

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 promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Ref.: AL KEN 2/2024
(Please use this reference in your reply)

18 June 2024

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 promotion and protection of the right to freedom of opinion and expression and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 52/4, 51/8, 54/14, 52/9 and 52/7.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the alleged **abduction and subsequent enforced disappearance from Nairobi of human rights defender and Rwandan refugee Yusuf Ahmed Gasana, and his alleged extraordinary rendition to Rwanda** where he is believed to be currently detained.

Mr. **Gasana** is a member of the Rwandese Refugee Initiative United and of the Tushirikiane Africa (TUSA) community-based organisation. He has worked on the rights of refugees in Kenya, empowering them to seek legal recourse in cases where their rights have been violated, and organizing them in requiring the Kenyan government comply with its obligations under United Nations High Commissioner for Refugees' (UNHCR) Cessation of Refugees Status Declaration of 30 June 2013. He has advocated against the involuntary repatriation of Rwandan refugees who fled before 31 December 1998.

Mr. Gasana's case was transmitted to your Excellency's Government under the urgent procedure of the UN Working Group on Enforced or Involuntary Disappearances, regarding his abduction on 30 May 2023 from his home by persons believed to be State agents ([A/HRC/WGEID/131/1](#), paragraph 72).

Mr. Gasana's case is the second case of alleged abduction and enforced disappearance of a human rights defender from Nairobi in 2023 that has been addressed by Special Procedures mandate holders. The previous case concerned a South Sudanese human rights defender who was allegedly attacked in their home in Nairobi by five armed men and a woman wearing a Kenyan police officer uniform. They were allegedly taken to South Sudan and detained. This case was addressed to the Government of South Sudan in [UA SSD 1/2023](#), to which no reply has yet been received.

According to the information received:

On 30 May 2023, at around 7 p.m., Mr. Gasana was allegedly taken from his home in a gated community in Nairobi by unknown persons who entered the estate under the pretext of looking for a rental house. They did not steal or destroy any items in his house and Mr. Gasana was prevented from taking his mobile phone when they took him. It is believed that the alleged perpetrators were Kenyan State agents, acting *ultra vires*. It is further alleged that they acted in collusion with Rwandan agents.

Mr. Gasana's abduction was reported by his family to Kenyan police, the Directorate of Criminal Investigation (DCI), the Independent Police Oversight Authority (IPAO), the Ministry of Interior, the Ministry of Foreign Affairs, the Kenyan National Commission on Human Rights (KNCHR) and the UNHCR Branch Office for Kenya. The police did not respond, and the case was handed over to the DCI; the IPAO said that the person handling Mr. Gasana's case was on leave; the KNCHR reportedly did not follow up on the case. UNHCR Kenya referred the family to the Kenyan Department of Refugee Services (KDRS) and the Kenyan national police. The family wrote to both agencies, but no replies were received.

In late July 2023, the Rwanda Investigation Bureau allegedly made inquiries in Mr. Gasana's hometown in Rwanda, asking whether he had participated in the 1994 Rwanda genocide.

On 7 September 2023, the regional DCI said that their investigation into Mr. Gasana's abduction concluded that it did not appear to be financially motivated.

Between September 2023 and March 2024, a number of individuals contacted Mr. Gasana's wife and informed her that they had been held with him in an unofficial, clandestine detention facility in Rwanda. They said he was alive and was being held without official charges. They claimed that the facility was used to detain individuals while the authorities sought information to press charges against them.

Mr. Gasana may have been regarded with suspicion due to his claims that Rwanda was not a safe country for the repatriation of refugees, in reference to the declaration by UNHCR of 30 June 2013 on the cessation of refugee status of Rwandan refugees. As an advocate against involuntary repatriation, Mr. Gasana had refused to join Kenyan State-sanctioned associations of Rwandan nationals and refugees living in Kenya that promoted the safe return to Rwanda.

At the time of the present communication, the fate and whereabouts of Mr. Gasana remain unknown.

