Mandates of the Special Rapporteur on the human rights of migrants; the Special Rapporteur on the rights of persons with disabilities; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on freedom of religion or belief; the Special Rapporteur on trafficking in persons, especially women and children and the Working Group on discrimination against women and girls

Ref.: OL EGY 7/2024
(Please use this reference in your reply)

17 December 2024

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the human rights of migrants; Special Rapporteur on the rights of persons with disabilities; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on freedom of religion or belief; Special Rapporteur on trafficking in persons, especially women and children and Working Group on discrimination against women and girls, pursuant to Human Rights Council resolutions 52/20, 53/14, 52/9, 50/17, 49/5, 53/9 and 50/18.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received **concerning certain provisions of the recently adopted "Asylum Law", and the impact it would have on the human rights of migrants, asylum seekers and refugees, should it come into forces once ratified by the President of the Arab Republic of Egypt**.

In the absence of an official copy of the law, in this communication, we do not aim at providing a comprehensive analysis of the asylum law approved by the House of Representatives of the Arab Republic of Egypt, and its compatibility with international human rights standards. We focus on those provisions falling within the scope of the mandates entrusted to us by the Human Rights Council. We are also referring to the provisions of the Asylum Law that has already been adopted. This process is occurring because the law has not yet been published or made publicly available pending the final approval by the President to be officially published in the national gazette.

According to the information received:

On June 2023, the government of Egypt announced its intention to promulgate a new Asylum Law, in accordance to the Prime Ministerial Decision 243/2023. The new law intended to be the first domestic law to regulate asylum seeking procedures in the country, in replacement of the existing refugee status determination system.

On 22 October 2024, the Defence and National Security Subcommittee of the Egyptian House of Representatives announced having approved, in principle, the government's draft Asylum Law. On 17 and 19 November 2024, the House of Representatives plenary fully discussed and approved the asylum law. Executive regulations are expected to be issued 6 months after the

adoption of the asylum law.

Concerns regarding criminalization and deprivation of liberty

In accordance with article 7 of the asylum law "the asylum seeker or their legal representative shall submit the asylum application to the Standing Committee, and if the asylum seeker entered the country legitimately, the Committee shall determine the status of the application within six months from the date of its submission. However, if they entered illegitimately, the period for determining the status of the application shall be one year from the date of its submission."

If adopted, the law would not only create the fiction of "legitimate" and "illegitimate" asylum seekers, a clear discriminatory provision, but would also unjustifiably punish "illegitimate" asylum seekers with extended waiting times on their application. Moreover, by introducing the term "illegitimate", the asylum law inherently associates irregular migration with criminal behaviour, implying wrongdoing on the part of asylum seekers. This is concerning as the asylum law fails to consider many individuals who seek asylum after entering an asylum country irregularly do so as a last resort, fleeing persecution, violence, or other extreme hardships, often without access to regular migration pathways. By adopting punitive language and differentiating between "legitimate" and "illegitimate" entrants, the asylum law creates a framework where irregularly entering asylum seekers are treated as offenders.

Furthermore, article 31 of the asylum law requires that asylum seekers must apply for asylum within 45 days of their arrival, a deadline that appears arbitrary and lacks clarity on how the date of entry would be determined. This ambiguity gives authorities broad discretion to estimate entry dates, potentially leading to inconsistent and unfair enforcement. Article 39 further stipulates that individuals who meet undefined "substantive conditions" for asylum must submit their applications within this 45-day window or face severe penalties, including at least six months of imprisonment and/or a fine. Such punitive approach contradicts international human rights law, which guarantees the right to seek asylum and refugee law and prohibits penalizing individuals for irregular entry when they are seeking asylum.

The asylum law also fails to address whether asylum claims submitted after the 45-day deadline would be considered, leaving the legal status and future of these asylum seekers uncertain. In this regard we wish to underline, as the Special Rapporteur on trafficking in persons noted, that "maintaining refugees in a protracted situation without refugee status and without rights to work to freedom of movement or to access to education or financial services, may encourage and facilitate trafficking in persons" (A/HRC/53/28, para. 27).

