Advance Version

Distr.: Restricted
5 June 2015

English only

Human Rights Council
Twenty-ninth session
Agenda item 4
Human rights situations that require the Council's attention

Report of the detailed findings of the Commission of Inquiry on Human Rights in Eritrea* **

Summary

The Commission of Inquiry undertook its investigation in accordance with Human Rights Council resolution 26/24.

Although the Commission was unable to visit Eritrea, it obtained first-hand testimony by conducting 550 confidential interviews with witnesses residing in third countries. It also received 160 written submissions.

On the basis of this body of evidence, the Commission found that systematic, widespread and gross human rights violations have been and are being committed in Eritrea under the authority of the Government. Some of these violations may constitute crimes against humanity.

In the present report, the Commission shows how the initial promises of democracy and rule of law, incarnated in the never-implemented Constitution of 1997, were progressively suppressed and then extinguished by the Government. It details how the Government has created and sustained repressive systems to control, silence and isolate individuals in the country, depriving them of their fundamental freedoms. Information collected on people's activities, their supposed intentions and even conjectured thoughts are used to rule through fear in a country where individuals are routinely arbitrarily arrested and detained, tortured, disappeared or extrajudicially executed. The Commission also describes how, on the pretext of defending the integrity of the State and ensuring its self-sufficiency, Eritreans are subject to systems of national service and forced labour that effectively abuse, exploit and enslave them for indefinite periods of time.

* Reproduced as received.

** The information contained in this document should be read in conjunction with the report of the Commission of Inquiry on Human Rights in Eritrea (A/HRC/29/42).

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Acronyms

ACHPR	African Charter on Human and Peoples' Rights
AENF	Alliance of Eritrean National Forces
AfDB	African Development Bank Group
AMISOM	African Union Mission in Somalia
ARDUF	Afar Revolutionary Democratic Unity Front
ARS	Alliance for the Re-Liberation of Somalia
AU	African Union
AMISOM	African Union Mission to Somalia
BANA	Eritrean Women War Veteran's Association
BMSC	Bisha Mining Shareholders Corporation
CAT	Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CEACR	Committee of Experts on the Application of Conventions and Recommendations of the International Labour Organisation
CEDAW Women	Convention on the Elimination of All Forms of Discrimination against
CERD	Convention on the Elimination of All Forms of Racial Discrimination
CIA	Central Intelligence Agency (USA)
CPAP	Country Programme Actions Plans
CRC	Convention on the Rights of the Child
CRC-OPAC	Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict
COIE	Commission of inquiry on human rights in Eritrea
COMESA	Common Market for Eastern and Southern Africa
DMLEK	Democratic Movement for the Liberation of the Eritrean Kunama
EDP	Eritrean Democratic Party
EEBC	Eritrea-Ethiopia Boundary Commission
EECC	Eritrea-Ethiopia Claims Commission
EFND	Eritrean Forum for National Dialogue
EIJM	Eritrean Islamic Jihad Movement
EIT	Eritrea Institute of Technology
ELF-PLF	Eritrean Liberation Forces – People's Liberation Forces
ELF	Eritrean Liberation Front
ELM	Eritrean Liberation Movement
EMC	Eritrean Movement for Change

ENA/EDA	Eritrean National Alliance/ Eritrean Democratic Alliance
ENAMCO	Eritrean National Mining Corporation
ENCDC (Baito)	Eritrean National Congress for Democratic Change
EPLF	Eritrean People's Liberation Forces, then Front
EPRP	Eritrean People's Revolutionary Party
EPRDF	Ethiopian People's Revolutionary Democratic Front
ERRC	Eritrean Relief and Refugee Commission
ESLC	Eritrean High-School Leaving Certificate
EU	European Union
EYSC	Eritrean Youth Solidarity for Change
EYSNS	Eritrean Youth Solidarity for National Salvation
FAO	Food and Agriculture Organisation
FGM	Female Genital Mutilation
GDP	Gross Domestic Product
HRC	Human Rights Council
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICRC	International Committee of the Red Cross
ICU	Islamic Courts Union
IGAD	Intergovernmental Authority for Development
ILO	International Labour Organisation
IMF	International Monetary Fund
MDGs	Millennium Development Goals
NCEW	National Confederation of Eritrean Workers
NDF	(Sudanese) National Democratic Alliance
NGO	Non-governmental organisation
NIF	National Islamic Front
NUEYS	National Union of Eritrean Youth and Students
NUEW	National Union of Eritrean Women
OCHA	Office for the Coordination of Humanitarian Affairs
OHCHR	Office of the High Commissioner for Human Rights
ONLF	Ogaden National Liberation Front
OLF	Oromo Liberation Front
OAU	Organisation of African Unity
PFDJ	People's Front for Democracy and Justice

PGE	Provisional Government of Eritrea
PROFERI	Programme for Refugee, Reintegration and Rehabilitation of Resettlement Areas in Eritrea
RCHRD	Regional Centre for Human Rights and Development
RCSE	Red Cross Society of Eritrea
RSADO	Red Sea Afar Democratic Organisation
SDF	Sudan Defence Force
SGBV	Sexual and Gender Based Violence
SPCF	Strategic Partnership Cooperation Framework
SPLM	Sudan People's Liberation Movement
TFG	(Somalian) Transitional Federal Government
TSZ	Temporary Security Zone
TPDM	Tigray People's Democratic Movement
TPLF	Tigray People's Liberation Front
TTI	Teachers' Technology Institute
UASU	University of Asmara Student Union
UN	United Nations
UNAIDS	Joint United Nations Programme on HIV/AIDS
UNCT	United Nations Country Team
UNCTAD	United Nations Conference on Trade and Development
UNDAF	United Nations Development Assistance Framework
UNDP	United Nations Development Programme
UNFPA	United Nations Population Fund
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNMEE	United Nations Mission in Ethiopia and Eritrea
UNOSAT	United Nations Institute for Training and Research's Operational Satellite Applications Programme
UNOVER	United Nations Observer Mission to Verify the Referendum in Eritrea
UPR	Universal Periodic Review
USAID	United States Agency for International Development
WHO	World Health Organisation
WYDC	Warsai Yikealo Development Campaign

I. Introduction

1. The Commission of Inquiry on Human Rights in Eritrea (hereinafter "the Commission") was established for a period of one year by the Human Rights Council through its resolution 26/24 of 27 June 2014 on the "situation of human rights in Eritrea".

2. On 26 September 2014, the President of the Council appointed Mr. Mike Smith as Chair of the Commission and Mr. Victor Dankwa and the Special Rapporteur on the situation of human rights in Eritrea, Ms. Sheila B. Keetharuth, as members of the Commission. The Commissioners served in a non-remunerated, independent, expert capacity, supported by a secretariat of experienced human rights officers.

3. This report is presented in compliance with paragraph 13 of resolution 26/24, whereby the Human Rights Council requested the Commission to present a written report to the Council at its 29th session, in addition to an oral update at its 28th session in March 2015 and an oral presentation to the General Assembly at its 70th session in October 2015.

4. In keeping with paragraph 14 of the resolution, the Human Rights Council may decide to "transmit all reports of the Commission to all relevant bodies of the United Nations and to the United Nations Secretary-General for appropriate action."

II. Mandate, methodology, and legal framework of the Commission of Inquiry

A. Origins of the mandate

5. In accordance with its mandate "to address situations of violations of human rights, including gross and systematic violations, and make recommendations thereon",[1] the Human Rights Council first considered the situation of human rights in Eritrea as one that required its attention during its 20th session in July 2012.[2] During this session, the Human Rights Council adopted, by consensus, resolution 20/20, in which it expressed its "deep concern at the ongoing reports of grave violations of human rights by the Eritrean authorities against its own population … and the alarming number of civilians fleeing Eritrea as a result of those violations". It also strongly condemned, among other things, "a) the continued widespread and systematic violations of human rights and fundamental freedoms committed by the Eritrean authorities, including cases of arbitrary and extrajudicial executions, enforced disappearances, the use of torture, arbitrary and incommunicado detention without recourse to justice, and detention in inhumane and degrading conditions; b) the severe restrictions on [fundamental freedoms …]; c) the forced conscription of citizens for indefinite periods of national service, which could amount to forced labour". In resolution 20/20, the Human Rights Council, therefore, decided to appoint a Special Rapporteur on the situation of human rights in Eritrea and to remain seized of this matter. It also called upon the Eritrean authorities to fully cooperate with the Special Rapporteur.[3]

6. Later that year, during its 21st session held in September 2012, the Council decided "to discontinue reviewing the human rights situation in Eritrea under its confidential

[1] See General Assembly resolution 60/251 of 15 March 2006, operative paragraph 3.
[2] Agenda item 4 on its programme of work.
[3] Human Rights Council resolution 20/20, operative paragraphs 4 and 5.

complaint procedure in order to take up public consideration of the same in the context of the implementation of Council resolution 20/20. The Council adopted a confidential resolution on Eritrea and decided to make it public as Human Rights Council resolution 21/1".[4] In resolution 21/1, the Council, therefore, decided that the documentation it had received from individuals, groups, or non-governmental organizations about human rights violations in Eritrea under the complaint procedure should no longer be considered confidential. The information was thereby transmitted to the newly appointed Special Rapporteur on the situation of human rights in Eritrea, Ms. Sheila B. Keetharuth, who was requested to further investigate the allegations contained therein. [5]

7. The Special Rapporteur presented her first report during the 23rd session of the Human Rights Council held in June 2013. In its resolution 23/21, the Council welcomed the report and expressed its concern about the lack of cooperation of the Government of Eritrea with the Special Rapporteur. It also reiterated its concerns about the situation of human rights in Eritrea and its condemnation of the human rights violations occurring in the country, as previously highlighted in resolution 20/20. It decided to extend the mandate of the Special Rapporteur for one year.

8. At its 26th session in June 2014, the Human Rights Council was faced with the continuous lack of cooperation by the Government of Eritrea and with an unchanged situation of human rights in the country. In its resolution 26/24, adopted by consensus, the Council therefore welcomed the second report of the Special Rapporteur; reiterated its concern for the lack of cooperation of Eritrea with the Special Rapporteur and for the human rights situation in the country; and as a result decided to extend for another year the mandate of the Special Rapporteur and to establish the Commission.[6]

B. Interpretation of the mandate by the Commission

9. The mandate of the Commission is outlined in paragraph 8 of resolution 26/24, which states that "the Commission of inquiry will investigate all alleged violations of human rights in Eritrea, as outlined in the reports of the Special Rapporteur."

10. As part of the definition of its methods of work, the Commission further delineated the scope of its mandate and its competences as follows:

> Competence *ratione personae*: the Commission shall only investigate alleged violations that are imputable on Eritrean authorities. This means violations directly committed by Eritrean public officials; committed at their instigation or with their consent or acquiescence; or when the relevant authorities have abstained to prevent, investigate and prosecute authors of violations of the fundamental rights of a person.
>
> Competence *ratione loci*: the geographic scope of the investigation is human rights violations allegedly committed on the territory of Eritrea, without any exclusion of a specific area of the country and including the border zones and Eritrean maritime territory.

[4] See Human Rights Council report 21/2, para. 228.
[5] A/HRC/23/53.
[6] A/HRC/26/45.

Competence *ratione temporis*: the temporal scope of the investigation covers the period from the independence of Eritrea until present day.[7]

Competence *ratione materiae*: the Commission shall investigate the human rights violations "as outlined in the reports of the Special Rapporteur",[8] which "include but are not limited to":[9]

Extrajudicial killings

Enforced disappearances and incommunicado detention

Arbitrary arrest and detentions

Torture

Violations occurring during compulsory national service, including those affecting children' rights

Restrictions to freedoms of expression and opinion, assembly, association, religious belief and movement

11. Other commissions of inquiry established by the Human Rights Council have been specifically requested to investigate the human rights violations and related crimes in a specific country or territory.[10] The Commission was only mandated to investigate all alleged violations of human rights in Eritrea. Therefore, the Commission interpreted its mandate as not including the investigation of international crimes in Eritrea. This is without prejudice to the possible perpetration of international crimes in Eritrea and in particular of crimes against humanity[11] and war crimes.[12] It also does not preclude the possibility for the Commission to recommend further investigations, if by the end of its own investigation it has collected information indicating that such international crimes may have occurred. The Commission emphasizes that its present findings should not be interpreted as a conclusion that international crimes have not been committed in Eritrea.

C. Cooperation of Eritrea and other States with the Commission

1. Lack of Cooperation of the State of Eritrea

12. In paragraph 9 of resolution 26/24, the Council "calls upon the Government of Eritrea to cooperate fully with the Special Rapporteur and the Commission of inquiry, to permit them and their staff members unrestricted access to visit the country, to give due consideration to the recommendations contained in the reports of the Special Rapporteur, and to provide them with the information necessary for the fulfilment of their mandates."

13. On 24 October 2014, the Chair of the Commission sent a letter to the President of Eritrea, His Excellency Isaias Afwerki, to express the wish of the Commission to visit Eritrea. Having received no answer, on 25 November 2014 the Chair of the Commission transmitted a second letter to the Permanent Mission of Eritrea to the United Nations Office

[7] Eritreans celebrate Independence Day on 24 May, date that recalls the take-over of Asmara in 1991, whereas the declaration of the independent state of Eritrea formally occurred in May 1993. For the purpose of its investigation, the Commission has taken the date of 1991 as a starting point.

[8] Paragraph 8 of resolution A/HRC/Res/26/24.

[9] (A/HRC/23/53) published on 28 May 2013 and (A/HRC/26/45), published on 13 May 2014.

[10] Sri Lanka, The Democratic People's Republic of Korea, Syria and Gaza.

[11] Crimes against humanity may happen in both war and peace time.

[12] During the war between Eritrea and Ethiopia from May 1998 to June 2000, and during the border clashes with Djibouti in June 2008.

and other international organizations in Geneva, in which he reiterated the request of the Commission to visit the country. This correspondence was sent after the three Commissioners met the First Secretary and *Chargé d' affaires ad interim* of the Permanent Mission of Eritrea on 19 November 2014, in Geneva. The Commission did not receive a reply.

14. On 19 December 2014, the Chair of the Commission sent a letter to the Minister of Foreign Affairs of Eritrea, His Excellency Osman Mohammed Saleh, through the Permanent Mission of Eritrea to the United Nations Office and other international organizations in Geneva, requesting for information about statements made by Eritrean officials in late 2014 about the decision of the Government of Eritrea to limit the duration of the national service of future conscripts to 18 months, as stipulated by Eritrean legislation.[13] In this correspondence, the Chair reiterated the desire of the Commission to visit Eritrea. Again, the Commission received no answer or information. On 19 May 2015, the Chair of the Commission sent another letter to the Minister of Foreign Affairs of Eritrea to request a copy of the new Civil, Penal, Civil Procedure and Penal Procedure Codes that were promulgated on 11 May 2015. The Commission received no answer or information.

15. In the context of each of its visits to other States (detailed hereafter), the Commission also systematically requested to meet with Eritrean representatives in-country. The Commission, however, did not receive any reply to these requests.

