

Mandates of the Special Rapporteur on the situation of human rights in Eritrea; the Working Group on Arbitrary Detention; the Working Group on Enforced or Involuntary Disappearances and the Special Rapporteur on the human rights of migrants

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7 July 2023

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the situation of human rights in Eritrea; Working Group on Arbitrary Detention; Working Group on Enforced or Involuntary Disappearances and Special Rapporteur on the human rights of migrants, pursuant to Human Rights Council resolutions 50/2, 51/8, 45/3 and 52/20.

In this connection, we would like to bring to the urgent attention of your Excellency's Government, information we have received regarding the alleged **arbitrary detention and collective expulsion of hundreds of Eritreans from Ethiopia, in violation of the non-refoulement principle, exposing them to the risk of being subjected to serious human rights violations, including torture, enforced disappearance and arbitrary detention.**

According to the information received:

On 23 June 2023, a group of approximately 400 Eritreans were allegedly forcibly returned from Ethiopia to Eritrea by the Ethiopian Immigration and Citizenship Service. They were transported by Ethiopian officials by bus to the city of Assab in Eritrea. The deportations were reportedly carried out without providing access to asylum procedures or conducting an adequate individual assessment of the risk that the returnees may be subjected to persecution or to human rights violations upon their return to Eritrea, in violation of the non-refoulement principle.

There is no official information about the fate or whereabouts of the deported persons after their arrival in Eritrea, and their relatives have been unable to contact them or obtain any information. Following the mass deportation, multiple cases of family separation have also been reported. The parents were deported to Eritrea and the children left behind in Ethiopia.

It is alleged that the group included both unregistered and registered asylum seekers. Further, we have received information indicating that since the onset of the COVID-19 pandemic, Eritreans arriving in Ethiopia have been denied access to asylum procedures and registration, and that the Ethiopian Refugees and Returnees Service (RRS) ceased registration of new asylum seekers. This made it impossible for Eritreans who entered the country after 2020 to seek and obtain asylum. The renewal of documentation and registration of births for registered asylum seekers and recognized refugees was also halted in 2020, and while these services resumed in November 2022, Eritreans have reported

difficulties in obtaining the required documentation.

Hundreds of Eritrean refugees, asylum seekers and migrants have been reportedly rounded up and detained over the past few months. Those arrested remained in detention at police stations for periods ranging from days to several months. In some cases, those detained were forcibly transferred to refugee camps, others were released after paying fines or after their status was clarified with the RRS, a large group of an estimated 400 individuals were deported to Eritrea, and finally dozens more remain in detention.

We have received information indicating that the mass round ups and arrests targeting Eritreans in Addis Ababa are ongoing, and that Eritreans currently detained in different police stations could be in the hundreds. They reportedly remain detained without charges and without access to legal representation or to a legal process to clarify their status. Among those in detention there are reportedly unregistered asylum seekers having no refugee status document, refugees who arrived in Addis Ababa from refugee camps without having urban refugee status, refugees who lost their identification documents while escaping the war in Tigray, and refugees with expired refugee status permits.

We take note of the statement of 24 June 2023 of the Ethiopian Human Rights Commission expressing concern about the forcible return of an estimated 200 Eritreans, including minors. We also note the response issued by the RRS on 25 June 2023, which stated that “none of the individuals who have been returned are refugees or asylum seekers,” but rather that they had been repatriated because they transgressed the immigration law. However, no information is provided by the RRS about any actions, procedures, or steps taken to provide returnees access to the asylum procedure, and to establish whether the individuals deported were at risk of persecution or of being subjected to human rights violations at their return to Eritrea, including torture, enforced disappearance or arbitrary detention.

While we do not wish to prejudge the accuracy of these allegations, we express our deep concern over the return of hundreds of individuals who could be at risk of being subjected to serious human rights violations to Eritrea, in potential violation of the non-refoulement principle.

We wish to emphasize that 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, have extensively documented the treatment of persons subjected to forced return upon their arrival in Eritrea. Contrary to international standards, Eritrea requires citizens to obtain an “exit visa” in order to leave the country. Eritreans are very rarely, if ever, released entirely from military/national service, and those who remain conscripted or members of the “Peoples’ Army” or “reserve army” are ineligible for such visas. As a result, individuals who are forcefully repatriated are by default considered to have left the country unlawfully and are regarded as serious offenders as draft evaders or deserters. Returnees are frequently arrested, questioned, and detained in extremely punitive conditions, in violation of fundamental rules of international law, including the right to a fair trial or due process of law. As

documented by various UN human rights bodies and mechanisms, deported Eritreans have been subjected to torture during interrogation, incommunicado detention and enforced disappearance, while others were made to serve in the military or undertake forced labour.

