

Mandates of the Special Rapporteur on the situation of human rights defenders; 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 extrajudicial, summary or arbitrary executions; 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

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders; 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 extrajudicial, summary or arbitrary executions; 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 43/16, 42/22, 45/3, 44/1, 44/5, 43/4, 42/16 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 **alleged long-term arbitrary detention of human rights defender, Dawit Isaak**.

Mr. Dawit Isaak is a Swedish-Eritrean human rights defender and journalist, who, prior to his detention, promoted freedom of expression in Eritrea. He was one of the founding members of Setit, Eritrea's first independent weekly newspaper, in 1993. Mr. Isaak was awarded the Freedom of Press award by Reporters without Borders in 2003, UNESCO's Freedom of Press Award in 2005, he was nominated for the Sakharov award in 2009 and awarded the Tucholsky Prize during the same year.

According to the information received:

In May 2001, Mr. Dawit Isaak's newspaper reported on a series of open letters penned by a group of politicians known as the G15. The letters urged the Government of Eritrea to implement the newly drafted Constitution, hold open elections and promote peaceful democratic dialogue, rule of law and justice.

On 23 September 2001, a number of days following the arrest of G15 members, Mr. Isaak was reportedly detained by two police officers at his home in the city of Asmara. It is not known whether an arrest warrant was presented or whether he was informed of any charges that may have been filed against him. He was sent to prison without trial and has at no point been allowed access to a legal representative or lawyer.

On 19 November 2005, Mr. Isaak was briefly released to receive medical treatment, at an unknown location. He was imprisoned again four days later on

23 November 2005.

On 30 May 2007, the African Commission on Human and Peoples' Rights (ACHPR) published its findings on Communication 275/03 – Eritrea v. Article 19. The communication lodged by an international non-governmental organisation, in which it stated its concern of the incommunicado detention of Mr. Isaak and 17 other journalists. In its decision, the ACHPR urged the Government of Eritrea to release Mr. Isaak and the other journalists. Other communications concerning the case of Mr. Isaak include: Zegveld and Ephrem v. Eritrea, communication No. 250/02, decision, November 2003; and Isaak v. Eritrea, communication No. 428/12, decision, February 2016.

In February 2009, Mr. Isaak was reportedly sent to at a military hospital as reports emerged that his health condition had worsened. Later that year he was reportedly admitted to Kedeste Mariam in Asmara, a psychiatric hospital. The reasons for this hospitalisation are not known.

On 26 May 2009, the President of Eritrea, Mr. Isaias Afwerki, stated in an interview with a Swedish television channel, “We know how to handle his kind”, and that Mr. Isaak would not be released and would not stand trial.

On 10 May 2013, a former prison officer confirmed to a Swedish newspaper that Mr. Isaak was “okay”, the first confirmation that the human rights defender was alive in a number of years.

In a decision based on Communication 428/2018 dated 27 April 2018, the ACHPR issued a decision reaffirming the findings of Communication 275/03, urging the Eritrean authorities to release of Mr. Isaak and the other journalists.

In September 2020, after a number of years of uncertainty about his fate, credible sources informed that Mr. Isaak was alive and being held in Eiraeiro, a remote prison known for its extremely poor conditions and high rate of deaths in custody.

In October 2020, an international NGO filed a complaint with the Office of the Swedish Prosecutor for international crimes, accusing Eritrea's President and seven other senior Eritrean officials of crime against humanity for holding the journalist Mr. Isaak incommunicado since 2001.

On 12 January 2021, the National Unit for International and Organised Crime, attached to the Prosecutor's Office in Sweden issued a decision in which it claimed that there was reason to believe that Mr. Isaak had been the victim of crimes against humanity.

There have been multiple reports that Mr. Isaak has been held in solitary confinement and tortured during his detention. There are well founded fears for his life. The authorities have denied any allegations of torture but have not permitted anyone to visit the human rights defender.

At the time of writing this letter, it is still unknown what crimes Mr. Isaak is accused of having committed.

Without prejudging the accuracy of the information received, we wish to express our grave alarm over the allegations of prolonged incommunicado detention, with periods of alleged enforced disappearance, of Mr. Dawit Isaak, who has reportedly been imprisoned without trial for almost 20 years. We express serious concern that his alleged arbitrary detention, without charge and standing trial, is connected to his work in the defence of human rights. The reports of multiple violations in the due process of law, including the detention of Mr. Isaak for his human rights work and allegations of torture and other cruel, inhumane, or degrading treatment or punishment, including his prison conditions, if confirmed, would constitute gross violations of human rights. While recognising that repeated calls from international and intergovernmental courts and bodies have thus far gone unheeded by your Excellency's Government, we once again deeply implore that human rights law and international standards be immediately respected to Mr. Isaak and his family.

