

Mandates of the Special Rapporteur on trafficking in persons, especially women and children; the Special Rapporteur on the human rights of migrants; the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity and the Working Group on discrimination against women and girls

Ref.: AL EGY 6/2025
(Please use this reference in your reply)

16 October 2025

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on trafficking in persons, especially women and children; Special Rapporteur on the human rights of migrants; Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity and Working Group on discrimination against women and girls, pursuant to Human Rights Council resolutions 53/9, 52/20, 59/5 and 59/14.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **deportations, arrests and other human rights violations against refugees, asylum seekers and migrants, including potential victims of trafficking**, in Egypt. These concerns are also related to those already raised in a letter to your Excellency's Government on 17 December 2024 ([EGY 7/2024](#)), including concerns in relation to compliance with the customary international law principle of non-refoulement and the State's obligation to ensure protection against refoulement, including serious risks of trafficking or re-trafficking, particularly for women and children.

According to the information received:

Background information on the situation of refugees, asylum seekers and migrants in Egypt

Since the outbreak of the conflict in Sudan in April 2023, according to UNHCR data portal on the situation in Egypt 1,500,000 Sudanese have fled to Egypt. According to figures published by UNHCR in October 2025, a total of 1,061,941 refugees and asylum seekers from 62 nationalities are registered with UNHCR Egypt. The Sudanese refugee population is the largest with 798,047. According to previous figures, out of the Sudanese arrivals, 35% are women, 27% are men, 19% are girls and 19% boys. The registered refugee population has grown by 235% overall since the start of the conflict, with Sudanese registrations increasing by 1,078 % as of May 2025. Most refugees live in urban areas such as Cairo, Alexandria, and Damietta.

The number of entries, however, has decreased since 11 June 2023, when Egypt introduced a requirement for a valid passport and visa for entry. Moreover, the Egyptian consulates in Wadi Halfa and Port Sudan reportedly extended their visa issuance wait time to 8-9 months. Moreover, as of May 2024, the consulates ceased accepting new appointment requests except for cases related to education and health, further compounding the challenges of entry into Egypt.

As a result of this requirement for visas, tens of thousands of people are currently stranded in Wadi Halfa and neighbouring areas, at the Sudan/Egypt border. This has led to an associated surge in new arrivals entering Egypt irregularly, which exposes them to severe protection risks, including physical insecurity, exploitation, extortion and sexual abuse.

In April 2025, the Government of Egypt took two key steps to improve access to legal stay for asylum-seekers. It extended the validity of the asylum-based residence permit from six months to one year and announced a 65% increase in processing capacity—from 600 to 1,000 individuals processed daily.

A Memorandum of Understanding (MoU) signed in 1954 between the Government of Egypt and UNHCR delegates functional responsibilities to UNHCR for all aspects related to registration, asylum documentation, refugee status determination (RSD), protection, and durable solutions.

On 16 December 2024 a new law on asylum (“Asylum Law”) was adopted. The law raised concerns regarding the impact of certain provisions on the human rights of migrants, asylum seekers and refugees. The law is currently pending its implementation through executive regulations. Concerns raised in our previous letter to the Government of Egypt of 17 December 2024 ([EGY 7/2024](#)) included the imposition of timelines for consideration of asylum seekers applications and the potential for the detention of asylum seekers who failed to comply with said deadlines for registration. Concerns were also raised regarding the inclusion of the term legitimate and illegitimate in reference to entrance to the country by asylum seekers, and the potential, that under article 39 of the new law, individuals who do not submit their applications within a 45-day window could face severe penalties, including at least six months of imprisonment and/or a fine. As we raised in our previous letter in December 2024, such a punitive approach contradicts international human rights law and refugee law, which guarantees the right to seek asylum and prohibits penalizing individuals for irregular entry when they are seeking asylum.

In November 2025, UNHCR provided the Government of Egypt with a Transition Plan at the request of Ministry of Foreign Affairs. The plan toward a State-based asylum system seeks to allow a gradual transition over a period of five years, in a phased approach to ensure that all stakeholders are adequately prepared, mitigate risks, address unforeseen challenges and maintain the protection of refugees and asylum seekers at the forefront. The plan constitutes a roadmap proposal to support the Government of Egypt in building a domestic asylum framework, including the drafting of executive regulations, capacity building, establishing a reception center, ensuring protection-sensitive entry systems and assuming responsibility for registration, documentation and Refugee Status Determination (RSD). Until the transition is completed, UNHCR will reportedly be expected to continue carrying out the operational aspects of asylum related to registration, documentation and RSD, in line with the 1954 Memorandum, as agreed with the Government..

Regarding timelines, as stipulated in the new Asylum Law, a Permanent Committee for Refugee Affairs (PCRA) mandated to process and adjudicate refugee applications and cooperate with international organizations was to be established within three months of the Law's enactment, and Executive Regulations would be adopted within six months. However, according to information received, the implementation of this timeline has experienced delays, and the establishment of the Refugee Affairs Committee as well as the adoption of the Executive Regulations are still pending.

As regards of the impact of the new Asylum Law on refugee status determination (RSD), concerns were raised regarding the definition of a refugee and an asylum seeker in Article 1 of the Asylum Law, and its deviations from the 1951 Refugee Convention definitions, including important language modifications. According to the new law a refugee would be “anyone who is outside their state of nationality or their state of habitual residence for reasonable grounds based on a ‘serious’ and well-founded fear of persecution”. The categorization of fear as serious, not being defined in the law, nor a part of the 1951 Refugee Convention may lead to an abuse of the process of determination by unnecessarily increasing the burden on asylum seekers to demonstrate their entitlement to protection and undermining the asylum application process in the country, as we previously raised.

In the meantime, as of end June 2025 registration demand continues to be high, and the waiting period is reportedly seven months with a backlog of 261,000 individuals. Additionally, since the onset of the crisis, most registered people (83.88%) reportedly have entered Egypt irregularly, due to restrictions on legal entry. The average waiting time for the Immigration Office’s issuance of a residence permit stands at 1,004 days (appointment dates currently being allocated for March 2028). The recent measures adopted by the Government of Egypt, including a 67% increase in processing capacity and the change from 6 to 12-month permit validity, are expected to gradually reduce the waiting period for the granting of residence permits to asylum seekers. However, as the processing of the asylum-based residence requests for asylum seekers remains centralized in Cairo, obstacles for timely access, particularly for those who reside outside Cairo, reportedly remain. Lack of timely access to asylum-based residence is reportedly hindering effective access to legal stay, placing refugees and asylum seekers at risk of arrest and detention, and unable to access state services, including public education.