16. On 5 June 2015, the report was shared with the Government of Eritrea.

2. Cooperation of other States

17. The Human Rights Council, in its resolution 26/24, requested all States to cooperate with the Commission.[14] The Commission sent requests to visit the following 24 countries with the view to conduct interviews with Eritrean refugees, migrants and other members of the diaspora: Algeria, Australia, Chad, Egypt, Ethiopia, Djibouti, Malta, Tunisia, Germany, Israel, Italy, Kenya, Kuwait, Morocco, Qatar, Saudi Arabia, South Africa, Sudan, Switzerland, Uganda, The United Arab Emirates, the United Kingdom, the United States, and Yemen.

18. Australia, Chad, Djibouti, Germany, Ethiopia, Israel, Italy, Malta, Sweden, Switzerland, Tunisia, the United Kingdom and the United States of America agreed to such a visit. The Commission thanks the Governments of these countries for their cooperation. On the basis of these acceptances and taking into consideration its budget and timeline, the Commission selected the countries it would visit according to the following criteria: 1) The size of the Eritrean population they host, and 2) The average dates of arrival of Eritreans in these countries, to ensure the entire period under investigation was covered. The Commission visited Switzerland, Italy, the United Kingdom, Djibouti, Ethiopia, Germany, Sweden and the United States of America between November 2014 and March 2015.

19. The Commission regrets that Algeria, Qatar and Saudi Arabia officially declined its request and that the other States have not replied to its official letters.

3. Cooperation of the United Nations entities

20. In paragraph 12 of resolution 26/24, the Human Rights Council also requests the United Nations, through its Secretary-General, to "provide the Special Rapporteur and the

[13] Proclamation 82/1995.

[14] Paragraphs 9 and 10 of the Resolution.

commission of inquiry with all information and the resources necessary to fulfil their mandates".

21. Accordingly, the Commission engaged with a number of United Nations entities to obtain relevant information and support to conduct its investigations. The Commission must express its concern about the fact that a small number of United Nations entities were reluctant to cooperate with the Commission for fear of negative repercussions on their relationship with the Eritrean Government. Most entities requested that any contact with the Commission or information provided to it be treated as highly confidential. This report, therefore, only attributes information to specific organizations where such information is reflected in their public reports. The citation of a public report is not necessarily an indication that an organization has cooperated with the Commission.

22. The Commission extends its gratitude to the Office of the High Commissioner for Human Rights (OHCHR), which provided a dedicated secretariat as well as its advice and support. The Commission also extends its gratitude to UN Women for the provision of the services of a gender expert to the Commission. Such support and assistance from OHCHR and UN Women was afforded with proper respect to the independence and integrity of the Commission; once appointed, secretariat members worked independently of these agencies. The Commission also interacted with, and received relevant information from a number of mandate-holders under the Special Procedures of the Human Rights Council and Human Rights Treaty Bodies.[15]

4. Cooperation of individuals and non-governmental organizations

23. The Commission has benefitted from the invaluable support of a number of individuals and non-governmental organizations who have helped to identify and contact Eritrean victims and witnesses of alleged human rights violations.

D. Methods of work

24. During their first meeting in Geneva in November 2014, the Commissioners adopted the terms of reference, rules of procedure, methodology, and standard of proof to be applied to the findings and the initial programme of work of the Commission.

25. In carrying out its work, the Commission was guided at all times by the principles of independence, impartiality, objectivity, transparency, integrity and the principle of "do no harm".

1. Protection of victims, witnesses and other sources of information

26. The Commission established procedures to ensure the protection of victims, witnesses and other sources of information at all stages of its work and beyond its conclusion. These procedures are in accordance with the standard policies adopted by

[15] Treaty bodies refer to the Committees established under the core human rights treaties with the mandate to monitor the implementation of the treaties by State parties. These are the Human Rights Committee, Committee on Economic, Social and Cultural Rights, Committee on the Elimination of Racial Discrimination, Committee against Torture, Committee on the Rights of the Child, Committee on the Elimination of Discrimination against Women, Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, Committee on the Rights of Persons with Disabilities, Committee on Enforced Disappearances and the Subcommittee for the Prevention of Torture.

OHCHR, which are themselves based on the central principles of confidentiality and "do no harm".[16]

27. The protection of victims and witnesses was one of the main challenges faced by the Commission during its investigations. Almost all victims and witnesses in contact with the Commission feared reprisals by Eritrean authorities, be it against themselves or targeting their family members still living in Eritrea. Irrespective of the country or location where the interviews were organised, the persons who agreed to speak on a confidential basis to the Commission were convinced that the Eritrean authorities were in a position to monitor their conduct through a network of spies and informants within the Eritrean diaspora. Indeed, the Commission was able to witness one specific episode of such monitoring. The Commission is, therefore, particularly grateful to those individuals who, notwithstanding such fears, did agree to speak to the Commission.

28. The Commission sought guarantees from the States concerned that individuals wishing to meet the Commission would have unhindered access to it, and that no person would, as a result of such contact, suffer any harassment, threats, acts of intimidation, ill-treatment or reprisals from anyone, or face any criminal prosecution or other judicial proceedings. The Commission reminds the governments of countries visited in the course of its investigation that they have a responsibility to ensure the protection of persons who have cooperated with the Commission.

2. Principle of confidentiality of the investigations

29. As a matter of principle, all information gathered by the Commission in the course of its investigations is confidential. The Commission took all necessary measures and precautions to protect the confidentiality of information and the identity of the individuals who provided information to the Commission and/or supported its work. The names of victims, witnesses and sources are therefore not mentioned in the report. However, names of some individuals whose cases have previously been published on open sources are listed in the present report and the consent of the victim has been obtained.

30. At the conclusion of the Commission's work, all the information collected will be moved on to the official United Nations archive system, where in accordance with the established procedure its contents will be classified as "unclassified", "confidential" or "strictly confidential".[17] All interviews from victims and witnesses will be classified as "strictly confidential". Information will not be shared with any State, entity or individual without the explicit and informed consent of each victim or witness concerned. This includes sharing with other sections of OHCHR; United Nations human rights mechanisms; any international judicial mechanisms; any judicial mechanisms of other states; and any government authorities, in particular the Eritrean government.

3. Standard of proof

31. Consistent with the practice of other United Nations fact-finding bodies, especially those which have not been granted access to the territory where the alleged violations have

[16] See OHCHR Manual on International Commissions of Inquiry and Fact-Finding Missions on International Human Rights Law and International Humanitarian Law (2013).

[17] According to United Nations rules, "unclassified" information refers to all information or material that can be disclosed without prior authorization; "confidential" information refers to information that will be declassified automatically after 20 years, although access to the information will be granted only upon request; and "strictly confidential" information is never automatically declassified. Information and records that are marked "strictly confidential" shall be reviewed item by item for possible declassification after 20 years and, thereafter, every five years.

occurred, the Commission based its findings on a "reasonable grounds to believe" standard of proof.[18] Internal guidelines were developed to ensure the corroboration of the information that is needed to reach the adopted standard.

32. Fact-finding bodies consider that the standard is met when in assessing all the information gathered – including open sources – they can conclude that it is reasonable to believe that the incident or event occurred as reported. The adopted standard of proof does not imply that on the basis of the information gathered, such conclusion should be the only reasonable one. This standard is sufficiently high to call for further investigations into the incident or pattern of conduct, which may lead to possible criminal prosecution in the future.

33. Patterns of systematic human rights violations have been identified taking into account the high frequency of occurrence of the human rights violations documented and corroborated during the investigation (taking into account the number of victims and the replication of the violation during a certain period of time); the type of rights violated; and the systemic nature of these violations, meaning that they cannot be the result of a random or isolated act of the Eritrean authorities

4. Investigation methodology

34. In order to establish the facts and circumstances of alleged violations and taking into account the impossibility to access Eritrea, the Commission decided to collect first-hand testimonies and accounts of victims and witnesses of alleged human rights violations from Eritrean refugees, asylum-seekers, migrants and other members of the diaspora.

35. The Commission also used the services of the United Nations Institute for Training and Research's Operational Satellite Applications Programme (UNOSAT) to obtain satellite imagery of detention places identified in the course of its investigations. Thus the Commission has been able to locate 67 detention facilities throughout Eritrea.[19]

(a) Confidential interviews

36. In the course of its investigations, which started effectively in November 2014, the Commission carried out 550 confidential interviews with victims and witnesses of with victims and witnesses of and sources on the perpetration of alleged human rights violations. These interviews were conducted during its successive visits to Switzerland, Italy, the United Kingdom, Djibouti, Ethiopia, Sweden, Germany, and the United States of America.

37. Some excerpts from these interviews are included in the report. These are published without information on the exact place and time of violations or any other details that might lead to the identification of the person, due to the legitimate protection concerns referred to above and substantiated in other parts of the text. These extracts have been rephrased in order to protect the identity of the sources and ensure better readability and comprehension.

(b) Organization of thematic discussions

38. During its country visits, the Commission also organized thematic discussions with researchers, academics, representatives of non-governmental organizations, as well as groups of victims and witnesses. Thus, in the United Kingdom, Ethiopia, Djibouti, Sweden,

[18] It should be understood that all findings presented in this report have reached the standard of "reasonable grounds to believe". In the very few instances where the adopted reasonable ground to believe standard has not been reached, the lower standard of proof is explicitly mentioned. In such case, the Commission usually refers to "allegation" instead of "information".

[19] The satellite images are annexed to the present report as Annex VI.

and the United States, thematic discussions were organised on freedom of religion; freedom of expression; freedom of association; women's rights; national service; extrajudicial killings; enforced disappearances, torture; prison conditions; and intimidation in the diaspora.

(c) Call for submissions

39. In November 2014, the Commission published a call for submissions on its website.[20] It invited interested individuals, groups and organizations to submit written information and/or documentation on alleged violations of human rights perpetrated in Eritrea since its independence. The call for submissions was initially opened until the end of January 2015 and then extended for one additional month, until 28 February 2015. Written submissions were received in English, Tigrinya and Arabic. Video, audio and photographic materials were also received. By the deadline, the Commission had received a total of 160 submissions related to 254 individual cases, providing first-hand testimonies of victims and witnesses of human rights violations as well as background information on the situation of human rights in Eritrea. When additional information was needed, the Commission contacted the author(s) of the submissions.

(d) Consideration of other written materials

40. The Commission collected and reviewed many reports and background information materials about Eritrea written by United Nations entities, non-governmental organizations, research institutes and academics.[21]

(e) Engagement with other States

41. At the beginning of each country visit, the Commission met with representatives of the respective States and from international organizations based in-country. During these meetings, the Commission informed the representatives of its mandate, methods of work and objectives as well as about the advancement of its work. The Commission also alerted the State authorities to its concerns about the security of persons assisting the Commission who are residing on their territory.

42. The Commission visited Switzerland from 17 to 26 November 2014; Italy from 27 November to 3 December 2014; the United Kingdom of Great Britain and Northern Ireland from 24 to 30 January 2015; Djibouti from 15 to 18 February 2015; Ethiopia from 19 to 22 February 2015; Sweden from 16 to 18 March 2015; Germany from 19 to 21 March 2015; and the United States of America from 26 to 30 March 2015, following a preparatory visit by the Chair of the Commission in January 2015.

43. The findings in this report rely primarily on first-hand testimonies from victims and witnesses collected during the confidential interviews, thematic discussions and through written submissions specifically addressed to the Commission. The written material and information gathered during consultation with representatives of other States and intergovernmental organizations were useful to obtain contextual and historical information on the past and current situation in Eritrea.

5. Integration of gender in the work of the Commission

44. In line with best practices in the integration of gender in commissions of inquiry and in accordance with Human Rights Council resolution 23/25, the Commission devoted

[20] http://www.ohchr.org/EN/HRBodies/HRC/CoIEritrea/Pages/CallSubmissions.aspx.
[21] See Annex VIII.

specific attention to gender issues and the gendered impacts of violations.[22] Pursuant to the commitment of the UN Secretary-General in 2011 to ensure that all commissions of inquiry have dedicated gender expertise and access to specific sexual violence investigative capacity, the services of a gender specialist were made available to the Commission.[23] The gender specialist provided gender sensitive investigation and analysis training and guidance to all members of the Commission.

45. The Commission faced significant challenges in the investigation and documentation of human rights violations suffered by women. Ahead of each country visit, the Commission - directly and through intermediaries - emphasized its desire to speak with as many Eritrean women as possible offering flexible arrangements to do so. Nevertheless, women represent just 18.5 per cent of the Commission's interviewees.

46. The Commission found that in general, women were more reluctant to come forward and speak for fear of their own safety as well as that of their families, lack of time, perceived inability to access interview locations, perceived lack of interest in their experiences and a general hesitation to disclose these. The Commission received information indicating that women in the diaspora communities were kept very busy with work, attending to their families and ensuring their family members', particularly children's survival in their new country. When communicating to men the Commission's desire to speak with their wives or other female family members, the Commission was often told that it would be possible, but that the women would be unable to travel or leave their homes as they could not navigate their new surroundings or because they cared for children or other relatives at home. The Commission also found that women hesitated to speak with the Commission because they perceived their experiences not worthy of consideration. By far, however, the biggest challenge to interview women was the fear for the safety of their families as they believed that their conduct was being clandestinely monitored by Eritrean authorities and were terrified for any person to know they had spoken with the Commission.

47. The Commission developed innovative ways to overcome these challenges. It contacted women's networks and groups and built relationships of trust through online conference calls. The Commission took the time to build rapport within these networks and was on hand to respond to questions or concerns of individuals at the convenience of the witnesses and intermediaries, which the Commission understood in the case of women, was often late into the evening after they had tended to their numerous responsibilities. Prior to country visits, the Commission engaged with female intermediaries as early as possible, expressing the Commission's desire to speak with women and highlighting the Commission's ability to be flexible with its arrangements to interview witnesses. It spoke with a number of witnesses in their homes where they felt comfortable and those with caring responsibilities could continue to care for their relatives/ children. Some interviews were undertaken in other locations where the witnesses felt comfortable and were only known by them. Some witnesses were interviewed online. In one location, where the Commission adopted an open door policy by which witnesses came to the interview location after being informed it would be there, the Commission explicitly introduced a "women's only day". The Commission understood that in the cultural setting in which women perceived themselves and their experiences to be of lesser significance to men, it would be important to have special days for women. The Commission noted that towards the end of the Commission's investigation phase, as trust and confidence in the

[22] A/HRC/23/L.28, para 17.

[23] See the 2011 report of the UNSG on Women, Peace and Security (S/2011/598), para 69.

Commission's work had grown, many more women indicated their willingness to be interviewed, but due to the Commission's compressed timeline this was no longer possible.

48. The Commission also noted that many women who did speak with the Commission prioritised reporting abuses suffered by male relatives, typically husbands, fathers or brothers thereby subordinating abuses that they themselves might have suffered. The traditional patriarchal society and men-first culture has an unspoken yet highly ordered hierarchy which cause women to regard their own suffering as less important or to be considered only after that of their male relatives and elders. The Commission was empathetic to these situations, taking the time to explain the Commission's work and its interest in all experiences of both men and women.

