

Mandates of the Special Rapporteur on the human rights of migrants; the Working Group on Arbitrary Detention; the Special Rapporteur on the right to education; the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; the Special Rapporteur on the sale, sexual exploitation and sexual abuse of children and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Ref.: AL GBR 5/2024
(Please use this reference in your reply)

17 April 2024

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the human rights of migrants; Working Group on Arbitrary Detention; Special Rapporteur on the right to education; Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; Special Rapporteur on the sale, sexual exploitation and sexual abuse of children and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 52/20, 51/8, 53/7, 52/10, 52/26 and 52/7.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the lack of appropriate age assessment and protection measures for children in asylum and immigration procedures, and the prosecution of age-disputed migrant children as adults in criminal proceedings. These children reportedly arrived in the United Kingdom on "small boats" and, while their real age is being determined, some of them are allegedly subject to immigration detention or placement in unsupervised adult accommodations, putting them in a situation of vulnerability.**

Related concerns about the human rights of migrant children arriving in the United Kingdom of Great Britain and Northern Ireland (referred to hereinafter as "the United Kingdom") on "small boats", and their vulnerability to serious human rights violations were previously raised in AL GBR 2/2023 and OL GBR 9/2023 sent to your Excellency's Government on 13 February 2023 and 4 May 2023 respectively. We regret that, to date, we have not received any response from your Excellency's Government.

According to the information received:

In late 2018, the number of people using "small boats" to reach the United Kingdom from mainland Europe began to increase, due to the lack of safe and legal routes to access protection in the United Kingdom. In June 2022, the Nationality and Borders Act (2022) expanded the scope of immigration crimes in the United Kingdom. The Act made two key changes to the Immigration Act 1971: 1) it introduced the offence of 'illegal arrival' (section 24), increasing the maximum penalty to four years imprisonment; and 2) expanded the scope of the offence of "facilitating arrival" (section 25), increasing the maximum penalty to life imprisonment. Information received suggests that those now prosecuted under these offences are unlikely to be deterred by the prospect of a custodial

sentence. Instead, the criminalization of asylum-seeking would put migrants at greater risk of human rights violations.

In addition, on 18 July 2023, the Government of the United Kingdom adopted the Illegal Migration Act with the stated purpose “to prevent and deter unlawful migration, and in particular migration by unsafe and illegal routes”, by requiring the detention and removal from the country of certain persons who enter or arrive irregularly in the United Kingdom.

On encounter with immigration officials, migrants are given an opportunity to declare their age. In the event the immigration official doubts the migrant to be a child, they would make a rapid decision about the age of the individual based on their physical appearance and demeanour alone.

Those whose physical appearance and demeanour indicate that they may be over 18 years of age are assigned an arbitrary birth date indicating that they are adults and are either sent to asylum accommodation for adults or charged with “illegal arrival” or “facilitation”. Those charged are then sent to an adult detention centre while they wait for further legal procedures, or the outcome of an age assessment. Concerns are being raised that rapid age assessment is leading authorities to treat migrant children as adults.

Criminal proceedings

In this regard, reports suggest that, between October 2022 and September 2023, at least 15 age-disputed migrant persons were arrested, charged with "illegal arrival" or “facilitation”, and convicted. 14 of them spent time in adult prisons, and at least five were later confirmed to be children. Those accused were usually advised to plead guilty to benefit from sentence reductions. In some cases, age-disputed persons accepted being legally considered as adults out of fear of spending more time in detention while awaiting the result of an ongoing age assessment. These early guilty pleas restricted the possibility to appeal. Some of these 15 migrant persons claimed or have been found to be survivors of torture and/or trafficking.

During incarceration, age-disputed migrant children shared cells with adults, at serious risk of harm or of being revictimized. Some of them would have been exposed to violence and drug use within the prison, with at least one having been assaulted by an adult. Reports also suggest that age-disputed migrant children experienced a rapid physical and mental health deterioration.

Asylum and immigration procedures

In addition to the group of age-disputed migrant children who were prosecuted as adults, reports suggest that, between January and June 2023, at least 1,004 migrants claiming to be children were sent to adult asylum accommodations, including hotels, or are held in immigration detention, despite the ruling of the High Court which declared this practice unlawful. At least 485 claims have resulted in the recognition of the migrant as a minor.

Furthermore, information indicates that at least 406 of these minors were reportedly forced to share rooms with adults, with no safeguards in place.

As a result, reports suggest that age-disputed migrant children in adult accommodations have suffered, suffer or are at risk of suffering physical and sexual violence. The information also mentions that age-disputed migrant children are at risk of self-harm and suicide due to the psychological impact that detention has on them. Likewise, age-disputed migrant children do not have adequate access to healthcare, educational or legal support.