Urgent needs identified among the new arrivals include food, shelter, healthcare and other public services. In June 2025 alone, 24,398 of the people arrived and were registered with UNHCR out of a total of 699,836 registered and 950,597 provided with registration appointments. Current priorities identified are registration of new arrivals, registration at border areas or in Aswan, identification of especially vulnerable families and persons with specific needs, and establishment of mechanisms to prevent and respond to sexual violence and ensure alternative care services for unaccompanied refugee children.

Detention and deportation of refugees, asylum seekers and migrants

There are critical factors that have contributed to heightened risks for unregistered Sudanese and others fleeing the conflict in Sudan, which have raised protection concerns. These include the lack of registration activities in Aswan, the lack of recognition of UNHCR registration appointment slips as an effective tool for protection prior to full registration, timely access to legal stay, and increased risks of arbitrary arrests, and deportations, including for those registered with UNHCR.

According to information received, refugees and asylum-seekers registered with UNHCR are generally released following UNCHR intervention. However, lack of access to those in places of detention prevents verification of data, or provision of assistance to those in need of protection and services..

A year-on-year comparison (January to August 2024 v 2025) shows a decrease of 32% in the total number of reported arrests. Nonetheless, an alarming increase of 56% is noted in the reports of arrests of asylum seekers with residence, including a 121% increase in arrests of UNHCR-registered persons.

According to information received, the majority of arrests took place on the streets, during random police identity checks and round-ups in neighborhoods with high concentrations of asylum seekers, refugees, and migrants. Their arrests did not reportedly relate to any behavior that might have attracted the attention of law enforcement authorities. Some of the arrests reportedly took place in private homes.

According to information received, the arrest and detention of 1,128 migrants, refugees, and asylum seekers was documented by a local actor in the first quarter of 2025, an increase from an average of 250 refugees, and asylum seekers arrested per month previously documented by the same actor.

According to information received, immigration detention has become a tool to facilitate deportations of refugees and asylum seekers. Reportedly, all incidents of refoulement recorded by local protection actors in 2024 were preceded by immigration detention of refugees and asylum seekers. Different reports have recorded the arrest of over 10,000 refugees and asylum seekers in 2024. However, other figures indicate around 22,000 Sudanese people deported to Sudan in 2024, all of whom were reportedly detained prior to deportation.

Regarding provisions in the law adopted in December last year, concerns have been raised that the Asylum law does not specify whether asylum seekers risk detention or other forms of deprivation of liberty after presenting themselves to the authorities while their claims for international protection are processed. This loophole may lead to “temporary detention” of individuals awaiting removal. Moreover, the Asylum law does not set a maximum duration for detention, nor does it provide mechanisms for detainees to challenge the legality of their detention, raising significant concerns regarding due process and access to justice for asylum seekers.

A year-on-year comparison (January to August 2024 v 2025) shows an increase of 150% in the total number of reported incidents of deportations for registered refugees, asylum seekers and holders of registration appointment slip holders (93 in 2024 v 223 in 2025).

There is no available data on overall deportation via the land border with Sudan.

In the current context of increased arrest and detention incidents based on residence permit violations, concerns regarding risks of deportation and lack of protection against refoulement are reportedly higher for Sudanese asylum seekers and refugees, and others fleeing the conflict in Sudan who are present in Aswan. This is reportedly linked to the absence of a UNHCR presence in Aswan, major challenges in accessing the registration center in Cairo and long wait time for the asylum-based residence.

According to information received, in 2025 police officers allegedly frequently confiscated UNHCR documents of detained refugees and asylum seekers upon arrest. Other practices of concern reported were the alleged coercion of refugees and asylum seekers by Egyptian authorities, particularly those registered with UNHCR, to sign voluntary return documents. Practices reported include: the systematic confiscation or destruction of UNHCR documentation at the time of arrest; the falsification of arrest records to suggest individuals were found near borders without papers; and the use of physical and psychological coercion, including physical violence or psychological abuse such as isolation or denial of food, visitation, or medical care, to extract signatures or fingerprints on documents falsely indicating consent to deportation. According to information received, in some cases, deportations allegedly proceeded despite ongoing legal proceedings, valid UNHCR registration, or imminent resettlement plans to safe third countries.

Regarding impact of the new Asylum Law, concerns have been raised concerning the lack of any explicit reference to the principle of non-refoulement, nor explicit provisions of temporary protection from expulsion of asylum seekers waiting for a decision on their asylum application, including appeals on a decision rejecting the request. Furthermore, the Asylum Law does not include clear provisions for individuals that qualify as refugees but have not yet been able to apply for asylum, raising concerns as to whether the provisions against expulsion would only apply to those who are recognized as refugees by the Committee. In addition, although article 35 of the Asylum Law allows rejected asylum seekers to challenge the Committee's decisions before the administrative courts, the law does not regulate procedures to ensure that individuals can remain in the country while their appeals are pending. Concerns were raised that this could create a situation where deportations may occur swiftly and render appeals ineffective in practice.

Concerns regarding child protection and heightened risk to trafficking in persons

As of June 2025, UNHCR registered a total number of 501,996¹ children and youth (247,288 Female & 254,708 Male) in the education age, among which 370,646 (184,544 Female, & 186,102 Male) are from Sudan.

As of 30 June, there are a total of 27,383 children with the specific need of *children at risk*. Of these, 38% are unaccompanied and separated children (UASC). Of the 10,403 UASCs registered by UNHCR in Egypt, 4,533 of them are unaccompanied (43%) and 5,870 are separated (57%). The increasing proportion of separated children in comparison with previous figures (39% in May 2024) has been linked to the high level of family separation due to the conflict in Sudan.

With these numbers, 35% of registered unaccompanied and separated children are under case management, though resource constraints mean that only high-risk cases are prioritized.

Children have reportedly been kept in detention for prolonged periods of time without access to asylum procedures. Children continue to be arrested because of irregular entry and apprehended in various detention facilities without access to legal assistance or the provision of other protection measures, such as timely appointment of guardians, best interests determinations, or access to education.

Three cases of female genital mutilation and six cases of child marriage were reported during April. A notable increase was observed in reported cases of child rape, rising from 3 incidents in March to 9 in April. Additionally, a recurring pattern has been identified involving accompanied children subjected to GBV by other children in co-living arrangements, particularly in households shared by multiple families; 7 such cases were reported in March, and another 5 in April.

There has been an increasing number of reported cases where the mother or caregiver has been detained or deported, leaving their children behind without guardians. In June alone, two such cases were reported, and the children were in need of case management or alternative care; and a total of 33 such cases have been reported since 2024. Additionally, opportunities for children at risk, including UASC, continue to be limited once they reach 18 years of age, in terms of access to education, training and livelihood support.

Concerns have also been raised regarding access to education. Figures reported from October 2024 acknowledged that approximately half of school-age refugee children in school years were out of school. While refugee children are legally permitted to attend Egyptian public schools requirements such as a valid residence permit and, recognized school certificates from the school the child attended before arriving to Egypt present significant barriers. In addition, non-formal community-led learning centers, on which many refugees relied on as an

¹ UNHCR Monthly Statistical Report, June 2025.

alternative, have been closed due to the strict enforcement of laws governing non formal learning sites, increasing the number of children out of school.

Other barriers to access education have been identified including fees for placement tests, supplies, school uniforms, transportation, and other necessary expenses. Many refugee children and youth have also reportedly dropped out due to economic constraints, as they are compelled to enter the labour force to support themselves and possibly contribute to/or provide for their family's basic needs.

Discrimination has also been reported at school, with refugee children facing discrimination from other students and teachers, further deterring enrolment or leading students to drop out. In addition, refugees who can access public education often face the same difficulties as Egyptian children: overcrowded classrooms, lack of educational materials, and other concerns regarding the quality of education and reliance on private lessons to make up gaps in the available education system. Many refugees also have difficulties in adopting or adjusting to the Egyptian dialect and curriculum. Regarding concerns of racial prejudice and discrimination, harassment, particularly for female students, has led many parents to express concerns over the security of their adolescent girls and have reportedly preferred to keep them.

Despite efforts by humanitarian organizations to ensure children access to education in Egyptian schools, including through cash grants, these have reportedly been insufficient to cover expenses and ensure children access to school.

Gender-based violence (GBV)

From January to April 2025 a total of 647 gender-based violence cases were reported to humanitarian organizations in Egypt. Only for April 2025 a total of 168 gender-based violence incidents were reported across Egypt. The most common violation reported against women was physical assault (41 incidents) followed by rape (30 incidents). The most common violation reported against girls was sexual assault (16 incidents) followed by physical assault and rape. The most common violation against men was rape (11 incidents) followed by sexual assault (4 incidents). As for boys, the most common reported violation was physical assault (6 incidents) followed by rape (3 incidents). Gender based violence against children constituted 41 incidents [24% of the total survivors – 32 girls; 9 boys]. The forms of gender-based violence affecting children the most was sexual assault [39%] followed by physical assault [29%]. 3.6% of survivors were unaccompanied and separated children.

While these figures have represented a decrease compared to figures in 2024 for a similar period, this decline is allegedly primarily attributed to reduced staffing and financial resources of humanitarian organizations assisting victims of gender-based violence in Egypt. In addition to decreased capacity, reception centers are also reportedly overcrowded. Information received also indicates that many of the refugees were either forced to witness gender-based violence or were exposed to it themselves during their flight to Egypt.

According to information received, the majority of gender-based violence incidents reported were perpetrated by individuals the survivor could identify such as landlords, neighbours, and employers, followed by individuals with no relation with the survivor and a smaller percentage of cases perpetrated by an intimate partner / former partner.

In addition to the exacerbated vulnerabilities of recovering from gender-based violence, lack of safe livelihood opportunities, safe and affordable alternative accommodation, recurring incidents and threats are reportedly exacerbating difficulties of survivors with regards to social stigma and ostracization from the community, as well as challenges to achieve self-reliance and/or break the cycle of abuse.

Discrimination and abuse against lesbian, gay bisexual, transgender and other gender diverse persons (LGBT) refugees have also been reported. Despite humanitarian organizations' efforts to mitigate risks, LGBT refugees continue to report difficulties integrating in Egypt due to the prevalence of discrimination on the basis of sexual orientation and gender identity. As a result, some reportedly engage in sex work in situations which may increase vulnerability to exploitation, including sexual exploitation, and other human rights violations.. The new Asylum law also requires refugees to respect undefined "values and traditions" of Egyptian society, a legal provision that could potentially be used to justify denial of asylum claims, including those from LGBT persons, or to justify surveillance of LGBT asylum seekers and refugees..

Risks of other human rights violations, including trafficking in persons

The persistent lack of sustainable livelihood options is contributing to repeated requests for housing and cash support. Survivors often struggle to secure accommodation within the current rental payment ceiling, leaving many unable to relocate despite being approved. This gap between financial assistance and actual housing costs has led to increased frustration and a growing number of unresolved cases. It is also contributing to increased vulnerability to exploitation, including trafficking in persons for sexual exploitation, particularly affecting women and girls, and to trafficking for purposes of forced labour and servitude in the domestic work sector and other sectors of the informal economy.

Concerns regarding availability of support and humanitarian assistance

According to information received, the capacity of humanitarian and civil society organizations to respond to the protection needs of the growing refugee and asylum seeker population has been significantly affected by financial cuts. Registration of refugees by UNHCR has also been affected due to cuts in human resources, including in number of interpreters, causing delays in the provision of support and, in particular, regarding registration, exposing refugees, asylum seekers and migrants to heightened risks of trafficking. Refugee led organizations and humanitarian activities have reportedly been targeted by police raids, resulting in detentions and deportations.

Funding cuts have also reduced the capacity to provide information services to new arrivals. This reduced capacity has been particularly concerning in view of the new legislation to be implemented and need for reliable information on issues such as residency and registration procedures.

