


AFRICAN UNION		UNION AFRICAINE
الاتحاد الأفريقي African Commission on Human & Peoples' Rights		UNIÃO AFRICANA Commission Africaine des Droits de l'Homme & des Peuples
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Consideration of Reports Submitted by States Parties under Article 62 of the African Charter on Human and Peoples' Rights

Concluding Observations and Recommendations on the Initial and Combined Periodic Report of the State of Eritrea on the Implementation of the African Charter on Human and Peoples' Rights

I. INTRODUCTION

1. The State of Eritrea (Eritrea) is a State Party to the African Charter on Human and Peoples' Rights (the African Charter), having ratified it on 14 January 1999.
2. Eritrea submitted its Initial and Combined Report to the African Commission on Human and Peoples' Rights (the Commission) on 12 October 2017. The Report encompasses eight periodic reports, from the period between acceding to the African Charter in 1999 and 2016.
3. The Report was considered by the Commission during the 62nd Ordinary Session, held in Nouakchott, Mauritania, from 25 April to 09 May 2018.
4. The Report was presented to the Commission by H.E. Mr. Tesfamicael Gerahtu, Ambassador and Head of the Delegation, in addition to the following members of the Delegation:
 - Mr. Adem Osman, First Secretary, Permanent Mission of the State of Eritrea to the United Nations (Geneva);
 - Mr. Biniam Berhe, First Secretary-Political Officer, Permanent Mission of the State of Eritrea to the African Union and the United Nations Economic Commission for Africa (UNECA);
 - Mr. Mussa Naib, Director General, Ministry of Education;
 - Mr. Sium Tecele, Staff, Legal Services, Ministry of Justice;
 - Mr. Mehretab Fessaie, Director General, Ministry of Labour and Human Welfare;
 - Dr. Mismay Ghebrewhiwet, Advisor to the Minister, Ministry of Health;
 - Ms. Senait Lijam, Member, Executive Board, National Union of Eritrean Women;
and

- Mr. Ibrahim Abdu, Legal Services, Ministry of Foreign Affairs.

II. POSITIVE ASPECTS

The Commission:

5. Takes note of the effort made by Eritrea in preparing and presenting its overdue Initial periodic report, in accordance with the provisions of Article 62 of the African Charter;
6. Welcomes the effort to enter into dialogue with the Government of the Federal Republic of Ethiopia, in order to establish peace between the two countries;

Ratification of regional and international human rights instruments

7. Notes that Eritrea has ratified the following regional and international instruments on the promotion and protection of human rights:
 - The African Charter on the Rights and Welfare of the Child;
 - The International Covenant on Civil and Political Rights;
 - The International Covenant on Economic, Social and Cultural Rights;
 - The Convention on the Elimination of All Forms of Discrimination against Women;
 - The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
 - The Convention on the Rights of the Child;
 - The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict;
 - The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography;
 - The International Convention on the Elimination of All Forms of Racial Discrimination.

Civil and Political Rights

Right to Life

8. Welcomes the information provided that there has been a *de-facto* moratorium on the death penalty for the past ten years;

Police, prisons and conditions of detention

9. Takes note of the initiative introducing Community Policing with the aim of improving public safety, law and order;
10. Notes the provision of education programs in prisons, including basic education up to secondary level, computer training and vocational programs in graphics and arts, as well as Arabic language programs which are offered on request;
11. Notes the establishment of an in-patient section at the National Referral Hospital in Asmara designated for referral of prisoners;

12. Notes the provision of HIV counselling centres in prison clinics;

Access to and administration of justice

13. Welcomes the opportunity given to Victims to participate in criminal proceedings, with the aim of obtaining redress for the Victims;

14. Welcomes the provision of legal services given to defendants who are hearing impaired;

Rights of refugees, internally displaced persons and migrants

15. Welcomes the establishment of the Immigration and Nationality Department to assist reintegration of Eritrean refugees;

16. Commends the provisions in the Citizenship Proclamation which stipulate that Eritrean citizenship can be acquired by birth, naturalization, adoption and marriage, which is equally applicable to men and women without discrimination;

Economic Social and Cultural Rights

Right to Water

17. Welcomes the policies put in place to improve access to water, including the Eritrean Water Law 162/2010, the Potable Water Regulation 42/1998, Water Policy Paper of Eritrea and Eritrean Water Quality Standard;

Right to Food

18. Takes note of initiatives of the Government to address malnutrition including establishing a Steering Committee on national food and nutrition security (FNCS), to improve access to safe, nutritious and affordable food;

19. Commends the establishment of 201 centres by the Government under the Hidri Programme, which sells subsidized food supplies to the public;

