

Mandates of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Working Group on Arbitrary Detention; the Special Rapporteur on the situation of human rights in Eritrea; 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 the human rights of migrants

Ref.: UA EGY 13/2021
(Please use this reference in your reply)

11 November 2021

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; Working Group on Arbitrary Detention; Special Rapporteur on the situation of human rights in Eritrea; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and Special Rapporteur on the human rights of migrants, pursuant to Human Rights Council resolutions 43/20, 42/22, 47/2, 42/16 and 43/6.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the alleged **arbitrary detention and deportation of 8 Eritrean asylum seeking migrants, including children, on 31 October 2021, despite the risk of persecution; and the imminent risk of collective expulsion of 10 others from Egypt to Eritrea in violation of the non-refoulement principle.**

According to the information received:

On 24 October 2019, a group of 18 Eritrean nationals, aged between 2 and 70 years old, entered Egypt through the southern borders with Sudan, without legal documents. They had fled Eritrea due to fear of being subjected to forced labour, indefinite forced conscription, and torture and other cruel, inhuman or degrading treatment linked to the indefinite national service.

Upon arrival, the group of asylum seeking migrants, who belong to the same family and sought international protection, were arrested in the City of Halayeb, for illegal entry on the Egyptian territory and were transferred to the Old Qusayr Police Station, in the Red Sea Governorate. Despite several attempts over the course of their two years of detention in Egypt, the 18 Eritreans were not allowed to submit asylum requests, and denied access to the United Nations High Commission for Refugees (UNHCR).

Since their arrest, they have been denied access to legal representation. Despite not having been charged with any criminal offences, or having been brought before a court, all of them, including nine children, were held in detention for over two years at the criminal detention facility of Old Qusayr in deplorable conditions, without access to adequate medical care, including children

suffering from underlying health conditions requiring regular attention and treatment.

The Egyptian immigration authorities have reportedly forced the group of asylum seeking migrants to sign deportation documents in August 2021, and cooperated with the Eritrean embassy in Cairo to issue them with travel documents, with a view to deport them back to Eritrea, where they may face persecution and the risk of being subjected to human rights violations, including arbitrary detention, forced labour and torture and inhuman or degrading treatment.

On 30 October 2021, eight of the asylum seeking migrants: (Mr. ██████████ (age 70); Mr. ██████████ (age 35); Ms. ██████████ (age 21); Mr. ██████████ (age 17); Ms. ██████████ (age 16); Ms. ██████████ (age 10); Mr. ██████████ (age 4), and Mr. ██████████ (age 3)), were transferred to Cairo to undertake PCR (COVID-19) tests, in preparation for their forcible deportation to Eritrea. The next day, they were deported without any individual assessment of their protection needs, and despite their expressed fear of persecution, torture and arbitrary detention, if returned.

According to the information received, the 8 asylum seeking migrants would have attempted to request asylum again at Cairo Airport, but would have been denied access to the asylum process by the security authorities. There are several persons with chronic diseases, in the group of 8 deported Eritreans, and security officers would have refused to allow them to take their medication with them. According to the allegations received, their relatives have had no news about the whereabouts of the eight deported Eritreans since their arrival in the country on 1 November, raising concerns about their potential incommunicado detention or enforced disappearance.

The 10 other Eritrean asylum seeking migrants (Ms. ██████████ (age 50); Mr. ██████████ (age 30); Ms. ██████████ (age 28); Mr. ██████████ (age 25); Ms. ██████████ (age 15); Ms. ██████████ (age 10); Ms. ██████████ (age 9); Ms. ██████████ (age 5); Mr. ██████████ (age 3); Mr. ██████████ (age 3) remain in detention, in the Old Qusayr Police Station, and are reportedly risking collective expulsion to Eritrea in the coming days. No individual assessment would have been carried out to identify potential risks of being subjected to human rights violations at their return to Eritrea.