Without prejudging the accuracy of the above information or formulating a conclusion on the allegations, we express our concern at the alleged abduction and enforced disappearance of Mr. Gasana from his home in Kenya, allegedly carried out by State agents, acting *ultra vires*. We are also deeply concerned about his alleged transfer to Rwanda and his subsequent detention. Should his extraordinary rendition

be verified, it would amount to refoulement, forbidden under international human rights, refugee, and humanitarian law. We fear that Mr. Gasana's alleged abduction, enforced disappearance, rendition and detention may be related to his human rights work, promoting the rights of refugees in Kenya and advocating against involuntary repatriation of refugees.

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 information on the steps taken to investigate and prosecute those responsible for the abduction and subsequent enforced disappearance of Mr. Gasana, to search for him and establish his fate and whereabouts and to bring the perpetrators to justice. If no investigation, prosecution or search activities have taken place, please explain why.
3. Please indicate which measures have been taken to ensure that all human rights defenders in Kenya, including those working on the rights of refugees are able to carry out their legitimate work in a safe environment.

We would appreciate receiving a response within 60 days. Past this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). 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.

Further, we would like to inform 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 allegation letter 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 to clarify the issue/s in question.

Please be informed that a letter on this subject matter has been also sent to the Government of Rwanda.

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

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Ganna Yudkivska
Vice-Chair on Communications of the Working Group on Arbitrary Detention

Aua Baldé
Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

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

Alice Jill Edwards
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 make reference to the Declaration on the Protection of All Persons from Enforced Disappearances, which establishes that no State shall practice, permit or tolerate enforced disappearances (article 2) and that no circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify enforced disappearances (article 7).

The Declaration outlines the obligation of States in article 8 not to expel, return or extradite a person to another State where there are substantial ground to believe that they would be in danger of enforced disappearance. Furthermore, under the Declaration, States are obligated to investigate any acts constituting enforced disappearance (article 13) and that the victim promptly, thoroughly and impartially and his/her family shall have the right to adequate compensation, including the means for as complete a rehabilitation as possible (article 19). We are further drawing the attention of your Excellency's Government to the practice of States resorting to the deprivation of liberty of individuals and refusing to acknowledge it or to disclose the fate or whereabouts of the individual concerned, for whatever purpose or duration and in whatever context, constitutes an enforced disappearance, in violation of *jus cogens* norms of international human rights law (articles 2 and 7). We also make reference to the Working Groups study of enforced disappearances in the context of transnational transfers (A/HRC/48/57), in which it observes transfers embody a denial of justice insofar as individuals are deprived of liberty in the form of secret detention and are removed from the protection of the law and echoes its recommendation cautioning States against transnational transfers which disregard for the rule of law and legal safeguards.

In relation to the allegations indicating that the individual mentioned above was being targeted because of his activities defending human rights, 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 Freedom, 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 states 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 freedoms.

We would also like to make specific reference to article 12(2) of the Declaration, which states that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliations, 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.

The principle of non-refoulement is codified in article 3 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment,

which Kenya ratified on 21 February 1997. It 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, ill-treatment, or other irreparable harm. The prohibition of refoulement under international human rights law is also more expansive than the protections offered under refugee law insofar as it applies to any form of removal or transfer of persons regardless of their status or grounds for seeking protection and is characterised by its absolute nature without any exception.

We further wish to draw the attention of your Excellency’s Government to article 9 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Kenya on 1 May 1972, which provides that no one shall be subjected to arbitrary arrest or detention or deprived of their liberty except on such grounds and in accordance with such procedure as are established by law. As stated in the jurisprudence of the Working Group on Arbitrary Detention, enforced disappearances constitute a particularly aggravated form of arbitrary detention. We further wish to remind the Government of Your Excellency that according to the jurisprudence of the Working Group on Arbitrary Detention and general comment No. 35, arrest or detention of an individual as punishment for the legitimate exercise of the rights guaranteed by the ICCPR, including freedom of opinion and expression, is arbitrary.

Further, the Working Group on Arbitrary Detention has reiterated that a deprivation of liberty is arbitrary when it constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings. In this respect, the Working Group on Arbitrary Detention has concluded that being a human rights defender is a protected status under article 26 of the ICCPR.