49. The Commission found that men were often more willing and able to meet with the Commission in interview locations as they were often more familiar with their new surroundings. In general, men often easily proffered information about female family members, friends or members of the community with grave concern. In exceptional cases, men came forward explicitly to speak with the Commission about the experiences of a specific female relative, on her behalf.

50. Sexual violence, particularly against women proved difficult to document owing to the cultural contexts specific to Eritrea, as well as to the general shame and stigma that still attaches to victims. Eritrean women were generally afraid to speak about sexual violence because of the cultural emphasis on their virginity, chastity or monogamy. Women reported that they customarily self-censor to avoid shame being brought upon their families as news travels quickly and easily through communities both inside and outside Eritrea. In Eritrea, the social shame a sexual violence victim suffers from can in turn lead to ostracism, inability to marry if single, and divorce and loss of children if married. In some cases, women also feared violence from their families if their experience of sexual violence was known. In the Afar community women and girl victims of sexual violence were also afraid that such violence could lead to their death.

51. The Commission also received reports of suicide among victims of sexual violence in Eritrea as a result of the extreme shame, stigma and related consequences from which they traditionally suffer. In the words of a woman who spoke with the Commission:[24]

> *"Not only can we not report it, it is part of our culture not to be able to say this … I cannot report it to another officer, because it is my superior doing this to me. I cannot talk about it with other people. If I reported it and the case went to court, the whole neighbourhood would know. Then it would bring shame to the family. No one would marry the girl. No one will marry a raped girl. The officers do it because they know this, they know that no one will report it because of the social shame and self-censorship of women. A woman cannot live in our society and be known to be a rape victim."*

52. The Commission was sensitive to these cultural contexts and the risk of re-traumatisation of victims. It sought to ensure all witnesses felt comfortable when speaking with the Commission. Interviews were held in safe and confidential locations, interpreters were selectively chosen and communications were kept confidential. The Commission re-assured all witnesses, particularly female witnesses, of the Commission's confidentiality protocols and its policy of non-disclosure to any individual or entity any details documented. Gender sensitive investigation methods were utilised, and gender, cultural and security considerations were taken into account when arranging, and during interviews.

[24] TSH081.

Where appropriate, the Commission referred victims of sexual violence to medical and psycho-social service providers as needed. Given the difficulty of both connecting with women and documenting sexual violence, the Commission takes the view that its inquiry may have only partially captured the extent of sexual violence and violence against women.

E. Legal framework of the investigation

1. International human rights instruments

53. The Commission assessed the human rights situation in Eritrea on the basis of the international legal obligations voluntarily subscribed to by Eritrea. Eritrea is a State Party to the following universal and regional human rights treaties: the Convention on the Rights of the Child since 1994 - and its two Optional Protocols since 2005, the Convention on the Elimination of All Forms of Discrimination against Women since 1995, the African Charter on Human and Peoples' Rights since 1999, the African Charter on the Rights and Welfare of the Child since 2000, the International Convention on the Elimination of Racial Discrimination since 2001, the International Covenant on Economic, Social and Cultural Rights since 2001, the International Covenant on Civil and Political Rights since 2002, and the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment since September 2014.

54. Eritrean authorities are responsible for guaranteeing the protection and preservation of the human rights and fundamental freedoms enshrined in these treaties at all times. They are obliged to refrain from any conduct that violates human rights and they have the duty to protect those living within their jurisdiction through the enactment of laws at the domestic level that protect and implement the human rights recognised at the international level. This means that the Commission also assessed, where possible, whether the national legislation enacted by Eritrean authorities is in line with the international obligations of Eritrea.[25] The Commission did not assess the compliance of Eritrean authorities with these domestic provisions, but whether their actions, in law and in practice were in accordance with the international standards.

2. Non-derogable rights

55. The Commission is of the view that Eritrea is bound by all the international obligations indicated above. It rejects the argument frequently raised by Eritrean authorities that the so-called "no war, no peace" status of the country and the "continued occupation of Sovereign Eritrean Territories" by some of its neighbours justifies some derogations and restrictions of the human rights to be enjoyed by the persons under its sovereignty. [26] Under public international law, derogations and restrictions to human rights in exceptional situations are strictly regulated by the human rights treaties themselves.

56. In accordance with article 4 of the International Covenant on Civil and Political Rights, some of the human rights guaranteed by the Covenant are "non-derogable" and should be respected at all times, including in time of public emergency that threatens the life of the nation. These include: The right to life; the prohibition of torture or cruel, inhuman or degrading punishment; the prohibition of slavery and forced labour; the right to

[25] Such assessment has been very limited because of the lack of accessibility to domestic legislation, including within Eritrea – see Chapter V.

[26] See National UPR Report submitted in accordance with paragraph 5 of the Annex to Human Rights Council resolution 16/21, A/HRC/WG.6/18/ERI/1, para. 91; Statement of the Eritrean Delegation, 18th Session of the UPR Working Group, 3 February 2014, p. 10; See chapter III.C. Historical Background – Post- Independence.

be recognised as a person before the law; and the freedom of thought, conscience and religion. In addition to this list of non-derogable rights established by the Covenant, a number of other rights were considered by the Human Rights Committee as non-derogable. These are: the right of all persons deprived of their liberty to be treated with humanity and with respect for the inherent dignity of the human person; the prohibition against taking hostages; imposing collective punishments through arbitrary deprivations of liberty or by deviating from fundamental principles of fair trial, including the presumption of innocence; abductions or unacknowledged detention; and certain elements of the rights of minorities to protection.[27] Moreover, the provisions of the Covenant relating to procedural safeguards may never be subjected to measures that would circumvent the protection of non-derogable rights.[28]

57. Temporary derogations to the other fundamental rights are possible in times of public emergency but they should not be discriminatory (that is based on the ground of race, colour, sex, language, religion or social origin). [29] Further, the scope of the derogation as to time and place should be restricted to the extent strictly required by the exigencies of the situation, in accordance with the principle of proportionality. In particular, it is acceptable under international standards to restrict the exercise of certain freedoms such as the freedoms of expression, assembly, association or to manifest one's religion or belief, provided that such restrictions be prescribed by law and be necessary in a democratic society to protect public safety, order, health or morals, or the fundamental rights and freedoms of others, and are designed in accordance with the proportionality principle.

58. Eritrea has never sent a notification to the United Nations Secretary-General declaring a State of public emergency in the country, which in accordance with article 4 of International Covenant on Civil and Political Rights is the first required step to allow the Government of a State party to take measures derogating from some of their obligations under the Covenant. In fact, during its two Universal Periodic Reviews Eritrea confirmed that there was no state of emergency in the country.[30]

3. Other international instruments and obligations

59. In addition to the core human rights treaties, the Commission took into account other international obligations voluntarily subscribed by Eritrea. These include: the 1930 Forced Labour Convention (since February 2000); and the 1957 Abolition of Forced Labour Convention (since February 2000).

60. The Commission also based its findings, where applicable, on the international obligations of Eritrea under customary international law, which is the non-written source of public international law. Customary law is binding on every State, except where the State has constantly objected to a specific customary obligation.

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[27] Human Rights Committee, General Comment 29 on state of emergency, para. 11 and 13.

[28] Article 14 of the ICCPR: right to due process and fair trial; In the context of international human rights law, the principle of proportionality implies that a reasonable balance should be struck between the aims pursued and the actions undertaken to achieve these aims.

[29] In this part, reference is only made to the specific provisions of the International Covenant on Civil and Political Rights regulating derogations to and restrictions of fundamental freedoms. Similar derogations and restrictions are usually recognized by other international human rights treaties, except under the African Charter on Human and Peoples' Rights that does not contain a general provision permitting the State parties to derogate form their responsibilities in times of emergency.

[30] In November 2009 and February 2014; A/HRC/13/2/Add.1. par. 31 and A/HRC/26/13.Add.1, par. 122.38. See chapter IV. C. on Eritrea's relations with the United Nations and other organizations.

4. International instruments on the administration of justice

61. The Commission also referred to international human rights instruments concerning the administration of justice, which provide detailed guidance about more general rules. To conduct its assessment of the conditions of detention and treatment of prisoners in Eritrea, the Commission relied on the Standard Minimum Rules for the Treatment of Prisoners,[31] the Body of Principles for the Protection of All Persons under Any Form of Detention,[32] the United Nations Standard Minimum Rules for the Administration of Juvenile Justice,[33] and the United Nations Standard Minimum Rules for Non-custodial Measures.[34] It also referred to the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials,[35] the Basic Principles on the Independence of the Judiciary,[36] the Basic Principles on the Role of Lawyers[37] and the Guidelines on the Role of Prosecutors[38] during its consideration of the structure and functioning of judicial system in Eritrea. While these instruments are not formally binding on Eritrea, they reflect the general consensus of contemporary thought and the essential elements of the most adequate systems of today, to set out what is generally accepted as being good principle and practice in the treatment of prisoners and structure and functioning of the justice system.[39]

III. Historical background

A. Pre-colonial and colonial times

1. Pre-colonial time (until 1860)

62. In 2003, archaeologists discovered in Buya (or Buia),[40] a locality in the northern Danakil Depression of Eritrea, the remains of a woman dating from one and half million years ago. This discovery placed Eritrea near the dawn of human kind. Evidence of both agricultural cultivations and breeding of livestock in the region can be traced back to 5000 B.C. By the second millennium B.C., the Eritrean coast was almost certainly visited by Egyptian trading expeditions. Historians consider Eritrea as the most likely location of the

[31] Adopted by the first United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955 and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.

[32] Adopted by the General Assembly in resolution 43/173, Annex.

[33] Adopted by the General Assembly in resolution 40/33, Annex.

[34] Adopted by the General Assembly in resolution 45/112, Annex.

[35] Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 august-7 September 1990, report prepared by the Secretariat (United Nations publication), chap. I, sect. B.2, Annex.

[36] Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August-6 September 1985: report prepared by the Secretariat (United Nations publication), chap. I, sect. D.2, Annex.

[37] Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 august-7 September 1990, report prepared by the Secretariat (United Nations publication), chapter. I, sect. B.3, Annex.

[38] Ibid, chapter. I, sect. C.26, Annex.

[39] See the Preliminary Observations (1) of the Standard Minimum Rules for the Treatment of Prisoners..

[40] Both Tigrinya and Arabic, the two most common languages in Eritrea, lack formal systems of transliteration to the Latin alphabet. As a result, personal and place names are spelt differently in other languages. In this report, the Commission has used spellings most frequently appearing in public documents, publications, and media.

land known to the Ancient Egyptians as Punt, first mentioned as early as the twenty-fifth century B.C.

63. Until the first centuries A.D, civilisations and kingdoms flourished on the territory of present-day Eritrea. Excavations at Sembel, a village near Asmara, uncovered evidence of one of the earliest urban, pastoral and agricultural communities of the Horn of Africa. Similarly, archaeological excavations in and near Agordat in central Eritrea yielded the remains of a culture known as the "Gash Group" that inhabited the Nile Valley between 2500 and 1500 B.C. From the eighth to the fifth century B.C., the Kingdom of D'mt encompassed most of Eritrea and northern Ethiopia. It built temples and irrigation systems, and fabricated iron tools and weapons. After its fall, the highlands of Eritrea were dominated by smaller successor entities until the rise of the Kingdom of Aksum, also known as the Aksumite Empire.

64. The Aksumite Empire extended its control over most of present-day Eritrea and the northern part of Ethiopia (as well as Western Yemen, southern Saudi Arabia and Sudan, at its height) from the second to the tenth century A.D. The capital city of the Empire was Aksum, now in northern Ethiopia. By the end of the third century A.D., it had begun minting its own currency and had become a centre for trade between West and East. Dominating states on the Arabian Peninsula across the Red Sea, it was named by the Persian philosopher Mani (216–274 A.D.) as one of the four great powers of its time along with Persia, Rome and China. As of the seventh century A.D., the Aksumite Empire faced the rapid expansion of Islam. Eventually, the Islamic Caliphate took control of the Red Sea and most of the Nile. Aksum, forced into economic isolation, started to decline.

65. After the fall of the Aksumite Empire around the tenth century A.D., the highlands passed under the rule of the *Bahr Negus* (lit. the "King of the Sea") and its kingdom, first called *Ma'ikele Bahr* (lit. "the land between the Red Sea and the Mereb river") and later renamed *Medri Bahri* (lit. the "Sea land" in Tigrinya). Its capital was Debarwa, located 25 kilometres south of present-day Asmara. *Medri Bahri* was a distinct political entity from Abyssinia, the Ethiopian Empire founded by Mara Takla Haymanot in 1137. The Bahr Negus alternately fought with or against the Abyssinians and the neighbouring Muslim states, depending on the circumstances.

66. By the end of the sixteenth century, the Ottomans had succeeded in conquering Medri Bahri, causing the territory to become part of the Ottoman province of Habesh Eyalet, extending to the areas of the Red Sea basin. For a short time before Jeddah, Massawa served as the capital of the new province. The Ottomans, however, failed to sustain control of lands in the interior of what today is Eritrea. In 1846, Muhammad Ali Pasha's Egyptian forces took control of Habesh Eyalet and enlarged it, notably by extending it to western Eritrea. Egypt's domination of the Eritrean coastal and western lowlands and northern highlands lasted until the Mahdist uprising in Sudan in 1888, which set the stage for the European penetration into the Horn of Africa.

2. Italian colonisation (1890-1941)

67. From 1870, Italians started settling along the Eritrean coast. To counter the French expansion in the region, the United Kingdom changed its position of supporting Egyptian rule in Eritrea to supporting the Italian colonisation of Eritrea. In 1885, following Egypt's retreat from the region, the British helped Italian troops to occupy Massawa, which was then united to the already colonised port of Assab to consolidate Italy's coastal possession. In 1889, Italy took advantage of the uncertain situation created by the death of Emperor Yohannes IV to occupy the Highlands with the aid of Eritrean auxiliaries. This occupation was accepted by the new Ethiopian monarch, Menelik II. On 1 January 1890, the Italian king announced the creation of the colony of Eritrea, taking its name from the ancient

Greek name for the Red Sea, *Erythreus.* Massawa became the capital of the new colony, before being replaced by Asmara in 1897.

68. The seizure by Italians of huge swathes of agricultural fields in the highlands from the indigenous population sparked an anticolonial revolt led by Bhata Hagos, a former commander in the Ethiopian army. In response, the Italians invaded the Tigray region but faced the resistance of Ethiopian troops, who defeated them in the battle of Adwa in 1896. In the peace treaty that followed, Emperor Menelik II renounced Ethiopian claims to the Italian colony in exchange for the recognition of Ethiopia as an independent State.