While we do not wish to prejudge the accuracy of these allegations, we are deeply concerned about the deportation of the eight asylum seeking Eritrean migrants, including children, despite substantial grounds that they could be facing persecution, including torture or ill-treatment. This risk has been substantiated by the UN Commission of Inquiry on Human Rights in Eritrea, and the mandate of the Special Rapporteur on the situation of human rights in Eritrea, who have extensively

documented the treatment of returnees upon their arrival in Eritrea. Contrary to international standards, Eritrea requires citizens to obtain an “exit visa” in order to leave the country. As a result, individuals who have fled Eritrea and subsequently been forcefully repatriated are considered as having left the country unlawfully, and are regarded as serious offenders and “traitors.” Returnees are often arrested, questioned, and detained in extremely punitive conditions. Deported refugees have been subjected to torture during interrogation, incommunicado detention and enforced disappearance, while others were made to undertake forced labour.

In this regard, we would like to remind your Excellency’s Government of the absolute and non-derogable principle of non-refoulement, as stated in article 3 of the Convention against Torture (CAT), which provides that “[n]o State Party shall expel, return (“refouler”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture”; and that “[f]or the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights”. This absolute prohibition on refoulement is also more expansive than the protections afforded under refugee law insofar as it applies to any form of removal or transfer of persons, regardless of the status or grounds for seeking protection, and does not apply any exception, even if persons do not qualify for refugee or asylum status under article 33 of the 1951 Refugee Convention or domestic law. Heightened consideration must also be given to children in the context of return, whereby actions of the State must be taken in accordance with the best interests of the child and States must also consider the particular needs and vulnerabilities of each child, in particular girls, which may give rise to irreparable harm in the country of return.

Furthermore, in any event, involuntary returns cannot be lawfully carried out without due process of law. In this connection, under international law, the decision to expel, remove or deport a non-national may only be taken after an examination of each individual’s circumstances and in accordance with the law and when procedural guarantees have been respected. In this connection, individuals facing deportation/repatriation are to have access to a fair, individualized examination of their particular circumstances, and to an independent mechanism with the authority to appeal negative decisions. Moreover, a risk assessment in the event of extradition should also be carried out to determine whether there is a risk of violation in the receiving State. In this context, an analysis of the general human rights situation in that State must be taken into consideration. In the absence of such procedures, the forced returns carried out by Egyptian authorities may amount to arbitrary or collective expulsion, which are prohibited under international law. The Human Rights Committee stressed in paragraph 10 of General Comment No. 15 (1986) that article 13 of the International Covenant on Civil and Political Rights “would not be satisfied with laws or decisions providing for collective or mass expulsions”. The Committee on the Elimination of Racial Discrimination has also recommended States to “ensure that non-citizens are not subject to collective expulsion”.

We would also wish to express our grave concern regarding allegations of violations of the right to seek asylum. In this regard, we would like to refer to article 14 of the Universal Declaration of Human rights which provides that “everyone has the right to seek and to enjoy in other countries asylum from persecution”. Under international human rights law, Egypt has the obligation to assess the protection needs of asylum seekers arriving to its territory, as well as to ensure their effective access to asylum procedures and subsidiary international protection. Asylum seekers should have access to a full and fair hearing of their claims, with adequate legal representation, and should be able to appeal decisions before they are returned to their country of origin.

We urge your Excellency’s Government to undertake a thorough individual assessment, in full respect of their fundamental safeguards, of the risks the 10 remaining refugees could incur upon deportation to Eritrea, including the potential risk of ill-treatment and arbitrary detention.

We further draw the attention of your Excellency’s Government to paragraph 16 of the Resolution A/RES/65/205 of the UN General Assembly, which “...recognizes that diplomatic assurances, where used, do not release States from their obligations under international human rights, humanitarian and refugee law, in particular the principle of non-refoulement.”

