured. Lastly, each State should establish rules and stipulate penalties in the national legislation for officials who refuse to provide information on the detention and to ensure strict supervision, including clear chain of command, of officials responsible for deprivation of liberty and authorized by law to use force and firearms.

We would also like to draw the attention of your Excellency's Government to paragraph 7(c) of Human Rights Council resolution 8/8 of 18 June 2008, which reminds all States that, "Prolonged incommunicado detention or detention in secret places may facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and can in itself constitute a form of such treatment, and urges all States to respect the safeguards concerning the liberty, security and the dignity of the person".

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.

We are issuing this appeal in order to safeguard the rights of the above-mentioned individuals from irreparable harm and without prejudicing any eventual legal determination.

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;

³ [OHCHR | A/HRC/48/57; Report of the Working Group on Enforced or Involuntary Disappearances \(2021\) to the UN Human Rights Council on enforced disappearances in the context of transnational transfers](#)

2. Please provide the names of the above-mentioned individuals currently detained by your Excellency's Government, as well as the factual and legal basis for their arrest and detention. Please explain how those are compatible with the obligations of Libya under international human rights law;
3. Please provide information on the measures taken to identify and provide human rights based, victim centered, trauma informed and gender sensitive assistance and protection to victims of trafficking, including migrants, asylum seekers and refugees found in the warehouses/farms in Tazirbu;
4. Please provide information on the measures taken to provide assistance and protection to the migrant, asylum seekers and refugee children found in Tazirbu and other unofficial detention centres, and the measures taken to identify child victims of trafficking, and ensure a protective environment for all child migrants, asylum seekers and refugees, including access to psycho-social and medical assistance, safe accommodation, appointment of a guardian, access to lawyers, family reunification, and best interests determination;
5. Please provide information on the access granted to the United Nations and the humanitarian agencies operating in Libya to detention centers to support Libyan authorities in the determination of the needs of migrants, including of asylum seekers, refugees, stateless persons, and trafficked persons;
6. Please provide information on the access provided to lawyers to places of detention, and the provision of legal assistance to the migrant detainees, including victims of trafficking;
7. Please also provide information on action taken to facilitate and ensure access to effective remedies, including compensation for alleged violations of international law, and guarantees of non-recurrence;
8. Please provide information on the measures and procedures initiated for the investigation and prosecution of the alleged perpetrators of the above referenced alleged violations of international human rights law, international humanitarian law, international refugee law, and international criminal law, and the measures of international cooperation undertaken to ensure accountability for alleged violations;
9. Please provide information on the measures taken to ensure compliance with the international law obligation of non-refoulement, including of individual assessments of risks of trafficking or re-trafficking;
10. Please provide information on the measures taken to ensure victims of trafficking are not subjected to enforced disappearance or to forced labour or sexual slavery, and measures taken to hold perpetrators of such crimes accountable and ensure access to remedies for victims.

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.

Further, we would like to inform your Excellency's Government that after having transmitted the information contained in the present communication to the Government, the Working Group on Arbitrary Detention may also transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. The present communication in no way prejudices any opinion the Working Group may render. The Government is required to respond separately to the allegation letter and the regular procedure.

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.

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 issues in question.

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

Siobhán Mullally
Special Rapporteur on trafficking in persons, especially women and children

Mathew Gillett
Vice-Chair of the Working Group on Arbitrary Detention

Aua Baldé
Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

Felipe González Morales
Special Rapporteur on the human rights of migrants

Fernand de Varennes
Special Rapporteur on minority issues

Tomoya Obokata
Special Rapporteur on contemporary forms of slavery, including its causes and consequences

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw the attention of your Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

We wish to draw your Government's attention to obligations included in the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (the Palermo Protocol), supplementing the United Nations Convention against Transnational Organised Crime, ratified by your Excellency's Government on 24 September 2004. The Protocol defines trafficking in persons as the recruitment, transportation, transfer, harbouring or receipt of persons, by proscribed means for the purpose of exploitation, which includes, inter alia, sexual exploitation, forced labour or services, or servitude. We would like to make reference to obligations in article 6 of the Palermo Protocol, concerning assistance to and protection of victims of trafficking in persons, to ensure: a) Appropriate housing; (b) Counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand; (c) Medical, psychological and material assistance; and (d) Employment, educational and training opportunities. We highlight the obligation, as stated in article 6(4), requiring that: "Each State Party shall take into account, in applying the provisions of this article, the age, gender and special needs of victims of trafficking in persons, in particular the special needs of children, including appropriate housing, education and care."

