

VII. Conclusions and recommendations

A. Conclusions

1507. The Commission finds that systematic, widespread and gross human rights violations have been and are being committed by the Government of Eritrea and that there is no accountability for them. The enjoyment of rights and freedoms are severely curtailed in an overall context of a total lack of rule of law. The Commission also finds that the violations in the areas of extrajudicial executions, torture (including sexual torture), national service and forced labour may constitute crimes against humanity. The Commission emphasizes that its present findings should not be interpreted as a conclusion that international crimes have not been committed in other areas.

1508. Following up on practices developed during the liberation struggle, the PFDJ, the ruling and only party in Eritrea, has held on to power by progressively dismantling or refraining from implementing reforms aimed at establishing democracy and rule of law in the country. Through the establishment of control systems and the application of harsh repression, the PFDJ has eroded public freedoms and established a rule of fear that tolerates no opposition. It has blurred the lines between the three sources of constitutional authority by concentrating all power in the executive, and in particular in the figure of the President – who is also the head of the party, at the cost of the legislature and the judiciary. National elections have never been held.

1509. The PFDJ has established a system by which an extraordinary number of individuals have the power to spy on Eritreans and conduct investigations and arrests often without observing the law. The proliferation of national security offices and of officers assigned to administrative offices but with an intelligence mandate – and their overlap with the party’s own intelligence and with military intelligence – is a major concern.

1510. What was meant to be the supreme law of the country, the Constitution of 1997, has never been implemented. The National Assembly stopped convening in 2002. Even while it was sitting, laws were passed by government decree (“Proclamation”); since 2002, it has been the exclusive way to promulgate legislation. It is of particular concern that some important policies adopted by the Government, including those severely affecting individual rights and freedoms, are not embodied in law; they are simply “announced” by government media or in messages passed on by local administrations and implemented in practice, with all the ambiguities of such a procedure. This *modus operandi* has undermined the legitimate expectations of Eritreans on the certainty of laws and on proper legislative processes separated from and under the control of an independent legislature. While the Commission welcomes the promulgation of the new codes that, as of May 2015, effectively replace the transitional codes in force since 1991, it is not in the position to assess their compliance with international human rights law.

1511. The Judiciary is not independent. Judges are appointed, reassigned and dismissed at the will of the President and are directed in their actions and influenced in their decisions by members of the PFDJ and of the army. The judicial system has

restriction on the individual’s freedom – often through violent means, making forced labour similar to slavery in its effect on the individual”- See: David Weissbrodt and Anti-slavery international, *Abolishing slavery and its contemporary forms*, OHCHR, HR/PUB/02/4, p. 12.

also been affected by the creation of a parallel structure, the Special Court, which, in practice, presides over and rules on all kinds of crimes, operating with clear disregard for the most basic safeguards related to due process. Its judges are senior military officers without legal training, apparently directly appointed by the President and directly accountable to him. Globally, administration of justice is completely deficient, particularly when it comes to processing cases of persons in detention. Community courts, with jurisdiction over disputes arising from the “daily lives of the communities”, have at least facilitated access to some justice for people in rural and remote communities.

1512. Eritreans are unable to move at will, to express themselves freely, to practice their religion without undue interference, to enjoy unrestricted access to information or to have the liberty to assemble and associate. Pervasive control systems and heavy consequences for perceived deviant behaviours, including lifetime incarceration or death, have created an environment of self-censorship whereby individuals no longer trust anyone – not even their own family.

1513. Continuing practices already recorded during the liberation struggle when dealing with internal and external opposition, the Government has since independence used enforced disappearances and extrajudicial executions to crush real or perceived opposition and prevent the rise of any opposing views. The Commission finds particularly abhorrent the Government’s practice of acknowledging arrests while providing no further information regarding the fate or whereabouts of those arrested.

1514. Arbitrary detention is ubiquitous. The number of officials misusing the power of arrest is particularly worrisome, as is the number of official, unofficial and secret places of detention – all outside the control of the judiciary. Conditions of detention are extremely harsh, and the lack of access to sufficient food, water and medical care while in detention is found to debilitate prisoners and to lead to short- and long-term health complications, and sometimes death. The practice of keeping detainees in incommunicado detention and/or in isolation with total disregard for international standards is widespread. The mental and physical health of prisoners is thus unduly and unnecessarily affected.