Right to Social protection

20. Welcomes the efforts by the Government to ensure social security and protection, including through enacting the National Pension Scheme (Proclamation 135/2003), the Public Sector Pension Scheme (Proclamation 136/2003) and the Martyrs' Survivors Benefit Scheme (Proclamation 137/2003);

Right to Work

21. Notes that equal rights to employment are stipulated in the Labour Proclamation No. 118/2001, which also provides in Article 67 that employment may not be terminated during maternity leave;

Right to Health

22. Takes note of the Government's initiatives to ensure access to health, including by heavily subsidizing health services;
23. Commends the initiative on immunization through the Reach Every District Strategy for immunization, which is implemented in hard to reach areas;
24. Takes notes of the Government's initiative to eliminate maternal and neonatal tetanus, in addition to establishing the Roll Back Malaria Strategy which has resulted in reduction of malaria morbidity;

Protection of the rights of persons living with HIV/AIDS

25. Welcomes establishment of the HIV/AIDS Persons Association, which contributes to addressing stigmatization and marginalization of victims;
26. Welcomes the free provision of ARVs to 66% of the estimated eligible cases, by the Ministry of Health;

Right to Education

27. Commends the free provision of education in Eritrea at all levels, with limited indirect expenses paid for transport and schools uniforms, and exemption for families from rural areas who cannot afford to pay for these expenses;
28. Takes note of the Government's efforts to ensure equitable access to education, including improving access to schools for children who live in rural areas or come from nomadic communities;
29. Welcomes the programs initiated by the Government to combat adult illiteracy;

Right to Culture

30. Commends the initiative of the Government to ensure preservation of cultural sites resulting in recognition of the capital city, Asmara, as a World Heritage Site by UNESCO on 08 July 2017;

Protection of the rights of women and children

31. Takes note of the Government initiatives aimed at reducing the maternal mortality ratio (MMR), with the annual rate of reduction MMR for the period 1990 to 2016 estimated at 4.6 %;
32. Notes that the Transitional Civil Code protects the right to succession irrespective of gender or age;
33. Notes that Article 10(2) of Proclamation No. 86/1996 stipulates that 30% of the seats in the National Assemblies are reserved for women;

34. Commends the initiatives of the Government to end mother to child transmission, including integrating prevention services with antenatal care and providing HIV testing to pregnant women;
35. Welcomes the Eritrean Obstetric Fistula Repair Project, launched in 2002, to address and combat obstetric fistula;
36. Takes note of the National Policy on Children, in addition to the Working Group led by the Ministry of Labour and Human Welfare, which oversees implementation of the Convention of the Rights of the Child and the African Charter for the Rights and Welfare of the Child;
37. Notes that Article 607 of the Transitional Civil Code stipulates that the legal age of marriage is 18 years old, and further that underage marriage is an offence which is grounds for dissolution of the marriage;
38. Welcomes the criminalization of female genital mutilation (FGM) under Proclamation 148/2007, in addition to establishment of 548 anti-FGM Committees nationwide;
39. Welcomes information on the reduction of FGM, noting that the practice which affected 89% of girls under the age of 5 in 1995, dropped to 5% by 2016;

Protection of the rights of persons with disabilities

40. Takes note of the National Policy on Persons with Disabilities, which ensures implementation equal rights and opportunities and stipulates the roles and responsibilities of all actors in advancing the rights and welfare of persons with disabilities, in addition to the loan scheme implemented by the Ministry of Labour and Human Welfare to assist persons with disabilities start income-generating activities for gainful employment;
41. Appreciates the efforts to provide transportation for students with disabilities to attend school, such as the 'Donkey for School' project;
42. Commends provision of full medical care to 7,000 persons with disabilities who were injured during the conflict;

Protection of the Environment

43. Commends the ban on the use of plastic bags, through Legal Notice 63/2002, and the provision of local alternatives as a means to end plastic pollution.

III. FACTORS RESTRICTING THE ENJOYMENT OF THE RIGHTS GUARANTEED IN THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS

44. Eritrea was involved in a 30 year liberation war, which cost the lives of thousands of Eritrean freedom fighters and civilians. After achieving independence on 24 May 1991,

Eritrea was then involved in a border dispute with its neighbour Ethiopia from 1998 to 2000. On 18 June 2000, the Governments of Eritrea and Ethiopia signed the Cessation of Hostilities Agreement (CHA) and on 12 December 2000 the Algiers Peace Agreement was signed. However, the border dispute caused internal displacement of approximately 90,000 civilians, in addition to destruction of houses, places of worship and schools, among others. As a result, in addition to the destabilising effect of the conflict, nation building and provision and access to essential basic services, such as health facilities and schools, was hindered for a long time.