69. The Italian administration launched its first development projects in Eritrea from the late 1880s. The construction of the Eritrean railway started in 1887 and the first line connecting Massawa to Saati, 27 kilometres inland from the coast, was completed in 1888. It reached Asmara in 1911. In addition, Italians built an infrastructure of ports, roads, telecommunications, factories, administrative centres and police stations that unified the colony under a centralised government. Many historians and specialists trace the development of a national consciousness to that time. The feeling of belonging to one nation was reinforced by the large scale enrolment of Eritreans as *askaris* (soldiers) in the Italian colonial army, which participated in the two Italo-Ethiopian wars (1895-1896 and 1935-1936) as well as in the war against Turkey in Libya (1911-1912). At the same time, the Italian administration developed policies intended to limit the development of an Eritrean elite. In 1932, the Fascist government expelled Protestant missionaries, the only source of Eritrean education beyond fourth grade, and limited the access of all Eritreans, including those of mixed blood, to schools, jobs and social services in urban areas.

70. From 1922, the rise of Benito Mussolini to power in Italy transformed the colony by making it his base for implementing his expansionist ambitions in the Horn of Africa. In 1935, thousands of Italian workers and soldiers poured into Eritrea in preparation of the second invasion of Ethiopia. In May 1936, Mussolini declared the birth of the *Africa Orientale Italiana*, the Italian East Africa Empire comprising Eritrea, Somaliland, and the newly conquered Ethiopia. Eritrea became the industrial centre of this empire. At that time, around 60 per cent of working-age male Eritreans found employment in the administration and in the 2,138 Eritrean factories in Eritrea in 1939; others were conscripted into the Italian army.

3. British administration (1941-1950)

71. In 1941, British-led forces defeated the Italian regular army and colonial troops in the battle of Keren, fought from 5 February to 1 April. This victory was of huge strategic importance as it opened the road and railway routes to Asmara and Massawa, both of which surrendered to Allied forces in the aftermath of the battle. Eritrea then fell under British military administration, which proceeded to dismantle many industries and most of the infrastructure as war compensation. At the same time, the British set the foundations for Eritrean political engagement and organizations by allowing trade unions, political parties and publications.

72. In April 1941, a group of Eritreans had formed the *Mahber Feqri Hager* (the Patriotic Society), with the original aim of ending the Italian domination of Eritrean public life. With the victory of the Allies and the definitive loss by Italy of its African colonies, the *Mahber Feqri Hager* split into two factions. A first one, led by Mr. Ibrahim Sultan and representing a group of Muslims, called for independence of the country or for a UN trusteeship. The second one, led by Tigrinya intellectual Mr. Tedla Bairu, advocated for a union with Ethiopia. In between them were other figures, like Mr. Wolde-Ab Wolde-Mariam, representing both Muslim and Christian groups who called for some form of autonomous federation with Ethiopia. By 1946, these three currents had turned into three distinct political parties: Mr. Sultan became the leader of the Muslim League, Mr. Bairu of

the Unionist party and Mr. Wolde-Mariam of the pro-independence party known as "Eritrea for Eritreans."

73. These political organizations aimed at lobbying the Allies on the future status of the country but the Allies refused. Immediately following the end of World War II, the British proposed to divide Eritrea along religious lines and parcel it off between Ethiopia and Sudan. The Soviet Union, anticipating a victory of communists in the Italian elections, initially supported the return of Eritrea to Italian trusteeship, while Arab states, eager to protect the Muslim population in the country, sought the establishment of an independent state. Haile Selassie, the Ethiopian Emperor, lobbied the United States for the handover of most of Eritrea to Ethiopia.

74. In 1948, following its inability to find a solution acceptable to all the parties, the "Four Powers" (the United States, the United Kingdom, France and the Soviet Union) turned the matter over to the United Nations. The organization also failed to find a solution, although they got close to partitioning Eritrea along religious lines according to the "Bevin-Sforza Plan" proposed by the United Kingdom and Italy in 1949.[41] In response, some Eritrean pro-independence parties gathered in the "Independence Bloc"[42] to advocate for the organization of a referendum on self-determination. The same month, the United Nations dispatched a Commission to explore possible solutions. The Commission proposed a way forward between the United States, keen to keep control over the former Italian military bases in Asmara, and Ethiopia, which was fearful of losing Eritrea altogether.

75. On 2 December 1950, the United Nations General Assembly adopted Resolution 390 A (V) creating a loose federation that saw Eritrea being placed under Emperor Haile Selassie's control but keeping its own administrative and judicial structures, its own flag, two official languages (Tigrinya and Arabic), and control over its domestic affairs, including police, local administration and taxation. The British, who were asked to leave Eritrea no later than 15 September 1952, organised legislative elections on 25 and 26 March 1952 to form a National Assembly of 68 members. On 10 July 1952, this new body accepted a constitution put forward by the United Nations and ratified by Emperor Haile Selassie on 11 September 1952.

4. Ethiopian annexation (1952-1962)

76. From the start of the federation, Emperor Haile Selassie took steps that appeared to undermine Eritrea's autonomy. He decreed a preventive detention law that allowed Ethiopian forces to supress Eritrean political movements and arrest newspaper editors. He forced elected community leaders to resign. He replaced the Eritrean flag with that of Ethiopia and imposed the use of Amharic in public services and schools. He also seized Eritrea's share of custom duties and moved most of Eritrean industries and businesses to Ethiopia.

77. Eritreans protested against Ethiopia's attempts to jeopardise the Federation. In 1957, students mounted mass demonstrations, followed in 1958 by a four-day general strike organised by trade unions. Ethiopian troops fired on the protestors, killing and wounding many. Convinced that peaceful protests were not effective anymore, in November 1958 Mr. Mohamed Said Nawd, Mr. Saleh Ahmed Eyay and other Eritreans exiled in Sudan founded the Eritrean Liberation Movement (ELM). Made up mainly of male and female students,

[41] The plan negotiated between the United Kingdom's foreign secretary, Ernest Bevin, and his Italian counterpart, Count Sforza, proposed the partitioning of Libya and Eritrea, with Eritrea to be divided between Ethiopia and Sudan. Ethiopia would have gained the highlands and eastern lowlands, and Sudan the western lowlands.

[42] Formed in June 1949 between the Liberal Progressive Party and "Eritreans for Eritrea".

intellectuals, and urban wage labourers, the ELM engaged in clandestine political activities intended to pacifically resist Ethiopian rule. By 1962, however, the Movement was discovered and suppressed by Imperial authorities. It also suffered from competition with the Eritrean Liberation Front (ELF), which had been created in July 1960 in Cairo by Mr. Idris Muhammad Adam and other Eritrean intellectuals and students inspired by the Algerians' fight for independence. Most of ELF initial militants and leaders were Muslims who, seeing Eritrea as part of the Arab world, adhered to a Pan-Arabic ideology. ELM and ELF competed for supporters but none of them managed to recruit Hamid Idris Awate, a former soldier in the Italian colonial army who turned into a guerrilla and community leader. In August 1961, he was forced to find refuge on Mount Abal, between Agordat and Tessenei, to escape imminent arrest by Ethiopian police forces. That is where, on 1 September 1961, he and his companions fired the first shots of what would become the 30-year armed struggle for independence. One year later, on 14 November 1962, Ethiopian troops forced the Eritrean Parliament to dissolve. On that day, Eritrea was officially annexed as Ethiopia's fourteenth province.

B. The struggle for independence

1. The ELF leading the struggle (1962-1974)

78. In 1962, Hamid Idris Awate's small group was strengthened by defecting Eritrean members of the Sudan Defence Force (SDF). After the death of their leader in June 1962, the group joined the ELF and formed the core of the troops that would combat Ethiopian forces for the next three decades.

79. In 1963, the ELF counted approximately 250 fighters and started receiving arms supplies from Iraq, Syria and China, through Sudan. Women were drawn to the cause of Eritrean liberation from the beginning. Soon after the inception of the ELF, women became involved resisting the occupation through activities such as cooking to nursing, weapon collection to message transmission. Although not easily welcomed into the ELF in its early days, women's ability to evade Ethiopian scrutiny and complete important clandestine tasks was of great value to the ELF.

80. Some of its male recruits also began to be trained overseas. During the following two years, ELF forces grew from four platoons to seven and by 1965 they had reached about 2,000 fighters organised in small units. Originally loosely defined, the ELF organization gained in clarity and efficiency in May 1965 when its president, Mr. Idris Mohamed Adem, and its secretary, Mr. Idris Galadewos, met with field commanders in Khartoum. They decided to create a Revolutionary Command based in Kassala and four Zonal Commands modelled on the *wilayat* (administrative districts) of the Algerian liberation movement. Zone 1 included the former province of Barka and the natural reserve of Gash Setit, today divided between the Gash-Barka and Anseba regions; Zone 2, the former province of Senhit, was absorbed into the Anseba region; Zone 3, the former provinces of Ankele Guzai and Seraye, incorporated parts of the Northern Red Sea, Debub (Southern) and Gash-Barka regions; and Zone 4, the former province of Sahel was integrated into the present day Northern Red Sea region.

81. ELF fighters were initially recruited among lowland Muslims. However, as the war spread, Christians from the highlands started to join the movement leading to the creation in late 1966 of a fifth Zonal Command covering the Eritrean highlands. In response, Ethiopia launched a counter-insurgency strategy coupling military offensives supported by arms and training from the United States and Israel with tactics aiming at dividing Muslims and Christian ELF supporters. At first the division strategy paid off. During the summer of 1967, the Christian leadership of the ELF under Mr. Wolde Kahsai defected. A group of recruits, led by Mr. Haile Woldetensa'e, were massacred by Muslim fighters after they had

turned themselves in at the Ethiopian consulate in Kassala and had asked for amnesty. In September 1967, 50 Christian farmers were massacred by ELF Muslim fighters in the Seraye and Gash-Setit regions. These incidents, added to a number of military failures, pushed ELF members of both religions to form the Eslah (reform) movement to challenge the Front's old leadership. In September 1968, Eslah transformed itself into the Tripartite Unity Forces, unifying Command Zones 3 and 5.

82. The counter-insurgency operations led by the Ethiopian army between 1967 and 1970 alienated the Eritrean population and prompted many Muslims and Christians to join the ELF. Meanwhile, the Front remained reluctant to incorporate women in its forces, and women continued to be unable to attain higher ranks in comparison to men. Although a Women's Union was formed in 1967 to advocate for their rights and for the ELF internationally,[43] it was not until the first National Congress in 1971[44] that the ELF leadership endorsed the notion that the role of women (and other groups such as students, workers and peasants) were essential to the struggle.

83. Despite this new strength, the ELF remained divided. In August 1969, an attempt was made to resolve the crisis by the creation of a Provisional General Command and the replacement of the Command Zones with a three-region system. However, the massacre of Christian recruits in 1969 and 1970 and the execution of ELF Christian prominent figures such as Mr. Wolde Ghiday and Mr. Kidae Kiflu prompted the creation in 1971 of a new dissident group under the command of Mr. Abraham Tewolde and Mr. Isaias Afwerki.

84. In 1971 the new group was joined by other dissident forces unhappy with the ELF's manner of operating. Together they formed the Eritrean Liberation Forces – People's Liberation Forces (ELF-PLF). Yet, most of the freedom fighters remained loyal to the ELF. In April 1971, an ELF Revolutionary Council and an Executive Committee were created and the fighting forces reorganised into 12 battalion-strength sectors. In February 1972, the new leadership of the ELF declared war on the ELF-PLF.

2. The first fighting between the ELF and the EPLF (1972-1974)

85. ELF dissident groups, which formed the ELF-PLF, were transformed in September 1973 into the Eritrean People's Liberation Forces (EPLF) with Mr. Romedan Mohamed Nur as its secretary and Mr. Isaias Afwerki as its military commander. Both had studied Maoist guerrilla strategy in China in the 1960s. No sooner had it been created than the EPLF faced internal dissensions challenging the newly elected leadership. Critics were violently suppressed. To avoid a possible resurgence, the EPLF set up a new internal security apparatus known as *Halewa Sewra* (lit. the "Shield of the Revolution" in Tigrinya) as well as a Central Committee secretly controlled by the Eritrean People's Revolutionary Party (EPRP), a clandestine communist movement formed in 1971 by ELF-PLF leaders, including Mr. Nur and Mr. Afwerki.[45]

86. EPLF discipline and its social revolutionary political programme gained support not only in its base, located in the Northern Red Sea region, but also in the Christian highlands. Following clashes around Zagher, in the northwest of Eritrea, under popular pressure the ELF and the EPLF negotiated a cease-fire in October 1974. This was one month after

[43] The General Union of Eritrean Women (Cairo Branch).

[44] 14 October and 12 November 1971.

[45] Formed in April 1971, this clandestine organization counted among its founders figures who joined the "G-15" dissent group in 2001 (see infra), including Mr. Mahmoud Ahmed Sherifo and Mr. Mesfin Hagos. The party, re-baptised Eritrean Socialist Party at its 1987 congress, was eventually dissolved at the end of the 1980s. Isaias Afwerki only revealed its existence at the third congress of the EPLF in February 1994.

Ethiopian Emperor Haile Selassie had been overthrown by a military junta that was known as the Derg.[46]

3. The first liberation of Eritrea (1975-1977)

87. In January 1975, the ELF and the EPLF, both reinforced by additional recruits, launched a common attack on Asmara. This was the prelude to a larger offensive that led the two Fronts to liberate almost 95 per cent of Eritrea. Despite having a larger contingent, the ELF lacked sufficient discipline and organization to outstrip the EPLF in its territorial expansion. By the end of 1977, the EPLF was controlling a zone from the coast to Nakfa in the north and extending to inland Dekemhare in central Eritrea, with the exception of Asmara and the islands of Massawa. On the other hand, the ELF had captured the highlands and the western localities of Mendefera, Adi Quala, Agordat and Tessenei, as well as towns in the Gash-Barka and Anseba regions.

88. By 1975 the new influx of recruits and sympathisers compelled the EPLF to reorganise and adopt new policies. It created a unit called Fitwari (lit. "Vanguards" in Tigrinya) which gathered 14 to 16-year-olds and provided them with education and rudimentary military training. The presence of women in the EPLF also increased during this time. In 1973, the first three women had insisted on being given military training, paving the way for more women to be admitted to the EPLF and, by 1975, women were openly recruited for military training. Women were very successful in recruiting other women, and organising civilian women in rural and urban areas.

89. From 23 to 31 January 1977, the EPLF held its first congress in Sahel. An expanded Central Committee was elected as well as a Political Bureau with Romedan Mohamed Nur as secretary general and Isaias Afwerki as vice-secretary. The organization was also re-baptised "Front" instead of "Forces" and an 11-point programme aiming at the creation of an independent, secular and egalitarian State was adopted. Importantly, the political programme included gender equality. The EPLF openly noted that one of its main goals was to liberate women from the inferior status conferred on them by traditional laws and customs. The land reform policy adopted during this time saw the redistribution of land to the landless and poor peasants, enabling women for the first time in history to own property. In rural areas, peasants' organizations were set up to implement the land reforms. Students and labour organizations were constituted in cities to promote and support the struggle, as was the National Union of Eritrean Women (NUEW). At the second regular meeting of the EPLF Central Committee in November 1977, polygamy was abolished and a law stipulating that marriage must be with the consent of both man and woman implemented.

