

**Mandates of the Working Group on Arbitrary Detention; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on the situation of human rights in Eritrea; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment**

REFERENCE:  
AL ERI 1/2018

16 October 2018

Excellency,

We have the honour to address you in our capacities as Working Group on Arbitrary Detention; Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on the situation of human rights in Eritrea; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 33/30, 36/6, 38/15, 34/18, 33/9 and 34/19.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the enforced disappearance of Mr. **Berhane Abrehe** and the arrest and incommunicado detention of his wife Mrs. **Almaz Habtemariam Sibhatu**, both former freedom fighters.

According to the information received:

On 17 September 2018, four members of the National Security Office stopped Mr. Berhane Abrehe, a former Eritrean Minister of Finance and Member of the National Assembly, while walking in the streets of Asmara. According to eyewitnesses, Mr. Berhane Abrehe started shouting that he was being taken away by force, without an arrest warrant and against his will. Reportedly, security agents arrested him and took him to an unknown location. He has been denied family visits and access to a lawyer and doctor. He has neither been formally charged nor brought before a judge. At the time of the present communication, the fate and whereabouts of Mr. Berhane Abrehe remain unknown.

Mr. Berhane Abrehe, 73 years old, requires vital medication following a liver transplant in 2009/2010 in Italy. Reportedly, he travelled every six months from Eritrea to Italy for medical screenings and adjustment of his medication until 2017, when the Government stopped issuing him the required exit visa. Reportedly, following his arrest on 17 September 2018, unidentified individuals, presumably from the National Security Office collected his medication from his house. No information is available about whether the collected medication is

currently being administered to Mr. Berhane or about his current physical and mental health status.

Prior to his arrest on 5 September 2018, an audio message of Mr. Berhane Abrehe was disseminated via the internet. Addressing the Eritrean People and President Isaias Afwerki, Mr. Berhane Abrehe talked about the hardship experienced by Eritreans in the country and in the diaspora during the past 17 years, due to what he called weaknesses in national institutions and the prevalent style of leadership. He called on the President to convene a meeting of the National Assembly and for him to defer to this national body. He proposed a public debate with the President to be broadcast on TV to explore the state of the political, economic, social, and cultural life of the past, current and future in the country. During his address, he also made reference to a two-volume book he authored, entitled 'Eritrea, My Country'. In the book, which has been published in August 2018 abroad, Mr. Berhane Abrehe talks about how the rule of law was eroded under the current leadership, presents ideas on how to put an end to the prevailing autocratic rule and transform the country into a democracy in a peaceful manner.

Mrs. Almaz Habtemariam Sibhatu, who is approximately 59 years old, was also arrested. Reportedly, in early January 2018, members of National Security Office came to her house and took her away without an arrest warrant. She was transferred to several places of detention and is currently believed to be at the Hazhaz Prison and Rehabilitation Centre in Asmara. She is being denied family visits and access to a lawyer. In August 2018, Mrs. Almaz Habtemariam Sibhatu was taken to a hospital, unable to walk without assistance, reportedly as a result of back problems she developed while in detention.

We express grave concern about the allegations of enforced disappearance, arbitrary arrests, incommunicado detention, and lack of legal representation. In particular, in view of the alleged prolonged incommunicado detention of Mrs. Almaz Habtemariam Sibhatu and the enforced disappearance of Mr. Berhane Abrehe, we are concerned that both may be at risk of torture and other forms of ill-treatment. We also express concern about the physical and mental integrity of Mr. Berhane Abrehe and Mrs. Almaz Habtemariam Sibhatu while in detention and their need to receive appropriate healthcare. We are further concerned that Mr. Berhane Abrehe's arrest is directly related to his critical comments on how the country was governed and his call for participation in public affairs.

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 provide information on the state of health, fate and whereabouts of Mr. Berhane Abrehe and Mrs. Almaz Habtemariam Sibhatu.
3. Please provide detailed information concerning the legal grounds for the arrest and detention of Mr. Berhane Abrehe, including whether there is any link to the publication of the above-mentioned book and audio-visual message, and of that of Mrs. Almaz Habtemariam Sibhatu, including how the measures are compatible with international norms and standards as stated, inter alia, in the UDHR and the ICCPR. Please also explain how the lack of due process and fair trial is compatible with Eritrea's obligations under international human rights law.
4. Please provide the details about Mr. Berhane Abrehe's current status of physical and mental integrity, including whether he has been granted access to the required medication following liver transplant as well as details, including dates and times, about his access to a doctor while in detention.
5. Please provide the details about Mrs. Almaz Habtemariam Sibhatu's current status of physical and mental integrity, and about the measures taken to ensure that she can enjoy her right to health, including access to adequate health care.

