



To:

The Prime Minister of Israel

The President of Uganda

The Attorney General of the Government of Israel

The Attorney General of the Republic of Uganda

Saturday, 14 April 2018

Dear all,

Re: Deportation as a Crime Against Humanity under International Criminal Court Jurisdiction

The Global Legal Action Network (GLAN) is an organization of lawyers initiating transnational human rights litigation around the world. Our focus is on cases in which “developed” countries are responsible for violations occurring in “developing” countries. We write to respectfully warn both Israel and Uganda that the forcible deportation plan currently being discussed for Eritrean and Sudanese asylum seekers living in Israel may amount to a crime within the jurisdiction of the International Criminal Court (ICC).

For your convenience, we provide an outline of the relevant analysis below:

1. According to statements by Israeli Prime Minister Benjamin Netanyahu, Israel intends the forcible deportation of up to 36,000 asylum seekers from Sudan and Eritrea.
2. On April 2, 2018, Israel and the UN Refugee Agency (UNHCR) signed an agreement according to which Eritrean and Sudanese asylum seekers would be granted international protection, with 16,000 departing to third countries.¹ Yet Israel immediately withdrew

¹ UNHCR and Israel sign agreement to find solutions for Eritreans and Sudanese:
<http://www.unhcr.org/news/press/2018/4/5ac261bd4/unhcr-israel-sign-agreement-find-solutions-eritreans-sudanese.html>

from this agreement, preferring instead to seek forced deportation under a bilateral agreement with an African government.

3. Rwanda refused to be a party to such an agreement, and Israel is currently seeking a similar plan with a so-called “second third country.” While the particular identity of the latter has not been officially disclosed, the press indicates that it is Uganda.
4. Under particular conditions and safeguards, “safe third country” agreements can be recognized as legal. Yet, as highlighted e.g. by new testimony published on April 13, the forcible transfer of refugees to Uganda clearly does not meet such minimal conditions for legality:²
 - there are currently no guarantees that deportees will enjoy any durable legal status in Uganda;
 - the collective deportation of persons without due process of law amounts to expulsion under Article 32 of the 1951 Refugee Convention (which Israel is a signatory to);
 - the discriminatory nature of the policy targeting black asylum seekers from particular countries is prohibited by a number of human rights treaties, as well as the customary prohibition of persecution;
 - the lack of transparency regarding the content of Israel’s forcible deportation scheme amounts to a systematic violation of the asylum seekers’ right to an effective remedy;
 - forced deportation will almost certainly involve indefinite periods of detention, which amount to inhuman and degrading treatment.
5. Considering the high number of refugees potentially involved, further concerns arise under international criminal law. Under Article 7 of the Rome Statute, widespread or systematic persecution, as well as widespread or systematic deportation, both amount to crimes against humanity.

² Israel: New testimonies show Israeli deportations putting Eritrean and Sudanese asylum-seekers at risk in Uganda: <https://reliefweb.int/sites/reliefweb.int/files/resources/MDE1582252018ENGLISH.PDF>

6. In recent years, the ICC has expanded its engagement with refugee and migration issues. This emerging priority is reflected in the ICC's investigation of Libya, as well as the Office of the Prosecutor's recent seeking of jurisdiction over Rohingya deportations.
7. Unlike Israel, which is not a party to the Rome Statute, Uganda has both signed and ratified the treaty. Uganda has thus granted jurisdiction to the ICC over crimes "of interest to the international community as a whole" when perpetrated in its territory.
8. Mass forcible deportations from Israel to Uganda naturally begin in Israeli territory and end in Uganda's territory. These alleged crimes are therefore committed in both countries. If Israel and Uganda choose to carry their forcible deportation plan, the ICC's jurisdiction may be triggered.
9. On April 9, 2018, the Office of the Prosecutor asserted that Myanmar's deportation of the Rohingya to Bangladesh is under ICC jurisdiction. Myanmar is not a party to the Rome Statute, but the ICC may acquire jurisdiction "because an essential element of the crime – crossing an international border – occurred on the territory of a state that is party to the Rome Statute (Bangladesh)."³ The same rule may apply to Israel's deportation plan to Uganda.
10. Israel and its agents are already involved in a preliminary examination conducted by the Office of the Prosecutor concerning the situation in Palestine. The situation in Uganda is of course the subject of an ongoing international criminal investigation. Both countries must avoid participating in any activities which will further expose their agents to the risk of prosecution.

Sincerely,

Kevin Jon Heller

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The Global Legal Action Network

³ Application under regulation 46(3): https://www.icc-cpi.int/CourtRecords/CR2018_02057.PDF