In light of the information received, we 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, ratified by Ethiopia on 14 March 1994, 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 or she would be in danger of being subjected to torture. The 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. We also 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." In addition, article 8 of the Declaration on the Protection of All Persons from Enforced Disappearance establishes that no State shall expel, return (refouler) or extradite a person to another State where there are substantial grounds to believe that they would be in danger of enforced disappearance.

Furthermore, involuntary returns cannot be lawfully carried out without due process of law. 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, in accordance with the law, and when procedural guarantees have been respected. In this connection, individuals facing deportation/repatriation should have access to a fair, individualized examination of their particular circumstances, access to legal representation, and to an independent review mechanism with the authority to appeal negative decisions. In the absence of such procedures, the forced returns carried out by the Ethiopian authorities may amount to arbitrary or collective expulsion, which are prohibited under international law.

Children must be afforded a special consideration in the context of returns: their best interests should be the paramount consideration. Where a return is deemed not to be in the best interests of the child, families should be kept together in the country of residence. The authorities should ensure that children are not separated from direct family members in the return process (A/HRC/38/41, para. 44).

We 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, Ethiopia 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.

We are also deeply disturbed by the allegations referring to the ongoing arbitrary detention of Eritrean migrants and asylum seekers. We would like to recall that, according to international human rights standards, detention for immigration related purposes should be a measure of last resort, only permissible for adults for the shortest period of time, when no less restrictive measure is available. We emphasize that the enjoyment of the rights guaranteed by the International Covenant on Civil and Political Rights (ICCPR), ratified by Ethiopia on 11 June 1993, 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.” We also wish to draw the attention of your Excellency’s Government to the Working Group on Arbitrary Detention’s Revised Deliberation no. 5, in which it emphasizes that any form of administrative detention or custody in the context of migration must not only be applied as an exceptional measure of last resort and for the shortest period but can also only be justified by a legitimate purpose, such as documenting entry and recording their claims or initial verification of identity if in doubt. The irregular entry and stay in a country by migrants should not be treated as a criminal offence, and the criminalization of irregular migration will therefore always exceed the legitimate interests of States in protecting their territories and regulating irregular migration flows. Further, any form of detention, including detention in the course of migration proceedings, must be ordered and approved by a judge or other judicial authority. Anyone detained in the course of migration proceedings must be brought promptly before a judicial authority, before which they should have access to automatic, regular periodic reviews of their detention to ensure that it remains necessary, proportional, lawful and non-arbitrary.

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 to Eritrea, we urge your Excellency’s Government to take all steps necessary to prevent further deportations of Eritreans that may amount to a violation of the prohibition of refoulement. We call upon your Excellency’s Government to review the situation of the Eritreans who remain in detention, and to ensure a thorough individual assessment of their cases and the identification of any protection needs, with all the necessary safeguards and in full respect of their fundamental rights and taking all necessary measures to prevent any irreparable damage to their life and personal integrity.

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 therefore 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 Eritrean migrants and asylum seekers currently in detention in Ethiopia, and how these are compatible with international

norms and standards as stated, inter alia, in the UDHR and the ICCPR and regional human rights treaties.

3. Please provide information regarding alternative and less restrictive measures to deprivation of liberty that can be provided to migrants and asylum seekers.
4. Please provide detailed information on the Eritrean migrants and asylum seekers who were deported to Eritrea on 23 June 2023. Please indicate how their individual circumstances and protection needs were considered prior to their deportation. 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 on the measures taken to protect the life, and the physical and psychological integrity of the individuals concerned after their deportation to their home country, and facilitate, through appropriate channels, their contacts with their family, counsel or other person of their choice.
6. Please indicate what measures have been taken by your Excellency's Government to protect the right of migrant and asylum-seeking children, in particular measures to prevent family separation and to ensure respect to the best interests of the child.

In view of the urgency of the matter, and while awaiting a reply, we 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.

Further, we would like to inform your Excellency's Government that after having transmitted the information contained in the present communication to the Government, the Working Group on Arbitrary Detention may also transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. The present communication in no way prejudices any opinion the Working Group may render. The Government is required to respond separately to the present communication and the regular procedure.

We may also 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 action. We also believe 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 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.

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