In addition, during immigration procedures, it was informed that migrants who indicated being 17 or younger, and with whom immigration officials had reasonable doubts about their age, were usually separated and subjected to further scrutiny. During the subsequent rapid age assessments, most often lasting between 10 and 40 minutes, age-disputed migrants would not be provided with interpretation, or it would not be in a language they understand. Furthermore, it is becoming increasingly common for migrants to arrive with evidence of their age but then not to be requested to present it, or for it to be dismissed. Many unaccompanied migrant persons arriving in the United Kingdom without documentation find it difficult to prove their age because their documents were destroyed, lost, or taken, never issued, or in some cases because the migrant travelled on false documentation.

Besides, in some instances, migrants are being told that there will be a lawyer at the accommodation for asylum seekers they are assigned to, with whom they can process their claim, yet this not being true. In other cases, they are not being provided with any information as to how to challenge the decision made about their age. Moreover, some migrant persons would be told that they cannot be children as they are too tall, their hands are too big, they are too hairy, or similar remarks on their physical appearance.

While we do not wish to prejudge the accuracy of these allegations, we would like to express our concern regarding the reported criminalization of migrants arriving in "small boats", most with the intention of seeking asylum. We are also concerned that, due to potential failures in the rapid age assessment practices and in the absence of child protection measures, migrant children may be prosecuted in criminal proceedings as adults and serve sentences in adult prisons. Additionally, we are worried that implications of convictions of migrant children may include that the children with sentences of over 12 months may be subject to deportation, while those who stayed could face significant difficulties as a consequence of having a criminal record. Furthermore, we are concerned that detaining age-disputed migrant persons in asylum centres for adults is placing migrant children in a vulnerable situation, including by sharing spaces with adults, without sufficient precautionary measures. Moreover, we are concerned that Home Office would not be recording data on the number of individuals whose claim to be a child on encounter is not accepted and who are then subject to a rapid decision on their age.

We would like to stress that migrant children, regardless of their, their parents' or their legal guardians' migration status, should be considered as children first and foremost. All migrant children should be entitled in law and in practice to all the rights

enshrined in the Convention on the Rights of the Child, to which the United Kingdom has been a party to since 1991. The Committee on the Rights of the Child has clearly stated that the immigration detention of any child is a violation of children's rights and always contravenes the principle of the best interest of the child¹. This position has been affirmed by joint General Comment No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination, and return. Several special procedures mandate holders have also stressed that immigration detention of children should be prohibited (para. 11, annex, A/HRC/39/45; para. 73, A/HRC/37/50; and para. 46, A/HRC/30/37). In its Revised Deliberation No. 5 on deprivation of liberty of migrants, the Working Group on Arbitrary Detention stresses that the deprivation of liberty of an asylum-seeking, refugee, stateless or migrant child, including unaccompanied or separated children, is prohibited.

We further wish to emphasize that restrictive migration or asylum policies render migrant and asylum-seeking children, including unaccompanied or separated children, particularly vulnerable to suffering violence and abuse during their migration journey and in countries of destination. Unaccompanied migrant and asylum-seeking children should have access to the national child-care system on an equal basis as national children and enjoy all relevant safeguards regarding the protection of children. Moreover, in his report on “[E]nding immigration detention of children and providing adequate care and reception for them” (A/75/183), the preceding Special Rapporteur on the human rights of migrants urges States to “ensure that the child’s best interest is the guiding principle in the design and implementation of migration policies and a primary consideration in all actions and decisions that concern each migrant child, including decision-making on migration procedures and the consideration of alternative care and reception solutions”. In addition, we would also like to highlight relevant findings of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance highlighting the potential risks behind the “adultification” of certain children, relying on harmful and baseless stereotypes that those from ethnic and racial groups are older than they are and/or are less innocent than others of the same age, often at the expense of their protection (A/HRC/38/52).

In addition, stated in the guidance of the United Nations High Commissioner for Human Rights on the protection of the human rights of migrants in vulnerable situations, a formal procedure to determine the best interests of the child should be conducted with certain safeguards. For example, such safeguards should include the meaningful participation of authorities responsible for child protection, as well as the right of the child to be heard and to have competent and independent legal representation (A/HRC/37/34, principle 6, guideline 6).