90. In 1975 the new regime in Ethiopia led by Mengistu Haile Mariam, which had embraced a communist ideology, was provided with massive military support by the Soviet Union. Although it had become the most numerous independence force after the defection of Christian contingents from the ELF in the summer of 1977, in December of the same year the EPLF suffered its first serious defeat against the Ethiopian army when trying to capture their naval base in Massawa. In April 1978, the EPLF and the ELF signed a unity agreement that was tested in May by a common offensive launched to capture the town of Barentu, in the west of Eritrea. The joint forces were defeated by an Ethiopian military force much stronger in numbers.

[46] Derg literally means the "Committee" in Ge'ez language, standing for the "Coordinating Committee of the Armed Forces, Police, and Territorial Army".

4. The Ethiopian counter-offensive and second round of fighting between the ELF and the EPLF (1978-1981)

91. Between 1978 and 1983, with the support of the Soviet Union, Ethiopia led six major offensives in which an estimated 30,000 Eritreans and 50,000 Ethiopians died. In the second half of 1978, Ethiopia launched an offensive of 120,000 soldiers and hundreds of Russian tanks on EPLF and ELF positions, regaining most of the Eritrean territory which had been held by the two organizations. In response, the EPLF, lacking support from the outside and inspired by Mao Zedong's teachings on guerrilla techniques, engaged in a "strategic withdrawal" to its bases in the Sahel region and later around the city of Nakfa, from which it conducted hit-and-run attacks. The ELF, with support from Arab countries, attempted to resist the Ethiopian offensive and ended up significantly weakened. Its leaders blamed the EPLF for not fulfilling the unity agreement and not joining its troops in battle, whereas the EPLF accused the ELF leadership of opening secret negotiations with Ethiopia through the Soviet Union and its Arab allies to reach a separate peace settlement. The revival of long-held antagonisms and the withdrawal of the ELF from its positions in the Sahel led in August 1980 to the second round of clashes between the two Fronts, this time initiated by the EPLF.

92. The strategy adopted by the EPLF paid off. By 1980, its forces had managed to stop Ethiopian offensives, seize some of their supplies and weapons, and stabilise a frontline in the Northern Red Sea region. The ELF, which was confronted by the Ethiopian army and EPLF fighters, was driven over the border into Sudan, where its troops were disarmed by the Sudanese authorities. The organization subsequently split into competing factions. By late 1981, the EPLF emerged as the only force fighting on Eritrean soil, although it remained isolated on the international scene with the Soviet Union and its affiliates backing Mengistu's regime and the United States and their Western allies reluctant to support a Maoist-inspired "liberation movement".

5. The military stalemate (1982-1987)

93. In 1982, the EPLF faced the sixth and most violent offensive of the Ethiopian army, known as the "Red Star Campaign", which involved a total of 100,000 Ethiopian troops equipped by the Soviet Union. On this occasion, Mengistu moved his office to Asmara to oversee military operations which were deployed on three fronts: Barka, Nakfa and around Alghena. The offensive involved the massive use of air power and toxic gas that the EPLF resisted by building a network of underground bases and fabricating homemade gas masks and other equipment. The EPLF was able to survive the offensive, which, according to EPLF sources, caused 33,000 Ethiopian casualties and 2,000 Eritrean casualties. This outcome gave renewed confidence to the EPLF, whereas the Derg army became severely demoralised from its attempt to destroy Eritrean resistance.

94. The Soviet Union continued to provide assistance to Ethiopia, and by 1984 military assistance was estimated to have totalled four billion US dollars. Despite Soviet assistance to Mengistu's regime, the EPLF managed to consolidate its positions and launch sporadic attacks against the Ethiopian military presence throughout the country, destroying materials and ammunitions. The Front was, however, affected by famine between 1983 and 1985 which prevented it from maintaining the territory it had regained. At the same time, though, the EPLF secured assistance including food aid from international NGOs and the Eritrean diaspora.

95. During this period of military stalemate, the EPLF reorganised its operations and moderated its discourse to attract more support. From 12 to 19 March 1987, it held its Second Congress, during which delegates decided to soften the 1977 Marxist programme and engage in building a "broad national democratic front". During this congress it was also made clear that the "correct way" (and therefore only way) for women to seek liberation

was to join the armed nationalist struggle and "their true representative [the National Union of Eritrean Women] NUEW". Isaias Afwerki became the secretary of the newly elected Central Committee, with Romedan Mohamed Nur as his deputy. The EPLF soon attracted former members of the ELF.

6. The second liberation (1988-1991)

96. In March 1988, in a turn of events, the EPLF managed to capture the city of Afabet, then headquarters of the Ethiopian army in north-eastern Eritrea. This victory put an end to the stalemate and subsequently allowed the EPLF to move to reconquer almost all of the north and west of the country. In May 1988, Ethiopian troops launched a large-scale bombing counter-offensive to re-capture Afabet. This was inconclusive and opened a new front-line from Halhal to the coastal plain north of Massawa.

97. The military successes of the EPLF yielded new recruits almost tripling the Front's size between 1988 and 1991. They also attracted diplomatic interest. Talks were initiated between the EPLF and the Jimmy Carter's US Administration in 1989, and the Soviet Union halted its military support to Ethiopia to favour a negotiated settlement of the conflict in 1988. In the meantime, the EPLF manoeuvred to weaken Mengistu's regime by intensifying its support to Ethiopian rebel movements, including the Tigray People's Liberation Front (TPLF) and the Oromo Liberation Front (OLF), respectively in north and south-central Ethiopia. In February 1989, EPLF artillery support contributed to the victory of the TPLF in the battle of Shire and the capture of the whole Tigray province, effectively blocking land access from Ethiopia to central Eritrea.

98. In January 1990, the EPLF launched a new offensive that, one month later, led to the liberation of Massawa. By May 1990, the frontline was reorganised between Segeneiti and Dekemhare. In early 1991, the EPLF intensified its attacks along the eastern coast to seize Assab and cut off Ethiopian access to the sea. In May, EPLF forces conducted their final assault and captured the city of Dekemhare on 21 May. The same day, Mengistu, facing the Ethiopian People's Revolutionary Democratic Front (EPRDF), which was supported by the EPLF, fled from Addis Ababa to Zimbabwe. On 24 May, the EPLF entered in Asmara which had been abandoned by retreating Ethiopian troops. Assab was liberated the following day. The armed struggle for independence was over after 30 years of fighting.

7. The *de facto* independence (1991-1993)

99. On 20 June 1991, Isaias Afwerki announced the creation of the Provisional Government of Eritrea (PGE) which would administer Eritrean affairs until the organization of a self-determination referendum. This decision had been accepted by the United States and the new TPLF-led Ethiopian Government in a conference organised in London in May 1991. The leader of the EPLF became the head of the PGE, and the Central Committee of the Front served as the transitional legislative body. An executive body was subsequently created in May 1992. Named the Advisory Council, it consisted of 28 members representing the heads of the EPLF departments[47] and the military. Despite the espoused commitments to gender equality, all of the first members of the Front were men.

100. From 1 to 5 July 1991, the PGE attended the peace conference held in Addis Ababa as an observer. On this occasion, the Ethiopian Government confirmed its support for a referendum on the independence of Eritrea within two years. In December 1991, Ethiopia notified the United Nations that it recognised the Eritrean people's right to self-

[47] The most known departments of EPLF were the Political Affairs Department, the Economic Affairs Department and the Organizational Affairs Department (see chapter V, A, Political and security frameworks).

determination, paving the way for a referendum. In April 1992, the PGE set up a Referendum Commission, chaired by Mr. Amare Tekle. It also passed the Eritrean Nationality Proclamation (No. 21/1993), which set the criteria of citizenship as a pre-requisite for participation in the referendum. Funded by the United Nations and other donor countries, the Commission organised a computerised registration of voters.

101. The referendum took place between 23 and 25 April 1993. Monitored by a United Nations observer mission (UNOVER),[48] the referendum saw 99.8 per cent of the 1,102,410 voters – who resided in Eritrea, Ethiopia, Sudan and other countries – vote for Eritrean independence. On 24 May 1993, Eritrea officially became an independent State. Four days later, it joined the United Nations as its 182nd member. It also established permanent representations to the Organization of African Unity (OA) and to the European Union (EU) and took observer status at the Arab League.

C. Post-independence

1. Building of the new State (1993-1998)

102. Recognition of Eritrea's independence opened a future of hope for the country, devastated by 30 years of conflict. On 19 May 1993, the PGE adopted Proclamation 37/1993 creating a new government to oversee a four-year transition to constitutional rule.[49] The legislative branch of the Government consisted of a National Assembly composed of the members of the Central Committee of the EPLF and 75 elected representatives.[50] None of the exiled political parties and organizations (including the ELF) was represented since the PGE had not authorised them to return to Eritrea. On 21 May, the National Assembly confirmed Isaias Afwerki as President of the country. At the beginning of June 1993, the PGE Advisory Council was transformed in the executive branch of the government. The Judiciary, for its part, had already been put in place since 1992, with applicable legislation based on a combination of Ethiopian civil codes, local customary laws and policies adopted during the liberation struggle. In May 1993, Ms. Fozia Hashim, appointed two years earlier as head of the High Court, became Minister of Justice, a post she still occupies today.[51]

103. On 20 May 1993, however, while the country prepared to celebrate its independence, former EPLF fighters launched a protest after President Afwerki's announced that veterans would remain mobilised for four additional years to rebuild the country war ravaged infrastructure. The protesters blocked Asmara airport and threatened to jeopardise the celebrations. President Afwerki eventually met them in the stadium of Asmara and, by promising them demobilisation benefits, convinced them to disband. Yet, two days later, hundreds protesters were arrested and imprisoned for several years.[52] Other signs of a lack of openness of the new authorities to criticism and forms of expression other than the EPLF-dictated ones could be observed. In 1993, for example, the EPLF decided to suspend the activities of the Regional Centre for Human Rights and Development (RCHRD), the first Eritrean national NGO created in 1992, after it had organised a conference on "NGO policy, multilateral policy and rural credit in Eritrea" and recruited hundreds of independent observers to monitor the April 1993 referendum.[53]

[48] See chapter IV, C, Eritrea's relations with the United Nations and regional organizations.
[49] See chapter V, A, Political and security frameworks
[50] This composition is provided in Proclamation 52/1994 which amended Proclamation 37/1993.
[51] See chapter V, C, The judicial system.
[52] See chapter VI, A, 3, Freedoms of opinion, expression, assembly and association.
[53] Ibid.

104. Soon afterwards Isaias Afwerki made his first speech to the OAU and the United Nations. He laid emphasis on self-reliance, a notion forged during the armed struggle against Soviet-backed Ethiopia. The concept of self-reliance was discussed in February 1994 during the Third Congress of the EPLF, which restructured the Front into a political party renamed People's Front for Democracy and Justice (PFDJ). Self-reliance became one of the six core principles outlined in the National Charter adopted by the Congress and aimed at guiding the PFDJ and the Government; other principles included national unity, participation, self-sacrifice, social justice and the strong relationship between the people and the leadership. The Charter stated the aim of building a secular State, independent from regional, ethnic, linguistic, religious, cultural and social affiliations. In this context, the congress did not reconsider the existing ban on political parties, instead it argued that introducing a multi-party system at this stage in Eritrea would favour the formation of organizations along sectarian lines and jeopardise the national consensus built during the struggle. The Congress also reconfirmed Isaias Afwerki as the PFDJ Secretary General and created a 19-person Executive Council and a 75-person Central Council to replace the Central Committee of the EPLF.

105. The National Charter of the PFDJ also called for the establishment of a constitutional commission to draft a national constitution by 1997. On 15 March 1994, that commission was created with a mandate of two years. It comprised a 32-member council and a 10-member executive committee chaired by Mr. Bereket Habte Selassie, a lawyer and leading figure during the armed struggle. Mr. Azien Yassin, an intellectual from the left wing of the ELF, served as vice-chair and Mr. Zemhret Yohannes, a prominent member of the secretariat of the PFDJ, was its secretary. The Commission, which included 20 women and representatives of each ethnic group, met for the first time one month later, on 17 April 1994. Throughout 1994 and 1995, commissioners travelled across Eritrea and abroad to discuss with local communities and the diaspora the principles to be outlined in the future constitution. The consultative process continued in January 1995 with the organization in Asmara of an international conference to debate the proposed constitution. Representatives of foreign countries were invited, but again exiled Eritrean political organizations were excluded.

106. The day after the Constitutional Commission was set up, on 16 March 1994, registration for the national service began and implemented with some delay the Proclamation adopted by the PGE on 6 November 1991.[54] The Proclamation required all Eritrean citizens aged between 18 and 40 years to undertake a 18-month national service, comprising six months of military training and 12 months of duties in the army or the military reserves. The official goals of the national service were to constitute a reserve force able to defend the country, forge a sense of national unity and rebuild the country. It also intended to put men and women in a position of equality for 18 months, just as they were during the liberation struggle. At first the Proclamation was met with some resistance but, by August 1994 the registration process, promoted by a media campaign highlighting the values of sacrifice, led to the enrolment of 200,000 recruits. A first group of 10,000 was sent to receive military training in the camp of Sawa, a former Italian garrison located along the Sawa River in the Gash-Barka region that had served as an ELF and EPLF base during the war for independence.

107. In September 1994, a group of Jehovah Witnesses was arrested for conscientiously objecting to perform military service.[55] More would be detained and imprisoned in the years to follow. In addition, on 25 October 1994 President Afwerki announced a

[54] See chapter VI, C, 1, National service

[55] Three of the men arrested are still in jail. See chapter VI, A, 4, Freedom of religion and belief.

presidential decree revoking the citizenship of Jehovah Witnesses on the ground that they refused to vote in the 1993 referendum.

108. Suppression of dissenting voices by the Eritrean Government was also to be witnessed in July 1994. Veterans with disabilities incurred during the armed struggle, protesting against their living conditions, decided to organise a demonstration that would take them to the capital city. After attempts by the police to stop them failed, a commando unit intervened and shot at the protesters, killing some. The leaders of the march, like those of the May 1993 veteran protest, were imprisoned.[56] This was the last public demonstration to occur before the early 2000s.

109. In November 1995, the Proclamation 11/1991 on National Service was amended to include citizens aged between 40 and 50 years in the national reserve army.[57] Later on, provisions were also added to ensure compliance with National Service by all citizens, including those in the diaspora, by making it a requirement for the renewal of passports. Similarly, Eritreans wanting to leave the country without completing their national duty were required to post a bond.[58] In 1995, the Government also adopted a Proclamation which prohibited local religious institutions from involvement in politics and from providing social services, managing development projects and advocating on issues related to social justice.[59] The following year, the Government suspended the activities of two national NGOs, the Eritrean Women War Veteran's Association (BANA) and the Tesfa Women Association, both created in 1994 by veteran fighters, seemingly because they competed with the PFDJ-controlled National Union of Eritrean Women (NUEW). The Government also expropriated their assets, including large sums of money. On 25 February 1997, the Chair of the Eritrean Relief and Refugee Commission (ERRC) announced that international NGOs would have to restrict their projects to education and health sectors, which resulted in many NGOs leaving the country.