The Working Group on Arbitrary Detentions wishes to emphasize that the prohibition of arbitrary deprivation of liberty is absolute and universal¹, noting that detention for peaceful exercise of rights is arbitrary in accordance with Human Rights Council Resolution 24/5 and Human Rights Committee, General comment No. 35, *Article 9, and General Comment 37 (2020)* as well as the jurisprudence of the Working Group². We are issuing this appeal in order to safeguard the rights of Mr. Dawit Isaak from irreparable harm and without prejudicing any eventual legal determination. It is relief *pendente lite*.³

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 the information about Mr. Dawit Isaak's whereabouts and wellbeing, including the prison conditions in which he is being held and his current status of physical and mental integrity.
3. Please provide detailed information concerning the legal basis for the arrest and detention of Mr. Dawit Isaak, including how the measures are compatible with international human rights norms and standards as stated in the International Covenant on Civil and Political Rights. Please also explain how his detention and alleged violations of due process and fair trial guarantees, is compatible with Eritrea's obligations under international human rights law.

See A/HRC/22/44, paras. 42-43; see also Human Rights Committee, general comment No. 35 (2014) on liberty and security of person, para. 66.

² See A/HRC/23/40/Add.1 and Opinions Nos 79/2018; 28/2018; 83/2018; 16/2017

³ Article 41 ICJ Statute 'Interim Protection': Part III, Section D (Incidental Proceedings), Subsection 1.

4. Please provide details on the measures taken to ensure that Mr. Isaak can enjoy his right to health, including access to adequate health care while in prison.
5. Please provide information regarding the 11 members of the G-15, and other independent journalists, Mr. Dawit Isaak's colleagues who were reportedly detained without trial since September 2001 and remain for two decades in incommunicado detention including their whereabouts and their state of physical and mental health.
6. Please indicate what measures have been taken to ensure that human rights defenders, including defenders working for the promotion and protection of freedom of expression in Eritrea are able to carry out their legitimate work in a safe and enabling environment without fear of arbitrary arrest, detention or retaliation of any kind.

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

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 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 issue/s in question.

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

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

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Priya Gopalan
Chair-Rapporteur of the Working Group on Arbitrary Detention

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

Mohamed Abdelsalam Babiker
Special Rapporteur on the situation of human rights in Eritrea

Morris Tidball-Binz
Special Rapporteur on extrajudicial, summary or arbitrary executions

Irene Khan
Special Rapporteur on the promotion and protection of the right to freedom of opinion
and expression

Tlaleng Mofokeng
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 of the International Covenant on Civil and Political Rights (ICCPR), which Eritrea acceded to on 22 January 2002. 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. Article 14(3) states that everyone shall be entitled: (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him; and (c) to be tried without undue delay.

We would also like to draw the attention of your Excellency's Government to articles 6, 7, 10, 19 and 21 of the ICCPR, which guarantee that every human being has the inherent right to life, that no one should be subjected to torture, and other cruel, inhuman or degrading treatment or punishment, and that everyone shall have the right to freedom of expression and the right to freedom of association.

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 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). In addition, arrest or detention is arbitrary and contrary to articles 9 and 19 of the ICCPR, when it constitutes a punishment for the legitimate exercise of the rights, including freedom of opinion and expression, freedom of assembly, freedom of association, freedom of religion and the right to privacy (CCPR/C/GC/35).

We would also like to refer your Excellency's Government to article 12 of the International Covenant on Economic Social and Cultural Rights (ICESCR), 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.

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 healthcare for prisoners, Rule 13 which states that "[a]ll accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation."

We would like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms.

Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the UN Declaration on Human Rights Defenders:

- article 6 point a), which provides for the right to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms;
- article 6 points b) and c), which provides for the right to freely publish, impart or disseminate information and knowledge on all human rights and fundamental freedoms, and to study, discuss and hold opinions on the observance of these rights;
- article 12, paragraphs 2 and 3, which provides that the State shall take all necessary measures to ensure the protection of everyone against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration.