

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

Ref.: UA RWA 2/2024
(Please use this reference in your reply)

18 June 2024

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the situation of human rights defenders; Working Group on Arbitrary Detention; Working Group on Enforced or Involuntary Disappearances and Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, pursuant to Human Rights Council resolutions 52/4, 51/8, 54/14 and 52/9.

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.

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 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 Investigative Bureau made inquiries in his 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 might have been treated 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 serious concern at the alleged abduction of Mr. Gasana from his home in Kenya, his extraordinary rendition to Rwanda, his enforced disappearance, and his alleged detention without charge in an unknown facility.

In this regard, we would urge your Excellency's Government to urgently provide information as to the fate and whereabouts of Mr. Gasana, and assurances as to his safety.

We wish to recall that, under international law, a deprivation of liberty (including in the form of incommunicado detention), followed by the failure or refusal to acknowledge a deprivation of liberty by State agents or the concealment of the fate or whereabouts of the person, are constitutive elements of an enforced disappearance. As stated in the jurisprudence of the Working Group on Arbitrary Detention, enforced disappearances constitute a particularly aggravated form of arbitrary detention.

Pursuant to article 7 of the Declaration on the Protection of All Persons from Enforced Disappearance, 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 disappearance. Article 13 of the Declaration sets forth the State's obligation to investigate promptly, thoroughly and impartially any complaints of enforced disappearance. Article 19 of the Declaration requires that victims of acts of enforced disappearance and their family obtain redress and integral reparation for the harm suffered. The Declaration also proclaims that each State shall take effective

legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance in any territory under its jurisdiction.

Pursuant to the 2019 Guiding Principles for the Search for Disappeared Persons, States are under an obligation to search for the disappeared. In particular, the search for a disappeared person should begin without delay (principle 6) and is an obligation of continuing nature (principle 7). With regard to the alleged enforced disappearance, if confirmed, it would amount to violations of articles 6, 7, 9 and 16 read alone and in conjunction with article 2(3) of the International Covenant on Civil and Political Rights (ICCPR), acceded to by Rwanda on 16 April 1975.

We also recall the absolute and non-derogable prohibition of torture established in article 7 of the ICCPR, also with regard to the relatives of the disappeared person. Article 10 (1) furthermore guarantees that all persons deprived of their liberty shall be treated with humanity and respect. We would also like to draw the attention of your Excellency's Government to its international obligations as per the Convention against Torture and other Cruel, Inhuman or Degrading Treatment and Punishment, acceded to by Rwanda on 15 Dec 2008.

Article 9 of the ICCPR guarantees the right of all persons to liberty and security of person and outlines that "No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law" (art. 9, para. 1).

Article 19 of the ICCPR guarantees the right to freedom of opinion and expression. It provides the right of all persons to freedom of opinion and expression, encompassing the freedom to seek, receive and impart information and ideas of all kinds. As interpreted by the Human Rights Committee in general comment No. 34 (CCPR/C/GC/34), such information and ideas include, inter alia, political discourse, commentary on one's own and on public affairs, cultural and artistic expression, and discussion of human rights (paragraph 11). We wish to emphasize 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.

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 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 person in compliance with international instruments.

1. Please provide information on the fate and whereabouts of Mr. Gasana. If his fate and whereabouts are unknown, please provide details of any investigation into his enforced disappearance or other queries which may have been carried out to search for him in compliance with the Guiding Principles for the Search for Disappeared Persons. If no investigations or search activities have been carried out, please explain why.
2. In case Mr. Gasana is at present deprived of his liberty in your Excellency's Government country, please provide detailed information on the reasons for his detention and whether any charges have been pressed against him. Kindly inform also on his current state of health and on which measures have been taken to ensure that he can communicate with, and be visited by, his family, counsel and any other person of his choice.
3. Please provide information concerning the alleged extraordinary rendition of Mr. Gasana to Rwanda, and, if proven to be true, how you are ensuring that his human rights are protected.
4. In the event that alleged perpetrators of Mr. Gasana's enforced disappearance are identified, please provide the full details of any prosecutions which have been undertaken and whether any penal, disciplinary or administrative sanctions have been imposed on the alleged perpetrators.

While awaiting a reply, we urge that all necessary interim measures be taken to prevent any irreparable harm to the life and personal integrity of Mr. Gasana, 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 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 [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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 this 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 issues in question.

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

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

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

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