110. With regard to the judicial system, in 1996 the Government announced the creation of a Special Court – a tribunal constituted of senior military officers appointed directly by the President – with the aim of reducing the backlog in civilian and military courts by hearing cases involving high level officials accused of corruption, misuse of public funds and other major capital offences. In a short time, the Special Court started operating as a parallel justice system. Lacking independence from the Executive, trained personnel and guarantees of fair trial, it quickly became a means for the suppression of dissent and critics.[60]

111. In July 1996, the Constitutional Commission submitted the final draft of the constitution to the National Assembly. Between January and March 1997, the first election since independence took place to designate the members of the assemblies (*baito*) of the six regions (*zoba*) set up in 1996[61] to replace the historical nine provinces (*awraja*) of Eritrea. Alternative candidates to PFDJ-affiliated ones were not allowed. The 399 elected representatives of the regional assemblies eventually formed, along with 75 representatives appointed by the PFDJ and 75 others elected by Eritreans in the diaspora, the Constituent Assembly which adopted the Eritrean Constitution in May 1997. The new Constitution 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

[56] See chapter VI, A, 3, Freedoms of opinion, expression, assembly and association.
[57] Proclamation 82/1995.
[58] See chapter VI, A, 2, Freedom of movement.
[59] Proclamation 73/1995.
[60] See chapter V, C, The judicial system.
[61] Proclamation No. 86/1996 for the establishment of regional administrations

and public freedoms.[62] President Afwerki, however, refused to implement the Constitution until the holding of national elections but the long awaited elections were to be postponed due to the border dispute with Ethiopia that broke out in 1998.

2. Border war with Ethiopia (1998-2000)

112. After independence, the sovereignty over many areas along the 1,000-kilometre border between Eritrea and Ethiopia was never officially determined. This had led to occasional skirmishes between the two armies in several locations. One such place was Badme, a western border locality that had passed under EPLF control in November 1977. According to several historical sources, on 6 May 1998 Ethiopian troops shot Eritrean soldiers near Badme. This incident provoked a heavy military response from Eritrea, soon matched by Ethiopia, which quickly escalated into war.

113. This was not the first time Eritrea had experienced a border dispute with one of its neighbours. On two occasions before it had disputes with Yemen regarding the Red Sea. The first, concerning Yemeni fishing in Eritrea waters, was settled by an agreement on 14 November 1994. The second – about the sovereignty over the Hanish Islands, equidistant between the coasts of the two countries – led to a three-day war from 15 to 17 December 1995 and the subsequent occupation of the Islands by Eritrean forces. Diplomatic resolution of the conflict having failed, the case was brought to the Permanent Court of Arbitration in The Hague, which, after two years of proceedings, concluded that the Islands should be under shared sovereignty. Both countries accepted the ruling.[63]

114. Similar to the disputes with Yemen, the conflict between Eritrea and Ethiopia reflected deep-seated political differences and economic and political competition for markets and influence in the region. When the war for independence ended in 1991, anti-Ethiopian feeling led to tens of thousands of captured Ethiopians soldiers and an estimated 30,000 of their wives and children, many of whom were Eritrean, being expelled into Ethiopia. At the same time, the Governments in Asmara and in Addis Ababa, bound by ties developed during the armed struggle when the EPLF supported the TPLF to seize power in Ethiopia, developed good relations. Eritrea renounced its claim to war reparations, and trade agreements with Ethiopia were concluded in 1992. Eritrea initially continued to use the Ethiopian currency Birr, opened its markets to Ethiopian companies and recognised Assab as a "free port". However, conflicts over land, taxes on trade, monetary policy and the adoption in November 1997 of an Eritrean national currency, the Nakfa, led to further tensions between the two neighbours.[64]

115. The 1998 war developed in three phases. The first phase saw Eritrean troops seize control over virtually all the disputed territory around Badme and on the Assab road. At the end of May 1998, a team of mediators which included Rwanda and the United States presented a proposal to the belligerents which invited them to redeploy their forces to positions held prior to 6 May – the day of the initial incident – in order to allow investigations and an agreement to demarcate the disputed border. Eritrea rejected the proposition on 3 June, and intense fighting resumed until early February 1999. Several diplomatic initiatives to resolve the conflict failed in short order. By the end of February Ethiopia had retaken Badme and much of the disputed territory. On 27th February, Eritrea announced that it was ready to accept the OAU Peace Framework proposal, but Ethiopia refused and resumed its assault on Eritrean positions. The last phase of the war started in May 2000 when Ethiopia opened a military offensive on three fronts: west of Badme; near

[62] See chapter V, The institutional and domestic legal frameworks.
[63] See chapter IV, C, 1, Foreign relations.
[64] Ibid.

Zalambessa; and close to Assab following which Ethiopian troops broke through Eritrean defences and, by mid-June, occupied the disputed territory and large parts of Eritrea. On 19 June, the two countries signed a cessation of hostilities before a peace agreement was reached on 12 December 2000, in Algiers. The Algiers Peace Agreement established a 25-kilometre-wide Temporary Security Zone (TSZ) on the Eritrean side of the disputed border, to be monitored by the United Nations Mission in Ethiopia and Eritrea (UNMEE), which was created by the United Nations Security Council in July 2000.[65] The Algiers Agreement provided for the creation of a joint Eritrea-Ethiopia Boundary Commission (EEBC) under the auspices of the Permanent Court of Arbitration, with a view to issuing a definitive ruling on the demarcation of the border between the two countries.

3. Political crackdown (2001-2002)

116. The border conflict, which led to between 70,000 and 100,000 deaths and the displacement of over one million people, had wider political ramifications. In Ethiopia critics of the Prime Minister asked why Ethiopian troops did not advance further into Eritrea; while in Eritrea there was criticism of how the war was handled by the President. Criticism within the PFDJ surfaced among top-ranking officials when President Afwerki refused the US-Rwanda mediation proposal in 1998. It intensified after Eritrean troops lost control of Badme and the Government was subsequently compelled to sign the Algiers Peace Agreement. Dissenters questioned President Afwerki's leadership in closed sessions of the PFDJ Executive Council in January and August 2000. In October 2000, a group of 13 Eritrean prominent figures in the PFDJ sent a letter to President Afwerki to ask for more transparency in Eritrean institutions and greater freedom of expression. Initially meant to be private, the letter was leaked to the media and came to be known as the "Berlin Manifesto", from the name of the city where it had been drafted.[66]

117. Following the September 2000 session of the National Assembly, a commission headed by the Minister of Local Government, Mr. Mahmoud Ahmed Sherifo, was set up to prepare guidelines for recognising political parties that would participate in the national elections scheduled for December 2001. However, President Afwerki refused to approve the draft guidelines presented to him. After Mr. Sherifo leaked them to the media in January 2001, he was removed from his post. He then joined a group of 15 officials who, in May 2001, published an open letter to PFDJ members. The signatories of the letter, known as the "G-15", were all dignitaries and members of the Executive Council and the Central Council of the PFDJ. Besides Mr. Sherifo, they consisted of Mr. Haile Woldensae, Mr. Mesfin Hagos, Major General Ogbe Abrha, Mr. Hamid Himid, Mr. Saleh Kekya, Brigadier General Estifanos Seyoum, Major General Berhane Ghebre Eghzabiher, Ms. Astier Feshatsion, Mr. Mohammed Berhan Blata, Mr. Petros Solomon, Mr. Germano Nati, Mr. Beraki Ghebreslassie, Mr. Adhanom Ghebremariam, and Mr. Haile Menkerios. In their letter, the members of the G-15 called for "peaceful and democratic dialogue" and "rule of law and justice." They diagnosed Eritrea as in "crisis" and identified the heart of the problem in the way President Afwerki had ruled the country, which, according to them, was "illegal and unconstitutional". They pointed out that "instead of taking action to correct its mistakes, the Government [had] tried to cover them up and silence criticism by threats creating an atmosphere of fear and intimidation." To address this situation, they called for the President

[65] S/RES/1312 (2000).

[66] The signatories included the chair and a member of the Constitutional Commission , Mr. Bereket Habte Selassie and Mr. Paulos Tesfagiorgis ; as well as Mr. Araya Debessay, Mr. Assefaw Tekeste, Mr. Haile Debas, Mr. Kasahun Checole, Mr. Khaled Beshir, Mr. Dawit Mesfin, Ms. Miriam Omar, Mr. Mohammed Kheir Omer, Mr. Reesom Haile, Mr. Mussie Misghina and Ms. Lula Ghebreyesus. The last two eventually withdrew their names, bringing the group down to eleven.

to govern "by the constitution and the law" and the legislature should counter-balance the Executive. They asked for elections to take place and for the PFDJ to function in a more transparent and participatory manner. They also called for the impartiality of mass media "to encourage the protection of human rights"; for freedom of expression and political discourse; freedom of action of NGOs; the dismantling of the Special Court; the independence of the Judiciary; and for individuals who had been detained for long periods of time without trial to be brought before a judge.

118. The wave of protest against President Afwerki's management of power reached another peak in July and August 2001. In July, the International Eritrean Studies Association organised a conference in Asmara during which the President of the High Court, Mr. Teame Beyene, called for the dissolution of the Special Court which he considered "illegal and unconstitutional." He also complained about interference of the Executive Branch in judicial proceedings. At the beginning of August, he accepted the *habeas corpus* petition regarding Mr. Semere Kesete, the President of the University of Asmara Student Union (UASU) who had been arrested on 31 July 2001 after criticising the attempt of the Government to impose a compulsory "summer work programme" with inadequate pay on students. Mr. Kesete was held incommunicado for several days before being brought to the High Court. The Court gave the Police twenty-four hours to formally present its charges or Mr Kesete would be released. University students were called to a meeting in Asmara stadium where they were rounded up by the Army. Once all students were gathered in the stadium, they were trucked to Wi'a and Gelalo, military training camps in the desert, where they were kept for several months and intimidated (several students died). Mr. Kesete was imprisoned without charge and spent two years in solitary confinement before managing to escape and flee Eritrea. Mr. Beyene was dismissed from his post. As an additional measure to prevent further protests, the University of Asmara – the only one in the country – was closed down in 2006.[67]

119. In early 2001 President Afwerki set up a security committee, headed by the then Minister of Information, Mr. Naizghi Kiflu,[68] to investigate political crimes of "sub-nationalism" and "defeatism". Mr. Kiflu ordered the shutdown of all independent publications.[69] Subsequently, the editors in chief and journalists of the eight privately owned newspapers, created after the promulgation of a national press code in 1996, were arrested and imprisoned. In the early hours of 18 and 19 September 2001, eleven members of the G-15 were arrested and detained *incommunicado* without any formal charges. Their whereabouts remain unknown to date. Mr. Mesfin Hagos, Mr. Adhanom Gebremariam and Mr. Haile Menkerios were abroad on the day of the arrests and escaped the crackdown, while one of the initial signatories who was in Eritrea was not arrested. During those days, numerous civil servants, military commanders, businessmen, relatives of the G-15 and other persons perceived as independent or critical of President Afwerki were also arrested. Some have been subjected to enforced disappeared since that time.[70]

[67] See chapter VI, A, 3, Freedoms of opinion, expression, assembly and association

[68] EPLF veteran fighter, head of military intelligence after independence, and then Minister of Information. Very close to President Afwerki, he moved to the United Kingdom in 2005 to become Ambassador and was later investigated by British Police for suspicion of crimes against humanity for the 2001 crackdown. His stay in the United Kingdom became an exile after he clashed with President Afwerki. He died in London in 2013. For three months, his family pleaded with President Afwerki to allow his remains to return to Eritrea. They were denied and he was finally buried in London.

[69] See chapter VI, A, 3, Freedoms of opinion, expression, assembly and association.

[70] See chapter VI, A, 3, Freedoms of opinion, expression, assembly and association and chapter VI, B, 2. Violations of the right to liberty and security of the person.

120. In February 2002, during a speech to the National Assembly, President Afwerki accused the reformists of "committing treason by abandoning the very values and principles the Eritrean people fought for". The Assembly – now purged and under his control – officially approved the arrests and the closing of newspapers it accused of being "foreign-funded" and "engaged in defamation and rumour-mongering". The Assembly also adopted a law on elections, which confirmed the ban on political parties other than the PFDJ. At the end of February 2002, President Afwerki appointed a five-person commission to organise the long awaited national elections – but to this day elections have not taken place.

121. On 13 April 2002, after two years of reviewing submissions by both countries, the EEBC announced its decision regarding the conflicting claims over territory between Eritrea and Ethiopia. Among a number of decisions, it awarded the disputed village of Badme, which had been administered by Ethiopia and where the 1998-2000 conflict began, to Eritrea. Ethiopia rejected this decision and refused to cooperate with the EEBC to physically demarcate the border. Eritrea accepted the decision and refused to reopen negotiations. This impasse led to what has been referred to by Eritrea as a "no war, no peace" situation between the two countries and the occupation of a part of its sovereign territory.

122. During this period, the Eritrean authorities continued to suppress people or groups accused of being manipulated by foreign interests. In April 2002, a registration requirement was imposed on all religious groups with the exception of the Coptic Orthodox Church of Eritrea, Sunni Islam, the Roman Catholic Church and the Evangelical Christian Church. None of the registration requests were approved and many members of these un-recognised religions and churches have been arrested and detained over the years.[71]

123. In addition, in May 2002, the Eritrean Government introduced the "Warsai Yikealo Development Campaign" (WYDC). The WYDC revisited the two former Proclamations on national service[72] and extended national service indefinitely. The Eritrean government also halted the demobilisation process initiated in 2000 after signing the Algiers Peace Agreement, this despite the fact that a demobilisation programme funded by the World Bank had been set up to progressively demobilise, reinsert and reintegrate 200,000 former combatants. In 2003, the Government decided to increase the duration of secondary education by one year and to compulsorily require all final year (12th grade) students to the "Warsai Yikealo Secondary School and National Vocational Training Centre" located at Sawa military camp, where they undertake military training, finalise their secondary education, and take their final exam.[73]

4. Eritrea on the international scene (2002-2012)

124. Ethiopia's refusal to accept the findings of the EEBC allegedly pushed Eritrea to support Somalia-based Ethiopian rebel groups, including the Ogaden National Liberation Front (ONLF),[74] to destabilise the Government in Addis Ababa.[75] In addition, Eritrea reportedly provided weapons and military advice to the Islamic Courts Union (ICU), with a view to forming an anti-Ethiopian government in Somalia. After a rapid advance throughout the country, the ICU captured Mogadishu in June 2006. In July 2006, and in

[71] See chapter VI, A, 4, Freedom of religion and belief.
[72] Proclamations No. 11/1991 and 82/1995.
[73] See chapter VI, C, 1, National service.
[74] The ONLF was formed in 1984 after the defeat of Somalia in the 1977 war against Ethiopia. Its stated objectives aim at obtaining the autonomy of the Ogaden region, situated in the Somali Regional State in eastern Ethiopia.
[75] See reports of the United Nations Monitoring Group on Somalia and Eritrea.

response to these developments, Ethiopia sent troops into Somalia to protect the Somalian Transitional Federal Government (TFG) that had taken refuge in Baidoa, and eventually reinstalled it in Mogadishu as of December of the same year.