Finally, as raised previously, with regards to the legislation passed in December last year, concerns have been shared regarding the potential criminalization of support to asylum seekers. Article 37 of the Asylum Law stipulates severe penalties, including imprisonment and fines, for individuals who provide such support without notifying the authorities. By extending similar restrictions to the employment of refugees, the law further hinders their ability to secure livelihoods, and increasing risks of exploitation, including in the context of trafficking in persons.

While we do not wish to prejudge the accuracy of these allegations, we would like to reiterate concerns raised in an Other Letter ([OL EGY 7/2024](#)) made jointly by several UN experts to your Excellency's Government on 17 December 2024. We are concerned about the risk of *refoulement* for "documented" and "undocumented" refugees and asylum seekers who fled to Egypt seeking safety and protection due to serious human rights concerns and a humanitarian crisis in their countries of origin. Any returns or deportation orders must be accompanied by an individual assessment of the circumstances and protection needs, including in relation to the principle of non-*refoulement*, the best interest of the child and the right to family life.

In this context, we wish to bring to the attention of your Excellency's Government, the obligations of non-*refoulement* arising under international human rights law and customary international law. Article 3 of the Convention against Torture and other Cruel, Inhuman and Degrading Treatment (CAT), accessed by Egypt on 25 June 1986, states: "No 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 "For 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." Article 2, paragraph 2, provides that the prohibition against torture is absolute and non derogable and emphasizes that no exceptional circumstances whatsoever may be invoked by a State Party to justify acts of torture in any territory under its jurisdiction. In the context of the prohibition against torture and other forms of ill-treatment, the principle of non-*refoulement* is applicable to all situations with no exceptions, and to all human beings, without discrimination.

We would also like to bring to your attention UNHCR Guidance Note on the International Protection Needs of People Fleeing Sudan from April 2025. As per the note: "The situation in Sudan continues to be volatile and may remain uncertain for some time to come, creating significant challenges for the safe and dignified return of those determined not to be in need of international protection. Against that background, in the exceptional situation that persons originating from Sudan are found not to be in need of international protection, neither under the 1951 Refugee Convention nor under broader definitions contained in regional instruments, UNHCR calls on States to

exercise caution when considering forced returns to the country”. The note also recommends that “All claims for international protection by nationals and stateless persons who were formerly habitual residents of Sudan should be processed in fair and efficient procedures in accordance with international and regional refugee law. UNHCR is concerned about an increase in international refugee protection needs for people fleeing Sudan since the outbreak of civil war on 15 April 2023. Persons who may be in need of international refugee protection under the 1951 Refugee Convention⁷⁹ include in particular: Political activists, human rights defenders, persons associated with resistance committees and emergency response room volunteers; Individuals who are perceived by one party to the conflict to be associated with another party to the conflict on the basis of their ethnicity or their place of origin. This includes, for example, non-Arab civilians from the Darfur region or areas under control of the RSF; Women and girls, including survivors and persons at risk of gender-based violence or conflict-related sexual violence; Children at risk of underage and forced recruitment; Survivors and people at risk of trafficking, including children; Humanitarian workers and medical personnel; and journalists”.

Regarding reports of arrests of persons in irregular situations followed by deportation, we would like to reiterate that immigration detention centers should be used only as a last resort, should not be used to force a return and should comply with the principles of legality, necessity, proportionality and non-discrimination. Children and other vulnerable groups should never be put in immigration detention centers and alternatives to detention must always be provided to unaccompanied migrant children and families with children. According to international human rights standards, detention for immigration purposes should be a measure of last resort, only permissible for adults for the shortest period of time and when no less restrictive measure is available. The detention of any child for reasons related to their immigration status or the immigration status of their parents or legal guardians can never be considered in the best interest of the child and always constitutes a violation of the rights of the child, in accordance with the applicable international human rights standards. We are concerned about reports of unaccompanied children and the separation of families in which different members have distinct documentation statuses. We also express concern about the reported harassment, threats, arbitrary arrest of refugees, asylum seekers and migrants, including those with valid documentation.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please indicate measures adopted by your Excellency’s Government to protect the human rights of third country nationals, in particular Sudanese refugees, asylum seekers, regardless of their migration status, and how these measures are in accordance with international human

rights law and other relevant international standards. In particular, please indicate measures taken or to be taken by your Excellency's Government to ensure the full respect of the principle of non-refoulement as well as measures against arbitrary detention and/or detention based on migration status.

3. Please indicate what measures are taken in the context of any proposed removal, deportation or expulsion proceedings, to undertake an individual assessment of the circumstances and protection needs of each third country national, to ensure respect for the principle of non-refoulement, the best interest of the child and the right to family life. Please indicate how the measures taken comply with the principles of legality, proportionality, necessity and non-discrimination.
4. Please provide information on the measures taken to ensure effective protection against refoulement, and effective access to the right to seek and enjoy asylum for third country nationals with disabilities.
5. Please provide information on measures taken to end the administrative detention of children in line with the existing Standard Operating Procedures (SOPs) on Children on the Move adopted by the Government of Egypt in February 2020.
6. Please explain what measures have been introduced to provide a gender-sensitive and child sensitive asylum procedure.
7. Please explain what measures of early identification, protection and support are available for Sudanese and other nationals who are victim and potential victims of trafficking in persons. In line of the concerns raised, please provide any information available regarding measures to prevent and protect refugees, asylum seekers and migrants against any type of exploitation, in particular children against child labour and child marriage.
8. Please provide any information about any measures available to support refugee, asylum seekers and migrant victims of gender-based violence
9. Please indicate the measures taken by your Excellency's Government to ensure the right to education to refugee, asylum seekers and migrant children, in particular addressing current barriers to access formal public education.
10. Please explain if any investigations, prosecutions or legal procedures have been carried out regarding complaints of arbitrary arrest of refugees and asylum seekers, particularly for arrests based on residence permit violations. Please provide any information regarding access to legal support, as well as access of humanitarian organizations to those in detention.

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(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 issue/s in question.

