

Mandates of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; the Special Rapporteur on the human rights of migrants and the Special Rapporteur on the right to privacy

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(Please use this reference in your reply)

25 February 2025

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; Special Rapporteur on the human rights of migrants and Special Rapporteur on the right to privacy, pursuant to Human Rights Council resolutions 49/10, 52/20 and 55/3.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning Mr. **Mohammed Ali Hussein Ali Al-Gubari**, a Yemeni citizen currently living in Kazakhstan. Mr. Al-Gubari was cleared for release and transferred from the detention facility at the U.S. Naval Station Guantánamo Bay to Kazakhstan in December 2014.

While we commend your Excellency's Government for deciding to resettle former Guantánamo detainees, including Mr. Al-Gubari, we express grave concerns at allegations that Mr. Al-Gubari is under constant threat of being forcibly removed to Yemen where he may face arbitrary detention and torture and other ill-treatment. Such removal would violate the obligation of non-refoulement under international human rights law, the right to family life and the rights of the child. We are further concerned that Mr. Al-Gubari has reportedly been unable to obtain a legal status in Kazakhstan where he has been living for over 10 years, which appears to have significantly impeded his ability to fully exercise his human rights, including freedom from arbitrary detention, freedom of movement and the rights to work, social security, and an adequate standard of living.

According to the information received:

Mr. Al-Gubari is a Yemeni national from Sanaa, Yemen, who was detained at the U.S. Naval Station Guantánamo Bay in June 2002, for twelve years, without charge or trial.

Mr. Al-Gubari was cleared for release through the stringent review process carried out by the Guantánamo Review Task Force. On 30 December 2014, he was released and transferred from Guantánamo Bay to Kazakhstan under the assurance of permanent resettlement with the opportunity to safely rebuild his life in Kazakhstan. Mr. Al-Gubari has been living in Kazakhstan since then with his wife and child, both Kazakh nationals, and with his wife's children from a previous marriage, for whom he has come to represent a father figure.

Upon his arrival in Kazakhstan in December 2014, Mr. Al-Gubari was not given any information about his immigration status and was made responsible for

regularising his status. He applied for asylum in 2015 and was provided asylum-seeker papers on 25 December 2015. However, the documents were only valid until 2 February 2016 and were not renewed upon expiry. It is further reported that no decision on his 2015 asylum claim was ever made, despite Kazakh domestic law requiring that a decision on asylum status be made within three months of the application being submitted, with a possible maximum extension of one year.

It is reported that despite being in Kazakhstan for over 10 years, Mr. Al-Gubari continues to be denied a legal status and faces continuous harassment by the Kazakh authorities, including credible and explicit threats of refoulement to Yemen, where he is at risk of arbitrary detention, ill-treatment, and torture, among other violations. In August 2019, for instance, Mr. Al-Gubari was stopped by the police and told he could not travel outside of his home without identification documents. In December 2019, Mr. Al-Gubari was stopped again and, upon not being able to provide identification documents, he was arrested and detained. In 2020, he was arrested again by police officers who claimed they needed to search him for weapons he may be carrying. He was subsequently taken to the immigration police because he did not have any form of identification. In 2022, Mr. Al-Gubari made an enquiry at the premises of the Kazakh Immigration Police. Officials told him that he was unwelcome in Kazakhstan and threatened to remove him to Yemen.

Being deprived of any form of valid legal status and identification papers in Kazakhstan, Mr. Al-Gubari was unable to work or travel and remained at constant risk of arrest and detention. Following the 2022 transfer of responsibility for asylum claims from the Immigration Police to the Ministry of Labour and Social Services, Mr. Al-Gubari had to submit another asylum application in October 2023. He received asylum-seeker documents which were renewed for successive three-month periods and expired in October 2024. During that time, Mr. Al-Gubari attempted to work as a taxi driver, but the authorities confiscated his car and alleged that he was driving without a permit even though he holds an international driver's license. Since the expiry of his asylum-seeker documents, Mr. Al-Gubari has once again been unable to work and earn a living.