125. After ICU forces were defeated by Ethiopian troops, Eritrea continued to support the various Islamist organizations that emerged following ICU's breakdown. In 2007, Eritrea withdrew from the Intergovernmental Authority for Development (IGAD), in protest for what it perceived as the organization's support for Ethiopian interventions in Somalia. Eritrea's relations with Djibouti also deteriorated after the latter supported Somali rebel groups that entered into reconciliation talks with the TFG. This added to a growing economic competition between the two countries after the port of Djibouti overtook Assab as an outlet for Ethiopian trade and an old border dispute over eleven kilometres of coastline around Ras Doumeira, a cape overlooking the strait of Bab-el-Mandeb flared up again. Eritrea accused Djibouti of incursions into its territory. In June 2008, its forces crossed the border and captured the area of Ras Doumeira, killing at least nine Djiboutian soldiers and provoking international condemnation.[76]

126. Eritrea's refusal to withdraw its troops from Ras Doumeira and allow a United Nations fact-finding mission to enter its territory, as well as its involvement in the conflict in Somalia, led the United Nations Security Council to impose sanctions on Eritrea and on 23 December 2009, the Security Council adopted Resolution 1907 imposing an arms embargo on Eritrea, travel bans and the freezing of the assets of some of the country's political and military officials.[77] Resolution 1907 also extended the mandate of the United Nations Monitoring Group for Somalia created in 2002 to monitor Eritrea's compliance with the new set of sanctions.[78] In July 2011, the Monitoring Group presented its first report, which provided evidence of Eritrea's continued support to Ethiopian rebel groups and Islamist organizations in Somalia, as well as an attempt from the Eritrean intelligence services to organise a car bomb attack at the January 2011 AU Summit.[79] Critically the Monitoring Group second report in 2012, found evidence of continued Eritrean support for Al-Shabaab and other dissident armed groups, of violations against the arms embargo and of collecting the Rehabilitation tax, all of which is contrary to the Security Council resolution.

127. In 2010, Eritrea reoccupied its seat in the Africa Union, long deserted in protest for the organization's backing of Ethiopia's actions in Somalia. This move, a sign of Eritrea's efforts to counter its isolation on the international scene, followed the withdrawal of its troops from Djibouti in June 2010, after a Qatar-led mediation. At the same time, relations between Eritrea and Ethiopia remained tense. In March 2011, Ethiopia accused Eritrea of sending agents across the border to plant bombs. In April, the Ethiopian Minister of Foreign Affairs declared that Ethiopia would officially support Eritrean opposition organizations based on its territory. In December 2011 the Ethiopian Government advocated for the United Nations Security Council to tighten its sanctions due to Eritrea's continued support to the Al-Shabaab Islamist group in Somalia.[80] In March 2012, Ethiopian forces carried out attacks inside Eritrea on alleged bases of the Afar Revolutionary Democratic Unity Front (ARDUF). Ethiopia claimed that it acted in reprisal for the kidnapping and assassination of a group of European tourists in January 2011 in the Ethiopian Afar region. Eritrea declared that it would not retaliate.

[76] See chapter IV, C, 1, Foreign relations.
[77] S/RES/1907 (2009).
[78] S/RES/1407 (2002).
[79] S/2011/433.
[80] S/RES/2002 (2011).

IV. Current context to human rights violations in Eritrea

A. Ethnic and religious composition of Eritrea

128. Out of a total population estimated at 6.3 million people[81], there are nine linguistically defined sub-nationalities, or ethnic groups in Eritrea: Tigrinya[82] (55 per cent), Tigre (30 per cent), Saho (4 per cent), Kunama (2 per cent), Rashaida (2 per cent), Bilen (2 per cent), and others (Afar, Beja and Nara, 5 per cent).

Afar

129. Traditionally pastoralists raising goats, sheep and cattle in the desert, the Afar people form an ethnic group spread across Ethiopia, northern Djibouti and southern Eritrea. Afar people speak the Afar language and the majority are Muslim.

Beja

130. The Beja people inhabit Eritrea, Sudan, Egypt and the Sahara desert. In Eritrea they reside in the Gash-Barka, Northern Red Sea and Anseba regions. They speak the Beja language and are predominantly Sunni Muslim. The Beja contain smaller clans such as the Bisharin, Hedareb, Hadendowa (or Hadendoa), the Amarar (or Amar'ar), Beni-Amir, Hallenga and Hamra.

Bilen

131. The Bilen people are concentrated in central Eritrea, in and around Keren and further south towards Asmara. Their mother tongue is the Bilen language, though many also speak Tigre and Tigrinya, and younger Bilen are said to use Arabic words and expressions in their everyday speech. They are both Christian and Muslim. Muslim adherents are mainly in rural areas and have often intermingled with the Tigre. Christian Bilen reside in urban areas and have often mixed with the Tigrinya.

Kunama

132. The Kunama people are an ethnic group living in Eritrea and Ethiopia. They speak a Nilo-Saharan language. Although almost 80 per cent of the group resides in Eritrea, they constitute a small minority there. Formerly nomadic, they are nowadays pastoralists and farmers, mainly living in the remote and isolated area between the Gash and Setit rivers, near the border with Ethiopia. During the 1998-2000 border war, an estimated 4,000 Kunama fled to Ethiopia.

Nara

133. The Nara people used to call themselves the Barya. They are divided into four sub-groups: Higir, Mogareb, Koyta, and Santora. Like Kunamas, Nara people speak a Nilo-Saharan language called Nara Bana. They are typically agrarian and today have settled

[81] World Bank estimate for 2013 (http://data.worldbank.org/country/eritrea)."No population census has ever been carried out in Eritrea. However, based on a population count by the Ministry of Local Government and NSO estimates, the total resident population of Eritrea was about 3.2 million as of 2010 (MND, 2010)" (in Eritrea Population Health Survey 2010, National Statistics Office).

[82] Information about Eritrea's ethnic composition come from open sources, including Wikipedia and the 2010 estimates from the CIA World Fact Book (https://www.cia.gov/).

mostly along the border with Sudan. The Nara people are generally Muslim, with a minority following Christianity and a few who practice traditional beliefs.

Rashaida

134. The Rashaida, Rashaayda or Bani Rashid, meaning "refugees" in Arabic, are a nomadic people living in Eritrea and northern Sudan. Many migrated from Hejaz, in present day Saudi Arabia, in 1846 after tribal warfare broke out in their homeland. A large number of them are still found in the Arabian Peninsula. After the independence of Eritrea, the Government encouraged the Rashaida to adopt agriculturalist life on land set aside near Sheeb, a village almost 60 kilometres northwest of Massawa. It is unknown how many Rashaida maintain their nomadic tradition. The majority of Rashaida are adherents of Sunni Islam and speak Arabic.

Saho

135. The majority of the Saho, or Soho people, inhabit the Southern and Northern Red Sea regions of Eritrea, while smaller populations live in the border areas of the Tigray region of Ethiopia. Although there are no official statistics, the Saho are estimated to be the third largest ethnic group in Eritrea. They speak the Saho language. They are predominantly Muslim.

Tigre

136. The Tigre people are nomadic pastoralist people who inhabit the northern, western and coastal lowlands of Eritrea (Gash-Barka, Anseba and Northern Red Sea regions), as well as eastern Sudan. They speak the Tigre language. The Tigre are predominantly adherents of Sunni Islam though a small proportion are Christian, often referred to as Mensaï in Eritrea.

Tigray-Tigrinya

137. The Tigray-Tigrinya people are a large ethnic group in Ethiopia and Eritrea. In Ethiopia, they are known as Tigray, eponymous with the Tigray region they inhabit. In Eritrea, they are known as Tigrinya and primarily live in the Kebessa highlands. The Tigray-Tigrinya speak the Tigrinya language, which although closely related to the Tigre language, is distinct from it. In Eritrea, the majority of the Tigrinya people are farmers and Christians: 73 per cent Eritrean Orthodox, 10 per cent Roman Catholic and Eastern Catholic and 7 per cent of various Protestant and Christian denominations. The remaining 10 per cent are Muslims and are usually known as Jeberti, a term used to generically refer to all Islamic inhabitants of the highlands.

B. Political context and migration

138. From the political point of view, Eritrea has remained unchanged, with by and large the same Government remaining in power since independence. Following the 2001-2002 political crackdown, President Afwerki consolidated his power and strengthened his control over the state and security apparatus, thus *de facto* eliminating any residual political space.[83] As explained in the historical background chapter, the only political party that is allowed to exist is the PFDJ; the National Assembly has not convened since 2002; and only government media are allowed to operate. Since 2002, several hundred thousand Eritreans

[83] See chapter V, A, Political and security frameworks.

have illegally left the country largely as a result of human rights abuses, indefinite conscription and the faltering economy. Eritrea has become one of the largest refugee-producing countries in the world.

1. Political Context

139. Since 2001 the President and a close-knit group of men have ruled Eritrea.[84] During the President's absence in 2013, media reports suggested that Eritrea was ruled by a "supra committee" composed of Brigadier General Simon Gebredengel, Deputy of the National Security Office; Brigadier General Teklai "Manjus"; Brigadier General Dr. Haile Mehtsum; Brigadier General Fitsum Gebrehiwet, Chief of Staff of the Navy; and Brigadier General Hadish Efrem. As for his civilian entourage, Mr. Yemane Gebreab, Director of the PFDJ Political Affairs Department, is known to be the President's political advisor. Mr. Hagos Gebrehiwet, Director of the PFDJ Economic Affairs Department, is reportedly in charge of the conduct of the Eritrean economy. Mr. Yemane Gebre Meskel, Director of the President's Office, is reportedly responsible of communications and in March 2015 he was appointed Minister of Information, a post which had remained vacant following the defection of the previous minister in 2012.

(a) Defections, demotions and expressions of discontent

140. In early October 2012, two air force pilots fled with the presidential plane to Saudi Arabia, where they claimed and were granted asylum. In late November, the then Minister of Information, Mr. Ali Abdu, known to be a member of President Afwerki's close entourage, defected while on a trip to Germany. Earlier in 2012, Mr. Berhane Abrehe, who had been Eritrea's Finance Minister for 11 years, was removed from his post after he openly challenged the use of mining revenues collected by the Eritrean Government.[85] In 2009, a dozen football players had disappeared in Kenya and in 2011, 13 players refused to return from Tanzania. In December 2012, 17 players of the Eritrean national football team absconded in Uganda during a regional tournament. They resurfaced 18 months later in The Netherlands, where they had been granted refugee status.

141. On 21 January 2013, more than 100 soldiers, supported by tanks, seized control of the building of the Ministry of Information in Asmara, known as "Forto". The officers ordered the director of the Eritrean state-run television to broadcast their demands, which included freeing all political prisoners; implementing the 1997 Constitution; appointing a transitional government; and ending corruption among senior officers. The broadcast was interrupted and soon afterwards the dissident troops were surrounded and arrested by Special Forces. To date, it remains unclear whether this incident was a coup attempt or a mutiny.[86] Over the ensuing days, a disciplinary committee[87] was set up and waves of arrests took place within the army, the State and the PFDJ. Among those arrested were the

[84] Most of these men have been part of the President's entourage since independence, if not from the days of the armed struggle.

[85] Information provided by the United Nations Monitoring Group on Somalia and Eritrea (S/2013/440).

[86] According to the United Nations Monitoring Group on Somalia and Eritrea (S/2013/440), "following the dispersal of the uprising, Eritrean officials made discreet references to diplomatic interlocutors regarding the Muslim faith of the majority of those who rebelled, indicating a deliberate policy of representing the uprising as a religiously motivated affair, whereas the rebel demands were political in nature."

[87] According to the United Nations Monitoring Group on Somalia and Eritrea (S/2013/440), this committee was headed by Brigadier General Teklai "Manjus", seconded by Brigadier General Eyob Fessahay "Hallibay" who reportedly is in charge of coordination between the President's Office and the People's Army.

Minister of Mines and Energy, Mr. Ahmed Haj Ali; the administrator of the Southern region, Mr. Mustapha Nurhussein; the Director of the PFDJ Organizational Affairs Department, Mr. Abdallah Jabar; the mayor of Mendefera, Mr. Suleiman Haj; the commander of the South Command Zone, Major General Umar Hassan "Teweel"; and the deputy of the Centre Command Zone, Colonel Emmanuel Hagama.[88]

142. In April 2013, a female pilot sent to Saudi Arabia to reclaim the presidential jet also defected.[89] In December 2013, nine more players from the national football team disappeared with their coach in Kenya, bringing to more than 50 the number of Eritrean national football players who had absconded since 2010. At the beginning of February 2015, a pilot in charge of the management of the Air Forces Commander's office reportedly defected to Sudan.[90]

143. Since the 2013 incident in Forto, President Afwerki has reportedly become more suspicious of the military command. Major General Sebhat Ephrem, who had been Minister of Defence since 1995, was appointed Minister of Energy and Mines in 2014.[91] Since then, President Afwerki has not appointed a new minister, only a Chief of Staff who reports directly to him.[92] At the end of 2014, the Tigray People's Democratic Movement (TPDM),[93] one of the Ethiopian opposition groups stationed in and supported by Eritrea, was reportedly used by Eritrean authorities to conduct rounds up in Asmara that lasted several days.[94]

144. In 2012, and perhaps in response to an increasing number of defections, dwindling numbers of conscripts and on-going incidents with neighbouring countries, the Government reportedly armed civilians. This new "People's Army" is said to undertake various duties, from guarding public sites to contributing to development projects.[95]

(b) A divided opposition

145. Eritrean opposition groups are based outside the country. They appear to be fragmented along ethnic, regional, religious and political lines, as well as divided on the question of their relations with Ethiopia.

146. After independence, the factions resulting from the split of the ELF in the early 1980s, constituted from exile the only oppositions groups to the EPLF/PFDJ in Eritrea. They included the ELF-Revolutionary Council (ELF-RC), the ELF-Central Leadership, and the Eritrean Islamic Jihad Movement, which was involved in insurgency attacks against the

[88] See chapter VI, A, 3, Freedoms of opinion, expression, assembly and association.

[89] In May 2013, the Saudi authorities informed the United Nations Monitoring Group on Somalia and Eritrea that they had released the plane for return to Eritrea but confirmed that all three pilots remained in Saudi Arabia (S/2013/440).

[90] An Eritrean Air force Captain Defects to Sudan, Awate, 1 February 2015.

[91] According to the United Nations Monitoring Group on Somalia and Eritrea (S/RES/2013/440), Major General Sebhat Ephrem had challenged two times President Afwerki's directives in 2012. Firstly, in April 2012, with other high ranking generals he constituted a committee to manage the security in Eritrea during President Afwerki's absence from the country. This initiative defied the latter's designation of Brigadier General Teklai "Manjus" as commander-in-chief during his absence. Secondly, in May 2012, Major General Sebhat Ephrem visited imprisoned military personnel in Asmara in open defiance of orders from President Afwerki.