It also remains unclear whether individuals who have served prison sentences or paid fines would still be eligible to apply for asylum or if they would face deportation. This legal gap raises significant concerns about the fate of asylum seekers who miss the deadline, as they may be left without recourse or protection.

Moreover, the asylum law does not specify whether asylum seekers risk detention or other forms of deprivation of liberty after presenting themselves to

authorities while their claims are processed. This loophole may grant the Standing Committee extensive powers to order "temporary detention" of individuals awaiting removal. However, 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.

The absence of these safeguards and the potential for indefinite detention highlight the significant risks posed by the asylum law. Criminalizing irregular entry and imposing rigid deadlines for asylum applications undermine the principles of protection enshrined in international refugee law.

We recognise efforts made by the Government of your Excellency to guarantee that applications submitted by persons with disabilities, older persons, pregnant women, unaccompanied children, or victims of human trafficking, torture, and sexual violence would have priority in the study and examination of their requests (article 7). Nevertheless, it is unclear how this provision would be implemented, or the role the Committee would have in guaranteeing this provision. For example, the Law does not provide for procedural accommodations to ensure all applicants have equal and effective access to asylum procedures. It also remains unclear how provisions in articles 7 and 31 would affect people in irregular situations in need of special protection. We are concerned that the lack of clarity may lead to asylum seekers in vulnerable situations being considered "illegitimate" or may lead them to fail to present themselves to the authorities within the 45-day time limit for fear of being considered "illegitimate", therefore exposing them to unjustified punishments, further violating their rights.

Equally concerning are the provisions that criminalize humanitarian actions, such as offering shelter or assistance to refugees. The asylum law associates these acts with concealing criminals, framing refugees as potential threats by default. Article 37 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, creating barriers to accessing their rights. This punitive framework not only discourages solidarity and humanitarian efforts but also threatens the work of organizations and individuals who support refugees. In this context, we would like to remind your Excellency's Government the importance of ensuring an enabling environment for civil society and protection of human rights defenders, including those defenders' assisting migrants and refugees. Policies and practices to combat trafficking in persons frequently refer to partnerships with civil society. The importance of partnerships with civil society is included in international and regional instruments relating to trafficking in persons, including the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, ratified by Your Excellency's Government on 5 March 2004, which specifically includes provision for cooperation with non-governmental organizations, other relevant organizations and other elements of civil society, in the provision of assistance to and protection of victims (art. 6(3)).

As stated under article 14(1) of the Universal Declaration of Human Rights (UDHR), everyone has the right to seek and enjoy in other countries asylum from

persecution. Egypt has the obligation to individually assess the needs to protect the rights of refugees and migrants, as well as the obligation to guarantee effective access to the territory and to the asylum procedures and complementary forms of international protection for people who require it.

We would also like to highlight that the 1951 Convention relating to the Status of Refugees, to which Egypt has been a party since 22 May 1981, explicitly recognises that refugees may be compelled to enter a country of asylum irregularly, and clearly request contracting States "not impose penalties, on account of their irregular entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence."". In connection to this provision, we also wish to remind your Excellency's Government about the application of the principle of non-punishment of victims of trafficking in persons. General recommendation No. 38 of the Committee on the Elimination of Discrimination against Women (CEDAW), 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."[1] 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".[2] In this regard, we wish to recall 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. Principle 7 of OHCHR Principles and Guidelines also 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". Guideline 2.5 of the OHCHR Principles and Guidelines for Human Rights and Human Trafficking, calls upon States and others 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[3]

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), the Special Rapporteur reminds that 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

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1 CEDAW, 'General recommendation No. 38 (2020) on trafficking in women and girls in the context of global migration' (20 November 2020) CEDAW/C/GC/38, para 98.

2 Global Compact for Safe, Orderly and Regular Migration (2018) A/RES/73/195, Objective 10, para 26(e).

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

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)

We wish to stress that most people fleeing conflict or persecution are unable to obtain the required documentation to access regular channels of migration. Restrictions on the access to procedures for international protection based on the mode of arrival undermines the purpose and protections established under the Refugee Convention.[4] We recall that the act of seeking asylum is always legal, and effective access to territory is an essential precondition for exercising the right to seek asylum[5] (A/HRC/47/30, para. 43). On the other hand, criminalising irregular migrants based on their status or mode of arrival can lead to other human rights violations.

