Mandates of the Working Group of Experts on People of African Descent; the Working Group on Arbitrary Detention; the Special Rapporteur on the human rights of migrants; the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Special Rapporteur on the situation of human rights in Eritrea and the Independent Expert on the situation of human rights in the Sudan

REFERENCE:
AL ISR 6/2018

19 February 2018

Excellency,

We have the honour to address you in our capacities as Working Group of Experts on People of African Descent; Working Group on Arbitrary Detention; Special Rapporteur on the human rights of migrants; Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; Special Rapporteur on the situation of human rights in Eritrea and Independent Expert on the situation of human rights in the Sudan, pursuant to Human Rights Council resolutions 36/23, 33/30, 34/21, 34/35, 34/19, 32/24 and 36/26.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the forcible return of Eritrean and Sudanese nationals.**

Related concerns regarding the treatment of non-nationals in Israel were previously raised in a communication sent to your Excellency's Government on 9 March 2012 (ISR 2/2012) by the Special Rapporteur on the human rights of migrants, as well as in a joint communication sent on 22 June 2012 (ISR 8/2012) by the Special Rapporteur on the human rights of migrants and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance. We regret that we have not received replies to these communications.

According to the information received:

According to data from the Population, Immigration and Border Authority (PIBA), as of September 2017, there were 37,885 foreign nationals in Israel who entered the country irregularly. This includes appproximately 27,000 Eritreans and 7,700 Sudanese nationals who entered the country through the formerly unfenced border with Egypt between 2006 and 2013. Pursuant to article 1 of the Law on the Prevention of Infliltration-1954, such persons are defined as "infiltrators" as they entered Israel through an unrecognized border entry point. The stigmatizing term "illegal infiltrators" has also been widely used by Government officials in the public debate about migration.

According to the Ministry of Interior, as of January 2018, 15,410 Eritreans and Sudanese had filed asylum requests. Since Israel took over refugee status determination (RSD) from UNHCR in 2009, 6,500 of these applications have been processed and only 10 Eritreans and one Sudanese have been recognized as refugees. Another 200 Sudanese, all from Darfur, were granted humanitarian status in Israel.

It is reported that one factor contributing to the low recognition rate of asylum applications is that the Ministry of Interior does not recognize Eritrean draft evaders and deserters as entitled to refugee status. In addition, 2,058 Eritreans, and 8 Sudanese were rejected due to a one-year deadline to file a claim, without access to RSD.

It is further reported that the high number of those who have not claimed asylum is due to the lack of information from the Ministry of Interior and difficulties in accessing asylum procedures, in particular the refugee status determination unit in Tel Aviv during the first half of 2017.

"Voluntary" returns between 2013 and 2017

Since December 2013, the Ministry of Interior has reportedly encouraged Eritrean and Sudanese nationals to return to their country of origin or to a third country, offering an incentive of USD 3,500 to those who agree to a so-called "voluntary departure".

In 2013, Israel concluded relocation agreements with two third countries, allegedly in East Africa. The identity of the two States still remains unknown nowadays due to a confidentiality document that was signed by the Prime Minister of Israel on 30 March 2014. In September 2015, the Israeli Supreme Court rejected a motion to disclose the relocation agreements.

Between December 2013 and the first half of 2017, approximately 14,000 Sudanese and Eritreans left Israel, including as the result of Government efforts encouraging "voluntary departures". It is estimated that 4,000 of these individuals were returned to third countries in Africa. Reasons that prompted a significant number of Sudanese and Eritreans to opt for return reportedly include the detention of African migrants in Israel; difficulties in renewing conditional release permits; the rise of hate crimes and racism targeting migrants of African origin; and the overall deterioration of the protection environment for asylum seekers in Israel.

It is alleged that Sudanese and Eritreans who were returned from Israel to some third countries in Africa faced considerable risks and were not accorded the rights and entitlements promised to them prior to their departure. Upon arrival, little support was provided beyond accomodation for the first night and most returnees did not receive permission to stay and work in the receiving third country.

As a result of these conditions, some returnees have chosen to move on to other African countries or to Europe. In 80 identified cases, Eritrean refugees and asylum seekers have reportedly risked their lives en route to Europe, suffering abuse, torture and violence along the way. Those individuals are particularly affected by robbery and extortion as they are thought to have financial resources based on their prior employment in Israel and the USD 3,500 grant they received for agreeing to leave the country.

Forcible returns under Procedure No. 10.9.0005

Since previous policies and legislative amendments were challenged in Israeli courts, a new "Procedure No. 10.9.0005 for relocation to third countries" (here after the Procedure) was introduced on 1 January 2018. While Section 1 states that the aim of the Procedure is to regulate the deportation of "infiltrators" from Israel to third countries, Section 3 clarifies that the Procedure is applicable to Eritrean and Sudanese nationals only.