We are also very disturbed about the continued arbitrary detention of Eritrean asylum seekers, and the refusal to grant them fundamental safeguards such as the right to be presented before judicial authority, the right to challenge the legality of their detention, the right to legal counsel and medical care. Nowhere in the world should an individual be subjected to a measure that may gravely undermine his or her integrity and health, such as torture, without the possibility to defend himself/herself before an independent and competent court of law upholding universally recognized fair trial standards. In this regard, we would like to recall the absolute obligation to refrain, prohibit and prevent any form of torture or ill-treatment with no exception or derogation, under the Convention against Torture, ratified by Egypt on 25 June 1986. We further recall the guarantees against arbitrary deprivation of liberty as codified in article 9 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Egypt on 14 January 1982. In this regard, we wish to emphasize that the enjoyment of the rights guaranteed by the ICCPR is not limited to citizens of State parties, but “should also be accessible to all persons, regardless of their nationality or stateless status, such as asylum-seekers, refugees, migrants and other persons, who may be in the territory or under the jurisdiction of the State party” (ICCPR/C/21/rev.1/Add.13 (2004), paragraph 10).

We would like to further remind your Excellency’s Government that the Convention relating to the Status of Refugees expressly prohibits the punishment of asylum seekers for having breached immigration rules in order to gain access to the protection of the territorial State. In addition, the Special Rapporteur on torture has concluded that “criminal or administrative detention based solely on migration status exceeds the legitimate interests of States in protecting their territory and regulating irregular migration, and should be regarded as arbitrary (A/HRC/39/45, annex, para.

10).” According to international human rights standards, detention for immigration purposes should be a measure of last resort, only permissible for the shortest period of time and when no less restrictive measure is available. If not justified as reasonable, necessary and proportional, the use of this measure may lead to arbitrary detention, prohibited by article 9 of the Universal Declaration of Human Rights and article 9.1 of the ICCPR. The commitment by Member States to use immigration detention only as a measure of last resort and work towards alternatives to detention was reaffirmed through the adoption of the Global Compact for Safe, Orderly and Regular Migration (objective 13, A/RES/73/195).

In any case, children should never be detained solely because of their irregular migration status or because they cannot be expelled. We also recall that all human rights norms and standards are applicable to migrant children, being of particular relevance the provisions established in the Convention on the Rights of the Child, ratified by Egypt on 6 July 1990. We would also like to refer Your Excellency’s Government to the report of the Special Rapporteur on the human rights of migrants on “Ending immigration detention of children and providing adequate care and reception for them” (A/75/183), where the Special Rapporteur provides a set of recommendations to Member States in this regard.

We also recall the principle 17 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, that “A detained person shall be entitled to have the assistance of legal counsel”; and Principle 24 that “A proper medical examination shall be offered to a detained person as promptly as possible after admission...and thereafter treatment shall be provided whenever necessary”.

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 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.

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 any comment you may have on the above-mentioned allegations.
2. Please explain the factual and legal grounds for the deprivation of liberty of the above-mentioned individuals, including children, and how this is compatible with the international human rights obligations of Egypt.
3. Please indicate what measures have been taken by your Excellency’s Government to protect the human rights of migrants at international borders, including ensuring their access to legal representatives and

relevant legal and procedural safeguards for persons in need of protection under international human rights and refugee laws.

4. Please provide detailed information on any measures taken, or foreseen, to immediately provide adequate medical care to the group of asylum seeking Eritrean, including specialised medical care to children suffering illnesses.
5. Please provide detailed information, where available, on risk assessment carried out by the Egyptian authorities, prior to the deportation of the eight Eritrean, to ascertain the risk they may incur, including being subjected to torture, ill-treatment, or arbitrary detention, if returned to Eritrea, and how this assessment is compatible with the principle of non-refoulement.
6. Please provide detailed information on the existing legal procedures in Egypt, ensuring the possibility for foreign nationals, including the ten Eritrean in detention, to challenge the decision to deport them and the safeguards applied in that regard.
7. Please provide detailed information on the legal status and conditions of detention of the Eritrean mentioned in this communication, who continue to be detained in Egypt, as well as any deportation measures that may be planned.
8. Please provide information on measures taken or to be taken by your Excellency's Government towards the complete termination of immigration detention of children.

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 responsible of the alleged violations.

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

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.

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 our highest consideration.

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

Miriam Estrada-Castillo
Vice-Chair of the Working Group on Arbitrary Detention

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

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