We wish to recall the Human Rights Council resolution 9/5, which addresses the issue of the human rights of migrants. The resolution "requests States to effectively promote and protect the human rights and fundamental freedoms of all migrants, especially those of women and children, regardless of their immigration status, in conformity with the Universal Declaration of Human Rights and the international instruments to which they are party." Resolution 9/5 also "reaffirms that, when exercising their sovereign right to enact and implement migratory and border security measures, States have the duty to comply with their obligations under international law, including international human rights law, in order to ensure full respect for the human rights of migrants" and "urge States to ensure that repatriation mechanisms allow for the identification and special protection of persons in vulnerable situations, including persons with disabilities, and take into account, in conformity with their international commitments, the principle of the best interest of the child and family reunification".

We also wish to remind your Excellency's Government of the obligation to ensure the rights of all victims of trafficking to seek and enjoy asylum, without discrimination. As is highlighted in the UN High Commissioner for Refugees (UNHCR) Guidelines on International Protection: The application of article 1A(2) of the 1951 Convention relating to the Status of Refugees to victims of trafficking and persons at risk of being trafficked (2006): "Trafficked women and children can be particularly susceptible to serious reprisals by traffickers after their escape and/or upon return, as well as to a real possibility of being re-trafficked or of being subjected to severe family or community ostracism and/or severe discrimination" (para. 19). Those UNHCR Guidelines further provide that assistance to victims of trafficking seeking asylum, should be provided in an age and gender sensitive manner, they note that victims of trafficking may rightly be considered as victims of gender-related persecution: "They will have been subjected in many, if not most, cases to severe breaches of their basic human rights, including inhuman or degrading treatment, and in some instances, torture." (Para. 47). In this context and in relation to the timelines established we would like to recall that given the complex nature of the harms of

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[4] UN High Commissioner for Refugees (UNHCR), *Guidelines on International Protection No. 14: Non-penalization of refugees on account of their irregular entry or presence and restrictions on their movements in accordance with Article 31 of the 1951 Convention relating to the Status of Refugees*, HCR/GIP/24/14, 23 September 2024, https://www.refworld.org/policy/legalguidance/unhcr/2024/en/148632

[5] Office of the United Nations High Commissioner for Refugees (UNHCR), Ten-Point Plan on Refugee Protection and Mixed Migration, chap. 3, available at www.unhcr.org/50a4c0a89.html

trafficking in persons trafficking-related asylum claims are particularly unsuited to accelerated processing and may limit the likelihood of identification of victims. Trafficking-related asylum claims, more specifically those related to trafficking for purposes other than sexual exploitation, may not emerge during first instance refugee status determination interviews or screening processes. (A/HRC/53/28, para. 21)

The principle of non-refoulment

While the asylum law specifies protection against the expulsion of refugees to the country of origin or former country of residence (article 13) and grants some protection in the context of extradition processes, there is no explicit reference to the principle of *non-refoulment* within the asylum law, 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. The prohibition of expulsion or *refoulement* of refugees and asylum seekers is central to asylum procedures and should be explicitly stated in the body of any proposed law, including articles defining the responsibilities and procedures of the Standing Committee and the rights of refugees and asylum seekers.

Furthermore, article 1 of the asylum law, that provides definitions for refugees and asylum seekers that are not based on the 1951 Refugee Convention definitions, include important language modifications, undermining the asylum application process in the country. As proposed by the asylum law, a refugee is "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". While there is no legal clarity about what "*serious*" means or requires, a requirement which is different from the definition already provided by the 1951 Refugee Convention, this modification may lead to an abuse of the process of determination by unnecessarily increasing the burden on asylum seekers to demonstrate their entitlement to protection.

