**Questions and Answers on the commission of inquiry on human rights in eritrea**

*Prepared for the oral update to the Human Rights Council (16 March 2015)*

1. ***About the mandate and the methods of work of the Commission***

**What is the added value of the Commission of Inquiry on Human Rights in Eritrea (COIE) compared to previous investigations on human rights violations in Eritrea?**

Reporting on the human rights situation in Eritrea has been limited, largely due to the restriction of access imposed on international organisations and researchers working in the field of human rights – and the severely constrained parameters within which independent in-country organisations function, thus impacting on their very existence and ability to research.

As requested by [Human Rights Council (HRC) resolution 26/24](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/26/24), the investigation of the COIE builds on previous work which the Special Rapporteur on situation of human rights in Eritrea has done. The Commission, however, has more resources than the Special Rapporteur to investigate human rights violations allegedly committed since the independence of the country. Up to the [oral update](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15699&LangID=E) of March 2015, the Commission had collected testimonies from more than 500 Eritreans in the Diaspora and refugees, many of whom left recently.

The objective of the report, which the COIE will submit to the HRC at its 29th session in June 2015, is three-fold: It will (1) provide a comprehensive account of violations committed by the Eritrean State since its independence and thus serve as a historical record for future accountability; (2) inform about the current human rights situation, taking into account recent developments; and (3) spell out recommendations to Eritrea and the international community aimed at respecting, protecting and fulfilling the human rights of all Eritreans in their home country.

**What is the standard of proof that the COIE has adopted to conduct its investigations? How does the Commission verify the information it receives?**

Consistent with the practice of other United Nations fact-finding bodies, especially those that were not granted access to the territory where the alleged violations have occurred, the COIE bases its finding on a “reasonable grounds to believe” standard of proof. The Commission considers that it has reached “reasonable grounds to believe” when it has corroborated information which allows it to conclude that it is reasonable to think that the event has occurred as reported by the victims and witnesses. In case the “reasonable grounds to believe” standard of proof has not been reached, in its final report the Commission will explicitly refer to “allegations” of human rights violations.

**How does the COIE ensure the protection of the victims and witnesses interviewed by the COIE, or having cooperated with it?**

Witnesses and victims’ protection is a central concern for the COIE. The Commission has adopted procedures and methods of work aimed at protecting such persons, as well as the information they have chosen to share with it, during all stages of its work and beyond the release of its report in June 2015.

However, the ability of the COIE to physically protect concerned persons is limited. The Commission counts on the Governments of the countries it visits to respect their primary responsibility to protect all individuals present on their territories, whatever their status may be, including the victims and witnesses it interviews. The Commission systematically seeks guarantees from the concerned States that individuals wishing to meet it shall have unhindered access to the Commission, and that none of them shall, as a result of such a meeting, suffer any harassment, threat, act of intimidation, ill-treatment or reprisal, or face any criminal prosecution or other judicial proceedings.

The Commission also systematically seeks the victims and witnesses’ explicit and informed consent regarding the use of information contained in their testimonies. The Commission will not share the information or the identity of the victims and witnesses interviewed with any State, entity or individual without their explicit and informed consent.

**Does the COIE investigate and report on what happens to Eritreans who are fleeing the country once they are outside Eritrean territory, especially in the Sinai desert?**

According to resolution 26/24, the mandate of the COIE is limited to violations that originated in Eritrea or that are imputable to Eritrean authorities. Therefore, the Commission has not included in its investigation violations committed against Eritreans by others than Eritrean authorities and that took place after they have crossed the border. Yet, in many interviews the Commission has heard accounts of serious human rights abuses occurring in the context of human trafficking, notably in the Sinai but also in other regions. These include abduction, extortion of abductees’ families to obtain the release of family members, ill-treatment of abductees amounting in many cases to torture and sexual and gender-based violence. In our view, these serious abuses, which fall outside of the Commission’s mandate, require close scrutiny by the governments’ concerned and the wider international community.

**Is the COIE investigating crimes against humanity?**

Differently from some other Commissions of Inquiry that were requested by the HRC to investigate the human rights violations and related crimes in a specific country or territory,[[1]](#footnote-2) the COIE was only mandated “to investigate human rights violations in Eritrea”. The Commission does therefore not think that its mandate includes the investigation of international crimes, i.e. crimes against humanity, war crimes and the crime of genocide as defined in the Rome Statute. This is without prejudice to the possible existence of international crimes, and in particular crimes against humanity, in Eritrea. It also does not preclude the possibility for the Commission to recommend further investigations, should it by the end of its own investigation have collected enough information pointing to the possibility of such international crimes having occurred.