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

In the event that your investigations support or suggest the above allegations concerning the arrest and detention to be correct, we strongly urge your Government to take all necessary measures to guarantee that the rights and freedoms of Mr. Berhane Abrehe and Mrs. Almaz Habtemariam Sibhatu are respected and that those responsible will be held accountable. We also request that your Government adopts effective measures to prevent the recurrence of such situations.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the above-mentioned persons in compliance with international instruments.

We would like to inform your Excellency's Government that after having transmitted an allegation letter 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 letters in no way prejudice any opinion the Working Group may render. The Government is required to respond separately to the allegation letter and the regular procedure.

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 issue/s in question.

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

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

Bernard Duhaime  
Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

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

David Kaye  
Special Rapporteur on the promotion and protection of the right to freedom of opinion  
and expression

Dainius Puras  
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable  
standard of physical and mental health

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

## **Annex**

### **Reference to international human rights law**

In connection with above alleged facts and concerns, we would like to draw the attention of your Government to the rights not to be arbitrarily arrested or detained and to a fair and public trial guaranteeing due process as enshrined in articles 9 and 14 ICCPR. In particular, we wish to remind that holding persons incommunicado violates their right to be brought before a court under article 9 (3) of the Covenant and to challenge the lawfulness of their detention before a court under article 9 (4) of the Covenant. Judicial oversight of detention is a fundamental safeguard of personal liberty and is essential in ensuring that detention has a legal basis.

We would also like to highlight paragraph 27 of General Assembly Resolution 68/156 (February 2014), which reminds States that prolonged incommunicado detention or detention in secret places can facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and can in itself constitute a form of such treatment.

We are further drawing your Excellency's Government's attention to the United Nations Declaration on the Protection of All Persons from Enforced Disappearances, which establishes the prohibition to practice, permit or tolerate enforced disappearances (art.2); the obligation to take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance (article 3); that no circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify enforced disappearances (article 7); the right to be held in an officially recognized place of detention, in conformity with national law and to be brought before a judicial authority promptly after detention and the obligation to make available accurate information on the detention of persons and their place of detention to their family, counsel or other persons with a legitimate interest (article 10); and the obligation to maintain in every place of detention an official up-to-date register of detained persons (article 12). Article 13 (1) of the Declaration also proclaims that whenever there are reasonable grounds to believe that an enforced disappearance has been committed, the State shall promptly refer the matter to that authority for such an investigation, even if there has been no formal complaint. No measure shall be taken to curtail or impede the investigation.

We furthermore would like to refer to article 19 of the ICCPR, which guarantees the right to freedom of opinion and expression. We would like to highlight that restrictions to the right to freedom of expression must under article 19(3) be provided by law, and be necessary and proportionate for the achievement of a legitimate objective. Laws restricting the rights enumerated in article 19 must not only comply with the strict requirements of article 19(3) but must also themselves be compatible with the provisions, aims and objectives of the Covenant. As highlighted by the Human Rights Committee, article 19(3) may never be invoked as a justification for the muzzling of any advocacy of multi-party democracy, democratic tenets and human rights (CCPR/C/GC/34).

We would also like to refer your Government to article 12 of the International Covenant on Economic Social and Cultural Rights, acceded to by Eritrea on 17 April 2001, which establishes the right to physical and mental health and the obligation of States in this regard. General Comment No. 14 of the Committee on Economic, Social and Cultural Rights holds that “States are under the obligation to respect the right to health by, inter alia, refraining from denying or limiting equal access for all persons, including prisoners or detainees, minorities, asylum seekers and illegal immigrants, to preventive, curative and palliative health services...” (para.34).

We would also like to draw the attention of your Excellency’s Government to the UN Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules) which further establish States’ responsibility to provide adequate access to health care for prisoners, Rule 27 provides that, “[a]ll prisons shall ensure prompt access to medical attention in urgent cases. Prisoners who require specialized treatment or surgery shall be transferred to specialized institutions or to civil hospitals.” Rule 24.2 indicates that prison “[h]ealth-care services should be organized [...] in a way that ensures continuity of treatment...”, and Rule 31 states that “[t]he physician or, where applicable, other qualified health-care professionals shall have daily access to all sick prisoners [and to] all prisoners who complain of physical or mental health issues...”