In this context, Section 2.3 of the Procedure makes reference to relocation agreements between Israel and two African countries that would accept those being returned under the Procedure. While Section 2.3 stipulates that these arrangements ensure that returnees will not be deported from the third country to their country of origin, no further details are provided with regards to the identity of the third countries or the content of the relocation agreements. However, the information received suggests that forced returns are envisaged to countries that do not offer effective protection to those affected.

Section 2.4 of the Procedure notes that the PIBA had published a leaflet informing Eritrean and Sudanese nationals that they would have to return to their respective country of origin or to a safe third country within three months, i.e. by 31 March 2018. Those who leave Israel during this period will receive USD 3,500 grant.

Section 3 of the Procedure specifies criteria for "the population to be deported to third countries". It stipulates that those with a pending asylum claim submitted prior to 1 January 2018 are exempted, as well as women, children, parents of a depending minor in Israel, and recognized victims of slavery or human trafficking. Yet, Section 3.4 notes that the groups targeted might be expanded further in the future to include, inter alia, asylum-seekers with a pending claim filed before 1 January 2018. Currently, an estimated 20,000 single men who have not filed an asylum claim prior to 1 January 2018, or whose claims have been rejected, face deportation. It appears that neither persons with medical conditions, including physical and mental disabilities, nor victims of torture are exempt from deportation, which suggests that those refugees in Israel, who survived torture, including rape, on Sinai are not protected from deportation.

Section 4.1 of the Procedure states that, as of 2 February 2018, Eritrean and Sudanese nationals seeking a visa renewal will be ordered to leave Israel within 60 days if they do not fulfil the criteria for exemption from the Procedure. On 4 Feburary 2018, authorities reportedly began notifying relevant individuals. As part of the notification, individuals are informed about the date of a hearing based on which a final decision will be made. It is alleged that some individual have been prevented from attending their hearing as they were refused access to the PIBA facilities.

According to Section 5 of the Procedure, anyone refusing to leave within the 60-day deadline will be called for another hearing. Relevant individuals will be subject to indefinite detention for lack of cooperation under the 1952 Entry to Israel Law if no valid reason for their refusal to leave Israel is found. Enforcement action will also be taken against the employers of those refusing to leave.

It is reported that the Government is currently considering several measures to ensure the effective enforcement of the Procedure. In addition to the recruitment of additional temporary immigration inspectors, Government officials are examining the possibility of immigration officials escorting resisting asylum seekers on the flight, possibly by using handcuffs.

While we do not wish to prejudge the accuracy of these allegations, we express our grave concern that the Procedure and its implementation would lead to significant and multiple human rights violations, in particular with regard to the prohibition of racial discrimination, indefinite immigration detention, and violations of the principle of non-refoulement, including of victims of torture.

Serious concern is expressed that the Procedure, which affects refugees and asylum seekers, perpetuates the stigmatization of asylum seekers as "illegal infiltrators" and emphasizes the negative impact of the use of this terminology by public officials. We are concerned that the use of such terms may reinforce and further legitimize discriminatory public discourses and racist attitudes towards migrants, refugees and asylum-seekers, especially those from sub-Saharan Africa. In this context, particular concern is expressed that the Procedure is of a racially discriminatory nature as it applies only to African migrants and specifically targets Eritreans and Sudanese on the basis of their national origin.

In addition, the extremely low recognition rate of asylum applications among Eritrean and Sudanese nationals raises concerns regarding violations of international law. In this connection, particular concern is expressed about the lack of recognition of Eritrean draft evaders and deserters as entitled to refugee status; the forcible return of persons with pending asylum claims; and the forcible return of persons who have been unable to file applications for asylum due to a lack of information about the right to apply for asylum and difficulties in accessing relevant facilities.

We are further concerned that, by stipulating indefinite detention for lack of cooperation under the 1952 Entry to Israel Law, the Procedure risks violating the right

not to be deprived arbitrarily of liberty and to fair proceedings before an independent and impartial tribunal.

We are seriously concerned that the forcible return of Eritrean and Sudanese people from Israel to third countries is in violation of the customary non-refoulement principle, which is codified in various international legal instruments ratified by Israel. In this context, we express particular concern that the temporary exemption of children and parents with depending minors in Israel might be repealed and that victims of torture are among those forcibly returned to third countries.