It is reported that since Mr. Al-Gubari arrived in Kazakhstan, his movements are heavily monitored and that, despite there being no domestic law preventing him from travelling within Kazakhstan, in practice, the Kazakh authorities refuse all requests he makes to visit other provinces within the country. In addition, his other family members have been repeatedly denied a visa and is therefore unable to visit him from Yemen.

In 2024, Mr. Al-Gubari was newly detained and interrogated by the police. Since then, it is reported that Mr. Al-Gubari has faced increased harassment and threats of removal to Yemen. Particularly, in May 2024 Mr. Al-Gubari was taken to the police station and interrogated in a cell. He was told to leave Kazakhstan before his asylum-seeker document expired or face forcible removal. Mr. Al-Gubari also reportedly received multiple visits from police officers threatening to remove him to Yemen, as well as a call from a security

official urging him to apply for a visa to a third country.

In December 2024, the financial stipend provided to Mr. Al-Gubari by the International Committee of the Red Cross (ICRC) ceased.

According to the information received, Mr. Al-Gubari was issued a Yemeni passport in 2016, which was immediately confiscated by the Kazakh authorities. It was not until 2023, after intervention from the U.S. authorities, that Mr. Al-Gubari was able to obtain a newly issued passport from the Yemeni authorities.

On 4 February 2025, Mr. Al-Gubari's asylum application was rejected and he was given one month to appeal before facing removal. An appeal was filed and, on 10 February 2025, Kazakh migration authorities confiscated his passport and issued him a visa expiring on 26 February 2025. On 14 February, the Kazakh secret services reportedly threatened Mr. Al-Gubari, giving him until 26 February to leave the country or risk being forcibly removed and having his child taken away.

Finally, it is reported that secret services have continuously pressured Mr. Al-Gubari's wife to divorce him and have threatened to close her family's business, which constitutes their main source of livelihood, and take her children away should she refuse. The authorities have also reportedly imposed fines on Mr. Al-Gubari for fabricated offences in a further attempt to force him to leave Kazakhstan.

While we do not wish to prejudge the accuracy of these allegations, we express grave concerns regarding the credible threats of imminent removal of Mr. Al-Gubari to Yemen, upon expiry of his visa on 26 February 2025, and the reported ongoing and persistent harassment of Mr. Al-Gubari by authorities, purportedly aimed at pressuring him to leave Kazakhstan. Removal would violate the principle of *non-refoulement* and, by separating Mr. Al-Gubari from his children, the right to family life and the rights of the child. We are further concerned at the apparent unwillingness and refusal of the authorities to grant Mr. Al-Gubari legal status in Kazakhstan for over ten years, which appears to have prevented him from enjoying his rights protected under international law, including his freedom from arbitrary detention, freedom of movement, and rights to work and social security.

Absolute and non-derogable principle of non-refoulement

We express our grave concerns at the credible threats of removal from Kazakhstan to Yemen, where Mr. Al-Gubari is at risk of arbitrary detention, torture and ill-treatment.

We remind your Excellency's Government of its absolute and non-derogable obligation against *refoulement* under international human rights law and as a peremptory norm of international law (*jus cogens*), arising under article 7 of the International Covenant on Civil and Political Rights, ratified by your Excellency's Government on 24 January 2006, and article 3 of the Convention against Torture and other forms of cruel, inhuman or degrading treatment or punishment (CAT), acceded to

on 26 August 1998. We note further the obligation of *non-refoulement* to persecution under article 33 of the Convention relating to the Status of Refugees 1951, acceded to by Kazakhstan on 15 January 1999. Under international law, a State must not return a person to any country where there are substantial grounds to believe that the person would be at risk of arbitrary deprivation of life, torture and cruel, inhuman or degrading treatment or punishment, persecution, denial of justice, arbitrary detention, or other serious violations of international human rights law.

We emphasize in particular article 3(1) of CAT provides that “[n]o State Party shall expel, return (‘refouler’) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.” Article 3(2) states that “[f]or the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.” In the context of the prohibition against arbitrary deprivation of life and torture and other forms of ill-treatment, non-refoulement is applicable to all situations with no exceptions, and to all human beings, without discrimination. We recall that “any transfer processes implemented by the transferring State must be international law compliant, with individuated assessments specific to each detainee, transparency regarding conditions of the receiving State, and clear procedural guarantees in line with international human rights law.”¹ This includes due process and independent review of refusal decisions.

