

Mandates of the Working Group on Enforced or Involuntary Disappearances; the Working Group on Arbitrary Detention; the Special Rapporteur on extrajudicial, summary or arbitrary executions; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE:
AL TZA 1/2021

25 January 2021

Excellency,

We have the honour to address you in our capacities as Working Group on Enforced or Involuntary Disappearances; Working Group on Arbitrary Detention; Special Rapporteur on extrajudicial, summary or arbitrary executions; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 45/3, 42/22, 44/5 and 43/20.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the enforced disappearance, arbitrary arrest and detention, ill-treatment or torture and possible killings of Burundian refugees in Tanzania.

According to the information received:

Burundian refugees in the refugee camps of Nduta, Nyarugusu and Mtendeli in the Kigoma region of Tanzania have faced serious human rights violations for several years, including arbitrary arrest and detention, torture and enforced disappearances, as well as possible killings.

The Government of Tanzania, in cooperation with the Government of Burundi, is allegedly tracking Burundian political opponents among the refugee population in Tanzania. Arbitrary arrests and enforced disappearances have allegedly been carried out by the Tanzanian police and intelligence services in cooperation with the Burundian intelligence services. Burundian intelligence agents have reportedly been said to pose as refugees within the camps as a means to identifying specific individuals to arrest. In some cases, the arrested refugees were first taken to the local police station before being forcibly disappeared. Some of the refugees abducted in camps in Tanzania were later identified in prisons in Burundi and confirmed that they had been subjected to enforced disappearance and held by Tanzanian police before being refouled.

Some individuals have reportedly been subjected to ill-treatment by Tanzanian intelligence agents, including electric shocks, rubbing of chili pepper on faces and genitals, beating and whipping. The Tanzanian police allegedly detained some refugees in rooms with no electricity or windows, and hung them from the ceiling. In some cases, police and intelligence agents informed the victims that they had received information about them from Burundian authorities.

The following reports were received from various sources:

- Between 2017 and 2020, one source reported that ninety refugees have disappeared at the hands of Tanzanian security forces, while one hundred and forty refugees have been subjected to arbitrary detention, torture and other violations.
- Another source documented more than twenty cases of enforced disappearances between 2019 and 2020. Toward the end of 2019, heavily armed police officers allegedly started entering refugee camps late at night and arresting Burundian refugees without presenting any arrest warrants or stating any motives for their arrests. The arrested refugees have reportedly been taken to undisclosed locations, and the local police has denied having knowledge of any arrest. The residents of the camps have conducted searches for human remains in and around the camps without success. The reporting of disappearances has continued well into 2020.
- It was also reported that between October 2019 and August 2020, Tanzanian police and intelligence services forcibly disappeared, tortured, and arbitrarily detained at least eleven Burundians for up to several weeks in degrading conditions in a police station in Kibondo, Kigoma region. Three were released in Tanzania, while the other eight refugees were forcibly returned to Burundi in August 2020, where they have been detained without any charge. Since January 2020, Tanzanian police have allegedly arrested and forcibly disappeared seven other refugees and asylum seekers. The arrests occurred in Mtendeli and Nduta refugee camps in the Kigoma region, near the border with Burundi.
- Tanzanian forces allegedly held several individuals incommunicado for up to several weeks at Kibondo police station without their families having any information as to their fate or whereabouts. Tanzanian intelligence agents or police interrogated detainees about alleged affiliation with armed groups and possession of weapons, their activities in the camp, and in some cases asked for money to release them. The detained individuals were reportedly accused of instigating the destabilization of Burundi and discouraging refugees from returning to Burundi.
- Tanzanian forces are allegedly taking some of the arrested refugees to Maragarazi, at the border between Tanzania and Burundi, where they are forcefully returned to Burundi and handed to Burundian authorities. Once in Burundi, Burundian authorities are further subjecting them to enforced disappearances and arbitrary detention. Refugees forcefully returned to Burundi have been placed in incommunicado detention in the prisons of Nyamusivya and Makere as well as the various places of detention of the Burundian Intelligence Services. Some refugees, victims of enforced disappearance, are suspected to have been killed. Reportedly, on 9 December 2020, a pick up truck carrying members of the intelligence police was seen entering Nyarugusu camp with two unidentified corpses on board. It is further reported that some refugees are killed upon arrival at Maragarazi. The victims of enforced disappearances include members of opposition parties or deserting soldiers having fled Burundi.

- The victims who have been released following a period of enforced disappearance and arbitrary detention live in fear of being abducted again, and often suffer the physical and psychological sequels of torture and ill treatment without any access to remedy or redress.

Reports of enforced disappearances have allegedly not been investigated by relevant authorities and families have remained without any response as to the fate or whereabouts of refugees who remain missing following an arrest by Tanzanian forces.