Creation of a "Standing Committee for Refugees Affairs"

In addition, if adopted, the asylum law would prompt the establishment of a "Standing Committee for Refugees Affairs, with legal personality, and reporting to the Prime Minister", becoming the main authority for refugee affairs, including undertaking tasks related to assessing and deciding on asylum applications, coordinating with national and international stakeholders, and guaranteeing the provisions of all forms of support, care, and service to refugees (article 2). Per article 3, the Standing Committee shall consist of representatives from the Ministries of Foreign Affairs, Justice, Interior and Finance. The membership period shall be of four years. A decree by the Prime Minister shall be issued nominating the chairman and members of the Committee, its bylaws, and the financial transaction for its chairman and members within three months from the date of enforcement of the law. The law also allows the Standing Committee to receive grants and support through donors and international partners.

Lack of clarity

The asylum law provides no clarity on how the Committee will determine whether an applicant meets the definition of a refugee. The asylum law also does not foresee for the Standing Committee to reason its decision to accept or reject asylum applications. Screening procedures, including individualized case studies, are highly technical in nature and are central to ensuring a fair and efficient asylum process. We are concerned that provisions in article 1, in addition to the lack of structured procedures and need of accountability on the part of the Committee, could undermine the whole asylum application process, and creates significant risks for individuals deserving of international protection.

In addition, the asylum law raises significant concerns regarding the lack of clarity about the status of asylum seekers, particularly during the waiting period for their applications to be adjudicated. This ambiguity leaves individuals, including those with specific needs, vulnerable to serious risks such as detention or deportation. The prolonged duration of the review process, in some cases up to a year, creates a precarious situation for asylum seekers, depriving them and their families of essential protection, assistance, and access to basic services. For example, the Law does not contain guarantees of access to key services and support for asylum seekers with disabilities, such as healthcare, assistive devices, education, social protection, or adapted accommodation, without which their safety, health, and well-being are seriously undermined. Applications from relatives and support persons of asylum seekers with disabilities should also be considered jointly as they provide essential support. It remains unclear whether the Committee will provide any support during this interim period or whether asylum seekers will be subject to immediate deportation if apprehended.

Moreover, the asylum law lacks a mechanism for a seamless transition from the existing legal system to the new one. Consequently, it has no provisions defining the status of asylum seekers already registered with the UNHCR or whose files are still under examination. The absence of such provisions creates a legislative and procedural vacuum between the date of the law's enactment, the date of the publication of its bylaws, the formation and training of the Committee, and the allocation of judicial and financial resources.

Such provisions not only contradict constitutional protections but also breach Egypt's obligations under international law and agreements. The lack of precise legal language heightens the risk of misuse of power, which could lead to arbitrary detention or expulsion of asylum seekers. Legal frameworks should be drafted with clarity and specificity to prevent overreach. Under the asylum law, deportation, expulsion, or detention could become legally permissible at the sole discretion of the Committee. Without adequate safeguards, the broad discretionary powers enshrined in the asylum law could lead to widespread violations of asylum seekers' rights and undermine the integrity of the asylum system.

In this connection, we wish to stress that the absence of appropriate procedural safeguards that explicitly require individual assessment on the circumstances and protection needs prior to deportation, and legislative proposals lifting automatic

suspension of deportation procedures for asylum seekers, particularly those with specific needs, would undermine international human rights law and the principle of *non-refoulement*.

We also wish to highlight that, under international human rights law and refugee law, States have the responsibility to ensure that all border governance measures taken at international borders, including those addressing irregular migration, are in accordance with the principle of *non-refoulement* and the prohibition of arbitrary and collective expulsions. The principle of *non-refoulement* forms an essential and non-derogable protection under international human rights, refugee, humanitarian and customary law. Under international human rights law, the principle of *non-refoulement* is explicitly guaranteed in article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), ratified by Egypt on 25 June 1986. 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, regardless of their entitlement to refugee status. International human rights bodies, regional human rights courts, and national courts have also found this principle to be an implicit guarantee flowing from the obligation to respect, protect and fulfil human rights contained within other international instruments, including the International Covenant on Civil and Political Rights (ICCPR), ratified by Egypt in 14 January 1982, and the Convention on the Rights of the Child (CRC), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which Egypt ratified in 6 July 1990 and 18 September 1981 respectively.