Regarding the immigration detention of adults, we wish to recall that, according to international human rights law, detention for immigration purposes should be a measure of last resort, only permissible for adults for the shortest period, with the possibility of administrative and judicial review and when no less restrictive measure is available. If not justified as reasonable, necessary, and proportional, nor reassessed as it extends time, the use of this measure may amount to arbitrary detention, prohibited by article 9 of the UDHR and article 9.1 of the ICCPR. The enjoyment of the rights

¹ See report of the 2012 day of general discussion, Committee on the Rights of the Child, para 32: [COMMITTEE ON THE RIGHTS OF THE CHILD \(ohchr.org\)](#)

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).

We would also like to refer to the Revised deliberation No. 5 on deprivation of liberty of migrants issued by the Working Group on Arbitrary Detention (Annex, A/HRC/39/45), where the Working Group stressed that in the context of migration proceedings, “alternatives to detention must be sought to ensure that the detention is resorted to as an exceptional measure”. Commitment by Member States to use immigration detention only as a measure of last resort and work towards alternatives to detention was reaffirmed through the adoption of the Global Compact for Safe, Orderly and Regular Migration (objective 13, A/RES/73/195).

We would like to bring to the attention of your Excellency’s Government, the statutory role of local authorities, which under sections 17 and 20 of the Children Act (1989) imposes: (i) a general duty to safeguard and promote the welfare of children within their area who are in need, by providing a range and level of services appropriate to their needs and; (ii) a duty to provide accommodation for children for any child in need within their area (s.20(1)). Furthermore, section 1(1) of the Children and Social Work Act of 2017 sets out the corporate parenting principles, which apply to local authorities, and requires them to act in the best interests and promote the physical and mental health and well-being of children, “who are looked after by a local authority, within the meaning given by section 22(1) of the Children Act 1989”.

Importantly, article 9 of the Screening Regulation establishes the rules concerning the health check and the identification of third-country nationals with vulnerabilities and special reception or procedural needs at the external borders. It provides that health and vulnerability checks will only be done if there are no relevant indications and/or circumstances concerning the “general state” of the third-country national. Recital 27 of the proposal provides that special attention “should be paid to individuals with vulnerabilities, such as pregnant women, elderly persons, single parent families, persons with an immediately identifiable physical or mental disability, persons visibly having suffered psychological or physical trauma and unaccompanied minors. In case of a minor, information should be provided in a child friendly and age-appropriate manner.”

The proposal also states that health checks should indicate the need for immediate care or isolation on public health grounds, whereas the vulnerability assessment should identify special reception requirements for persons in vulnerable situations, such as victims of torture, victims of trafficking in persons, or contemporary forms of slavery. In the case of children, “support shall be given by personnel trained and qualified to deal with minors, and in cooperation with child protection authorities.” The proposed Regulation requires people to receive timely and adequate support in view of their physical and mental health. However, those subject to screening within States territories, as per article 5, will only be subject to a preliminary medical examination (article 9(4)).

We would like to bring to your attention the report of the Special Rapporteur on torture (A/HRC/37/50), in which it was concluded that “criminal or administrative detention based solely on migration status exceeds the legitimate interests of States in protecting their territory and regulating irregular migration and should be regarded as arbitrary (para. 25),” The Special Rapporteur further emphasised that detention of migrants should never be used as a means of deterrence, intimidation, coercion, or discrimination (para. 73).

We also wish to recall that placing children with adults in detention settings, including accommodations for asylum seekers, is not allowed. The current age-determination procedures seem to allow for such a chance, and therefore would place the UK in violation of its responsibilities under article 37(c) of the Convention on the Rights of the Child.

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 details on steps envisaged or already undertaken by the Home Office or other relevant entities within your Excellency’s Government to provide full and effective reparation to migrant children prosecuted as adults in criminal proceedings and those who would have spent time in adult prisons or adult accommodations. Please provide information on any measures taken and assistance provided to victims in relation to their restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.
3. Please provide information on the healthcare services, including psychological services available to migrant children.
4. Please provide detailed information on the channels and procedures for migrant children to follow when there is an age dispute. Please include detailed information on safeguards set in place to protect age-disputed migrant children who are placed in accommodations for adult asylum seekers. Please specify whether it is considered to place age-disputed migrant persons in facilities for unaccompanied minors until proven otherwise.
5. Please provide information on the measures taken by the Government of your Excellency to review all age disputed claims. Please provide information on how your Government collects or plans to collect and review evidence and data on age disputed claims.
6. Please include detailed information on the protocols and methods of age determination in the United Kingdom and explain how these are compatible with applicable international human rights standards, including in relation to the rights of the child.

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 that after having transmitted the information contained in the present communication to the Government, the Working Group on Arbitrary Detention may also transmit a 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.

