

*(Please note that this is not an official translation)*

Prosecution Authority  
National unit for international and organised crime  
Prosecutor Karolina Wieslander  
12 January 2021

No AM-156654-20  
Handling officer 860-S22

Annex to decision

### *Complaint*

(General description of our complaint. Our names and those of the suspects are probably what is hidden behind the black bars.)

XXXXX and XX have on 28 October filed a complaint with the National unit for international and organised crimes against XXXXXXXXXXXXXXXXXXXXXXXX  
The complaint is about Crimes against humanity, enforced disappearance and torture against the injured party Dawit Isaak.

XXX and XXX and other persons have filed a similar complaint against partially the same persons about the same suspected crimes against Dawit Isaak. That complaint reached the the International Prosecution Office in Stockholm 30 June 2014 and a decision to the effect that no investigation should be opened was communicated 11 July 2014. The case was reviewed without change by the Director of Public Prosecution at the Prosecution Development Centre, whose decision in turn was reviewed without change by the Prosecutor-General 25 March 2015. Finally, the Prosecutor-General reviewed his earlier decision 14 September 2016 and found no reason to change it. In summary, no investigation was opened due to the complaint of 30 June 2014.

### *When should an investigation be opened (När bör en förundersökning inledas)*

According to Chapt 23 Art 1 of the Code of Judicial Procedure an investigation shall be commenced as soon as there is reason to believe a crime falling under public prosecution has been committed [*Note: correct translation – ‘falling under public prosecution’? Such cases are to be handled by a public prosecutor and not brought by any private individuals, nor does a victim have to press charges*]

If it is obvious that a crime cannot be investigated, there is no need to open an investigation. This exception from the so-called duty to investigate and charge follows from the fact that there are situations in which there is practically no possibility to investigate or to take legal proceedings. This may, e.g. be the case when a crime is committed abroad and neither evidence or the suspect are available in Sweden and not believed to be possible to reach for Swedish officials through for example legal assistance or extradition (se proposition 1994/95:23 p 95f)

When the suspicion relates to crimes committed abroad by other than Swedish citizens, like in this case, a charge needs to be given permission by the Swedish Government. The chances of getting such a permission may in certain cases be taken into account already when deciding whether to open an investigation. Furthermore, it is required that a Swedish Court has jurisdiction over the suspected crime and that its jurisdiction is not limited by laws in international law regulating immunity.

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In conclusion, for an investigation to be opened there is to be a reasonable possibility to investigate and try a suspected crime in Sweden.

*The reasons for the decision in this case (Skälen för beslutet i detta fall)*

In this case there is information to support that Dawit Isaak has been deprived of his liberty since September 2001 without having been tried in court and in general totally deprived of contact with the world outside. No further information about his detention has been given by Eritrean authorities. It can be concluded that his detention is a result of opinions he has uttered which, in a democratic state, would be included in everyone's freedom of expression and that persons in the political leadership in Eritrea are party to that the detention is being continued. Finally, there is information to suggest that the detention of Dawit Isaak is part of systematic violations of a similar character of which also other persons have fallen victim for having used their freedom of expression. Thus, there is reason to believe that Dawit Isaak is subjected to, at least, crimes against humanity in the form of enforced disappearance following Art. 2 sec. 9 of the Law (2014:406) against genocide, crimes against humanity and war crimes from 1 July 2014, when the law took effect.

This crime falls under universal jurisdiction and can therefore be tried by a Swedish court according to Chapter 2, Art 3 of the Criminal code, though some of the suspects in the complaint can be expected to enjoy immunity.

As to the possibility for Swedish investigators to conduct an investigation into the suspected crime it must be taken into account that the suspected crime has been committed and still is being committed in Eritrea and that the suspected persons belong to the political leadership there. Even though it cannot be ruled out that some evidence may be found outside of Eritrea an investigation would require investigative measures taken on there and by permission of the authorities there. Given the political situation in Eritrea and the character of the suspected crime the prospect of acquiring that are very limited. My conclusion is therefore that the possibilities to investigate the suspected crime are very small in practice.

In addition, eventual charges can be made only after obtaining a permission from Government. As said, the chances of obtaining such a permission should in certain cases be considered. During such a process it may be taken into account if an investigation can be thought to affect Sweden's relations to the country in question negatively. In connection with the decisions by the Prosecutor-General on the question of opening an investigation in essentially the same case in 2015 and 2016, the conclusion after consulting with the Ministry for Foreign Affairs was that an investigation would risk diminishing the chances for Dawit Isaak's release, which according to the Prosecutor-General was of bigger interest than that of starting an investigation. No new information gives the basis to come to another conclusion than the Prosecutor-General did.

Altogether I find that it is obvious that the suspected crimes in the complaint cannot be investigated and bring to court. An investigation shall therefore not be opened.

Karolina Wieslander