45. The human rights situation in Eritrea has also been exacerbated by severe drought which has occurred over a number of years and caused severe malnutrition across the country.
46. Another factor restricting the enjoyment of human rights is the apparent indefinite nature of the country's National Service, referred to as an exception to forced labour under the Labour Proclamation and the definition of labour in the Penal Code. The practical effect of the indefinite extension of the period served in the National Service, is that conscripts can be required to serve for decades or, in some cases, indefinitely.

IV. AREAS OF CONCERN

47. While recognising the efforts made by the Government to promote and protect human rights, the Commission is however concerned about the following:

Submission of Periodic Reports

48. The Initial and Combined Periodic was overdue, encompassing a period of 17 years;
49. While participation of national civic organizations in the preparation of the Periodic Report is noted, no information is provided on the specific independent civil society organizations which participated in its preparation;

Ratification and domestication of regional and international instruments

50. No information is provided on the domestication and incorporation of the African Charter, and other regional and international human rights instruments, in the domestic legal system;
51. The non-ratification of several relevant regional and international human rights instruments, including:
 - The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the Maputo Protocol);
 - The Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (the Court Protocol);
 - The African Charter on Democracy, Elections and Governance;

- The African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (the Kampala Convention);
- The OAU Convention Governing the Specific Aspects of Refugee Problems in Africa;
- The African Union Convention on Preventing and Combating Corruption;
- The African Youth Charter;
- The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa;
- The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa;
- The Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty;
- The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights;
- The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families;
- The International Convention for the Protection of all Persons from Enforced Disappearance;
- The Convention on the Rights of Persons with Disabilities; and
- The Optional Protocol to the Convention on the Rights of Persons with Disabilities;

Adoption of legislative or other measures to give effect to human rights

52. The apparent lacuna of constitutional law given the lack of clarity on whether the Constitution (1997) is still in force and the delay in the finalization and adoption of the revised Constitution, following the process which started in 2015;
53. The lack of mainstreaming of human rights in the domestic legal system, in addition to the fact there is no Ministry specifically designated to ensure that the promotion and protection of human rights is mainstreamed throughout the Government's policies and programs;
54. The lack of an independent national institution entrusted with the promotion and protection of the rights and freedoms guaranteed by the African Charter;
55. The apparent lacuna in the current laws which do not stipulate the non-derogable rights which cannot be limited under any circumstances, even in emergency situations;
56. The lack of a recent census on the population in the country, which would guide the formulation of policies and programs on the protection of human rights in the country;

Right to security of persons, right to life and the death penalty

57. The death penalty is retained in the Transitional Penal Code of Eritrea;

58. The lack of specific legislation criminalizing extra-judicial killings;
59. Reported cases of the 'shoot to kill' policy which is allegedly used by the military to disperse protestors and national service conscripts attempting to desert military service;
60. The reports of deaths in the prisons or other places of detentions, for example the reported deaths of members of the Jehovah Witness faith in detention;

Prohibition of torture, cruel, inhuman and degrading treatment

61. It is noted in the Report that torture is not condoned in the domestic laws and is punishable by law, however no information is provided on the exact legal provisions which prohibit torture, or the existence of a law defining and criminalizing torture;
62. The lack of an independent institution mandated to conduct investigations on allegations of torture;
63. The allegations of acts of torture routinely committed against persons in detention, and the lack of information on independent investigations into these allegations;
64. The allegations of torture, or the threat of torture, being practised as punishment and during interrogation of returned asylum-seekers, and the lack of information on investigations of these reports;

Right to liberty and security of persons, conditions of prisons and detention centres

65. The Report indicates that the penitentiary system runs 11 detention facilities, however there are allegations of numerous unofficial places of detention in the country;
66. The lack of information on the total prison population in the country, in addition to the number of remand prisoners verses convicted persons, female and male prisoners, in addition to juvenile prisoners;
67. The lack of information on the number of prisoners currently sentenced to capital punishment, in light of the information provided that the "death penalty is exceptionally applied for criminal offences that entail capital punishment;"
68. The lack of information on the Ministry responsible for overseeing the Eritrea Correctional and Rehabilitation Services;
69. The lack of information on training specifically related to human rights provided to law enforcement agencies, including the Eritrean Police Force, the Eritrea Correctional and Rehabilitation Services and the Community Police, in addition to whether the Prison Services Regulation contains provisions on human rights and the rights of detained persons;