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

Gehad Madi
Special Rapporteur on the human rights of migrants

Ganna Yudkivska
Vice-Chair of the Working Group on Arbitrary Detention

Farida Shaheed
Special Rapporteur on the right to education

Balakrishnan Rajagopal
Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context

Mama Fatima Singhateh
Special Rapporteur on the sale, sexual exploitation and sexual abuse of children

Alice Jill Edwards
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 bring to your Excellency's attention to the Human Rights Council resolution 9/5, which addresses the issue of the human rights of migrants, which "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". Moreover, we would like to refer Your Excellency's Government to article 24 of the International Covenant on Civil and Political Rights, ratified by your Excellency's Government on 20 May 1976, stating that: "Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State."

In that connection, we would like to bring to your Excellency's attention article 34 of the Convention on the Rights of the Child (CRC), adopted by your Excellency's Government on 19 April 1990 and ratified by the United Kingdom of Great Britain in 1991, which provides "States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent: (a) The inducement or coercion of a child to engage in any unlawful sexual activity; (b) The exploitative use of children in prostitution or other unlawful sexual practices; (c) The exploitative use of children in pornographic performances and materials. Further, article 35 of the Convention provides that "States Parties shall 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."

Particularly to article 27 of the Convention, which establishes that "States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development", regardless of their legal status and documentation. In this regard, I would also like to draw your Excellency's attention, to article 3.1 of the Convention, which refers to the best interest of the Child as a primary consideration in all Governmental actions. Additionally, the 2005 general comment no. 6 of the Committee on the Rights of the Child on the treatment of unaccompanied and separated children outside their country of origin, applies to children irrespective of their residence status (consistent with article 7 of the Convention). The principle of non-discrimination of the Convention (article 2) applies to separated and unaccompanied children and prohibits any discrimination on the basis

of the status of the child as unaccompanied, or as being a refugee, asylum-seeker or migrant.

Furthermore, article 24 of the Convention stipulates that State parties recognize the right of the child to the ‘enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health’. State parties shall ‘strive to ensure that no child is deprived of his or her right of access to such health care services’. This is furthered by article 24(2) that affirms the States obligation to ‘pursue full implementation of this right, and in particular, shall take appropriate measures’ to ‘ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care’, and ‘combat disease and malnutrition, including within the framework of primary health care’. This is supported in General Comment No. 15 that provides that, in accordance with article 4 of the Convention, State parties ‘shall fulfil the entitlements contained in children’s rights to health to the maximum extent of their available resources and, where needed, within the framework of international cooperation’.

We would also like to draw your Excellency’s attention to the Concluding observations of the Committee on the Rights of the Child in 2016, on the United Kingdom’s fifth periodic report (CRC/C/GBR/CO/5), and its concerns that: “Not all unaccompanied children have access to an independent guardian or legal advice in the course of immigration and asylum procedures” (paragraph 76(b); and further that: “Asylum-seeking, refugee and migrant children and their families face difficulty in gaining access to basic services, such as education and health care, and are at high risk of destitution” (paragraph 76(f)).

We stress that States’ obligations under international human rights law as enshrined in the Universal Declaration of Human Rights and all the core international human rights treaties require that human rights be at the centre of migration and asylum governance, including in response to large and mixed movements.² In his report on “means to address the human rights impact of pushbacks of migrants on land and at sea”, the preceding Special Rapporteur on the human rights of migrants notes that “States are responsible for border governance on their territory, and for any operations elsewhere where they exercise effective control or authority over an area, place, individual(s) or transaction.³ The transnational nature of some State actions in the context of governing international borders does not exempt States from fulfilling positive human rights obligations, nor from accountability; rather, the responsibility of multiple States may be implicated in certain cases, for instance on the high seas, and elsewhere when States act extraterritorially.

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

² See principle 1 in the Office of the United Nations High Commissioner for Human Rights (OHCHR) and IOM Migration Group publication entitled Principles and Guidelines, on the human rights protection of migrants in vulnerable situations, pp. 21–22.

³ See A/70/303, paras. 11–13.

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”.

We wish to remind your Excellency’s Governments of the obligations it assumed upon ratification on 20 May 1976 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), in particular concerning right of everyone to an adequate standard of living for himself and his family, including adequate housing (article 11.1). In its General Comment No. 4 interpreting obligations under the ICESCR, the Committee on Economic, Social and Cultural Rights (CESCR) emphasized that “the right to housing should not be interpreted in a narrow or restrictive sense which equates it with, for example, the shelter provided by merely having a roof over one’s head or views shelter exclusively as a commodity. Rather it should be seen as the right to live somewhere in security, peace and dignity.”