**What does the COIE respond to claims that it is a tool created by States unfriendly to Eritrea?**

HRC resolution 26/24, establishing the COIE’s mandate, has been adopted in June 2014 without a vote by the members of the Council, which include many Member States with a diplomatic presence in Asmara. Resolution 26/24 builds on two previous HRC resolutions (20/20 and 23/21) as it reiterates the concern of the Council “at the ongoing reports of grave violations of human rights by the Eritrean authorities against their own population and fellow citizens.” It would therefore seem a misconception to purport that only a few States unfriendly to Eritrea created the Commission. On the contrary, the establishment of the COIE is the response of the international community, as embodied by the HRC, to Eritrea’s non-cooperation with the Special Rapporteur on human rights in Eritrea as well as with other human rights monitoring mechanisms, such as thematic Special Rapporteurs.

1. ***About the cooperation of Eritrea and other countries with the Commission:***

**Does the lack of access to Eritrea affect the work of the Commission?**

Paragraph 9 of HRC resolution 26/24 calls upon the Government of Eritrea to cooperate fully with the Commission “to permit [it] and [its] staff members’ unrestricted access to visit the country (…) and to provide them with the information necessary for the fulfilment of [its] mandate.”

From the beginning of its work, the COIE has sought the cooperation of the State of Eritrea. Through official letters to the President and the Minister of Foreign Affairs, as well as through approaches to various Eritrean representatives in countries visited, the Commission sought permission to visit the country and asked for clarification of certain policies relevant to its investigation. Up to March 2015, the Commission has not received any answer to any of these requests.

The lack of access to Eritrea has not affected the implementation of the mandate of the COIE. The Commission has been able to collect a high number of first-hand testimonies among diaspora and refugee communities. It has been able to corroborate most of the information provided. Yet, having access to Eritrea would have allowed the COIE to interview Eritreans inside the country and to visit the sites of alleged human rights violations. More importantly, having access to Eritrea would have been an opportunity for the Commission to engage in a constructive dialogue with the Government and to get acquainted with the Government’s perspective. The COIE hopes that the Government will reconsider its position vis-à-vis country mandates and open its doors for a frank and in-depth dialogue, which will comprise access to places where human rights violations have reportedly been committed, including places of detention.

**Why did the Commission visit Ethiopia and Djibouti but no other neighbouring countries with large numbers of Eritreans?**

The COIE is aware of the bilateral sensitivity in the relationship between Eritrea and Ethiopia and Djibouti respectively. It decided to visit Ethiopia and Djibouti for the same reasons that it has decided to visit Italy, Switzerland and the United Kingdom. The COIE chose these countries among those who had accepted its request on the basis of: (1) the number of Eritrean population they host; (2) the dates of arrival of Eritreans so that the whole period under investigation (from independence to present day) would be covered; and (3) in line with its programme of work and resources.

The COIE would like to visit other neighbouring countries, including the Sudan, where there are considerable numbers of Eritrean refugees. Nevertheless so far (March 2015) the Governments of these countries have not responded to the COIE’s request to visit them. If positive replies are received before the end of its period of investigation, the COIE will consider them on the basis of the criteria it has applied to all its other visits.

**How many countries responded positively to the request of the COIE to visit them? How many of them did the Commission visit?**

HRC resolution 26/24 (paragraphs 9 and 10) requests States to cooperate with the COIE. At the beginning of its work, in November 2014, the COIE sent requests to visit 25 countries, namely: Algeria, Australia, Chad, Egypt, Ethiopia, Eritrea, Djibouti, Malta, Tunisia, Germany, Israel, Italy, Kenya, Kuwait, Morocco, Qatar, Saudi Arabia, South Africa, Sudan, Switzerland, Uganda, United Arab Emirates, the United Kingdom, the United States of America, and Yemen.

Australia, Chad, Djibouti, Ethiopia, Italy, Malta, Sweden, Switzerland, the United Kingdom and the United States of America have accepted the request.

By the end of March 2015, the COIE will have visited eight countries: Switzerland and Italy in December 2014, the United Kingdom in January 2015, Djibouti and Ethiopia in February 2015 and Sweden, Germany and the USA in March 2015.