70. The lack of an independent institution mandated to conduct visits to prisons and other places of detention;
71. The allegations of numerous cases of arbitrary and *incommunicado* detention, and the lack of information on investigations of these reports;
72. The allegations of indefinite lack of access by family members to prisoners held in *incommunicado* detention;
73. The allegations of cruel, inhumane and degrading conditions in the prisons and other centres of detention, which have not been independently investigated;
74. The allegations of '*nay hadera*,' who are detainees in the custody of the Military, who have not been afforded any protection under the law;
75. The lack of information on the percentage of the prison population with HIV/AIDS, and whether these prisoners have free access to ARVs;
76. The lack of information on whether Government has a condom distribution program in prisons, as a way to curb the HIV/AIDS epidemic;

Access to and administration of justice

77. The continued arbitrary denial of the basic rights of all persons detained without access to lawyers or a fair and speedy trial, including specifically the group of former Government officials, journalists and the Jehovah Witness religious leaders, who were arrested, never charged or tried in a court of law, or allowed access to lawyers;
78. The lack of legal provisions stipulating the right of *habeas corpus*;
79. The lack of legislation or policy which ensures access to legal aid;
80. The lack of clarity on the position of the Special Court within the hierarchy of the judicial system;
81. Certain provisions in the Proclamation No.85/1996, which established the Special Court, which are contrary to the right to a fair trial including: Article 4(2) which states that "the Special Court can review and see again previously decided cases," in violation of the principle of *res judicata*; Articles 3 and 6 which provide that the "the Special Court may disregard the provisions of the Penal Code and the Criminal Procedure Code of Eritrea;" and Article 5(1) which denies the right of appeal of a Special Court decision;
82. The allegation that defendants before the Special Court have no right to legal representation.

Independence and training of Judges

83. Insufficient information on the process of appointing judges, in addition to legal provisions stipulating their independence and security of tenure;
84. The lack of information on whether the judges of the Community Courts, the Military Courts and the Special Court are required to have prior legal training and experience;
85. The lack of information on an institution which conducts regular training for judicial officers, including training on human rights issues;

Freedom of conscience and religion

86. The lack of clarity on the Ministry which monitors implementation of Proclamation 73/1995, and whether there are provisions in the law for recourse to appeal to the Courts for religious groups whose applications for registration are denied;
87. The allegations that followers of Jehovah Witness faith were stripped of citizenship rights, in response to their refusal to vote in the 1993 independence referendum, exposing them to *de facto* statelessness;

Freedom of information and expression

88. The lack of clarity on the existence of a law which expressly provides for the right to access information;
89. The restriction on freedom of expression in the Penal Code which criminalizes defamation;
90. The lack of private media in the country in accordance with the Press Proclamation 90/1996 which stipulates that ownership of television and radio is reserved for the Government;
91. The lack of an independent regulatory body which exercises powers in the areas of broadcast or telecommunications regulation;
92. The reports of restricted access to telephone SIM cards, allegedly allowed only for people who have clearance from the Government or are excused from national service;
93. The reports of heavy restriction of the Internet by the Government, with estimates that only 0.9% of the population have access to the Internet;

Freedom of association and assembly

94. The lack of information on the existence and total number of independent civil society organizations (CSOs) operating in the country, distinguished from the 'national organizations' mentioned in the Report;

95. Insufficient information on the process of registration for non-governmental organizations under Legal Notice No 5 of 1992, including whether there is recourse to appeal for organizations whose application is denied;
96. The lack of information on the criteria and requirements for holding a peaceful assembly;

Right to freedom of movement, refugees, international displaced persons and migrants

97. The requirement for an exit visa for Eritreans who wish to leave the country, with children under the age of five (5) not eligible to be issued an exit visa;
98. The apparent lack of an appeal process for persons denied the exit visa;
99. The reports that National Service conscripts are not entitled to an ID card and National Passport until completion of their service, taking into consideration the indefinite extension of this service;

Right to participate freely in Government

100. The lack of clarity on whether the National Assembly is currently operational, following its last reported meeting in 2002;
101. The failure to hold national Presidential and legislative elections;
102. The apparent restrictions curtailing the formation of opposition political parties;
103. The absence of information on legislation governing registration, regulation and funding of political parties;

Economic, Social and Cultural Rights

104. The lack of information on the allocation of the national budget to key sectors, such as health and education;
105. The information provided in the Report that almost 20.5% in rural areas do not have access to potable water;

Right to property

106. The lack of information on the Government Ministry or institution responsible for ensuring access to housing;
107. The lack of information on the Government institution responsible for monitoring implementation of the Land Proclamation;

Right to work

108. The lack of information on the unemployment rate, and crucially the youth unemployment rate which is a major concern in several African countries;