Finally, the lack of transparency of the Procedure with regard to the third countries raises concerns about the lack of protection of the persons to be returned and the absence of sufficient guarantees preventing deportations to their country of origin. In this connection, we are particularly concerned that forced returns to countries that do not offer effective protection expose the concerned persons to a substantial risk of being subjected to torture and other cruel, inhuman or degrading treatment. Given the human rights situation in Eritrea, those forcibly returned are at high risk of being arrested and detained, and subjected to ill-treatment and torture. If forcefully returned, Eritreans who are considered by the Government as having left the country illegally face a risk of prolonged detention without access to legal representation and to family members. Similarly, given the situation in Sudan, returnees are at risk of detention and torture by Sudanese security forces. Incidents of arrest, torture and prolonged detention of individuals perceived as opponents to the regime by the National Security Service are regularly reported in Sudan.

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 explain the objectives of the adoption and implementation of Procedure No. 10.9.0005, in light of Israel's obligations under international human rights law and standards as well as under international refugee law. In this context, please explain why the Procedure singles out Sudanese and Eritrean nationals, and please address the urgent concern that the Procedure violates the international prohibition on racial discrimination by targeting refugees and migrants on the basis of their national origin.

3. Please provide further information as to how many of the concerned individuals have pending asylum applications; and how many parents, children, and unaccompanied children are among those concerned.

4. Please provide information on whether the potential risks faced upon return to Eritrea and Sudan have been assessed individually for each of the concerned Eritrean and Sudanese nationals.

5. Please provide information about any measures taken to guarantee the psychological and physical integrity of the Eritrean and Sudanese nationals if returned to a third country, in particular guarantees against refoulement and marginalisation.

6. Please identify the third countries to which Eritrean and Sudanese nationals will be returned. In this connection, please provide detailed information about the guarantees offered by the third countries to Eritrean and Sudanese nationals.

7. Please provide detailed information on measures taken to guarantee non-discrimination and equality before the law of non-nationals residing in Israel, in particular Eritrean and Sudanese nationals.

8. Please provide information on what measures are in place to provide adequate human rights training for the soon-to-be hired temporary immigration officers that will be in charge of implementing the deportation policy against Eritrean and Sudanese nationals.

9. Please provide details on any steps taken by your Excellency's Government to eliminate biased-based profiling and to combat racism and xenophobia against non-nationals. In this connection, please also elaborate on measures aimed at promoting diversity, respect and mutual understanding between citizens and non-citizens.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

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. Furthermore, in view of the outlined concerns, we would like to call on your Excellency's Government to take all steps necessary to conduct a comprehensive review of the Procedure, ensuring its compliance with relevant international human rights standards.

We intend to publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be

alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issues in question.

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

Sabelo Gumedze
Chair-Rapporteur of the Working Group of Experts on People of African Descent

Elina Steinerte
Vice-Chair of the Working Group on Arbitrary Detention

Felipe González Morales
Special Rapporteur on the human rights of migrants

E. Tendayi Achiume
Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance

Nils Melzer
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Sheila B. Keetharuth
Special Rapporteur on the situation of human rights in Eritrea

Aristide Nononsi
Independent Expert on the situation of human rights in the Sudan

Annex
Reference to international human rights law

In connection with the above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the following international legal norms and standard:

With regards to the discriminatory nature of the Procedure, we would like to remind your Excellency's Government of its obligation under the International Convention on the Elimination of All forms of Racial Discrimination (ICERD), ratified by Israel on 3 January 1979, in particular articles 2, 5, 6 and 7. We would also like to bring to the attention of your Excellency's Government Recommendation XXX on Discrimination against Non-Citizens (2004) of the Committee on the Elimination of Racial Discrimination. In this General Recommendation, the Committee clarifies that "differential treatment based on citizenship or immigration status will constitute discrimination if the criteria for such differentiation, judged in the light of the objectives and purposes of the Convention, are not applied pursuant to a legitimate aim, and are not proportional to the achievement of this aim" (para. 4). In this context, the Committee calls upon States Parties to ensure that legislative guarantees against racial discrimination apply to non-citizens regardless of their immigration status and that laws and policies relating to immigration, deportation, or other forms of removal of non-citizens do not discriminate -in purpose or effect- on the basis of race, colour or ethnic or national origin (paras. 7, 9 and 25). States should ensure that all non-citizens "[…] have equal access to effective remedies, including the right to challenge expulsion orders, and are allowed effectively to pursue such remedies" (para. 25).