1. ***Emerging findings***

**How can the COIE draw conclusions, as it did in its oral update to the HRC on 16 March 2015, while it has not concluded its investigations and finalised its report?**

In its oral update to the HRC, the COIE highlighted that its findings were “emerging findings” and not definitive conclusions. So far, the COIE has collected testimonies from more than 500 members of the Eritrean diaspora and refugee communities. After cross-checking and corroborating most of the information contained in these testimonies, the COIE is able to confirm patterns identified in the reports of the Special Rapporteur as well as recent developments. However, the Commission will continue analysing, cross-checking, and corroborating the information it has already collected until the finalisation of its report, which is to be presented at the 29th session of the HRC in June 2015.

**How would the COIE summarise its findings to date (March 2015)?**

Paragraph 8 of HRC resolution 26/24 requests the COIE to “investigate all alleged violations of human rights in Eritrea, as outlined in the reports of the Special Rapporteur.” The Commission has collected more than 500 testimonies, leaving victims and witnesses the opportunity to give it a full account of the violations they have endured. After cross-checking and analysing the information collected through these testimonies, the Commission can say that so far four main patterns of violations can be identified: (1) the curtailing of public freedoms; (2) indefinite National Service constituting a breeding ground for human rights violations; (3) widespread arbitrary arrests and detention; and (4) widespread ill-treatment and torture in the military and in detention.

**What is the COIE’s view about the use by the Eritrean Government of the so-called “no war no peace” situation as a justification to restrict human rights and public freedoms?**

The State of Eritrea has ratified six international human rights conventions and two optional protocols.[[2]](#footnote-3) Possible derogations and restrictions to human rights in exceptional situations are strictly regulated by these human rights treaties (as well as by international customary law) and cannot be justified simply by invoking a situation of “no war, no peace”. In particular, Article 4 of the International Covenant on Civil and Political Rights stipulates that some of the human rights guaranteed by the Covenant are “non-derogable” and should be respected at all times. They include – even in times of public emergency: the right to life; the prohibition of torture or cruel, inhuman or degrading punishment; the prohibition of slavery (forced labour); the right to be recognized as a person before the law, and the freedom of thought, conscience and religion. Yet, based on its findings so far, the Commission can assert that all these rights and freedoms are being violated in Eritrea and this since the independence of the country.

In addition, while restrictions and derogations to some other rights and freedoms are possible under international human rights law, they should only happen under specific circumstances, be provided by the law and be limited in time and scope, which is not the case in Eritrea.

**Has the COIE been able to interview former prisoners of war who were detained in Eritrea? Has it received additional information on those who are still unaccounted for?**

The COIE has been able to interview two Djiboutian soldiers who had been detained for three and a half years in a military camp in Afabet, before escaping. They were detained with five other Djiboutians and at one point with Ethiopian prisoners of war. The account they gave of the conditions of their detention is not different from those of many Eritreans interviewed by the Commission. Notably, it shows the prevalence of ill-treatments, lack of hygiene, lack and poor quality of food, and lack of health care.

At this stage, the Commission has unfortunately not received testimonies about the possible whereabouts of other missing prisoners of war.

**What does the COIE think about recent announcement by the Eritrean Government that it will bring back National Service to 18 months for new recruits?**

The COIE regrets that it has not received any reply to the letter that its Chairperson sent on 19 December 2014 to the Minister of Foreign Affairs of Eritrea to ask information about the decision of the Government of Eritrea to limit the duration of the National Service of future conscripts to 18 months, as initially stipulated by the Eritrean legislation.[[3]](#footnote-4) The Commission has sought information about any official declaration issued to inform people in Eritrea on this, but has so far been unable to find any.

Limiting the National Service to 18 months would be a welcome development as it would decrease the period of time during which conscripts would be exposed to possible violations of their rights and would allow Eritrean youth a life outside national service. Nevertheless, *per se* it will not have a fully satisfactory impact as long as the conditions of service are not improved and a system of accountability put in place to punish the perpetrators of human rights violations.

Since National Service became indefinite in 2002, it has constituted a breeding ground for human rights violations in Eritrea. It is likely to continue to be at the heart of many human rights violations in Eritrea as long as commanders and officers keep on enjoying total impunity for the abuses they commit on recruits, including punishments amounting sometimes to torture, arbitrary detention, and sexual and gender-based violence. The conditions during military training, which according to the testimonies collected by the Commission are gruelling, must be assessed and improved accordingly. Practices of forced labour identified by ILO, which consist in exacting services that are not for purely military ends, should cease as well.[[4]](#footnote-5)

If indeed the Government is committed to addressing the indefinite nature of the National Service, the Commission hopes it will allow international human rights mechanisms to support and monitor such reforms. Additionally, the issue of the thousands of Eritreans currently in National Service and who have already served lengthy periods of time also needs to be addressed as a matter of priority by the Eritrean Government.