1515. Persons arrested, detained or held for punishment under various circumstances, including during national service and military training, are routinely subject to forms of ill-treatment that, in many cases, amount to torture. The Commission finds that the use of torture is so widespread that it can only conclude that it is a policy of the Government to encourage its use for the punishment of individuals perceived as deviant and for extorting confessions. Monitoring of detention centres is non-existent, and perpetrators of torture are never brought to justice.

1516. The Commission finds that the practice of punishing family members for the behaviour of a relative constitutes a form of guilt by association that is in violation of international standards. Retaliation of this kind can be financial or take the form of harassment (including abroad), arbitrary arrest and detention. Targets can be relatives of perceived critics of the Government, conscripts who have deserted, detainees who have escaped or individuals who had fled the country.

1517. Controlled access to property, including land, has allowed the Government to use such resources as a further means to punish those in perceived disagreement with it and to reward supporters. The Commission finds that military and party representatives in particular have abused their authority to seize land, houses and businesses for their own profit.

1518. Since 1994, Eritreans have had to spend most of their working lives in national service. The duration of national service is indefinite, its conditions violate international standards and conscripts are severely underpaid. As such, it is an institution where slavery-like practices take place. Conscripts are at the mercy of their superiors, who exercise control and command over their subordinates without restriction in a way that violates human rights and without ever being held accountable. Conscripts are regularly subjected to punishment amounting to torture and ill-treatment, during both military training and life in the army. Women and girls are at a high risk of rape and other forms of sexual violence in all areas of national service, and particularly in military training camps, where they are often forced into concubinage by superiors in the camp. Eritreans who attempt to avoid conscription or escape from the military are severely punished and arbitrarily deprived of their liberty.

1519. The Government has unlawfully and consistently been using conscripts and other members of the population, including members of the militia, many beyond retirement age, as forced labourers to construct infrastructure and to pursue the aim of economic development and self-sufficiency of the State, thus indirectly supporting the continued existence of a totalitarian Government that has been in power for the past 24 years. The use of forced labour is so prevalent in Eritrea that all sectors of the economy rely on it, and all Eritreans are likely to be subject to it at some stage in their lives. The Government also regularly profits from the almost free work exacted from conscripts and detainees to obtain illegitimate financial gain when they are “lent” to foreign companies paying salaries to the Government that are considerably higher than the amounts paid by the Government to the workers.

1520. The situation of human rights incites an ever-increasing number of Eritreans to leave their country. Overall, it is estimated that approximately 5,000 people leave Eritrea each month, mainly to neighbouring countries. The trend has been upwards, with a marked spike during the latter months of 2014. In October 2014, the registered refugee population was 109,594 in the Sudan and 106,859 in Ethiopia. The total Eritrean population of concern to the United Nations High Commissioner for Refugees in mid-2014 was 357,406; depending on estimates of the current population, this would constitute between 6 and 10 per cent of the national population. Thousands of Eritreans are killed at sea while attempting to reach European shores. The practice of kidnapping migrating individuals, who are released on ransom after enduring horrible torture or killed, targets Eritreans in particular. Episodes of Eritreans killed inside the country while trying to leave have also been recorded.

1521. Discrimination and violence against women are present in all areas of Eritrean society. Women are not only at extreme risk of sexual violence within the military and in military training camps, but also in society at large, where violence against women is perpetrated in an environment of impunity. Discrimination against women intersects with the other human rights violations, placing women in a position of vulnerability. Violations of the right to property, employment and freedom of movement result in women being vulnerable to food insecurity, engaging in transactional sex and prostitution and at heightened risk of punishment for non-sanctioned work. The lack of genuine rule of law, credible security agencies and independent and impartial women’s civil society organizations leaves women and girls unable to seek recourse to justice or remedy for the sexual and gender-based violence and discrimination they endure.

1522. The Commission finds that the lack of trustworthy data, including statistical data, in almost every domain (inter alia, legal, demographic, development-related and economic) is a serious deficiency that hampers a clear understanding of the situation

in Eritrea, allows the circulation of interpretations that are not evidence-based, and results in decisions that can be harmful to the enjoyment of human rights of Eritreans.

1523. The Commission has not benefited from any form of cooperation from the Government of Eritrea. The limited access to the country by international and regional governmental and non-governmental organizations is of great concern, particularly in the context of a Government that maintains an opaque system and that does not make information publicly available to either its citizens or the international community.