109. The provision in the Labour Proclamation No. 118/2001 which permits a child aged 14 years to enter into a contract of employment;
110. In spite of the provisions in the Labour Proclamation No 118/2001 abolishing forced labour in Eritrea, there are reports of the National Service Program's use of conscript labour in mining and construction plants owned by private companies, which have not been independently investigated;
111. The reports that participation in the *Warsay Yikealo Development Campaign* is mandatory and effectively extends the compulsory national service with no or very little pay, and further that conscripts in this Program are subjected to forced labour when they are mandatorily deployed to various posts including in the civil service, national and local administrations, State-owned companies and the military;

Right to health

112. The lack of information on provision of free or subsidized family planning services, which the Government relies on to prevent unwanted pregnancies;

Protection of the rights of persons living with HIV/AIDS

113. The lack of information on the existence of an independent Government institution responsible for coordinating the country's response to combat HIV/AIDS;
114. The lack of provision of free ARVs to all citizens with HIV/AIDS, in addition to the apparent lack of programs to ensure provision of ARVs and other services to key vulnerable groups including sex workers and men who have sex with men (MSM);

Right to education

115. The Government's policy of mandating the participation of all secondary students at the Sawa Education and Training Centre, which reportedly includes military training;
116. The lack of information on the Government institution which monitors the programs at the Sawa Education and Training Centre, and whether there is a human rights based approach to the training provided at this facility;
117. The possibility of the lack of access to education for students from the Jehovah Witness faith;
118. The reports which indicate that students who are not assigned to colleges on completion of the secondary school exam remain in National Service indefinitely;

Protection of the rights of women and children

119. The reports that out of 18 Ministers, only 3 are women;

120. The lack of clarity on the role, function and independence of the National Union of Eritrean Women (NUEW), given the information in the Report that “NUEW also acts on behalf of the Government of the State of Eritrea on women affairs and is mandated to represent the government and Eritrean women in national, regional and international forum;”
121. The allegations of sexual abuse of female conscripts, which have not been independently investigated;
122. The apparent lack of legislation specifically on promotion and protection of the rights of the child;

Rights of persons with disabilities and older persons

123. The need for a rights-based approach in the policies and programs developed for persons with disabilities;
124. The lack of information provided on legislation, policy or programs for the protection of the rights of older persons, or a Government institution which monitors this key vulnerable group;

Extractive industries, the environment and human rights violations

125. The lack of information on the role and responsibility of the Eritrean National Mining Corporation;
126. The lack of information on the consultation and participation process for communities living in areas which were expropriated, from which concessions were granted to 23 companies;
127. The extent to which international labour standards are enforced in the mining areas;
128. The lack of information on whether a percentage of the proceeds from the extracted resources are invested in the country;
129. The lack of information on whether judicial or non-judicial grievance mechanisms exist, to ensure redress for violations committed by the companies in the extractive industry;

Protection of the rights of indigenous populations

130. Absence of information in the Report related to indigenous populations in Eritrea;
131. The lack of information on the existence of a Government institution, law or policy to ensure protection of the rights of indigenous populations, including Afar and Kunama ethnic groups;

Human rights defenders

132. The apparent lack of a law which recognizes the status of human rights defenders, and ensures protection of their rights, in addition to protection of their family members;

Information not provided in the Report

133. The reports that, as of 01 January 2017, Eritreans can only be married if they have completed their National Service, taking into consideration the current indefinite nature of the service;
134. The lack of information on the total number of members of the National Service who have been demobilized during the reporting period;

Implementation of the Commission's Recommendations

135. Absence of information on measures taken to implement the Commission's decisions in **Communication 275/03: Article 19 v. Eritrea** and **Communication 250/02: Liesbeth Zegveld and Mussie Ephrem v. Eritrea**.

V. Recommendations

136. In view of the foregoing, the Commission recommends that the Government should:

Submission of Periodic Reports

- i. Submit Periodic Reports to the Commission every two years;
- ii. Ensure the participation of independent civil society organizations, including faith based organizations, in the preparation of the next Periodic Report submitted to the Commission, in addition to including this information in the Report;

Ratification and domestication of international instruments

- iii. Ensure the domestication of the African Charter within the domestic legal system;
- iv. Expedite the ratification and domestication of all relevant regional and international human rights instruments;
- v. Make the declaration under Article 34(6) of the Court Protocol accepting the jurisdiction of the Court to hear cases brought by individuals and NGOs;

Adoption of legislative or other measures to give effect to human rights

- vi. Expedite the process of revising the Constitution in a transparent and participatory manner;
- vii. Take measures to ensure that human rights are mainstreamed in the domestic legal system, including through inclusion of a Bill of Rights in the revised Constitution, and consider appointing a member of Government to spearhead monitoring and implementation of human rights in the country;