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

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

Gehad Madi
Special Rapporteur on the human rights of migrants

Graeme Reid
Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity

Claudia Flores
Chair-Rapporteur of the Working Group on discrimination against women and girls

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to refer your Excellency's Government to article 3 of the Universal Declaration of Human Rights, which states that "Everyone has the right to life, liberty and security of person," and articles 6(1), 7, 9 and 18 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Egypt on 14 January 1982, which guarantees the inherent right to life of every individual, the prohibition of torture, the right to liberty and security of the person as well as the right to freedom of religion or belief. In this regard, we would like to highlight that the enjoyment of the rights guaranteed in the ICCPR is not limited to citizens of State parties but "must also be available to all individuals, regardless of their nationality or statelessness, such as asylum seekers, refugees, migrant workers and other persons, who may find themselves in the territory or subject to the jurisdiction of the State Party" (ICCPR/C/21/Rev.1/Add. 13 (2004), Para. 10).

Furthermore, we wish to refer to article 14 of the Universal Declaration of Human Rights, which states that "everyone has the right to seek and enjoy in other countries asylum from persecution." We wish to stress that States should ensure that all border governance measures taken at international borders, including those aimed at addressing irregular migration, are in accordance with the principle of non-*refoulement* and the prohibition of arbitrary or collective expulsions.

The principle of non-*refoulement* is codified in article 3 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, to which Egypt has been a party since 1986. Article 3 of the Convention provides that no State shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds to believe that he would be in danger of being subjected to torture, ill-treatment or other irreparable harm (see also ICCPR, article 7). As an inherent element of the prohibition of torture and other forms of ill-treatment, the prohibition of *refoulement* under international human rights law is also more expansive than the protections afforded under refugee law insofar as it applies to any form of removal or transfer of persons, regardless of their status or grounds for seeking protection, and is characterised by its absolute nature without any exception. Heightened consideration must also be given to children in the context of return, whereby actions of the State must be taken in accordance with the best interests of the child. States must also consider the particular needs and vulnerabilities of each child, which may give rise to irreparable harm in the country of return. The principle of non-*refoulement* under international human rights law further protects against return to a country where there is a real and foreseeable risk of arbitrary deprivation of life (ICCPR, art 6) or the flagrant denial of other fundamental human rights (ARJ v Australia, para 6.9), such as the right to a fair trial, liberty, or freedom of thought, religion or conscience. Again, there is no exception allowing *refoulement* to such harms under any circumstances. We would also like to bring to the attention of your Excellency's Government the obligations emanating from the Convention relating to the Status of Refugees 1951, acceded by Egypt on 22 May 1981.

We wish to draw the attention of your Excellency's Government to its obligations to ensure the right to adequate housing as an aspect of the right to an

adequate standard of living, recognized by article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified on 14 January 1982. The Committee on Economic, Social and Cultural Rights, in its general comment No. 4 stated that “forced eviction are *prima facie* incompatible with the requirements of the Covenant and can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law”. Further, in its general comment No. 7 on forced evictions the Committee stressed that “forced eviction and house demolition as a punitive measure are also inconsistent with the norms of the Covenant (para. 12)”. In addition, “States parties shall ensure, prior to carrying out any evictions, and particularly those involving large groups, that all feasible alternatives are explored in consultation with the affected persons, with a view to avoiding, or at least minimizing, the need to use force. Legal remedies or procedures should be provided to those who are affected by eviction orders. States parties shall also see to it that all the individuals concerned have a right to adequate compensation for any property, both personal and real, which is affected.” (Para. 13) The Committee stated that “evictions should not result in individuals being rendered homeless or vulnerable to the violation of other human rights” (para. 16)

The Committee highlighted that, “[w]omen, children, youth, older persons, indigenous people, ethnic and other minorities, and other vulnerable individuals and groups all suffer disproportionately from the practice of forced eviction. Women in all groups are especially vulnerable given the extent of statutory and other forms of discrimination which often apply in relation to property rights (including home ownership) or rights of access to property or accommodation, and their particular vulnerability to acts of violence and sexual abuse when they are rendered homeless.” (Para. 10). The alleged forced evictions also violate article 17.1 of the International Covenant on Civil and Political Rights, protecting everyone against ‘arbitrary or unlawful interference’ with one’s home.”

Further, general comment No. 4(2017) of the Committee against Torture states that trafficking in persons may constitute torture (as included in a non-exhaustive list of human rights situations that may constitute an indication of a risk of torture), to which the principle of *non-refoulement* should be applied. This includes whether the person concerned would be deported to a State where he or she was subjected to or would run the risk of being subjected to slavery and forced labour or trafficking in human beings.²

We would like to draw the attention of your Excellency’s Government to the report of the Special Rapporteur on trafficking in persons, “Refugee Protection, Internal Displacement and Statelessness”, (A/HRC/53/28), which states that the obligation of *non-refoulement* also applies to risks of trafficking in persons arising from non-State actors, where the State is unable or unwilling to provide protection. (A/HRC/53/28, para. 30). Such protection must include specialized assistance measures for victims of trafficking and persons at risk of trafficking. (A/HRC/53/28, para. 35).

We would also like to draw the attention of your Excellency’s Government to the thematic report of the former Special Rapporteur on the human rights of migrants on means to address the human rights impact of pushbacks of migrants on land and at sea (A/HRC/47/30). In this report, the Special Rapporteur stresses that migrants

² General comment No. 4 (2017) on the implementation of article 3 of the Convention in the context of article 22, para. 29(n).

arriving at international borders, regardless of how they have travelled, should have access to individualised, prompt examinations of their circumstances, and referral to competent authorities for a full evaluation of their human rights and refugee protection needs, including access to asylum. Effective access to territory is an essential precondition for exercising the right to seek asylum (para. 43).