1524. The international community and the United Nations bear an ongoing responsibility for the situation in Eritrea. In particular, the non-implementation of the Algiers Agreement of 12 December 2000 and of the ruling on the demarcation of the border between Ethiopia and Eritrea has provided an easy pretext for the Government to implement repressive practices supposedly aimed at the defence of the State. The international community also has a responsibility to keep Eritrea under scrutiny for its policies and practices.

B. Recommendations

1525. On the basis of its findings and conclusions, the Commission makes the recommendations below.

General

1526. The Commission of Inquiry recommends that the Government of Eritrea:

(a) Implement fully and without further delay the Constitution of 1997; any amendments to the Constitution should be made in a transparent and participatory manner and take into account the State's obligations under international human rights law;

(b) Respect obligations under international human rights treaties to which Eritrea is a party; ratify and implement other international human rights instruments; and respect fully the freedoms of expression and opinion and of peaceful assembly and association as critical foundations for any democracy;

(c) Acknowledge the existence of human rights violations and ensure accountability for past human rights violations, including but not limited to extrajudicial killings, enforced disappearances, torture, unlawful detention, sexual violence and forced labour, including within national service;

(d) Establish an independent and impartial mechanism to investigate and, where appropriate, to bring perpetrators to justice, in particular those with command responsibility, and to provide victims with adequate redress; and ensure that procedures are in place to hold all perpetrators of ongoing and future human rights violations fully accountable.

Governance and administration of justice

1527. The commission also recommends that the Government of Eritrea:

(a) Ensure the separation of powers between the legislature, the executive and the judiciary;

(b) Allow the creation of political parties and hold free, fair and transparent democratic elections at all levels, and in this context, respect and implement the draft

electoral law and other products of the work of the Commission set up to organize elections;

(c) Bring national laws and regulations into line with international human rights standards, ensure that law-making is transparent and consultative, and that all legislation is published and made accessible to the general public in the official languages of Eritrea.

(d) Adopt legislation providing enhanced legal and social protection to those in vulnerable situations, particularly children;

(e) Undertake without delay legal and institutional reforms aimed at ensuring checks and balances among government organs, including by restoring the respect of the rule of law, by institutionalizing an independent and transparent judiciary and by providing access to justice, in particular for the accused and detainees;

(f) Ensure that court processes, including judgements, are transparent, open and accessible to the public, and transmitted to accused persons immediately;

(g) End the application of vicarious liability of innocent parties for alleged unlawful acts committed by third persons;

(h) Establish an independent national human rights institution with a monitoring mandate to investigate ongoing human rights violations; and protect and respect the substantive role that civil society actors, particularly human rights defenders, play in democratic societies.

(i) Ensure that individuals have the possibility of appealing settlements that are not based on law, and close the Special Court.

Enforced disappearances, and arbitrary arrest and detention

1528. The Commission further recommends that the Government of Eritrea:

(a) Cease with immediate effect the practice of enforced disappearance and all forms of extrajudicial executions by, inter alia, discontinuing the shoot-to-kill policy wherever it may be applicable in border areas;

(b) Immediately and unconditionally release all unlawfully and arbitrarily detained persons, including members of the G-15, journalists and members of religious groups;

(c) Set up an effective mechanism to establish the whereabouts of those who have disappeared, provide it with a full account of all those arrested or disappeared since independence, and immediately provide information thereon to their families;

(d) Review all cases of detainees who have been convicted of an offence in a judicial or quasi-judicial forum but who were not given the opportunity to defend themselves or accorded the procedural rights that are established in the international instruments to which Eritrea is party;

(e) Put an immediate end to the practice of incommunicado detention and close all unofficial and secret places of detention; allow access to prisoners by family members, lawyers and judges; and institute and ensure the respect of procedures whereby any person who is arrested is either charged or released after a reasonable period of time;

(f) Provide immediately information on any prisoners of war held in detention, and release them as soon as possible; in the meantime, allow international monitors unrestricted access to them.