- viii. Establish an independent mechanism, such as a National Human Rights Institution or Ombudsman, with functions specifically dedicated to the promotion and protection of human rights, in compliance with the Principles relating to the Status of National Institutions (the Paris Principles);
- ix. Take urgent action to ensure that the existing laws specifically provide for non-derogable rights which cannot be limited under any circumstances including: the right to equality before the law; the right not to be discriminated against; the right to life; the right not to be deprived of liberty without due process of law; among others;
- x. Consider conducting a national census urgently, which will provide crucial data on the country's population, including key vulnerable groups, and which will guide the elaboration and development of the Government's policies and programs;

Right to security of persons, right to life and the death penalty

- xi. Abolish the death penalty in law, and commute all prisoners sentenced to capital punishment to life imprisonment;
- xii. Enact legislation which specifically criminalises extra-judicial killings;
- xiii. Conduct prompt investigation on the allegations of the 'shoot to kill' policy allegedly used by the military, in addition to ensuring prosecution of all perpetrators;
- xiv. Conduct prompt investigation of the allegations on deaths which have occurred in places of detention, taking into consideration that "*Where a person dies in State custody, there is a presumption of State responsibility and the burden of proof rests upon the State to prove otherwise through a prompt, impartial, thorough and transparent investigation carried out by an independent body,*" as stated in the Commission's General Comment No. 3 on the African Charter on Human and Peoples' Rights: The Right to Life;

Prohibition of torture and cruel, inhuman and degrading treatment

- xv. Enact specific legislation which defines, prohibits and criminalizes torture, in accordance with international standards;
- xvi. Ensure the establishment of an accessible and fully independent mechanism to which all persons can bring their allegations of torture;
- xvii. Take immediate and urgent measures to conduct investigations on the reports of torture committed in places of detention, including ensuring prosecution of perpetrators and provision of redress to the victims or their families;
- xviii. Ensure that returned asylum-seekers are not subjected to torture, or the threat of torture, and conduct prompt investigations on these reports;

Right to liberty and security of person, conditions of prisons and detention centres

- xix. In the next Report, provide the following information:
- (a) The total number of prisons and other places of detention in the country;
 - (b) The total number of the prison population, in addition to disaggregating the information according to the number of remand prisoners, convicted persons, female and male prisoners, in addition to juvenile prisoners;
 - (c) The total number of prisoners currently sentenced to capital punishment;
 - (d) The Ministry responsible for overseeing the Eritrea Correctional and Rehabilitation Services;
- xx. Ensure provision of training to all law enforcement personnel on human rights, including the Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (the Robben Island Guidelines), the Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa (the Luanda Guidelines), the UN Standard Minimum Rules for the Treatment of Prisoners, among others;
- xxi. Ensure that the Prison Services Regulations includes provisions on human rights and the rights of detained persons;
- xxii. Appoint an independent institution with the mandate to conduct unannounced visits to all places of detention;
- xxiii. Take urgent measures to conduct investigations on all cases of arbitrary and *incommunicado* detention, ensure prosecution of all perpetrators and provision of redress to the victims or their families;
- xxiv. Urgently make provisions to ensure the immediate access of family members to all prisoners who have been held in *incommunicado* detention;
- xxv. Urgently investigate the allegations of cruel, inhumane and degrading conditions of detention, and take measures to improve conditions of detention in accordance with international standards, including the Luanda Guidelines;
- xxvi. Urgently investigate the allegations of '*nay hadera*,' and ensure that all prisoners in places of detention are afforded basis human rights protection;
- xxvii. Ensure provision of free access to ARVs to the entire prison population with HIV/AIDS;
- xxviii. Ensure provision of condoms in prisons, to prevent the spread of HIV/AIDS in prisons;

Access to and administration of justice

- xxix. Take urgent measures to address the denial of basic rights of all detained persons, including the group of former Government officials, journalists, religious leaders and members of the Jehovah Witness faith, among others, by ensuring immediate access to the essential elements of a fair hearing, as stipulated in the Commission's Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa;
- xxx. Enact provisions stipulating the right of *habeus corpus* in the revised Constitution or the Penal Code;
- xxxi. Establish a Legal Aid program to ensure provision of legal aid to indigents;
- xxxii. In the next Periodic Report, clarify the position of the Special Court in the hierarchy of the judicial system;
- xxxiii. Amend the provisions of Proclamation No.85/1996 clarifying the following:
 - (a) The Special Court is bound by the principle that "No person shall be liable to be tried again for any criminal offence on which judgment has been rendered;"
 - (b) The Special Court shall operate in accordance with the laws of the country, including the Penal Code and the Criminal Procedure Code of Eritrea;
 - (c) The decisions of the Special Court are subject to appeal in the High Court;
- xxxiv. Guarantee the right of defendants to legal representation in cases before the Special Court is provided in Proclamation No.85/1996, and further that defendants before the Special Court are informed of this right;