The Government of Tanzania declared in August 2020 that a high-level investigation into the matter was underway. The results of the investigations were not yet known at the time of writing the present communication.

One hundred seventy eight thousand Burundian refugees live in Tanzania; many of whom had fled electoral violence in Burundi in 2015 linked to the contested third term in office of then-president Pierre Nkurunziza. The public rhetoric regarding Burundian refugees has become increasingly hostile in Tanzania. Tanzanian authorities have made public speeches intimating Burundian refugees to return home. Burundian refugees are allegedly facing intimidation including the destructions and closure of markets in the camps, restrictions on business activities as well as limited access to services. Authorities are allegedly destroying the houses of refugees who are returning to Burundi to prevent others from moving into the buildings. The prevailing context has created heightened fear and anxiety among the Burundian refugees. It has led many refugees to flee the camps for fear of being subjected to arbitrary arrest and enforced disappearance or forced return. Many live in fear of reprisals and intimidation, including by suspected Burundian intelligence agents posing as refugees in the camps.

On 15 December 2020, the Special Rapporteur on Refugees, Asylum Seekers, Internally Displaced Persons and Migrants in Africa of the African Commission on Human and Peoples' Rights, "expressed concern about the situation of Burundian refugees in the United Republic of Tanzania, in violation of fundamental rights such as access to asylum and the principle of non-refoulement."¹

While we do not wish to prejudge the accuracy of these allegations, we express our serious concerns regarding the allegations of enforced disappearances, summary execution, arbitrary arrest and detention, torture and other cruel, inhuman or degrading treatment or punishment, intimidation, and other violations of human rights of Burundian refugees in Tanzania. We are further concerned about the hostile public rhetoric by the Tanzanian authorities signalling that Burundian refugees are no longer welcome and should return home despite various reports that such returns may not always be safe.

We are also concerned by the alleged forced return to Burundi of refugees belonging to Burundian opposition movements and of Burundian military defectors, in

¹ <https://www.achpr.org/pressrelease/detail?id=556>

violation of the principle of non-refoulement. We find deeply troubling the allegations of cooperation between the intelligence agencies of Tanzania and Burundi in carrying out these forceful returns leading to further arbitrary detention and enforced disappearances of the refouled Burundian refugees in Burundi.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international and regional 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 the observations of your Excellency's Government on the following matters:

1. Please provide any additional information and/or comments you may have on the above-mentioned allegations.
2. Please explain the alleged arrest/abduction of Burundian refugees in the Nduta, Nyarugusu and Mtendeli camps without a warrant, without informing them of the reasons for their arrest, and without disclosing their location as these allegations are in contradiction with the obligations of Tanzania under international human rights law.
3. Please provide the details of any investigation, or judicial or other inquiries, including the specific State entity responsible for such investigation or inquiry, which may have been carried out in relation to the reported enforced disappearances, arbitrary arrest, detention, torture and other cruel, inhuman or degrading treatment or punishment, and/or killings of Burundian refugees in Tanzania to establish accountability and ensure justice. If no inquiries or investigations have taken place, or if they have been inconclusive, please explain the reasons for this.
4. What are the existing legal framework, procedures and institutional arrangements in place to guarantee the right to life, to liberty, to personal security, to physical and psychological integrity, to due process and to an effective remedy, with a view to prohibiting and preventing enforced and involuntary disappearances in Tanzania, especially as it relates to refugees?
5. Please indicate what specific legal and administrative measures have been taken to ensure the compliance with the obligation of non-refoulement as it specifically relates to Burundian refugees. Please provide details as to measures in place to guarantee the safety and security of refugees in the Nduta, Nyarugusu and Mtendeli camps.
6. What are the arrangements put in place by the Government of Tanzania to protect refugees from political and armed groups from other countries and maintain the civilian and humanitarian character of asylum, including in the camps, as provided for under national, regional and

international refugee law, international humanitarian and human rights law?

7. Kindly provide information on the nature of the existing cooperation between Tanzanian and Burundian national intelligence agencies, specifically as it regards Burundian refugees in Tanzania. What safeguards are in place to uphold the non-derogable principle of non-refoulement?

We would appreciate receiving a response within 60 days. Thereafter, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

We would like to inform your Excellency's Government that after having transmitted an allegation letter to the Government, the Working Group on Enforced or Involuntary Disappearances may transmit, through its humanitarian procedure, any individual case of enforced disappearance brought to its attention.

We would also 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.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their recurrence 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 may 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 issues in question.

We would like to inform your Excellency's Government that a similar letter will be transmitted to the Government of Burundi.