Protection of women

Articles 2 and 6 of the CEDAW, provide with the commitments to protect women against refoulement and gender-related forms of persecution, including trafficking in persons. 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 fulfil 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 of 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 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). 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.

Further, we remind your Excellency's Government of the obligations arising under article 8 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, 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 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 relation to children, we would like to highlight that the obligation of non-refoulement arising under the Convention of the Rights of the Child (CRC), ratified by your Excellency's Government on 6 July 1990, is absolute, and permits of no exceptions, or derogations. As required under article 35 of the CRC, States 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 obligation imposes positive obligations on the State to ensure identification, assistance and protection, including access to asylum and protection against refoulement. 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.[6]

We would also like to recall that unaccompanied and separated children are at particular risk to trafficking in persons.

We invite the Government of your Excellency to establish clear timelines for the transitional period, and guarantee that UNHCR-registered refugees and asylum seeker's rights are respected, safeguarding their legal status, and ensure extension of residency when needed. In order to guarantee a smooth transition, we recommend granting UNHCR ex-officio membership in the Standing Committee.

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[6] General Comment no.6 (2005) Treatment of Unaccompanied and Separated Children Outside their Country of Origin, CRC/GC/2005/6, para.27

We further invite the Government of your Excellency to incorporate the Refugee Definition verbatim as per articles 1A(2) of the 1951 Convention as well as article 1(1 and 2) of the Organization of African Unity (OAU) Convention within the asylum law so as to ensure compliance with its international and regional legal obligations under the 1951 Convention and the OAU Convention.

Individuals facing deportation should have access to a fair, individualized examination of their particular circumstances, and to an independent mechanism vested with the authority to review appeals of negative decisions. It should be noted that the principle of non-refoulement has been interpreted to apply to a wide range of risks of irreparable harm and should be applied to prevent the return of persons in cases of risk of serious human rights violations. These risks include to the rights to life, integrity or freedom of the person, and of torture and ill-treatment.[7] In addition, under certain circumstances, the individual assessment of the risk of irreparable harm can include, among other elements, access to or the level of enjoyment of economic and social rights. (A/HRC/47/30, para. 42). As an inherent element of the prohibition of torture and other forms of ill-treatment, the prohibition of refoulement is characterised by its absolute nature without any exception and overrides not only national immigration laws but also contradicting international obligations, such as those of extradition treaties (A/HRC/37/50, para. 37). Therefore, any steps taken to legalize policies effectively resulting in the removal of foreigners without an individualized assessment in line with human rights obligations and due process are squarely incompatible with the prohibition of collective expulsions and the principle of non-refoulement (A/HRC/50/31, para. 70).

On the risk of expulsion, we wish to remind the Government of your Excellency that collective expulsions are prohibited as a principle of general international law. In this regard, we would like to draw the attention of your Government to paragraph 10 of general comment No. 15 (1986) of the Human Rights Committee, where the Committee stressed that article 13 of the International Covenant on Civil and Political Rights "would not be satisfied with laws or decisions providing for collective or mass expulsions". The Committee on the Elimination of Racial Discrimination has also recommended States to "ensure that non-citizens are not subject to collective expulsion" (Committee's general recommendation No. 30 (2004), para. 26). This prohibition requires an expulsion to be examined and decided individually, and to be based in the decision of a competent authority, and in accordance with the law and with respect of due process and procedural safeguards.

The above-mentioned provisions of the asylum law would also allow for the detention of asylum seekers on the basis of extremely broad grounds and significant executive discretion. In this connection, 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 Universal Declaration of Human Rights and article 9.1 of the

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[7] OHCHR, "The principle of non-refoulement under international human rights law", available at www.ohchr.org/Documents/Issues/Migration/GlobalCompactMigration/ThePrinciplenonrefoulementUnderInternationalHumanRightsLaw.pdf.

ICCPR. The enjoyment of the rights guaranteed in the ICCPR is not limited to citizens of States parties but "must also be available to all individuals, regardless of their nationality or statelessness, such as asylum seekers, refugees, migrant workers and other persons, who may find themselves in the territory or subject to the jurisdiction of the State Party" (ICCPR/C/21/Rev.1/Add.13 (2004), para. 10).