Independence and training of Judges

- xxxv. In the event of its absence, urgently establish an independent Judicial Service Commission mandated with the appointment of judges, and enact a law which specifies the independence of the Judiciary from other branches of Government, and which ensures security of tenure of Judges;
- xxxvi. Ensure that judges appointed to the Community Courts, the Military Courts and the Special Court have training and experience in the legal profession;
- xxxvii. Ensure provision of training programs for all judicial officers, including the judges of the Community Courts, the Military Courts and the Special Courts, and further ensure that the training programs include components on human rights, making reference the African Charter, the Commission's Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, among others;

Freedom of conscience and religion

- xxxviii. Appoint a Minister to monitor implementation of Proclamation 73/1995, in addition to ensuring the right to appeal for religious groups which are denied registration;

- xxxix. Ensure that followers of the Jehovah Witness faith retain their citizenship rights in accordance with the Citizenship Proclamation No. 21/1992 which provides that “Eritrean citizenship can be acquired by birth, by naturalization, by adoption and by marriage, without discrimination;”

Freedom of expression and access to information

- xl. Ensure enactment of a law which provides for the right to access information, in accordance with international standards and as elaborated in the Commission’s Model Law on Access to Information in Africa;
- xli. Amend the provisions of the Penal Code which criminalize defamation, in accordance with the Commission’s Resolution on Repealing Criminal Defamation Laws in Africa (ACHPR/Res.169 (XLVIII)10) which calls on “*States Parties to repeal criminal defamation laws or insult laws which impede freedom of speech;*”
- xlii. Amend the provisions of the Press Proclamation 90/1996 to allow the operation of private media in accordance with the Commission’s Declaration of Principles on Freedom of Expression in Africa which provides in Principle V(1) that “*States shall encourage a diverse, independent private broadcasting sector. A State monopoly over broadcasting is not compatible with the right to freedom of expression;*”
- xliii. Establish a public authority which exercises powers in the areas of broadcast or telecommunications regulation, which should be independent and adequately protected against interference, particularly of a political or economic nature;
- xliv. Ensure unrestricted access to telephone SIM cards to all persons residing in Eritrea’s territory without discrimination;
- xlv. Take measures to ensure unrestricted access to the Internet;

Freedom of association and assembly

- xlvi. Include in the next Report, the names and functions of independent civil society organizations which are operating in the country;
- xlvii. Ensure that the provisions of the regulatory framework for the registration of non-governmental organizations, that is Legal Notice No 5 of 1992, are in accordance with international standards on freedom of association, including the Commission’s Guidelines on Freedom of Association and Assembly;
- xlviii. Enact a legislative and regulatory framework which governs the right to assemble, in accordance with international standards, including the Commission’s Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa;

Right to freedom of movement, refugees, international displaced persons and migrants

- xlix. Consider revision of the policy requiring an exit visa for Eritreans who wish to leave the country, and consider amending the policy to exempt children under the age of five (5) from requiring an exit visa;
- l. Establish an appeal process for persons denied the exit visa, in addition to recourse to legal appeal in Court;
- li. Provide information in the next Report on the measures put in place to ensure that National Service conscripts are issued an ID card and National Passport;

Right to participate freely in Government

- lii. Provide information in the next Report on the status of the National Assembly;
- liii. Consider holding national Presidential and legislative elections as soon as possible;
- liv. Revise the restrictions which hinder the formation of opposition political parties;
- lv. Enact legislation governing registration, regulation and funding of political parties;

Economic, Social and Cultural Rights

- lvi. In the next Periodic Report provide information on the allocation of the national budget to key sectors, such as health and education;
- lvii. Take the necessary measures to ensure access to potable water, specifically targeting the rural areas;

Right to property

- lviii. In the next Report, provide information on the role and function of the Government institution which is mandated to ensure access to adequate housing;
- lix. Provide information on the Government institution responsible for monitoring implementation of the Labour Proclamation;

The right to work

- lx. In the next Periodic Report provide information on the unemployment rate, in addition to the youth unemployment rate;
- lxi. Revise the provisions of the Labour Proclamation No. 118/2001 to restrict children aged 14 years from entering into a contract of employment;
- lxii. Investigate all reports of the use of National Service Program conscripts in mining and construction plants owned by private companies and provide information on the outcome of these investigations in the next Report;

lxiii. In the next Periodic Report, provide information on the following elements of the *Warsay Yikealo Development Campaign*:

- (a) The Government institution which oversees the program;
- (b) The mandate and work done by the program;
- (c) The recruitment process for participation in the program, and whether the program is mandatory;
- (d) The amount of remuneration for participation in the program;
- (e) Investigations carried out regarding the allegations that conscripts in the *Warsay Yikealo Development Campaign* are subjected to forced labour, and the outcome of the investigations;