Further, General Assembly resolution 65/205 (2011) urges States “not to expel, return (‘refouler’), extradite or in any other way transfer a person to another State where there are substantial grounds for believing that the person would be in danger of being subjected to torture, and recognizes that diplomatic assurances, where used, do not release States from their obligations under international human rights, humanitarian and refugee law, in particular the principle of non-refoulement” (para. 16).

We call the attention of your Excellency’s Government to the UNHCR’s 2021 call on States not to forcibly return Yemeni nationals and former habitual residents of Yemen to any part of the country.² Special Procedures mandate holders have similarly warned that forcibly returning former Guantánamo Bay detainees to Yemen would “put their lives at risk”.³

We note that, following her official country visit to Kazakhstan in 2019, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism highlighted that individuals transferred from Guantánamo Bay to Kazakhstan “remain fully protected under international human rights law, including by the absolute prohibitions on torture and ill-treatment, refoulement and arbitrary detention” (A/HRC/43/46/Add.1, para. 54).

¹ Technical Visit to the United States and Guantánamo Detention Facility by the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, 14 June 2023, para. 54.

² UNHCR Position on Returns to Yemen – Update I, October 2021, p. 25, available at: https://www.refworld.org/policy/countrypos/unhcr/2021/en/123940?_gl=1*196mnw*_rup_ga*MTE4MjUwNjcxOC4xNzI3NTM3ODIw*_rup_ga_EVDQTJ4LjYyMTcyNzUzNzgzOS4xLjEuMTcyNzUzNzklOS42MC4wLjA

³ UN Office of the High Commission for Human Rights, Press Releases, *UAE: UN experts say forced return of ex-Guantanamo detainees to Yemen is illegal, risks lives*, 15 October 2020, available at: <https://www.ohchr.org/en/press-releases/2020/10/uae-un-experts-say-forced-return-ex-guantanamo-detainees-yemen-illegal-risks>.

Right to privacy and family life

We remind your Excellency's Government that article 12 of the Universal Declaration of Human Rights (UDHR) and article 17 of the International Covenant on Civil and Political Rights (ICCPR), ratified by your Excellency's Government on 24 January 2006, prohibit arbitrary interferences with individuals' privacy, family, home or correspondence. Article 16(3) of the UDHR and article 23(1) of the ICCPR provide that "[t]he family is the natural and fundamental group unit of society and is entitled to protection by society and the State." The reported pressures on Mr. Al-Gubari's wife, a Kazakh national, to divorce him or else have her business closed down and her children taken away raise serious concerns of arbitrary interferences in Mr. Al-Gubari's family life, in breach of articles 17 and 23(1) of the ICCPR and articles 12 and 16(3) of the UDHR.

In addition, the reported monitoring of Mr. Al-Gubari's movements may constitute a further violation of article 17 of the ICCPR and article 12 of the UDHR, where they are not necessary and proportionate in pursuit of a legitimate national security aim. In general comment No. 16, the Human Rights Committee noted that ordinarily "[s]urveillance, whether electronic or otherwise, interceptions of telephonic, telegraphic and other forms of communication, wire-tapping and recording of conversations should be prohibited" (para. 8).

Best interest of the child and importance of preserving the family unit

The threats of removal of Mr. Al-Gubari from Kazakhstan, in addition to the threats of taking away his child, could also violate the international obligation to make the best interests of the child as a primary consideration in all actions concerning children, under article 3 of the Convention on the Rights of the Child (CRC), ratified by Kazakhstan on 12 August 1994. Further, article 9(1) of the CRC requires children not to be separated from their parents unless it is necessary for the best interests of the child; for example, when the child is in danger of experiencing imminent harm (CRC/C/CG/14, para. 61). We recall the strong presumption in favour of maintaining the family unity under international law (Human Rights Committee, general comment No 19, para. 5). In this regard, the Committee on the Rights of the Child emphasizes that "[p]reventing family separation and preserving family unity are important components of the child protection system" under article 9(1) of the CRC (CRC/C/CG/14, para. 60).

