

Mandates of the Special Rapporteur on the situation of human rights defenders; the Independent Expert on human rights and international solidarity; the Special Rapporteur on the human rights of migrants and the Special Rapporteur on trafficking in persons, especially women and children

Ref.: AL ITA 1/2022
(Please use this reference in your reply)

19 May 2022

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders; Independent Expert on human rights and international solidarity; Special Rapporteur on the human rights of migrants and Special Rapporteur on trafficking in persons, especially women and children, pursuant to Human Rights Council resolutions 43/16, 44/11, 43/6 and 44/4.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **criminal prosecution of three human rights defenders for providing assistance to migrants and asylum seekers.**

Messrs. **Afewerki Gebremedhn, Abraha Ghebrehiwet and Hints Mebrahtom** are Eritrean men living in Italy, where they have been granted asylum.

Concerns in relation to the criminalization of human rights defenders working in support of the human rights of people on the move and the situation of migrants and asylum seekers in Italy and at its borders have been raised with your Excellency's Government by multiple Special Procedures mandate holders on several previous occasions (see, most recently, ITA 2/2021, ITA 1/2021, ITA 7/2020, ITA 5/2020 and ITA 6/2019). While we welcome your Excellency's Government's engagement on these issues through its responses to these communications, we remain concerned about the issue in light of the below-detailed allegations.

According to the information received:

On 14 March 2016, Messrs. Gebremedhn, Ghebrehiwet and Mebrahtom, along with three other Eritrean men, were arrested on suspicion of being members of an international people smuggling organisation. They were charged with criminal conspiracy to facilitate illegal immigration under article 416 of the Italian Criminal Code and article 12 of the Consolidated Immigration Act, 1998. The accusations against these men stemmed from acts of assistance towards other Eritreans, which they had performed between May 2014 and October 2015. These acts included giving advice on how to use public transport, helping the migrants and asylum seekers buy tickets for buses or trains, buying them clothes, food, phones and sim cards, as well as hosting recently arrived migrants and asylum seekers and helping them find places to stay. The three human rights defenders were assisting migrants who were newly arrived in Italy at the time and were seeking asylum. Two human rights defenders were also charged with having illegally transferred money, in relation to their use of the hawala system.

For these actions, the prosecutor requested sentences of between 12 and 14

years for each of the three men and fines of up to €300,000, along with their preventive detention on the basis of the seriousness of the charges. Subsequent to their arrest, the men were placed in preventive detention in Rebibbia prison in Rome, where they were held since March 2016 until 22 December 2017. The case was opened following an investigation involving the Italian Anti-Mafia Directorate in Rome and the Italian Coastguard into an alleged international organisation of people smugglers claimed by to be involved in organising the journeys of people from Eritrea to Europe, via Italy. Proposed evidence against the accused men was collected through surveillance conducted in the course of this investigation, including by means of wiretapping.

In the first instance, Messers. Gebremedhn, Ghebrehiwet and Mebrahtom, along with one of the other men on trial, were convicted by the Rome Criminal Court of the charge of aiding and abetting illegal immigration, under article 12, paragraphs 1 and 3 of the Consolidated Immigration Act, and sentenced to between 2 and 4 years imprisonment, along with fines of up to €125,000. The other two men involved in the case were acquitted. The decision was based on the Court's interpretation of the acts performed by the men as having been aimed at aiding the migrants and asylum seekers to cross Italy's borders into another State, an offence punishable under the Consolidated Immigration Act without a requisite profit motive. The Court dismissed the charge that the men had been involved in a criminal conspiracy due to the lack of evidence provided by the prosecution to prove the existence of a criminal organisation or any profit or gain the men may have derived from the material acts forming the substance of the case against them. The charges relating to the illicit transfer of money were also dismissed, with the Court deeming there to be no evidence to support them.

The decision in the first instance was appealed by the defence to the Court of Appeal of Rome, who ruled on the case on the 26 May 2021, reducing the sentence of the court of first instance while nonetheless upholding the interpretation of the defendants' conduct as "other acts" aimed at facilitating the entry of the people they helped into another State, as provided for in article 12, paragraphs 1 and 3, of the Consolidated Immigration Act.

This decision was appealed by the defence to the Court of Cassation, with a decision expected on the 20 May 2022.

As of the time of writing, Messers. Gebremedhn, Ghebrehiwet and Mebrahtom are at liberty. They have been assisted by a legal team throughout the proceedings against them.

Without wishing to prejudge the accuracy of the above-detailed allegations, we wish to underline our concern at the prosecution of Messers. Gebremedhn, Ghebrehiwet and Mebrahtom, whose pursuit by the State would appear to represent the criminalisation of acts of solidarity and assistance towards migrants and asylum seekers through the misapplication of elements of the national legal framework designed, in principle, to regulate migration and combat trafficking in persons. In addition, we would like to express our concern as to the extended period of pre-trial detention to which Messers. Gebremedhn, Ghebrehiwet and Mebrahtom were subjected. We express these concerns recalling that this is not the first occasion upon

which Special Procedures mandate holders have communicated with your Excellency's Government in connection with the charge of aiding and abetting illegal migration being pressed against human rights defenders following investigations carried out on the basis of approaches used to tackle organised crime and including the extensive use of surveillance powers (see ITA 1/2021 and ITA 5/2020). We fear that this investigatory approach has contributed to the conflation of humanitarian acts of solidarity aimed at defending, promoting and enabling the fulfilment of the human rights of migrants, including the right to seek asylum, with criminal activity. We further state our concern that the result of this approach has been to repress the legitimate work of human rights defenders and to deter individuals from engaging in acts of solidarity with migrants and asylum seekers.

In this regard, we wish to stress the crucial role played by human rights defenders undertaking humanitarian action aimed at preventing and alleviating suffering of migrants, including through the provision of shelter, food, medical care and transportation, and wish to underline the negative human rights impacts of efforts to deter the provision of such assistance. States must refrain from criminalizing or otherwise penalizing either the provision of support or assistance to migrants or the organizations or individuals who carry out such essential activities.

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 comment(s) which you may have on the above-mentioned allegations.
2. Please provide detailed information to clarify the legal and factual basis for the prosecution of Messers. Gebremedhn, Ghebrehiwet and Mebrahtom.
3. Please provide detailed information as to the legal basis for the pre-trial detention of Messers. Gebremedhn, Ghebrehiwet and Mebrahtom, along with information as to the assessments taken to evaluate the necessity of such detention and information concerning the reasons for its extended duration.
4. Please provide information on any measures to ensure that criminal justice laws are not misused to punish migration-related humanitarian acts or to harass human rights defenders or civil society organizations that work with migrants.

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.

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.

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

Mary Lawlor

Special Rapporteur on the situation of human rights defenders

Obiora C. Okafor

Independent Expert on human rights and international solidarity

Felipe González Morales

Special Rapporteur on the human rights of migrants

Siobhán Mullally

Special Rapporteur on trafficking in persons, especially women and children

Annex

Reference to international human rights law

In relation to the above-mentioned allegations, we would like to recall article 1 of the Universal Declaration of Human Rights (UDHR), which states that all human rights are born free in equal in dignity and in rights. We would also like to emphasise that the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), each ratified by Italy on 15 September 1978 and which further develop the rights agreed in the UDHR, affirm that the rights contained in these instruments apply without discrimination between citizens and non-citizens, and should be enjoyed by all people.

With this in mind, we would like to recall article 9 of the ICCPR, which establishes that everyone has the right to liberty and security of person, and that no one shall be subject to arbitrary arrest or detention. As highlighted by the Human Rights Committee in its General Comment No. 35¹, article 9, which in its third paragraph guarantees the right to trial within a reasonable time or release, applies specifically to persons in pre-trial detention. As stated by the Committee, persons charged with a criminal offence who are not released pending trial must be tried as quickly as possible, in consistency with their right to a defence.² Article 9.3 also makes it clear that the detention in custody of persons awaiting trial will be the exception, as opposed to the general rule,, and, as the Committee has outlined in the same General Comment, detention pending trial must be based on an individualized determination that it is reasonable and necessary taking into account all the circumstances of the case.³

We would also 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.

We would further like to bring to the attention of your Excellency' Government article 12 of the Declaration, and in particular paragraphs 2 and 3, which provide 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.

In the connection with this, we would like to refer to the report of the former Special Rapporteur on the situation of human rights defenders on defenders of the rights of people on the move, presented at the 37th session of the UN Human Rights Council in 2018.⁴ Therein, the former Special Rapporteur, addressing the root causes

¹ CCPR/C/GC/35

² Ibid., para 37

³ Ibid., para 38

⁴ A/HRC/37/51

of violations of the rights of those acting in solidarity with people on the move, highlighted the “mistreatment of these defenders is inseparable from the commodification of the people whose rights they champion, the shift in public discourse towards a securitized, rather than humanitarian, approach to people on the move, and the repressive utilization of citizenship and status to separate people on the move from the rights to which they are entitled.”⁵

In this connection, we would also like to draw the attention of your Excellency’s Government to the report of the Special Rapporteur on the human rights of migrants on the right to freedom of association of migrants and their defenders (A/HRC/44/42), in which the Special Rapporteur expressed concern on the troubling reports that migrant leaders of civil society organisations that work with migrants have been targeted for detention and deportation as a way of interfering with the work of their organisation and dissuading other migrants from organising. In his report, the Special Rapporteur also expressed concern over the misuse of laws that criminalize humanitarian acts, effectively censoring acts that embody the principles of humanity and civility. The Special Rapporteur urged States to ensure that criminal justice laws are not misused to punish migration-related humanitarian acts or to harass civil society organisations that work with migrants.

We would like to draw the attention of your Excellency’s Government to the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol), ratified by your Excellency’s Government in 2006, through which your Excellency’s Government is obliged to refrain from acts which would defeat or undermine the Protocol’s objectives and purposes, which include to prevent and combat trafficking in persons, to ensure assistance to victims, to provide effective remedies and to prosecute those responsible.

We would also like to highlight the report of the Special Rapporteur on trafficking in persons, especially women and children to the Human Rights Council in 2018, (A/HRC/38/45). In this context we would like to recall the Special Rapporteur’s recommendation in paragraph 71 calling States to ensure that organizations and individuals who assist people on the move are not criminalized or otherwise punished for doing so.

The Council of Europe Convention on Action against Trafficking in Human Beings, which your Excellency’s government ratified in 2010, sets important obligations aimed at improving the protection of victims of trafficking, and in particular we would like to refer to article 35 which imposes an obligation to cooperate with civil society to meet the objectives of the Convention and article 12(5) which relates to provision of assistance to victims, specifically ‘to co-operate with non-governmental organisations, other relevant organisations or other elements of civil society engaged in assistance to victims.’ We would also like to highlight Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims.

Finally, we would like to refer to the 8th General Report of the Group of Experts on Action Against Trafficking in Human Beings, in particular the thematic section on provision of assistance to victims of human trafficking which specifically

⁵ Ibid., para 26

highlights role of civil society.