With regards to the removal of non-citizens, the Committee reiterates the prohibition of collective expulsions and the principle of non-refoulement (paras. 26-27) and further notes that expulsions of non-citizens, particularly of long-term residents, should be avoided if this would result in disproportionate interference with the right to family life (para. 28). In addition, the Committee urges States to ensure that non-citizens are not subjected to racial or ethnic profiling or stereotyping (para 10); to take resolute action against the tendency to target, stigmatize, stereotype or profile members of "non-citizen" population groups on the basis of race, colour, descent, and national or ethnic origin (para. 12); to guarantee the security of non-citizens, especially with regards to arbitrary detention (para. 19); and to provide special training, including on human rights, for all officials dealing with non-citizens (para.21).

In its general recommendation No. 13 on the training of law enforcement officials in the protection of human rights, the Committee recalled the provisions of article 2 of the Convention, which require States parties to ensure that public authorities and institutions do not engage in racial discrimination, and the undertaking by States parties to guarantee the rights, protected under article 5 of the Convention, to equality before the law, without distinction as to race, colour or national or ethnic origin. The Committee also explained that those obligations relied on national law enforcement officers who should be properly

informed of their State's obligations and of the Code of Conduct for Law Enforcement officials (see General Assembly resolution 34/169, annex).

The Human Rights Committee concluded in 2009 that a case of racial profiling in the context of immigration control constituted discrimination. In that particular case, specifically assessing identity checks for immigration purposes in the light of articles 2 (3) and 26 of the International Covenant on Civil and Political Rights, the Committee considered that:

Identity checks carried out for public security or crime prevention purposes in general, or to control illegal migration, serve a legitimate purpose. However, when the authorities carry out such checks, the physical or ethnic characteristics of the people subjected thereto should not by themselves be deemed indicative of their possible illegal presence in the country. Nor should they be carried out in such a way as to target only people with specific physical or ethnic characteristics. To act otherwise would not only negatively affect the dignity of the people concerned, but would also contribute to the spread of xenophobic attitudes in the public at large and would run counter to an effective policy aimed at combating racial discrimination.

With regards to the expulsion of non-nationals, we would like to remind your Excellency's Government of the right to seek and enjoy asylum as enshrined in article 14 of the Universal Declaration of Human Rights (UDHR). We also recall article 13 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Israel on 3 October 1991, which states that "an alien lawfully in the territory of a State Party to the present Covenant may be expelled there from only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority."

In this context, we further reiterate that forcible returns to countries that do not offer effective protection expose the concerned persons to a substantial risk of being subjected to torture and other cruel, inhuman or degrading treatment in violation of the principle of non-refoulement and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and the ICCPR, both ratified by Israel on 3 October 1991.The prohibition of a return to a place where individuals are at risk of torture and other ill-treatment is enshrined in article 3 of CAT. This absolute prohibition against refoulement is stronger than that found in refugee law, meaning that persons may not be returned even when they may not otherwise qualify for refugee or asylum status under article 33 of the 1951 Refugee Convention or domestic law. Accordingly, non-refoulement under the CAT must be assessed independently of refugee or asylum status determinations, so as to ensure that the fundamental right to be free from torture or other ill-treatment is respected even in cases where non-refoulement under refugee law may be circumscribed.

With reespect to a potential inclusion of children and parents with depending minors in the category of persons to be deported, we would like to reiterate Israel's obligation to the principle of the best interest of the child and family reunification, as stipulated in the Convention on the Rights of the Child ratified by Israel on 3 October 1991. In this connection, we would like to refer your Excellency's Government to para. 10 of the GA res. 62/156 which "urges States to ensure that repatriation mechanisms allow for the identification and special protection of persons in vulnerable situations and take into account, in conformity with their international obligations and commitments, the principle of the best interest of the child and family reunification".

Concerning the use of indefinite immigration detention, we remind your Excellency's Government of the right not to be deprived arbitrarily of liberty and the right to fair proceedings before an independent and impartial tribunal as enshirned in articles 9 and 10 of the UDHR and articles 9 and 14 of the ICCPR. In this connection, we recall that detention should never be used as a punitive or deterrent measure against refugees and asylum-seekers. We also recall that the enjoyment of the rights guaranteed in the ICCPR are not limited to citizens of States parties but "must also be available to all individuals, regardless of their nationality or statelessness, such as asylum seekers, refugees, migrant workers and other persons, who may find themselves in the territory or subject to the jurisdiction of the State Party" (ICCPR/C/21/Rev.1/Add. 13 (2004), Para. 10). In addition, we would like to remind your Excellency's Government of the guarantees concerning persons held in custody as defined in Deliberation No. 5 on situation regarding immigrants and asylum-seekers of the Working Group on Arbitrary detention.

Finally, we note that the envisaged use of handcuffs during the forcible return may amount to excessive and disproportionate use of force, in violation of prohibition of torture and other cruel, inhuman or degrading treatment, as enshrined in article 7 of ICCPR and article 16 of CAT.