**Does the COIE have any information about President Afwerki’s recent announcement that a new Constitution is being drafted?**

The COIE does not have any information about this. The first mention the Commission was aware of that a new Constitution would be drafted was made by the Eritrean representative during the second UPR review in February 2014. This was confirmed during an interview given by His Excellency President Afwerki for New Year Eve 2014 and by the delegations that participated in the review of Eritrea before CEDAW and at the 28th session of the HRC. The composition of this committee has however not been officially communicated, and neither has the status of its work. The COIE is concerned at this lack of transparency.

Moreover, it is worth recalling that, after a long consultative process, a constituent assembly had adopted a Constitution in May 1997. This constitution, which provided for the creation of a secular state based on social justice, democratic principles, equality between men and women as well as all ethnic and religious groups, human rights and public freedoms, has never been implemented. Should there be a new Constitution, the Commission hopes that it will ensure the same guarantees contained in the 1997 Constitution, it will be drafted in a transparent and participatory way and will be fully implemented. While the re-drafting takes place, the COIE urges the Government of Eritrea to implement the 1997 Constitution, to give constitutional protection to citizens.

**What are the views of the COIE on the recent steps taken by the Eritrean Government in the area of human rights and on the role of the international community in this?**

The COIE acknowledges the efforts made by the government of Eritrea to fulfil its commitment to reach several of the Millennium Development Goals, in particular those related to the improvement of child and maternal health and contagious diseases. The COIE also welcomes the efforts recently made by the State of Eritrea to engage with human rights mechanisms, notably for the second Universal Periodic Review (UPR) of the country and its recent review by the CEDAW. The Commission hopes that this is the sign of a genuine willingness of the Eritrean Government to improve the human rights situation in the country and that it will be soon followed by real change on the ground. The Commission also takes note of attempts by various stakeholders within the international community to establish dialogue with the Eritrean Government. The Commission has itself made and will continue to make efforts to engage with the Eritrean authorities. Nevertheless, as highlighted in its oral update to the HRC, the COIE underlines the centrality of human rights for dialogue and cooperation with the Eritrean Government.

**OHCHR visited Eritrea for the second time in February 2015. How does the COIE see the cooperation between the Commission and OHCHR?**

The COIE is an independent body. It receives support from OHCHR but it operates independently from OHCHR. The Commission welcomes this second visit if it is to lead to a genuine and effective cooperation between OHCHR and the Government of Eritrea, based on comprehensive assessment of the human rights situation in the country. The Commission would like to recall, as it did in its oral update to the HRC on 16 March 2015, that any effort to improve the human rights situation in Eritrea cannot be done without an overall and honest assessment of it. The COIE understands its work as a unique opportunity to conduct such an assessment and will publish its findings in June 2015.

1. ***About the coming months***

**What activities does the COIE expect to conduct until the end of your mandate? Following the example of the Commission of inquiry on human rights in the DPRK, does it intend to organise public hearings of victims and witnesses?**

The COIE will continue collecting information by visiting Sweden, Germany and the United States in March. Unless further acceptances of visit requests are received, the COIE will then focus on the drafting of its report, to be presented to the HRC in June 2015.

The COIE has considered organising one or more public hearings based on the example of previous commissions. However, it has found that security concerns for public speakers override the possible benefits of such hearings, and the COIE is from this point of view more comfortable with seeking information in confidential settings. There are indeed few Eritreans who are willing to speak publicly without fearing retaliation for family members still in Eritrea. The investigation of the COIE points to such concerns being justified. The COIE is considering alternative ways to bring information on the situation of human rights in Eritrea into the public.

**What will happen once the mandate of the Commission has expired?**

Close scrutiny of the human rights situation in Eritrea by the international community will be crucial beyond the release of the report of the COIE and its presentation to the HRC in June 2015. The Commission considers it essential for improving the human rights situation in Eritrea that there be continuing monitoring of on-going developments, as well as of the implementation of the recommendations of the Commission. In its report, the Commission will include its recommendations on how such follow up could be conducted.

1. Sri Lanka, DPRK, Syria and Gaza [↑](#footnote-ref-2)
2. ICCPR, ICESCR, CEDAW, CERD, CRC, CRC OP-AC, CRC OP-SC, and CAT [↑](#footnote-ref-3)
3. Proclamation 82/1995 [↑](#footnote-ref-4)
4. Direct Request (Committee of Experts on the Application of Conventions and Recommendations) - adopted 2010, published 100th ILC session (2011) - Forced Labour Convention, 1930 (No. 29) - Eritrea (Ratification: 2000) [↑](#footnote-ref-5)