We would also like to refer to the revised deliberation No. 5 on deprivation of liberty of migrants issued by the Working Group on Arbitrary Detention (annex, A/HRC/39/45), where the Working Group stressed that in the context of migration proceedings, "alternatives to detention must be sought to ensure that the detention is resorted to as an exceptional measure". Commitment by Member States to use immigration detention only as a measure of last resort and work towards alternatives to detention was reaffirmed through the adoption of the Global Compact for Safe, Orderly and Regular Migration (objective 13, A/RES/73/195) and the Global Compact on Refugees (paragraph 60, A/RES/73/151). We would also like to refer your Excellency's Government to the report of the Special Rapporteur on torture (A/HRC/37/50), in which the Rapporteur concluded that "criminal or administrative detention based solely on migration status exceeds the legitimate interests of States in protecting their territory and regulating irregular migration and should be regarded as arbitrary (para. 25)," The Rapporteur further emphasised that detention of migrants should never be used as a means of deterrence, intimidation, coercion or discrimination (para. 73).

Matters of securitization, due process, and access to justice

The asylum law raises significant concerns regarding due process and access to justice for asylum seekers. One of the most pressing issues is the denial of legal right to stay pending determination of their claims, which effectively prevents asylum seekers from securing legal representation or interpretation. Without legal standing, they are unable to hire lawyers to navigate the complex legal and judicial systems in Egypt, a necessity when appealing negative decisions. 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. This oversight creates a situation where deportations may occur swiftly, rendering appeals ineffective. The absence of an internal review mechanism further exacerbates the issue, as asylum seekers must rely solely on a lengthy and costly judicial process, undermining their right to a fair hearing and due process protections.

The asylum law also significantly broadens the criteria for excluding individuals from refugee status, deviating from established international standards. Under article 8, the law introduces vague and expansive grounds for exclusion, including undefined threats to "public order" and "national security," as well as affiliations with organizations listed as terrorist entities under domestic legislation. This approach not only contradicts the 1951 Refugee Convention, which limits exclusion to those who have committed serious non-political crimes, but also risks denying protection to individuals persecuted for political reasons or unjustly charged in their countries of origin. The introduction of subjective criteria creates a significant risk of arbitrary decisions and undermines the fundamental purpose of international refugee protection, which is to safeguard those fleeing persecution.

Furthermore, the asylum law's reliance on vague language grants the government unchecked authority to take punitive measures against refugees under the pretext of national security and public order. Article 10 empowers the Standing Committee to impose what it deems "necessary measures," including detention and expulsion, without clearly defining these actions or establishing limits. This ambiguity enables broad discretionary powers, leaving refugees vulnerable to arbitrary detention and other violations. The use of elastic terms allows for subjective interpretation, increasing the risk of abuse and undermining the rule of law.

The expansion of the grounds for revocation of refugee status, in particular article 9 of the asylum law which allows for the revocation of refugee status on vague and broad criteria, including the failure to adhere to societal values or traditions as outlined in article 28, the absence of clear appeal processes and the lack of clarity in language on exclusion and rejection of the asylum application, as well as provisions that provide for automatic deportation in case of rejection of an asylum application, render guarantees against expulsion ineffective.

Persons or foreigners whose applications for asylum were denied may find themselves in an especially vulnerable situation, as they may not speak the language and therefore may fail to understand why their application was denied, and/or be aware of grounds on which removal orders are based and/or ways to challenge the legality of these decisions. The Special Rapporteur on the human rights of migrants has been made aware that the asylum law would put at significant risk asylum seekers, who could potentially be denied key procedural safeguards, such as judicial oversight, prompt access to a lawyer, interpretation/translation services, necessary medical care, means of contacting family or consular or diplomatic representatives and ways of challenging rejection of asylum requests. We would, however, like to stress that consular authorities should only be contacted if this is requested by the detained migrant. Asylum-seekers should not be brought to the attention of their country of origin's consular authorities without their knowledge and consent.