Right to health

lxiv. Ensure provision of free or subsidized family planning services;

Protection of the rights of persons living with HIV/AIDS

lxv. Establish a national institution mandated to coordinate the country's interventions to combat HIV/AIDS;

lxvi. Ensure provision of free ARVs to all citizens with HIV/AIDS, in addition to key vulnerable groups including sex workers and MSM;

Right to education

lxvii. Consider revising the mandatory participation of all secondary students at the Sawa Education and Training Centre;

lxviii. Ensure the appointment of a Government institution to monitor the programs at the Sawa Education and Training Centre, and take the necessary measures to include a human rights based approach to the training provided at this facility;

lxix. Ensure access to education for all children without discrimination, including children from the Jehovah Witness faith;

lxx. Ensure that students who complete the secondary school exam are able to join alternative institutions of higher education, such as vocational training centres;

Protection of the rights of women and children

lxxi. Ensure that the allocation of positions to Ministers takes into account the need for representation by women;

lxxii. In the next Report, clarify the role and mandate of the National Union of Eritrean Women (NUEW), and encourage the formation of independent civil society organizations which promote and protect the rights of women;

- lxxiii. Investigate the allegations of sexual abuse of female conscripts, in accordance with the Commission's Guidelines on Combating Sexual Violence and its Consequences in Africa, which provide that "*States must adopt the necessary legislative and regulatory measures to act with due diligence to prevent and investigate acts of sexual violence committed by State and non-state actors, prosecute and punish perpetrators, and provide remedies to victims;*"
- lxxiv. Enact legislation which provides for promotion and protection of the rights of the child;

The rights of persons with disabilities and older persons

- lxxv. Replace the needs-based approach employed for persons with disabilities with a rights-based approach;
- lxxvi. Adopt comprehensive measures, including legislative and regulatory frameworks to ensure the rights of older persons;

Extractive industries, environment and human rights violations

- lxxvii. In the next Report, clarify the role and responsibility of the Eritrean National Mining Corporation;
- lxxviii. Ensure the free, prior and informed consent of all communities living in areas which were expropriated for the extraction of natural resources;
- lxxix. Take the necessary measures to ensure that international labour standards are strictly enforced in the mining areas;
- lxxx. Ensure by law that a percentage of the proceeds from the extracted resources are invested in the country;
- lxxxii. Establish judicial or non-judicial grievance mechanisms to ensure redress for violations committed by the companies in the extractive industry;

Protection of the rights of indigenous populations

- lxxxii. Provide detailed information relating to indigenous populations, including the measures put in place to ensure their representation in the next Report;
- lxxxiii. Establish a legislative and regulatory framework for the promotion and protection of the rights of indigenous populations, and appoint a Government institution to monitor implementation;

Protection of human rights defenders

- lxxxiv. Enact legislative measures to protect human rights defenders, in conformity with the Kigali and Grand Bay Declarations, in addition to the UN Declaration on Human Rights Defenders;

Information not provided in the Report

- lxxxv. Provide information in the next Report on the alleged policy which stipulates that Eritreans can only be married if they have completed their National Service;
- lxxxvi. Provide information on the total number of members of the National Service who have been demobilized during the reporting period;

Implementation of the Commission's Recommendations

- lxxxvii. Take immediate action to implement the Commission's decisions and provide information on the measures put in place to implement the recommendations issued in the following Communications;
 - (a) **Communication 275/03: Article 19 v. Eritrea** in which the Commission called on the State to: "Release or bring to a speedy and fair trial the 18 Journalists (including Mr Dawit Isaak) detained since September 2001 and to lift the ban on the press; grant detainees immediate access to their families and legal representatives; and take appropriate measures to ensure payment of compensation to the detainees;"
 - (b) **Communication 250/02: Liesbeth Zegveld and Mussie Ephrem v. Eritrea** in which the Commission urged the State of Eritrea to: "Order the immediate release of the 11 detainees, namely, Petros Solomon, Ogbe Abraha, Haile Woldetensae, Mahmud Ahmed Sheriffo, Berhane Ghebre Eghzabiher, Astier Feshation, Saleh Kekya, Hamid Himid, Estifanos Seyoum, Germano Nati, and Beraki Ghebre Selassie; and Recommends that the State of Eritrea compensates the above-mentioned persons;"
- lxxxviii. Inform the Commission on the measures which have been taken to implement the recommendations of the present Concluding Observations in the next Report.

Adopted at the 63rd Ordinary Session of the African Commission on Human and Peoples' Rights, held from 24 October to 13 November 2018, in Banjul, The Gambia