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

Tae-Ung Baik
Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

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

Agnes Callamard
Special Rapporteur on extrajudicial, summary or arbitrary executions

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

Annex

Reference to international human rights law

We wish to remind Your Excellency's Government of the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment as codified in Article 7 of the International Covenant on Civil and Political Rights (ICCPR), which Tanzania accessed in 11 June 1976. Furthermore, Article 6(1) of the ICCPR provides that every individual has the right to life and that no person shall be arbitrarily deprived of his or her life. In General Comment 31, the Committee has observed that there is a positive obligation on States Parties to ensure protection of Covenant rights of individuals against violations by its own security forces. Permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate and bring perpetrators to justice could give rise to a breach of the Covenant (CCPR/C/21/Rev.1/Add.13).

We would also like to refer your Excellency's Government to article 13 of ICCPR, which provides 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 No. 15, the Human Rights Committee reaffirms this principle (paragraphs 9 and 10).

Furthermore, we would like to draw your attention to the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol. Article 33(1) of the 1951 Convention stipulates 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.

In addition, we would like to bring to the attention of your Excellency's Government articles 9, 14, 19 and 22 of ICCPR, which establish the right not to be deprived arbitrarily of liberty, the guarantees of due process, and the protection of the rights to freedom of opinion and expression, as well as freedom of association, respectively.

Article 9(1) of the Covenant requires that no one is deprived of his liberty except on such grounds and in accordance with such procedure as established by law. This would normally require the issuance and presentation of a warrant for and during the arrest. In addition, we would like to remind that pursuant to article 9(3) of the Covenant that pre-trial detention is an exceptional measure and must be assessed on an individual basis. The rationale in paragraph 3 of article 9 also indicates that alternative measures including house arrest, judicial monitoring, release on bail shall not be regarded as compulsory vis-à-vis a pretrial detention but rather optional. The consideration of alternative non-custodial measures allows it to be ascertained whether the principles of necessity and proportionality have been met (see A/HRC/19/57, para. 54). The current public health emergency puts an additional onus of consideration upon the authorities, as they must explain the necessity and proportionality of the measure in the

circumstances of the pandemic. The Working Group recalls in particular that automatic pre-trial detention of persons is incompatible with international law. The circumstances of each instance of pre-trial detention should be assessed; at all stages of proceedings, non-custodial measures should be taken whenever possible, and particularly during public health emergencies (Deliberation No. 11 on prevention of arbitrary deprivation of liberty in the context of public health emergencies, para. 14). Moreover, we would like to recall that article 9.3 requires that the arrested person shall be brought promptly before a judge.

Article 9 (4) of the Covenant provides that “[a]nyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful”. In this respect, “[t]he right to bring proceedings applies in principle from the moment of arrest and any substantial waiting period before a detainee can bring a first challenge to detention is impermissible. In general, the detainee has the right to appear in person before the court, especially where such presence would serve the inquiry into the lawfulness of detention or where questions regarding ill-treatment of the detainee arise. The court must have the power to order the detainee brought before it, regardless of whether the detainee has asked to appear” (CCPR/C/GC/35, para. 42). Moreover, “[t]o facilitate effective review, detainees should be afforded prompt and regular access to counsel. Detainees should be informed, in a language they understand, of their right to take proceedings for a decision on the lawfulness of their detention” (Ibid, para. 46) (see also Revised Deliberation No 5 on deprivation of liberty of migrants paras 28-29).

We also wish to recall that the prohibition of arbitrary detention is absolute, meaning that it is a non-derogable norm of customary international law, or *jus cogens*.³ Arbitrary detention can never be justified, including for any reason related to national emergency, maintaining public security or the large movements of immigrants or asylum seekers. This extends both to the territorial jurisdiction and effective control of a State (Revised Deliberation No. 5 on deprivation of liberty of migrants, para. 8)

The Declaration on the Protection of All Persons from Enforced Disappearances establishes that no State shall practice, permit or tolerate enforced disappearances (Article 2) and 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). It also proclaims that each State shall ensure 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 accurate information on the detention of persons and their place of detention being made available to their family, counsel or other persons with a legitimate interest (Article 10). In addition, Article 8 provides that no State shall expel, return (“refouler”) or extradite a person to another State where there are substantial grounds to believe that he or she would be in danger of enforced disappearance. The Declaration outlines the obligation of States to promptly, thoroughly and impartially investigate any acts constituting enforced disappearance (Article 13) and prevent enforced disappearance of children (Article 20).

We also recall that enforced disappearance constitutes a particularly aggravated form of arbitrary detention as it places the person outside the protection of the law, in violation of article 6 of the Universal Declaration of Human Rights (see namely opinions No. 82/2018, para. 28; No. 18/2019, para. 33).

The African Charter on Human and Peoples' Rights, which Tanzania ratified in 1984, guarantees the right to life (Article 4) and to personal liberty and protection from arbitrary arrest (Article 6); prohibits torture and cruel, inhuman and degrading treatment (Article 5) multiple violations that make up enforced disappearance.