Judicial review is crucial so that the powers of the state can be kept within the bounds of the law and human rights standards. Foreigners should be enabled to challenge any decision relating to their asylum applications, detention or deportation before a competent, impartial and independent judicial or administrative body and in an individualized, prompt and transparent proceeding affording essential procedural safeguards, imperatively including accurate, reliable and objective interpretation services, in line with article 2 of ICCPR.

The Basic Principles and Guidelines on remedies and procedures on the right of anyone deprived of their liberty to bring proceedings before a court also state that the right to challenge the lawfulness of decisions made over their applications before a court is an independent human right. It applies to all non-nationals, including migrants regardless of their status, asylum seekers, refugees and stateless persons, in any situation.

Restriction of fundamental rights

Article 14 explicitly states that while refugees and asylum seekers have the right to religious belief, only followers of Islam, Christianity, and Judaism may practice their rituals in designated places of worship. This limitation directly contradicts the principles of religious freedom enshrined in international human rights instruments. The ICCPR, in article 18(1), guarantees everyone the right to freedom of thought, conscience, and religion. This right encompasses not only holding religious beliefs but also manifesting them through worship, observance, practice, and teaching, both individually and in community, in public or private settings.

These restrictions represent a broader pattern of limiting religious expression in the country. However, the inclusion of such discriminatory provisions in asylum legislation exacerbates the vulnerability of refugees and asylum seekers, who may face persecution for their beliefs. Upholding the right to freedom of religion or belief requires removing these limitations and ensuring that all refugees, regardless of their faith, can practice their religion or belief freely and without fear of reprisal. Legal frameworks must be grounded in the principles of equality and non-discrimination, providing robust protections for freedom of religion or belief in line with international human rights obligations.

In addition to these prohibitions, under article 30 of the Bill, the exercise of political and trade union rights, the expression of political opinion, and practices considered to be disturbing of "public order" are prohibited for refugees and asylum seekers. This provision fully contravenes the rights to freedom of expression, peaceful assembly and association, enshrined under articles 19, 21 and 22 of the ICCPR. Such a prohibition is entirely unjustified and blatantly fails to meet the requirements of necessity and proportionality that every restriction to the said right is bound to meet. A blanket prohibition of these rights or one that does not clarify and specify the limited scope of its application in line with the requirements set by international human rights standards, is contrary to international law.

The right to freedom of peaceful assembly and of association are pertinent to the democratic process, both during the election period and between elections. The Special Rapporteur reiterates that these rights are essential components of democracy since they empower women, men and youth to "express their political opinions, engage in literary and artistic pursuits and other cultural, economic and social activities, engage in religious observances or other beliefs, form and join trade unions and cooperatives, and elect leaders to represent their interests and hold them accountable" (Council resolution 15/21, preamble). (A/68/299, para. 5).

The Special Rapporteur on the rights to freedom of peaceful assembly and of association, in her report A/79/263 indicated that "civil society and solidarity groups aiding refugees and migrants have also been exposed to harassment and stigmatizing rhetoric, as well as to aggravated legislative, administrative and media attacks, including being charged with criminal offences for their humanitarian work and subjected to racist and xenophobic attacks by anti-immigrant groups18 and being accused of "undermining national security and unity". In addition to delegitimizing and criminalizing the work of civil society, this also feeds into the narrative of stigmatizing and dehumanizing people on the move."

The asylum law also imposes undue restrictions on the freedom of movement of refugees that are not applicable to other foreign nationals, in violation to the 1951 Convention. Article 22 grants refugees' freedom of movement and the right to choose a place of residence but arbitrarily restricts this right to being in accordance with the conditions listed in article 10, as well as the imposition of counter-terrorism measures, and other exceptional or grave circumstances. Similar restrictions are not stipulated under Egyptian law for other foreign nationals or Egyptian nationals.

In connection with above alleged facts and concerns, we would like to refer your Excellency's Government to article 18 of the ICCPR which states that "Everyone shall have the right to freedom of thought, conscience and religion. These rights shall include freedom […] either individual or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching." The Human Rights Committee has noted in general comment No. 22, paragraph 3, that article 18 of the ICCPR "Does not permit any limitations whatsoever on the freedom of thought and conscience […]". Thus, peaceful expression of one's thought and conscience cannot be restricted unless such restrictions have fulfilled stringent tests of legality, proportionality and necessity.

