

Mandate of the Special Rapporteur on the situation of human rights in Eritrea

REFERENCE:
UA EGY 11/2021

10 September 2021

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the situation of human rights in Eritrea pursuant to Human Rights Council resolution 47/2.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received regarding the situation of Mr. ██████████ ██████████ and Mr. ██████████ ██████████, two Eritrean nationals who would have fled Eritrea to avoid indefinite military conscription in the Eritrean national service. The two concerned individuals would be reportedly in detention at Al Qanater prison, and would be at imminent risk of deportation from the Arab Republic of Egypt to Eritrea, in violation of the non-refoulement principle. If deported to Eritrea, Mr. ██████████ ██████████ and Mr. ██████████ ██████████ risk facing the danger of torture, enforced disappearance, and arbitrary detention.

I have previously brought the situation of these two individuals to the attention of your Excellency's Government through a joint communication (reference: [AL EGY 9/2020](#)) and a follow-up letter dated 5 October 2020. I thank your Excellency's Government for the response received on 26 August 2020 to the initial joint allegation letter. Regrettably, I have not received any reply to our follow-up letter of 5 October 2020. I also requested a meeting with your Excellency to discuss this situation on 27 August 2021, which unfortunately has not taken place to date due to scheduling difficulties.

According to the information received:

Mr. ██████████ ██████████ and Mr. ██████████ ██████████ would be at imminent risk of *refoulement* to Eritrea. According to the allegations received, on 8 August 2021 Eritrean Embassy officials and Egyptian immigration authorities would have informed the two concerned individuals that they were to be returned to Eritrea. On 9 September 2021, the prison administration would have forcibly subjected them to a COVID-19 PCR test, and told them this was a requirement prior to their deportation within the next two days.

Further, I have also received information indicating that the two individuals have allegedly been subjected to acts of reprisal after information regarding their situation was submitted to the Special Procedures of the Human Rights Council. According to the information received, following the issuance of a Joint Allegation Letter addressed to the Government of the Arab Republic of Egypt on 23 July 2020, Mr. ██████████ ██████████ and Mr. ██████████ ██████████ would have been interrogated by prison authorities about the complaint made to my mandate, and forced to

sign documents stating they had not been mistreated in Al Qanater prison. Further, these documents would have been made available only in Arabic, which neither of the two individuals can read nor understand. After signing the documents, mistreatment would have escalated and prison officials would have allegedly beat them, forced them to sleep outdoors, locked them up in solitary confinement, and denied them access to food, including to food provided by charitable organisations supporting them.

While I do not wish to prejudge the accuracy of these allegations, I express my serious concern over the risk of a return to Eritrea, in potential violation of the non-refoulement principle. If returned, Mr. [REDACTED] and Mr. [REDACTED] are at high risk of being arrested, arbitrarily detained, and subjected to ill-treatment and torture.

Eritrea imposes severe restrictions on the right to leave one's country, including the requirement of exit visas. 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 such visas. If forcibly returned, Eritreans who departed without the necessary exit visa are considered by the Government as having left the country illegally, and are regarded as serious offenders as draft evaders or deserters. Upon arrival in Eritrea, returnees are arrested and detained in violation of fundamental rules of international law, namely the right to a fair trial and due process of law. My mandate has extensively documented the torture and inhuman and degrading treatment, and prolonged detention under extremely punitive conditions of deserters and draft evaders, including in my latest report to the Human Rights Council in May 2021 (A/HRC/47/21). Numerous human rights violations have also been documented in connection to Eritrea's military/national service programmes, including forced labour and practices analogous to slavery, torture, sexual violence, and inhumane conditions of service.

In light of the information received, I would like to draw the attention of your Excellency's Government to article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), ratified by Egypt on 25 June 1986, which provides that no State shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds to believe that he would be in danger of being subjected to torture. I would like to recall that non-refoulement under CAT must be assessed independently of refugee or asylum-seeker status determinations.

I would also like to refer to article 7 of the International Covenant on Civil and Political Rights and to paragraph 9 of the General Comment No. 20 of the Human Rights Committee, which states that State parties "must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of extradition, expulsion or refoulement."

I am also expressing my additional serious concern about what appears to be reprisals against the two concerned individuals, in apparent retribution for the submission of information regarding their situation to the Special Procedures of the

Human Rights Council. These reprisals would allegedly include acts of torture and inhuman or degrading treatment.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

In view of the irreversibility of the refoulement of the two concerned individuals to Eritrea, I urge your Excellency's Government to take all steps necessary to prevent their forced return, which, if carried out, would be inconsistent with standards of international human rights law. I call upon your Excellency's Government not to forcibly return the two prisoners, to ensure the proper assessment of their cases and the identification of any protection needs, and to undertake all necessary measures to protect the two concerned individuals from the risk of being subjected to human rights violations in Egypt and abroad.

As it is my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention, I would be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please provide information on the current legal status of Mr. [REDACTED] and Mr. [REDACTED] including regarding the legal grounds for holding them in custody since 2012 and 2014 respectively, and how these measures are compatible with international norms and standards as stated, inter alia, in the UDHR, the ICCPR and regional human rights treaties.
3. Please provide information on the measures taken to protect the life, and the physical and psychological integrity of Mr. [REDACTED] and Mr. [REDACTED] if returned to their home country.
4. Please provide information on whether the potential risks faced upon return to Eritrea have been assessed individually for each of the concerned Eritrean nationals.
5. Please provide information regarding how the proper identification of all potential protection needs and respect for international and human rights law – particularly with regard to the principle of non-refoulement – are taken into account when carrying out the repatriation of foreign nationals, including from Eritrea.
6. Following reception of this letter, please provide detailed information about the steps taken to investigate the allegations that the two concerned individuals have been subjected to ongoing reprisals by prison authorities accusing them of having complained about the alleged

violations committed against them to the United Nations special procedures.

7. In this connection, and if the allegations of reprisals are confirmed, please provide detailed information about the measures taken by the Government to protect these individuals against reprisals for the submission of their concerns to United Nations.

In view of the urgency of the matter, and while awaiting a reply, I respectfully urge your Excellency's Government to take all necessary interim measures 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 those responsible of the alleged violations.

In light of the allegations of reprisals for cooperation with the United Nations, its representatives and mechanisms in the field of human rights, I reserve the right to share this communication – and any response received from your Excellency's Government - with other UN bodies or representatives addressing intimidation and reprisals for cooperation with the UN in the field of human rights, in particular the 6 senior United Nations officials designated by the Secretary General to lead the efforts within the United Nations system to address this issue.

I may publicly express my concerns in the near future as, in my view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. I also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that I have been in contact with your Excellency's Government's to clarify the issue/s in question.

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.

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

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