We would like to bring to your Government's attention article 6 of the International Convention on the Elimination of all forms of Discrimination against Women (ratified by Libya on 18 June 2004), which provides that States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women (article 6). We also wish to recall We also recall CEDAW General Recommendation No. 38 on trafficking in women and girls in the context of global migration (CEDAW/C/GC/38), and in particular recommendations regarding situations of conflict and humanitarian emergencies (para 65-69).

We also wish to recall article 8 of the International Covenant on Civil and Political Rights (ICCPR), acceded to by Libya on 15 May 1970, which prohibits slavery; slavery and the slave-trade in all their forms, servitude and forced or compulsory labour and article 35 of the Convention on the Rights of the Child, ratified by Libya on 15 April 1993, which calls States to "take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form".

We highlight the obligation of States to ensure that return of a victim of trafficking, "shall be with due regard for the safety of that person and for the status of any legal proceedings related to the fact that the person is a victim of trafficking and shall preferably be voluntary" (article 8(2)). We highlight the obligation of non-refoulement stated in article 14(1) of the Palermo Protocol.

Furthermore, we recall that the principle of non-refoulement is also codified in article 3 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. It 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. We recall also article 7 of the International Covenant on Civil and Political Rights, which includes the prohibition of *refoulement*, and General Comment no. 20 of the Human Rights Committee, article 7 (Prohibition of torture, or other cruel, inhuman or degrading treatment or punishment), which states at para. 9: “States parties must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of their extradition, expulsion or refoulement.” We further recall General comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, which refers to the obligation of States parties not to extradite, deport, expel or otherwise remove a person from their territory when there are substantial grounds for believing that there is a real risk of irreparable harm such as that contemplated in articles 6 and 7 of the Covenant. We recall General Comment no. 36 (Right to Life), which provides (at para. 23), “The duty to protect the right to life requires States parties to take special measures of protection towards persons in vulnerable situations whose lives have been placed at particular risk because of specific threats or pre-existing patterns of violence. Such persons include [...] victims of domestic and gender-based violence and human trafficking. They may also include children, especially [...] unaccompanied migrant children and children in situations of armed conflict, [...] displaced persons, asylum seekers, refugees and stateless persons.”

As an inherent element of the prohibition of torture and other forms of ill-treatment, the prohibition of refoulement under international human rights law (article 3 CAT) 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 characterized 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 return⁴.

We further highlight the obligation on the State to establish comprehensive policies, programmes and other measures, to “prevent and combat trafficking in persons” (article 9(1)(a) of the Palermo Protocol).

In addition, we would like to refer to the Recommended Principles and Guidelines on Human Rights and Human Trafficking (“Recommended Principles and Guidelines”), issued by the Office of the High Commissioner for Human Rights in July 2002. In particular, we would like to refer to guideline 2, providing that states should ensure “that trafficked persons are not prosecuted for violations of immigration laws or for the activities they are involved in as a direct consequence of their situation as trafficked persons” and that “trafficked persons are not, in any circumstances, held

⁴ See for example in CMW/C/GC/4-CRC/C/GC/23 para. 11: “States should adopt solutions that fulfil the best interests of the child, along with their rights to liberty and family life, through legislation, policy and practices that allow children to remain with their family members and/or guardians in non-custodial, community-based contexts while their immigration status is being resolved and the children’s best interests are assessed, as well as before return”.

in immigration detention or other forms of custody". Reference is further made to guideline 9 recalling the international legal rights of trafficked persons as victims of human rights violations to adequate and appropriate remedies, including compensation.

Finally, principle 13 of the Recommended Principles and Guidelines provides that "States shall effectively investigate, prosecute and adjudicate trafficking, including its component acts and related conduct, whether committed by governmental or by non-State actors".

We highlight the position of the UN Special Rapporteur on trafficking in persons, especially women and children, highlighting objective 10 of the Global Compact for Safe, Orderly and Regular Migration to prevent, combat and eradicate trafficking in persons, and further recommending that states should expand access to regular migration routes and pathways to residence and citizenship for victims of trafficking, and further that: "To prevent trafficking in persons and protect victims of trafficking, States must ensure effective access to international protection, expanded resettlement opportunities, humanitarian visas and family reunification, without discrimination." (A/77/170, para. 57).

We remind your Excellency's Government of the ILO Forced Labour Convention (1930) (No.29), which defines forced labour as all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily (art. 2) and by the ILO convention no. 182 on the worst forms of child labour (1999), which includes among worst forms of child labour, all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict (art. 3).

The Slavery Convention defines slavery as "the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised" (article 1(1)). It defines slave trade as including: all acts involved in the capture, acquisition or disposal of a person with intent to reduce him to slavery; all acts involved in the acquisition of a slave with a view to selling or exchanging him; all acts of disposal by sale or exchange of a slave acquired with a view to being sold or exchanged, and, in general, every act of trade or transport in slaves (article 1 (2)).

The Rome Statute for the International Criminal Court includes enslavement, and sexual slavery, within the categories of crimes against humanity, and war crimes. (article 7(1)(c) ; article 7(1)(g) ; articles 8(2)(b)(xxii) and 8(2)(e)(vi)). Article 7(2)(c) of the Rome Statute states that: "[E]nslavement means the exercise of any or all of the powers attaching to the right of ownership over a person *and includes the exercise of such power in the course of trafficking in persons, in particular women and children.*" (emphasis added) The Elements of Crimes provides that the crime against humanity of enslavement includes the following element: "The perpetrator exercised any or all of the powers attaching to the right of ownership over one or more persons, such as by purchasing, selling, lending or bartering such a person or persons, or by imposing on them a similar deprivation of liberty."⁵ An explanatory footnote provides:

⁵ Elements of Crimes, Official Records of the Review Conference of the Rome Statute of the International Criminal Court, Kampala, 31 May -11 June 2010 (International Criminal Court publication, RC/11), p.6.

“It is understood that such deprivation of liberty may, in some circumstances, include exacting forced labour or otherwise reducing a person to a servile status as defined in the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of 1956. *It is also understood that the conduct described in this element includes trafficking in persons, in particular women and children.*”⁶ (emphasis added)

The same explanatory footnote is included in the Elements of the Crimes of sexual slavery as a crime against humanity, and sexual slavery as a war crime, both in international armed conflict, and in non-international armed conflict.⁷

As sub-Saharan migrants and refugees appear to be particularly affected by the allegations described above, we further recall that the prohibition of discrimination and the right of everyone to equality before the law is enshrined in a variety of human rights instruments, including articles 2 and 26 of the ICCPR,; article 2 of the Convention on the Rights of the Child, and articles 2 and 5 of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), acceded to by Libya on 3 July 1968, and Article 14(2) of the Palermo Protocol.

In this connection, we would like to remind your Government of its obligations under ICERD, which defines racial discrimination as “any distinction, exclusion, restriction or preference based on race, color, descent, or national or ethnic origin [...]” (article 1(1)). In particular, we recall article 2 on the obligation of States to prohibit and eliminate any act or practice of racial discrimination against persons and/or groups by public authorities or any other person, group or organization. Article 5 requires States Parties to guarantee the right of everyone, without distinction, to equality before the law in the enjoyment of their human rights. This includes the right to personal security and protection by the State against violence or bodily harm, regardless of whether harm is inflicted by government officials or by any individual group or institution (article 5(b)). In accordance with article 6, States must not only ensure the effective protection against racial discrimination of everyone within their jurisdiction, but also provide access to remedies and adequate reparation to victims.

We would further like to recall that the Committee on the Elimination of Racial Discrimination, in its general recommendation no. 30 on discrimination against non-citizens, urges States to: ensure equal protection and recognition before the law of non-citizens; take action against racially motivated violence and ensure the security of non-citizens, particularly with regards to arbitrary detention; combat ill-treatment of and discrimination against non-citizens by public officials “by strictly applying legislation and regulations providing for sanctions and by ensuring that all officials dealing with non-citizens receive special training, including training in human rights”; and ensure equal access to effective remedies and adequate reparation (section V).

We further refer to CEDAW general recommendation no. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women in which the Committee “reiterate[d] the obligation of States parties to treat women with dignity and to respect, protect and fulfil their rights under the Convention at each stage of the displacement cycle, as well as in the enjoyment of durable solutions, including integration and/or resettlement in receiving States and/or voluntary

⁶ Id. fn.11.

⁷ Id. p.8, fn.18, Id, p.28, fn.53, Id, p.37, fn.66.

repatriation to their State of origin.” (CEDAW/C/GC/32, para. 14)

We further underline the absolute obligation to prohibit and prevent torture under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), acceded by Libya on 16 May 1989, and underline the General Assembly Resolution 77/209 (2022) “Recalling that freedom from torture and other cruel, inhuman or degrading treatment or punishment is a non-derogable right under international law, including international human rights law and international humanitarian law, which must be respected and protected under all circumstances, including in times of international and non-international armed conflict or internal disturbances and tensions or any other public emergency, that the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment is affirmed in relevant international instruments and that legal and procedural safeguards against such acts must not be subject to measures that would circumvent this right.”

The Special Rapporteur on Torture indicated that “All varieties of human trafficking activity involve the intentional infliction of severe mental or physical pain or suffering. While the primary purpose of trafficking is exploitation, the infliction of pain and suffering is always instrumentalized for intermediate purposes, such as coercion, intimidation, punishment or discrimination, all of which are defining elements of torture. Should one of these elements be missing, human trafficking generally meets the threshold of other ill-treatment. Therefore, where human trafficking is carried out by or at the instigation or with the consent or acquiescence of State officials, it amounts to torture and ill-treatment as defined in human rights law”. (A/HRC/37/50, para. 33).

Regarding the detention of migrants, in addition to the references made in the communication, we wish to draw the attention of your Excellency’s Government to the Working Group on Arbitrary Detention’s Revised Deliberation no. 5, in which it emphasizes that any form of administrative detention or custody in the context of migration must be applied as an exceptional measure of last resort, for the shortest period and only if justified by a legitimate purpose, such as documenting entry and recording their claims or initial verification of identity if in doubt. The irregular entry and stay in a country by migrants should not be treated as a criminal offence, and the criminalization of irregular migration will therefore always exceed the legitimate interests of States in protecting their territories and regulating irregular migration flows. Further, any form of detention, including detention in the course of migration proceedings, must be ordered and approved by a judge or other judicial authority. Anyone detained in the course of migration proceedings must be brought promptly before a judicial authority, before which they should have access to automatic, regular periodic reviews of their detention to ensure that it remains necessary, proportional, lawful and non-arbitrary.⁸

We would also like to draw your attention to article 10 of the ICCPR, which provides that all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. The Committee against Torture and the Human Rights Committee have consistently found that conditions of detention can amount to inhuman and degrading treatment.

⁸ A/HRC/39/45, Annex.

In this context we wish to draw your Government to the absolute prohibition of torture and other ill-treatment as enshrined in article 3 of the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), ratified by your Excellency's Government on 16 May 1989.

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".

With regard to the conditions of detention, we would like to draw the attention of your Government to the Standard Minimum Rules for the Treatment of Prisoners (adopted by the Economic and Social Council by resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977). We would also like to draw your Government's attention to the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment adopted by the General Assembly on 9 December 1988 (adopted by General Assembly resolution 43/173 of 9 December 1988). The Committee against Torture and the Human Rights Committee have consistently found that conditions of detention can amount to inhuman and degrading treatment. This conclusion was reiterated by the Special Rapporteur on Torture explaining that "Any detention regime that, as a matter of deliberate policy or as a consequence of negligence, complacency or impunity, subjects or exposes migrants to treatment or conditions of detention grossly inconsistent with universally recognized standards, most notably the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), is incompatible with the prohibition of torture and ill-treatment, regardless of economic or budgetary considerations". He further indicated that "the threshold of prohibited ill-treatment generally will be reached sooner with regard to migrants with an irregular status or with other vulnerabilities. Moreover, ill-treatment or grossly inadequate detention conditions can even amount to torture if they are intentionally imposed, encouraged or tolerated by States for reasons based on discrimination of any kind, including based on immigration status, or for the purpose of deterring, intimidating or punishing migrants or their families, coercing them into withdrawing their requests for asylum, subsidiary protection or other stay, agreeing to "voluntary" return, providing information or fingerprints, or with a view to extorting money or sexual acts from them." (A/HRC/37/50, para. 20).

In its report on Enforced Disappearances in the Context of Migration (A/HRC/36/39/Add.2), the Working Group on Enforced or Involuntary Disappearances found that there is a clear lack of sufficient and qualitative investigations related to the matter the disappearance of migrants, which provokes a clear protection gap. According to the Working Group, impunity and lack of clarification of the facts are among the factors that most affect the relatives of the disappeared. The Working Group, therefore, called on states to adequately investigate any allegation of involvement, collusion or acquiescence of State authorities in acts,

which may end in the disappearance of migrants and to criminalize all acts of enforced disappearances of migrants, which should be punished by appropriate penalties, taking into account their extreme seriousness.