In conclusion, the asylum law, if enacted, would fall significantly short of international human rights and refugee law and other relevant standards. It is essential to underscore that migration governance measures, including those addressing irregular migration, must not undermine the human rights and dignity of migrants and refugees. Human rights are universal and apply to everyone, regardless of nationality, religion or belief, age, gender, disability, migratory status, or any other characteristic. States are bound by their obligations under core international human rights treaties to place human rights at the centre of all efforts to manage migration. This responsibility includes ensuring that border management measures uphold key principles such as the prohibition of collective expulsions, the principle of non-refoulement, the right to seek asylum, the right to life, the prohibition of torture, and the promotion of gender equality, while also prioritizing the rights and best interests of children.

Criminalization of unauthorized border crossings, as suggested in the asylum law, contravenes international human rights standards. Crossing an international border without authorization should not be treated as a criminal offense, as it does not strip foreigners of their human rights entitlements, including due process guarantees. The fundamental rights of foreigners must be protected, irrespective of their migration status, to ensure that they are treated with dignity and respect. We wish to emphasise that "laws, policies and practices penalizing people in need of international protection because of their unauthorized or irregular entry and presence and/or restricting their freedom of movement can breach article 31 of the 1951 Convention relating to the Status of Refugees".[8]

Effective migration governance should focus on enhancing access to regular, safe pathways to seek asylum, rather than imposing restrictive measures that further

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[8] UN High Commissioner for Refugees (UNHCR), *Guidelines on International Protection No. 14: Non-penalization of refugees on account of their irregular entry or presence and restrictions on their movements in accordance with Article 31 of the 1951 Convention relating to the Status of Refugees*, HCR/GIP/24/14, 23 September 2024, https://www.refworld.org/policy/legalguidance/unhcr/2024/en/148632

marginalize migrants and asylum seekers. Policies should be designed to protect human rights and address the vulnerabilities of those on the move, aligning with international obligations and principles of equality, non-discrimination, and humanitarian protection. By prioritizing human dignity and expanding safe migration options, states can create a more equitable and humane approach to migration management.

Therefore, and in view of the above-mentioned analysis, we urge Your Excellency's Government to reconsider the provisions of the asylum law and to bring Egypt's domestic law in line with international human rights standards. We highly recommend that Your Excellency's Government consults the *OHCHR's Recommended Principles and Guidelines on Human Rights at International Borders* the *Global Compact for Safe, Orderly and Regular Migration* and the *Global Compact on Refugees*. We look forward to receiving further information on the issues mentioned in this letter, and we stand ready to cooperate with your Excellency's Government to enhance the protection of the human rights of all migrants in the Arab Republic of Egypt.

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 observations.

2. Considering that the recently approved law has not been ratified by the President yet, and that it is expected that in the coming months bylaws will be structured to operationalize the implementation of the law, please indicate any concrete and immediate plans to address the questions raised in this letter, as well as other matters raised by civil society and legal experts with the aim of bringing the asylum law, and its bylaws, in line with international human rights and refugee law, particularly with regard to criminalization and discrimination of certain groups of asylum seekers, the principle of non-refoulement, the right to due process, gender-sensitive measures, the suppression of some of the rights of asylum-seekers and refugees and other aspects mentioned in the present communication.

3. Please provide information regarding any consultation(s) that have taken place or plans to hold consultation(s) on the asylum law with the United Nations High Commissioner for Refugees, civil society and other relevant stakeholders, including lawyers' associations and representatives of migrants, asylum seekers and refugees as well as victims of contemporary forms of slavery and trafficking in persons and the outcome of such consultation(s), including issues mentioned in this letter.

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency's Government will be made public via the communications reporting website after

48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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

Gehad Madi
Special Rapporteur on the human rights of migrants

Heba Hagrass
Special Rapporteur on the rights of persons with disabilities

Irene Khan
Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Gina Romero
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Nazila Ghanea
Special Rapporteur on freedom of religion or belief

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

Laura Nyirinkindi
Chair-Rapporteur of the Working Group on discrimination against women and girls