

Mandates of the Special Rapporteur on the human rights of migrants; 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 Working Group on Arbitrary Detention

REFERENCE:
UA USA 27/2017

21 December 2017

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the human rights of migrants; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; Special Rapporteur on the situation of human rights in Eritrea; and Working Group on Arbitrary Detention, pursuant to Human Rights Council resolutions 34/21, 34/19, 32/24 and 33/30.

In this connection, we would like to bring to the attention of your Government information we have received concerning the forced returns of Eritrean nationals.

According to the information received:

On 13 September 2017, the Department of Homeland Security (DHS) announced measures to expedite the deportation of Eritreans back to Eritrea. It is our understanding that there are about 700 Eritrean nationals in the United States who are subject to final orders of removal issued by immigration courts.

Reportedly, the majority of the concerned Eritrean nationals are under orders of removal following refusal of asylum applications in proceedings during which not all concerned had access to legal counsel.

Reportedly, a considerable number of those concerned are being held in custody in immigration detention in various facilities in the US. Among them are individuals, who had been released from immigration custody, but have been rearrested in the context of the announcement of new measures to expedite the deportation of Eritreans.

All of them are facing imminent deportation to Eritrea, where they are at risk of serious human rights violations.

While we do not wish to prejudge the accuracy of these allegations, we express our serious concern over the risk of a return to Eritrea, in potential violation of the non-refoulement principle. Given the situation in Eritrea, those forcibly returned are at high risk of being arrested and detained, and subjected to ill-treatment and torture. If forcibly 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 family members.

Eritrea imposes severe restrictions on the right to leave one's country. Eritreans are very rarely ever released entirely from military/national service, and those who remain conscripts or members of the "Peoples' Army" or "reserve army" are ineligible for the exit visas. Departure without the necessary exit visa is regarded as illegal exit. Individuals forcefully repatriated are inevitably considered as having left the country unlawfully, and are regarded as serious offenders and as draft evaders or deserters from the military/national service, who are labelled as "traitors." Upon arrival in Eritrea, returnees are arrested and detained in violation of fundamental rules of international law, namely the right to a fair trial. The use of torture by Eritrean officials has been, and remains, both widespread and systematic in civilian and military detention centres. Those returnees, who are of draft age and military fit are transferred into the military/national service. Numerous human rights violations have been documented in relation to Eritrea's military/national service programmes, which constitutes enslavement because of a number of factors, namely (a) the uncertain legal basis for the national service programmes; (b) the arbitrary and open-ended duration of conscription, routinely for years beyond the 18 months provided for by the decree of 1995; (c) the involuntary nature of service beyond the 18 months provided for by law; (d) the use of forced labour, including domestic servitude, to benefit private, PFDJ (People's Front for Democracy and Justice)-controlled and State-owned interests; (e) the limitations on freedom of movement; (f) the inhumane conditions, and the use of torture and sexual violence; (g) extreme coercive measures to deter escape; (h) punishment for alleged attempts to desert military service, without an administrative or judicial proceeding; (i) the limitations on all forms of religious observance; and (j) the catastrophic impact of lengthy conscription and conditions on freedom of religion, choice, association and family life.

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 the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), ratified by your Government on 21 October 1994. 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.

The enjoyment of the rights guaranteed in the ICCPR acceded to by your Excellency's Government on 8 June 1992 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). The ICCPR further 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 its General Comment XV, the Human Rights Committee reaffirms this principle (Paragraphs 9 and 10).

We would further like to recall to your Excellency’s Government the 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”.

In addition, we would like to remind Your Excellency’s Government’s 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.

We would like to bring to Your Excellency’s Government’s attention article 26 of the International Covenant on Civil and Political Rights stating that “all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”.

In this connection, I would also like to refer Your Excellency’s Government to the Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the treatment of offenders, Havana, Cuba, 27 August to 7 September 1990, in particular:

- Principle 1: all persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings;
- Principle 5: Governments shall ensure that all persons are immediately informed by the competent authority on their right to be assisted by a lawyer of their own choice upon arrest or detention or when charged with a criminal offence;
- Principle 7: Governments shall further ensure that all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer, and in any case not later than forty-eight hours from the time of arrest or detention.

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 therefore 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 provide information about any measures taken to guarantee the psychological and physical integrity of the Eritrean nationals if returned to their home country.
3. Please provide further information on the reasons for the order of removal and how many of the concerned individuals are under orders of removal following failed asylum applications.
4. Please provide information on whether the potential risks faced upon return to Eritrea has been assessed individually for each of the concerned Eritrean national.
5. Please provide further information on whether migrants, regardless of their status, are entitled to legal aid and interpretation.
6. Please provide information on the legal framework of the collaboration by your Excellency's Government with the Government of Eritrea with a view to facilitate the return of Eritreans to their home country?
7. Please provide information about the whereabouts of the 700 Eritrean nationals awaiting removal.
8. Please provide information on the legal grounds for holding in custody since 13 September 2017 a considerable number of these concerned Eritreans and how these measures are compatible with international norms and standards as stated, inter alia, in the UDHR and the ICCPR.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

We would like to inform your Excellency's Government that after having transmitted an urgent appeal to the Government, the Working Group on Arbitrary Detention may transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such appeals in no way prejudice any opinion the Working Group may render. The Government is required to respond separately for the urgent appeal procedure and the regular procedure.

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

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

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punishment

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