We would like to remind your Excellency's Government of the obligations arising under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), ratified by Egypt on 18 September 1981, in particular, articles 2 and 6 of the Convention, commitments to protect women against *refoulement* and gender-related forms of persecution, including trafficking in persons.³

In its general recommendations No. 32 on the gender-related dimensions of refugee status, asylum nationality and statelessness of women, the Committee on the Elimination of All Forms of Discrimination Against Women notes that women are forced to leave their countries of origin due to very serious forms of discrimination and gender-related persecution and recognizes "that displacement arising from armed conflict, gender-related persecution and other serious human rights violations that affect women compounds existing challenges to the elimination of discrimination against women" (CEDAW/C/GC/32, para. 14). Moreover, the Committee on the Elimination of All Forms of Discrimination Against Women underlined that States have the primary responsibility to ensure that asylum-seeking women and refugee women "are not exposed to violations of their rights under the Convention" (CEDAW/C/GC/32, para. 7), and that States need to "refrain from engaging in any act of discrimination against women that directly or indirectly results in the denial of equal enjoyment of their rights" (CEDAW/C/GC/32, para. 8). States are obliged to "treat women with dignity and to respect, protect and fulfill their rights under the Convention on each stage of the displacement cycle, as well as in the enjoyment of durable solutions" (CEDAW/C/GC/32, para. 14). Women should have access to asylum procedures and if their request has been denied, they "should be granted dignified and non-discriminatory return processes" (CEDAW/C/GC/32, para. 24). In particular, "no asylum seeker or refugee is to be expelled or returned (*refoule*) in any manner whatsoever to the frontiers of territories where his or her life or freedom or the right to be free from torture or other cruel, inhuman or degrading treatment or punishment would be threatened" (CEDAW/C/GC/32, para. 20). States need to "protect women from being exposed to a real, personal and foreseeable risk of serious forms of discrimination against women, including gender-based violence" (CEDAW/C/GC/32, para. 22).

In its general recommendation No. 38 on trafficking in women and girls in the context of global migration (2020), the Committee on the Elimination of All Forms of Discrimination Against Women has stated that trafficking "is part and parcel of gender-related persecution" (CEDAW/C/GC/38, para. 45). Further, as highlighted in general recommendation No. 38, "Women and girls face an increased risk of being trafficked at all stages of the migration cycle – in transit, in reception and accommodation facilities, at borders and in destination countries. Upon return, they may experience

³. Committee on the Elimination of Discrimination against Women (CEDAW) general recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women, para. 15. See UNHCR, "Guidelines on international protection: the application of article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees to victims of trafficking and persons at risk of being trafficked", guideline No. 7 (HCR/GIP/06/07).

reprisals and revictimization. Although States have a sovereign prerogative to manage their borders and regulate migration, they must do so in full compliance with their obligations as parties to the human rights treaties that they have ratified or to which they have acceded” (CEDAW/C/GC/38, para. 22-23). Also, gender-related claims can intersect with other prohibited grounds, such as race, ethnicity, religion, etc. (CEDAW/C/GC/32, para. 16).

Further, we remind your Excellency’s Government that State parties to the Convention on the Elimination of All Forms of Discrimination against Women “are obligated to protect victims of trafficking in persons, especially women and children, from revictimization, which includes guaranteeing victims of trafficking protection against forcible return” (CEDAW/C/GC/38, para. 41).

We also wish to refer to the 2016 Report on eliminating discrimination against women with regard to health and safety (A/HRC/32/44), where the Working Group on Discrimination against Women and Girls underlined that women migrants are of greater risk to be subjected to violence, exploitation, trafficking and slavery, and that they are in greater difficulty in assessing the healthcare (paras. 50-51). Also, even when they are entitled to emergency health care, they are often excluded from preventive reproductive and sexual health services (para. 52).

The Working Group on discrimination against women and girls noted in its report on women deprived of liberty ([A/HRC/41/33](#)) that measures to combat terrorism and corresponding national security measures sometimes profile and target women, in particular those from certain groups, which sometimes includes female human rights defenders. It has further recommended that States ensure measures addressing national security, terrorism, conflict, and crisis, incorporate a women’s rights focus and do not instrumentalise women’s deprivation of liberty for the purposes of pursuing government aims. As highlighted in its report on health and safety ([A/HRC/32/44](#)), the Working Group stressed that women’s safety should be addressed as an integral aspect of women’s health. Women’s exposure to gender-based violence in both the public and private spheres, including in conflict situations, is a major component of women’s physical and mental health and the destruction of their well-being, and it constitutes a violation of their human rights.

Regarding obligations towards children, we would like to remind your Excellency’s Government of the obligations arising under the Convention on the Rights of the Child (CRC), ratified by your Excellency’s Government on 6 July 1990. The CRC highlights the serious risks of trafficking of refugee, asylum seeking and migrant children, particularly of girls, that affect their rights to life, survival and development. (General comment No. 6(2005) Treatment of Unaccompanied and Separated Children Outside their Country of Origin, CRC/GC/2005/6, para. 23). We highlight that trafficking of children is a serious violation of human rights and constitutes persecution.⁴ To ensure fulfilment of States’ positive protective obligations to prevent trafficking of children, articles 34 to 36 of the Convention on the Rights of the Child must be read in conjunction with the special protection and assistance obligations arising under article 20 of the Convention, and the general obligation of non-discrimination set out in article 2. The obligation of non-*refoulement* arising under the

⁴ ExCom, Conclusion No. 107, para. (g)(viii). See: (A/HRC/53/28), para. 65

CRC, is absolute, and permits no exceptions or derogations. As required under article 35 of the CRC, State Parties are to take all appropriate national, bilateral and multilateral measures to prevent, inter alia, the traffic in children for any purpose or in any form. This requirement imposes positive obligations on States to ensure identification, assistance and protection, including access to asylum and protection against *refoulement*.

We would like to stress that every migrant child, regardless of their migration status, should be considered as a child 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. Heightened consideration must also be given to children in the context of non-*refoulement*, whereby the best interests of the child must be the paramount consideration in any actions or decisions taken by the State. As stated in the report of the United Nations High Commissioner for Human Rights on Principles and practical guidance 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 (arts. 3.1 and 12 CRC; A/HRC/37/34, principle 6, guideline 6). In particular, a child should not be returned if such return would result in the violation of their fundamental human rights, and where a return is deemed not to be in the child's best interests, families should be kept together in the country of residence.

We would also like to recall article 22 of the Convention on the Rights of the Child, which calls upon States to “take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.”

In its general comment No. 6 (2005) on the Treatment of unaccompanied and separated children outside their country of origin of 1 September 2005, the Committee on the Rights of the Child stated that States party to the Convention on the Rights of the Child “[...] shall not return a child to a country where there are substantial grounds for believing that there is a real risk of irreparable harm to the child, such as, but by no means limited to, those contemplated under articles 6 [right to life] and 37 [right to be free from torture or other cruel, inhuman or degrading treatment or punishment and right not to be arbitrarily deprived of liberty] of the Convention” (CRC/GC/2005/6, para. 27).

Such non-*refoulement* obligations apply irrespective of whether serious violations of those rights guaranteed under the Convention originate from non-State actors or whether such violations are directly intended or are the indirect consequence of action or inaction. The assessment of the risk of such serious violations should be conducted in an age and gender-sensitive manner and should, for example, take into account the particularly serious consequences for children of the insufficient provision of food or health services (CRC/GC/2005/6, para. 27).

Regarding specific concerns of the return of victims of trafficking, we recall the obligations arising under the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (the Palermo Protocol), ratified by your Excellency's Government on 5 March 2004. In particular, we recall article 6, which sets out provisions for "Assistance to and protection of victims of trafficking in persons," and article 7, which calls upon States to "consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases" (article 7(1), and, "to give appropriate consideration to humanitarian and compassionate factors" (article 7(2)).

In this context, we highlight the obligation on States to ensure that victims of trafficking are given an effective opportunity to seek and enjoy asylum and other forms of international protection and that they are not penalised for their mode of entry into the State. In this context we wish to underline obligations enshrined in article 14.1 of Palermo Protocol regarding application of international protection regime and application of non-refoulment. General recommendation No. 38 of the Committee on the Elimination of Discrimination against Women, on trafficking of women and girls in the context of international migration, reiterates the importance of the non-punishment principle and the obligation of States to ensure its application to all victims "without exception" (CEDAW/C/GC/38, para. 98). The Global Compact on Safe, Orderly and Regular Migration calls on States to "facilitate access to justice and safe reporting without fear of detention, deportation or penalty". (A/RES/73/195, objective 10, para. 26(e))

In this regard, we wish to remind your Excellency's Government that victims of trafficking are often in irregular situations and without documentation. As stated in the Office of the High Commissioner for Human Rights Recommended Principles and Guidelines on Human Rights and Human Trafficking, assistance and protection shall be given unconditionally and regardless of the migratory status of the victims. In this regard, we wish to bring your Excellency's attention to principle 7, which provides that, "trafficked persons shall not be detained, charged or prosecuted for the illegality of their entry into or residence in countries of transit and destination, or for their involvement in unlawful activities to the extent that such involvement is a direct consequence of their situation as trafficked persons," and principle 8, which calls upon States to "ensure that trafficked persons are protected from further exploitation and harm and have access to adequate physical and psychological care. Such protection and care shall not be made conditional upon the capacity or willingness of the trafficked person to cooperate in legal proceedings."

Guideline 2.5 of the OHCHR Principles and Guidelines for Human Rights and Human Trafficking, calls upon States to ensure that trafficked persons are not prosecuted for violations of immigration laws or for the activities that they are involved in as a direct consequence of their situation as trafficked persons. In its resolution 10/3, the Conference of the Parties to the United Nations Convention against Transnational Organized Crime reiterated the non-punishment principle and the importance of access to remedies if victims are punished or prosecuted.⁵

⁵ (Conference of the Parties to the United Nations Convention against Transnational Organized Crime, resolution 10/3, entitled: "Effective implementation of the Protocol to Prevent, Suppress and Punish Trafficking in

As stated in the report of the Special Rapporteur on trafficking in persons, especially women and children on the Implementation of the Principle of Non-Punishment (A/HRC/47/34), states should ensure that the principle of non-punishment is applied to: “criminal, civil, administrative and immigration offences, as well as other forms of punishment, such as arbitrary deprivation of nationality, denial of consular assistance or repatriation, exclusion from refugee status or other forms of international protection and family separation; (d) Any situation of deprivation of liberty, including immigration detention and detention pending removal, transfer or return proceedings” (A/HRC/47/34, para. 57.c-d).

Further, we would like to remind your Excellency’s Government of the obligations arising under article 8 of the Palermo Protocol, which provides: “When a State Party returns a victim of trafficking in persons to a State Party of which that person is a national or in which he or she had, at the time of entry into the territory of the receiving State Party, the right of permanent residence, such return 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.” Principle 11 of the OHCHR Recommended Principles and Guidelines also provides: “Safe (and, to the extent possible, voluntary) return shall be guaranteed to trafficked persons by both the receiving State and the State of origin. Trafficked persons shall be offered legal alternatives to repatriation in cases where it is reasonable to conclude that such repatriation would pose a serious risk to their safety and/or to the safety of their families.” Further, it is provided that in implementing this principle, guideline 2.7 of OHCHR Recommended Principles and Guidelines continues that States should consider “ensuring that procedures and processes are in place for receipt and consideration of asylum claims from both trafficked persons and smuggled asylum seekers and that the principle of non-refoulement is respected and upheld at all times.”

In the specific context of victims of trafficking with disabilities, we further highlight States’ obligation to ensure that information and procedures for trafficked persons with disabilities, are accessible, meet the obligations of reasonable accommodation and comply with international human rights law. Recalling the Convention on the Rights of Persons with Disabilities (article 1), we note that persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments, and we highlight the obligation of States to ensure equality before the law, including taking measures to provide access by persons with disabilities to the support required in exercising legal capacity. This also requires ensuring that specialised assistance is provided for trafficked persons or persons at risk of trafficking with disabilities, who are presenting asylum claims or other claims for international protection. The particular risks of trafficking that may be faced by persons with disabilities for all purposes of exploitation, should be recognised in individualised assessments of asylum claims and *refoulement* determination procedures.⁶ Recalling Security Council resolution 2475(2019), the Special Rapporteur on trafficking in

Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime”, para. 13 (g.)

⁶ See: Keelin Barry, Irish Centre for Human Rights, Submission on Draft General Comment on Persons with Disabilities in Situations of Risk and Humanitarian Emergencies (article 11 of the Convention on the Rights of Persons with Disabilities (2023), available at: <https://www.ohchr.org/en/calls-for-input/2023/day-general-discussion-and-call-written-submissions-article-11-convention> .

persons has highlighted that all responses to risks of trafficking in persons must be disability inclusive and ensure the rights of persons with disabilities, including in provision of information, access to safe and accessible accommodation, transportation and in all assistance and protection measures.⁷

Furthermore, we wish to remind your Excellency's Government that there is no basis under international law to expel foreign nationals at risk of *refoulement* in retaliation for the alleged conduct of their state of nationality. In principle, peaceful counter-measures (article 49 of the ILC Articles on State Responsibility 2001) are available against a State (and by extension, its nationals) which fails to fulfil its international obligation to suppress in its territory diligently the preparation of terrorism directed against foreign states. Countermeasures shall not, however, affect a State's obligations to protect fundamental human rights (article 49(1)(b) of the ILC Articles), which includes *non-refoulement*. Further, the principle of *non-refoulement* under international human rights law is absolute and non-derogable and admits no security-based exceptions.

We would also like to remind your Excellency's Government that even when third country nationals present in Egypt do not claim to be at risk of *refoulement*, international law still requires non-arbitrariness and due process in the expulsion of any alien, including a decision in accordance with grounds specified under national law; notice of the reasons for expulsion, and an opportunity to challenge them (including through sufficient disclosure of evidence); review by an independent, competent authority; and a right to be represented on appeal (article 13 of the ICCPR; UN Human Rights Committee, general comment No 15; articles 4-5 and 26 of the ILC Draft Articles on the Expulsion of Aliens 2014). Even where individuals are lawfully expelled, the return and reception of persons must be carried out in full respect for international human rights law, and there should be independent monitoring of such processes (guideline 9 of the OHCHR Recommended Principles and Guidelines on Human Rights at International Borders (2014)).

The New York Declaration for Refugees and Migrants 2016 (in its annexed Comprehensive Refugee Response Framework) and the Global Compact on Refugees 2018 (at para. 56) recognise the legitimate security concerns of States. However, sovereign control over migration is always subject to international legal obligations (New York Declaration, para. 42), including *non-refoulement* and the prohibition on collective expulsion without individualised decisions, due process of law, and adequate safeguards. We remind your Excellency's Government that both the United Nations Security Council and General Assembly have consistently affirmed that all measures to counter terrorism must comply with international law, including international human rights law and international refugee law.⁸ Where a person is at risk of *refoulement*, returns must be strictly voluntary, based on the informed choice of the persons involved.

Further, the UN Global Counter-Terrorism Strategy 2006 cautions that violations of human rights – which include forced collective expulsions – are

⁷ Joint Statement: "Ukraine: Armed conflict and displacement heightens risks of all forms of sexual violence including trafficking in persons" 16 March 2022, <https://www.ohchr.org/en/press-releases/2022/03/ukraine-armed-conflict-and-displacement-heightens-risks-all-forms-sexual>.

⁸ See eg UN Security Council resolutions 1456 (2003) and 2178 (2014); UN General Assembly Global Counter-terrorism Strategy 2006.

themselves conditions conducive to terrorism (Pillar I). The Security Council similarly warns that violations of international law foster a sense of impunity and may increase radicalization (resolution 2178 (2014)).

In connection with the reports of the detention of Sudanese nationals, we wish to recall that, according to international human rights standards, detention for immigration purposes should be a measure of last resort, only permissible for adults for the shortest period of time and when no less restrictive measure is available. If not justified as reasonable, necessary and proportional, the use of this measure may lead to arbitrary detention, prohibited by article 9 of the UDHR and article 9.1 of the International ICCPR. 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”.

We wish to emphasize that the detention of any child for reasons related to their, their parents’ or their legal guardians’ immigration status can never be considered in the best interests of the child and always constitutes a violation of the rights of the child, in accordance with the applicable international human rights standards. 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 child⁹. 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.

Finally, we would like to recall that the Human Rights Council resolution 9/5, which addresses the issue of the human rights of migrants, “requests States to effectively promote and protect the human rights and fundamental freedoms of all migrants, especially those of women and children, regardless of their immigration status, in conformity with the Universal Declaration of Human Rights and the international instruments to which they are party.” Resolution 9/5 also “reaffirms that, when exercising their sovereign right to enact and implement migratory and border security measures, States have the duty to comply with their obligations under international law, including international human rights law, in order to ensure full respect for the human rights of migrants” and “urge[s] 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.”

⁹ Report of the 2012 day of general discussion, Committee on the Rights of the Child, para. 32: <https://www.ohchr.org/Documents/HRBodies/CRC/Discussions/2012/DGD2012ReportAndRecommendations.pdf>

Article 2(1) of the ICCPR and article 2(2) of the International Covenant on Economic, Social and Cultural Rights both oblige each State Party to respect and ensure the rights enumerated in those Covenants without distinction or discrimination “of any kind” as to “race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”. This prohibition on discrimination in relation to all Covenant rights is also underscored by article 26 of the ICCPR, which provides: “All persons are equal before the law and are entitled without any discrimination to the equal protection of the law,” based on any of those prohibited grounds.

The Human Rights Committee emphasized that States have a legal obligation to ensure everyone the right recognized by the ICCPR without discrimination on the basis of sexual orientation or gender identity (CCPR/C/GC/35, paragraph 3). As elaborated in general comment No. 20 of the Committee on Economic Social and Cultural Rights, “other status” as provided by the ICCPR and ICESCR also includes sexual orientation and gender identity among the prohibited grounds of discrimination in relation to the obligation of States to respect, protect and fulfil all human rights in the twin Covenants.

On the basis of international human rights norms and standards and the work of the UN human rights treaty bodies and special procedures, in 2015 the UN High Commissioner for Human Rights emphasized that States have an obligation to, among other things, revise criminal laws to remove offences relating to consensual same-sex conduct and other offences used to arrest and punish persons on the basis of their sexual orientation and gender identity or expression; protect individuals from violence, torture and discrimination based on their sexual orientation and gender identity; provide redress to victims; and, provide training to law enforcement personnel and judges on gender-sensitive approaches to addressing violations related to sexual orientation and gender identity. In addition, the High Commissioner for Human Rights recommended that States ensure that anti-discrimination legislation includes sexual orientation and gender identity among prohibited grounds (A/HRC/29/23, para. 78 and 79).

The Office of the United Nations High Commissioner for Refugees (UNHCR), the agency responsible for “supervising the application of the provisions” of the 1951 Refugee Convention and monitoring State compliance, also recognizes persecution based on sexual orientation and gender identity as legitimate grounds for asserting an asylum claim. Furthermore, under several international human rights instruments, interpretive bodies include sexual orientation and gender identity under prohibitions on discrimination. States have committed themselves to the protection of refugees from persecution and discrimination in accordance with human rights law and humanitarian law (see A/HRC/59/43).