

Mandate of the Special Rapporteur on the human rights of migrants.

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Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the human rights of migrants pursuant to General Assembly resolution 60/251 and to Human Rights Council resolution 17/12.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received regarding the **repatriation agreement between Norway and Ethiopia**. I will also be sending a similar letter to the Government of Ethiopia.

According to the information received:

A Memorandum of Understanding (MOU) between the governments of Norway and Ethiopia concerning assisted return of Ethiopian nationals residing in Norway was signed on 26 January 2012. Ethiopian nationals whose request for a refugee status or residence permit has been rejected, and those with pending application for asylum who decide of their own free will to return to Ethiopia are being offered an opportunity to return voluntarily to Ethiopia with support from the Norwegian authorities.

The MOU provides that Norwegian authorities commit themselves to sharing with the Ethiopian authorities "as much information as possible with regard to the returnees" (article 3.4). It is alleged that this could put them at risk when they are returned to Ethiopia. Furthermore, the MOU does not provide for guarantees that the returnees will not be subjected to harassment, threats, persecution, discrimination or criminal investigations upon their return to Ethiopia. The MOU (annex 2) provides that the Norwegian authorities shall submit a return application (for the persons to be returned) to the Ethiopian Ministry of Foreign Affairs and to the National Intelligence and Security Services/Immigration.

The MOU (annex 1) further provides that the Ethiopian Administration for Refugee and Returnee Affairs (ARRA) will be responsible for the implementation of the return and reintegration programme in Ethiopia. It is alleged that ARRA does not have any experience relating to reintegration of individuals. According to

the MOU, ARRA will receive a sum of money per returned person (NOK 26 000 per person plus administrative costs).

Reportedly, repatriation agreements Norway has entered into with other countries in the past have provided that personal information concerning the content of asylum application should not be disclosed, and that the receiving country undertakes to protect the returnees against harassment, threats, persecution, discrimination and criminal prosecution. Furthermore, in the past, reintegration programmes have been managed by IOM or UNHCR.

Allegedly those who do not return voluntarily will be returned by force, starting on 15 March 2012. This may affect up to 400 persons, many of whom have been living in Norway for many years, established families in Norway and worked there legally until January 2011, when their work permits were withdrawn. Reportedly, persons who do not return voluntarily and who are returned by force will not receive reintegration support.

It is alleged that the freedoms of opinion and expression and peaceful assembly and association are not guaranteed in Ethiopia. Many of the rejected asylum seekers residing in Norway claim to have been political activists in Ethiopia, and fear that their lives could be in danger if they are returned to Ethiopia. It is further alleged that the deportations may result in rights abuses such as torture or ill-treatment.

Children who were born and raised in Norway, and who have never even been to Ethiopia will reportedly also be subjected to forced return. Reportedly, primary education is not free or compulsory in Ethiopia, which could lead to a regression in these children's enjoyment of their right to education. Furthermore, 46 children who are either Norwegian citizens or have a permanent residence in Norway and who will remain there, will be separated from either their mother or father, whose asylum application has been rejected, and who will be subjected to forced return.

Concern is expressed at the lack of safeguards in place for the return and reintegration process. Concern is also expressed for the physical and mental integrity of persons who have been politically active with the Ethiopian opposition, should they be forcibly returned to Ethiopia. Concern is further expressed that forced return may not be in the best interests of the children concerned.

While I do not wish to prejudge the accuracy of these allegations, I would like to remind your Excellency's Government that the enjoyment of the rights guaranteed in the International Covenant on Civil and Political Rights (ICCPR), ratified by Norway on 13 September 1972, is not limited to citizens of States parties but "must also be available to all individuals, regardless of 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" (CCPR/C/21/Rev.1/Add. 13 (2004), para. 10).

Furthermore, I would like to stress that your Excellency's Government has the obligation to protect the right to physical and mental integrity of all persons within its territory or subject to its jurisdiction. Article 7 of the ICCPR provides that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." I would also like to recall article 3 of the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, ratified by Norway on 9 July 1986, according to which 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. 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. In this respect, I would like to refer to the Committee against Torture, which in 2010 was "deeply concerned about numerous, ongoing and consistent allegations concerning the routine use of torture by the police, prison officers and other members of the security forces, as well as the military, in particular against political dissidents and opposition party members, [...]" in Ethiopia (CAT/C/ETH/CO/1, para 10).

I would also like to draw your attention to article 33 of the 1951 Convention on the Status of Refugees and its protocol, ratified by Norway on 23 March 1953 and 28 November 1967 respectively, which stipulate that no Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

While noting that your Excellency's Government is currently working on a white paper on asylum-seeking children (Stortingsmelding om barn på flukt), it is of particular concern that the MOU does not seem to take into account the particular protection measures that should be put in place for children. In this regard, allow me to remind your Excellency's Government of article 3 of the Convention on the Rights of the Child, ratified by Norway on 8 January 1991, which provides that in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration. In this respect I would like to refer to the concern expressed by the Committee on the Rights of the Child in 2010, that in Norway, "the principle of primary consideration of the best interests of the child is not yet applied in all areas affecting children, such as [...] immigration cases" (CRC/C/NOR/CO/4, para 22). I would also like to recall article 2(2) of the Convention which provides that all appropriate measures shall be taken "to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members".

In the event that your investigations support or suggest the above allegations to be correct, I urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of Ethiopian nationals at risk of forced return are respected.

As it is my responsibility, according to the mandate entrusted to me by the Human Rights Council, to clarify all information brought to my attention, I would greatly appreciate additional details from your Excellency's Government concerning the above MOU and its implementation plan. I would in particular appreciate to receive information on the following points:

1. Are the facts alleged in the above summary of the case accurate?
2. How will your Excellency's Government monitor how ARRA spends the money it receives for the implementation of the return and reintegration programme?
3. What is the role of the National Intelligence and Security Services in the return and reintegration process?
4. How will your Excellency's Government ensure that the authorities in Ethiopia comply with the absolute prohibition of torture vis-à-vis the returnees?
5. What measures has your Excellency's Government taken or does it intend to take to ensure an individual assessment of all Ethiopian nationals subjected to forced return; those who may be in need of international refugee protection or who are in need of human rights protection for other reasons?
6. What measures has your Excellency's Government taken or does it intend to take to ensure an evaluation of the best interests of the child in relation to each Ethiopian child (any person under the age of 18 years) who may be subjected to forced return?
7. Please provide information on the status of the negotiations relating to other repatriation agreements between your Excellency's Government and other countries, please indicate the contents of these agreements, and please send me a copy of the draft texts of the agreements, if available.

I would greatly appreciate receiving the above information from your Excellency's Government within 60 days. Your Excellency's Government's response will be made available in a report to the Human Rights Council.

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

François Crépeau
Special Rapporteur on the human rights of migrants