Conditions of detention

1529. The Commission recommends that the Government of Eritrea:

(a) Improve the conditions of detention and the treatment of prisoners to bring them into line with international standards and, in particular, ensure access to medical treatment for all detainees in need;

(b) Ensure that solitary confinement remains an exceptional measure of limited duration;

(c) Institute procedures for independent oversight of detention centres; and immediately permit unhindered access by international monitors to all places of detention, allow them to conduct regular and unannounced visits, and act promptly on their recommendations;

Torture and ill-treatment

89. The Commission recommends that the Government of Eritrea put an immediate end to the use of torture and other forms of ill-treatment, establish adequate complaints mechanisms and ensure that prompt and effective investigations are conducted into all allegations of torture and ill-treatment with a view to bringing perpetrators to justice.

Public freedoms

1530. The Commission recommends that the Government of Eritrea:

(a) Permit immediately freedom of movement within the country by dismantling checkpoints and removing the need for travel permits; take measures to facilitate the lawful movement of persons in and out of the country, including for family reunification; and lift the requirement of an exit visa to leave the country, and treat returnees in compliance with international standards;

(b) Take immediate measures to allow the operation of independent media, including by bringing relevant legislation into conformity with international standards; and protect journalists from arbitrary interference and arrest;

(c) Take immediate measures to end all religious persecution, particularly for specific religious groups, such as Jehovah's Witnesses, Pentecostals and other non-authorized religious groups; and immediately restore citizenship and related rights;

(d) Respect the religious freedom of all faiths.

Property

1531. The Commission also recommends that the Government of Eritrea:

(a) Ensure that rights related to property are realized and enjoyed without discrimination of any kind;

(b) Ensure that evictions from property, including land and houses, and resettlements are conducted in accordance with international human rights law, including on compensation, and the principles of proportionality and reasonableness;

(c) End forced evictions used in reprisal against unauthorized religions, such as Jehovah's Witnesses and those who did not take part in the armed struggle.

(d) Stop the seizure without compensation of land of Afars who flee Eritrea; and ensure that Afars are resettled in a hospitable environment.

National service

1532. The Commission recommends that the Government of Eritrea:

(a) Discontinue indefinite national service by limiting it to 18 months for all current and future conscripts, as envisaged by the Proclamation on national service;

(b) Provide full and transparent information on the implementation of the recent announcement concerning the return of the duration of national service to 18 months for persons recruited as of 2014;

(c) Provide for conscientious objection by law, in accordance with international norms; and provide for and grant exemptions from national service for reasons relating to physical or mental health issues or family needs;

(d) Establish and apply lawful procedures for the apprehension of draft evaders and deserters, and ensure that they are charged and tried by a court in accordance with international standards;

(e) Adopt a military code that, inter alia, forbids and punishes ill-treatment, exploitation and harassment of conscripts, and that sets standards for their living conditions, including provision of food and shelter;

(f) Establish a complaint mechanism for conscripts to raise allegations of ill-treatment and to obtain redress;

(g) Stop the forced recruitment of children under the age of 18 years into military training;

(h) Disassociate education from military service and provide for the completion of secondary schooling outside of Sawa or other military training centres;

(i) Abolish the requirement of completion of national service duties for citizenship.

Forced labour

1533. The Commission of Inquiry calls upon the Government of Eritrea to cease the practice of using conscripts serving in the national service, detainees, students and members of the militia as a source of forced labour, which is prohibited by international standards.

Gender equality

1534. The Commission of Inquiry recommends that the Government:

(a) Strengthen legislation protecting and promoting the equality of women in Eritrea;

(b) Ratify the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa;

(c) Permit the creation of independent gender-specific civil society organizations, which are necessary to increase women's involvement in public life and decision-making;

- (d) Ensure that women have access to productive land, agricultural training and the means required to make their farming sustainable and productive;
- (e) Ensure that all women and girls enjoy equal inheritance rights and are protected by the same legal standards;
- (f) Investigate, prosecute and sentence offenders of sexual and gender-based violence;
- (g) During mandatory military training, prohibit the assignment of women and girls to officials' quarters for forced domestic labour, and institute a zero-tolerance policy for sexual abuse within training camps, which should be monitored and reported on by an independent institution;
- (h) Take immediate measures to ensure de facto gender equality, and address all forms of violence against women, including domestic violence, sexual and gender-based violence by State and non-State actors, specifically within state institutions, such as military camps, army and places of detention;
- (i) Implement impartial, gender-sensitive reporting mechanisms for victims of violence, and provide rehabilitation and support services, including safe houses, legal aid resources and health care.

Follow-up

1535. The Commission of Inquiry also recommends that the Government:

- (a) Seek technical assistance from OHCHR and other agencies, as appropriate, with a view to assist in the implementation of the present recommendations, as well as those made during the universal periodic review and by other human rights mechanisms;
- (b) Collaborate with the Special Rapporteur in implementing her mandate and respond positively to her requests for an invitation to visit Eritrea;
- (c) Cooperate with other international human rights mechanisms;
- (d) Ensure an inclusive and comprehensive follow-up process to the universal periodic review, implement the recommendations made by treaty bodies, and submit overdue reports;
- (e) Cooperate with the international community to allow those providing international humanitarian assistance unhindered access throughout the country.

1536. The Commission of Inquiry recommends that the international community:

- (a) Pending tangible progress in the situation of human rights, in particular the adoption of reforms that seriously address the problems identified in by the Commission in the present report, continue to provide protection to all those who have fled and continue to flee Eritrea owing to severe violations of their rights or fear thereof;
- (b) Respect the principle of non-refoulement and end bilateral and other arrangements that jeopardize the lives of those who seek asylum;
- (c) Identify long-term solutions to help Eritrean refugees, including local integration in the first-asylum country and resettlement in third countries, and strengthen international solidarity in sharing the responsibility to care for Eritrean refugees and migrants;

(d) Promote channels of regular migration from Eritrea to reduce clandestine channels, in particular by ensuring that they no longer have to risk their lives crossing the Mediterranean; in this regard, the issue of securing refugee routes should be considered at the international level to provide safe passage to fleeing persons;

(e) Promote inter-State cooperation to counter human smuggling and trafficking, while treating victims in accordance with international human rights standards;

(f) Criminalize the trade in people trafficking and people smuggling, which in this region predominantly affects Eritreans; and establish mechanisms to investigate, and provide resources to prosecute, those engaged in this trade;

(g) In engaging with the Eritrean authorities on solutions to stem the flow of asylum seekers from Eritrea, place human rights considerations at the forefront of any package of proposed abatement measures; furthermore, neighbouring Governments should train security sector personnel in gender-sensitive trafficking awareness;

(h) Keep Eritrea under close scrutiny until tangible progress in the situation of human rights is evident, and ensure the centrality of human rights in all engagement with the country;

(i) Clear conditions for a return to full, normal relations between Eritrea and the international community, including the participation of Eritrea in regional councils and mechanisms;

(j) Assist Eritrea and Ethiopia in solving border issues through diplomatic means.

1537. When negotiating development assistance and investment projects in Eritrea, Governments, non-governmental organizations and private sector companies should ensure that decent wages for locally engaged staff are an integral part of the agreement, and insist that wages effectively go to those doing the work. In negotiating access to the country and in proposing programmes and projects, organizations should ensure that a positive impact on the enjoyment of rights and freedoms of the people of Eritrea as recognized under international law is a central priority.

1538. The Commission of Inquiry recommends that the United Nations, review and revise where necessary the Human Rights Up Front initiative for Eritrea in the light of the findings of the commission and ensure that all United Nations entities apply it consistently.

1539. The Commission of Inquiry calls upon the International Labour Organization to address the issue of forced labour in Eritrea.

1540. In deciding among its future projects, the United Nations Development Programme should prioritize support for the strengthening of the national statistics office of Eritrea.

1541. OHCHR should report annually to the Human Rights Council and other appropriate United Nations organs on its efforts to assist the Government of Eritrea in the implementation of the recommendations made in the present report, as well as those made during the universal periodic review and by other human rights mechanisms.

1542. The Commission of Inquiry recommends that the Human Rights Council:

(a) Organize, at its thirtieth session, a high-level panel discussion on strategies to investigate the issue of human trafficking in North Africa and the Mediterranean, with the involvement of all relevant actors and using both security and human rights frameworks;

(b) Renew the mandate of the Special Rapporteur on the situation of human rights in Eritrea, and request the mandate holder to, inter alia, work to promote and report on the implementation of the present recommendations, providing the additional resources necessary to do so;

(c) Mandate a relevant special procedure or otherwise direct an investigation of the extent to which the abuses identified by the Commission constitute crimes against humanity;

(d) Request OHCHR to increase attention and resources to the situation of human rights in Eritrea by enhancing engagement with the Government with the aim of implementing the present recommendations, as well as those made during the universal periodic review and by other human rights mechanisms.