Impact of the lack of legal status on the enjoyment of rights and fundamental freedoms

We express further concern at the apparent failure and unwillingness of your Excellency's Government to regularize Mr. Al-Gubari's legal status in Kazakhstan since his arrival over 10 years ago, in December 2014. Mr. Al-Gubari has been in a legal limbo for over 10 years, despite the agreement to resettle him facilitated and agreed upon by both the Government of Kazakhstan and the Government of the United States. The apparent failure to grant Mr. Al-Gubari any legal status in Kazakhstan means that he is unable to fully root his life in his new country and appears to have significantly impacted his enjoyment of rights protected under international law,

including his right to freedom of movement and his right to work.

We remind your Excellency's Government that under article 12(1) of the ICCPR, "everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence". The Human Rights Committee has affirmed that "[l]iberty of movement is an indispensable condition for the free development of a person" (general comment No. 27, para. 1).

Additionally, article 6 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by your Excellency's Government on 24 January 2006, recognizes the right of everyone to work, which includes a duty on States to safeguard the opportunity to gain a living by work which is freely chosen or accepted. We are further concerned that the interferences in his right to work and earn income have resulted in violations of his right and that of his family members to an adequate standard of living under article 11 of the ICESCR. In this context, his irregular status has also compromised his right to social security under article 9 of the ICESCR, which Kazakhstan has an obligation to fulfil under international law.

We are deeply concerned at the repeated instances of police harassment of Mr. Al-Gubari, which often relate to the uncertainty surrounding his legal status. We emphasize that under article 9 of the ICCPR, every person enjoys the right to freedom from arbitrary arrest detention.

We are further concerned that the state of limbo that Mr. Al-Gubari has been forced to live in for over 10 years, under constant and credible threats of removal to Yemen, coupled with the persistent harassment that he and his family have reportedly been subjected to by the authorities, including through constant monitoring and the threat of removal of his child, may violate the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment in article 5 of the UDHR, article 7 of the ICCPR and articles 1 and 2 of the CAT. We underline that the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment noted that systematic conduct in the form of "State-sponsored vilification and persecution involving additional measures such as arbitrary detention, constant surveillance, systematic denial of justice and serious threats or intimidation" may rise to the level of psychological torture (A/HRC/43/49, para. 69).

Finally, we remind your Excellency's Government of its obligations by virtue of article 2 of the ICCPR and article 2 of the ICESCR to ensure the full realization of the rights recognized in both Covenants to all individuals within its territory and subject to its jurisdiction.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

In view of the urgency of the matter, we would appreciate a response on the 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 information on and the basis for any plan to forcibly remove Mr. Al-Gubari to Yemen or any other country, and explain how this complies with international legal standards, including the principle of non-refoulement, the presumption in favour of maintaining family unity and the rights of the child.
3. Please explain how your Excellency's Government plans to regularize the legal status of Mr. Al-Gubari, in line with the assurance of permanent resettlement with the opportunity to safely rebuild his life in Kazakhstan that was made upon his transfer from Guantánamo Bay to Kazakhstan in 2014.
4. Please explain the basis for the rejection of Mr. Al-Gubari's asylum application submitted in 2023 and detail the review process carried out to make a determination on his application.
5. Please provide detailed information on what diplomatic assurances and human rights safeguards were included in the transfer agreement between your Excellency's Government and the Government of the United States concerning Mr. Al-Gubari's transfer from Guantánamo Bay to Kazakhstan.
6. Please provide information on the steps that your Excellency's Government intends to take to investigate all allegations of harassment by various Government officials against Mr. Al-Gubari and his family, including through the threat of removal to Yemen, the threat of child removal, and repeated instances of arbitrary detention, to prevent their reoccurrence, and to ensure accountability.
7. Please indicate how your Excellency's Government will respect Mr. Al-Gubari's freedom of movement and rights to privacy, family life, work, adequate standard of living and social security.

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.

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 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 issue/s in question.

A copy of this communication has been sent to the Government of the United States of America.

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

Ben Saul

Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

Gehad Madi

Special Rapporteur on the human rights of migrants

Ana Brian Nougrères

Special Rapporteur on the right to privacy