[92] In the person of Major General Philipos Woldeyohannes.

[93] Also known by its Tigrinya acronym "De.M.H.T".

[94] A Mercenary Army: Isaias Afwerki's Last Stand, Awate, 15 November 2013.

[95] For instance: "People's Army members engaged in construction of Patriots Cemetery in Afembo Area", 10 February 2015, Shabait.com (Eritrea's Ministry of Information website). See chapter V, A, 2, security sector.

Eritrean Defence Forces between 1994 and 1997. The border war with Ethiopia prompted the emergence of new opposition movements based on Ethiopian territory. Created respectively in 1997 and 1998, the Red Sea Afar Democratic Organization (RSADO) and the Democratic Movement for the Liberation of the Eritrean Kunama (DMLEK) have striven for the emancipation of the Afar and Kunama minorities. In 1999, ten opposition groups established the Alliance of Eritrean National Forces (AENF), which transformed itself into the Eritrean National Alliance (ENA) in 2002 before being renamed the Eritrean Democratic Alliance (EDA) in 2005. Based in Addis Ababa, EDA currently consists of 13 organizations with varying goals and constituencies. Some are organised along ethnic lines, like DMLEK and RSADO; others are Islam-based organizations (the Eritrean National Salvation Front, the Eritrean Islamic Party for Justice and Development, the Eritrean People's Congress and the Eritrean Islamic Congress); and still others are remnants of the ELF or dissidents of the PFDJ, such as the Eritrean Democratic Party and the Eritrean People's Democratic Party.[96] EDA held its last Congress in 2011.

147. After the 2001-2002 political crackdown, some exiled dissidents formed the Eritrean Democratic Party (EDP), chaired until 2009 by Mr. Mesfin Hagos, one of the members of the G-15 group who escaped arrest. EDP, which underwent several splits,[97] has always opposed EDA on the ground of its alleged link with the Ethiopian Government. In an attempt to unite political and civil society organizations, the Eritrean National Congress for Democratic Change (ENCDC, also called "Baito") was created in 2011. It held its first meeting in Awassa (Ethiopia) in November 2011 and elected 127 representatives of the Eritrean diaspora from all over the world. In February 2014, Ethiopia-based opposition organizations tried without success to form a "consultative group" aimed at revitalising EDA and unite Eritrean opposition movements.

148. After the crackdown, other movements were set up abroad by Eritrean exiles as forms of civil society expression. Some of them have since become political opposition groups. As an example, the Eritrean Youth Solidarity for Change (EYSC) and the Eritrean Youth Solidarity for National Salvation (EYSNS) have emerged in opposition to the Eritrean Government and PFDJ-controlled National Union of Eritrean Youths and Students (NUEYS). Based in Addis Ababa, EYSNS was reorganised in 2014 into a political party named the Eritrean Solidarity Movement for National Salvation.

149. Recent years have also witnessed the creation of fora with the objective of facilitating political dialogue within the diaspora and supporting anti-government campaigns outside and inside Eritrea. The Eritrean Forum for National Dialogue (EFND/Medrek) and the Eritrean Movement for Change (EMC) were founded in 2013 by former members of the EPLF. They represent themselves as channels for the continuation of the 2001 reformist movement. For its part, the Eritrean Lowlanders' League, established in 2014, aims at counterweighting the Tigrinya-dominated political opposition. Created in 2011 by Eritrean activists in the United States and the European-based diaspora, the "Freedom Friday" *(Arbi Harnet)* Movement has reportedly managed to promote civil disobedience inside Eritrea through robot-call campaigns, an underground newspaper and poster campaigns. The Movement seems to have managed to establish a cell in Asmara.[98]

[96] Formerly the Eritrean People's Party (EPP).

[97] Including a split that in 2004 gave birth to the Eritrean People's Movement, which later joined EDA.

[98] Eritrea: Conversation with the resistance movement inside Asmara, Horn Affairs – English, 26 October 2014.

2. Migration

150. The human rights situation prompts many Eritreans to leave their country. Former members of the Government, EDF members or football players, already mentioned, are the more well-known cases among the thousands of people fleeing Eritrea every year. In its report "Asylum Trends 2014", UNHCR states that "the increase in the number of Eritrean asylum-seekers observed in recent years continued into 2014 reaching unprecedented levels among the group of 44 industrialised countries. The figure was at its highest with 48,400 new asylum applications registered during the year, thereby more than doubling compared to 2013 (22,300)." This made Eritrea the fifth largest producer of asylum seekers.

151. Overall, it is estimated that 5,000 people leave Eritrea each month, mainly to neighbouring countries. The trend has been upwards, with a marked spike during the last months of 2014. In October 2014, the registered refugee population was 109,594 in Sudan and 106,859 in Ethiopia. The total Eritrean population of concern to UNHCR in mid-2014 was 357,406 – depending on estimates of the current population, this would constitute between 6 per cent and 10 per cent of the national population.[99]

152. Neighbouring countries are usually the first port of call but not the final destination for Eritreans leaving their country. With the situation in Yemen progressively worsening, routes used to move towards Europe have mainly been the land routes northward through Sudan to Libya or to Egypt and Israel.

153. The movement of people through the Sinai hoping to reach the northern shores of Africa and hence Europe has created a phenomenon that is termed by some as "Sinai Trafficking." While still covered by the legal human trafficking definition, it is argued that this phenomenon "can be used to differentiate a particular new set of criminal practices that have first been reported in the Sinai Peninsula."[100]

154. These criminal practices include the kidnapping, selling and re-selling of individuals among people smugglers and traffickers with the final purpose of extorting ransom money from their families. The extortion is often conducted by torturing victims with extreme cruelty and sometimes to a live audience, as relatives are called during torture sessions and made to listen what is happening to their loved ones. Torture includes rape and other forms of sexual violence, severe beatings, pouring of molten plastic on various parts of the body, hanging in various positions for extended periods of time leading to loss of circulation and body limbs, starvation, electrocution and mental abuse. Protracted torture leads to death: "it is believed that between 5,000 and 10,000 people have died in the context of the Sinai trafficking. The interviews consistently show that approximately 25 per cent of Sinai hostages are killed or die. In some groups, the figure is closer to 50 per cent."[101]

155. The United Nations Monitoring Group on Somalia and Eritrea has alleged in several of its reports to the Security Council the complicity of some Eritrean officials in the trafficking of Eritreans, with individuals apparently being abducted in Eritrea and ransom money being paid to those officials. As an example, in its 2013 report it stated: "The kidnapping, ransom and extortion of Eritrean migrants by human trafficking rings is a complex business involving a number of parties. The Monitoring Group has attempted to obtain evidence of extortion payments for which Eritrean agents are the direct beneficiaries

[99] See chapter IV, A, Political context and migration.

[100] M. Van Reisen and C. Rijken,*Sinai Trafficking: Origin and Definition of a New Form of Human Trafficking* (Cogitation, Social Inclusion, 2015, Volume 3, issue 1), pages 113-124.

[101] M. van Reisen, M. Estefanos and C. Rijken, *The Human Trafficking Cycle: Sinai and Beyond*, (Wolf Legal Publishers 2013), Page 63.

in order to demonstrate, as clearly as possible, the continuing involvement of the Government of Eritrea in this trade."[102]

156. It is assessed by some researchers that between 2009 and 2013, 25,000 to 30,000 individuals were victims of the Sinai trafficking; approximately 90 per cent of them are believed to be Eritreans. This high percentage is explained not only by the preponderance of Eritreans using the Sinai route but also by the fact that Eritreans are seen as the most lucrative of victims. The Eritrea diaspora network has become known for paying higher ransoms than any other national groups – requests for Eritreans can reach 50,000 USD per person; sometimes victims are sold a number of times and released only through the payment of progressively higher ransoms. Ransoms are also known to have been paid for people who were dead by the time the money was demanded and/or delivered.

157. Several reports have now been published indicating that Eritreans can become victims of trafficking at different stages of their journey. While some put themselves in the hands of people smugglers from the beginning (and are sold on to traffickers), many others are abducted close to the border (in a third country or within Eritrea) or in transit countries (particularly in Sudan and Ethiopia), from refugee camps and anywhere along the route north.

C. Eritrea's foreign relations and role in the international arena

1. Foreign relations

158. The Eritrean armed struggle only attracted diplomatic interest at the end of the 1980s, when the end of the Cold War drastically changed international dynamics. Before that, Western States had been reluctant to support Maoist-inspired liberation forces like EPLF, even if as of 1982 it was the only one fighting Soviet-backed Ethiopian troops in Eritrea. The end of the Soviet Union's massive military support to the Ethiopian communist regime in 1988 precipitated the fall of its leader, Mengistu Haile Mariam, in 1991 and the subsequent recognition by the new Ethiopian Government of the Eritreans' right to self-determination.

(a) Eritrean independence and international recognition

159. Eritrea's official accession to independence on 24 May 1993 increased international interest in the country. Upon independence, Eritrea immediately became a member of the United Nations,[103] the Organization of African Unity, (OAU)[104] and the Inter-Governmental Authority on Development (IGAD).[105] Eritrea was also granted observer status at the Arab League. President Afwerki's speeches at international level, in which he laid emphasis on self-reliance and denounced corruption, made him and Eritrea a symbol of the "African Renaissance" promoted at that time by US President Bill Clinton.[106]

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[102] S/2013/440.

[103] See chapter III, C, Post-independence.

[104] Eritrea acceded to the OAU Treaty on 24 May 1993. The OAU later transitioned into the African Union.

[105] IGAD is a trade regional organization founded in 1986 and gathering States of the Horn of Africa (Djibouti, Ethiopia, Somalia and Eritrea), the Nile Valley (Sudan and South Sudan); and the Great Lakes (Kenya and Uganda). In 1993, Eritrea became the seventh member of the organization.

[106] During his African journey in March 1998, Bill Clinton popularised this notion when he said he placed hope in a new generation of African leaders devoted to democracy and economic reforms. Although the US President did not identify African leaders by name, it is generally assumed that he was referring to, among others, Yoweri Museveni of Uganda, Paul Kagame of Rwanda, Meles

160. The cornerstone of Eritrea's foreign policy during those years remained the building of a strategic alliance with Ethiopia, facilitated by ties between President Afwerki and his counterpart President Meles Zenawi who, before becoming Ethiopia's Head of State, was the chairman of the Tigray People's Liberation Front (TPLF). The two countries signed a trade agreement in January 1992. The following April they entered into an agreement on transit that turned Assab into a "free port" for Ethiopian imports and exports. In July 1992, further bilateral accords were concluded on cultural and technical exchanges; immigration; the use of trans-border rivers, particularly the Setit river; and security and defence cooperation. Eritrea also continued to use the Ethiopian Birr as its currency. Besides Ethiopia, Eritrea's main trading partners at the time included Italy, Saudi Arabia, Sudan, the United Arab Emirates, the United States and Yemen.

(b) Tensions with Sudan and border dispute with Yemen

161. Tensions with two of Eritrea's neighbours, Sudan and Yemen, nevertheless arose soon. Sudan hosted both the ELF and the EPLF during the armed struggle.[107] It was one of the first countries of the region to send an official representative to liberated Eritrea, as of December 1991, and at around the same time it withdrew its support to the ELF, closing their offices in Sudan. In 1989, though, Mr. Omer al-Bashir had seized power in Sudan with the help of the National Islamic Front (NIF) led by Mr. Hassan Al-Turabi. The latter supported the Eritrean Islamic Jihad Movement (EIJM) that led campaigns against the EPLF and Eritrean military forces, and called for the establishment of Islamic governments throughout the Horn of Africa.[108] In spite of his influence, in August 1994 Eritrea and Sudan signed a joint statement aimed at ensuring non-interference in each other's affairs. Soon afterwards, though, the Eritrean government accused Sudanese authorities of allowing EIJM fighters to infiltrate among Eritrean refugees returning from Sudan. In December 1994, Eritrea broke its diplomatic relations with Sudan. In June 1995, the PFDJ hosted a conference of Sudanese opposition forces in Asmara, during which the dormant Sudanese National Democratic Alliance (NDA), a coalition of parties opposing the regime of President Al-Bashir, was revived to launch an armed struggle against the NIF-controlled Sudanese Government.[109] In a symbolic gesture, the NDA was hosted in the former Sudanese embassy in Asmara and NDA military training camps were set up in western Eritrea. In January 1997, the NDA opened a front on the Eritrea-Sudan border. In June of the same year, the Eritrean government accused Sudan of an assassination plot against President Afwerki.

Zenawi of Ethiopia and Isaias Afwerki of Eritrea. Other leaders were later added to that list, including Ghana's Jerry Rawlings, Mozambique's Joaquim Chissano and South Africa's Thabo Mbeki.

[107] The ELF started to operate from Sudan in the 1960s ; the EPLF in the 1970s. Yet, Sudan's support to Eritrean independence forces varied depending on the authorities in place in Khartoum and their relations with Ethiopia. However, even when the Government of Sudan was not officially supportive of them, notably under Generals Abbud and al-Nimeri's rule, Eritrean liberation movements were always able to operate in Sudan. The ELF supply network ran largely through Kassala and the EPLF's through Port Sudan.

[108] The EIJM was formed in the early 1980s in Gedaref, Sudan, among the Eritrean Muslim refugees. It gathered Islamist-oriented former ELF members, students having been trained in Saudi Arabia, and fighters having served as *mujahideen* in Afghanistan. The EIJM started to launch a guerrilla campaign against the EPLF from Sudan along the western border with Eritrea in 1989. Despite EPLF's attempts to negotiate a cease-fire in 1993, the EIJM continued to attack Eritrean Government forces throughout the 1990s and in the early 2000s. In 2003, the EIJM split into two movements: the Eritrean Islamic Salvation and the Eritrean Islamic Reform Movement, known as Eslah.

[109] Further conferences were organised in Asmara in January and October 1996 and March 1997.

162. The two countries resumed peaceful relations in late 1999, thanks to a mediation process led by Qatar.[110] The entente, nevertheless, did not last as during the Eritrea-Ethiopia border conflict, Ethiopian troops were allowed to use Sudanese territory and airspace to fight Eritreans. In response, Eritrea revived its support to the NDA, and provided assistance to rebel forces in Darfur and to the Sudan People's Liberation Movement (SPLM) in southern Sudan.[111] The Comprehensive Peace Agreement between the Sudanese Government and the SPLM in January 2005, which Eritrea helped to mediate, favoured the resumption of diplomatic relations between the two countries by years-end. These relations grew even closer when President Afwerki became one of the first Heads of State to invite President Al-Bashir for a visit after the International Criminal Court (ICC) indicted him for war crimes in Darfur. President Al-Bashir visited Eritrea in March 2009, a visit reciprocated in 2011 by President Afwerki in October 2011. Later that month, President Al-Bashir officially announced the end of border tensions between Sudan and Eritrea at a road inauguration meeting.[112] In June 2013, talks between Presidents Afwerki and Al-Bashir resulted in an agreement to establish a free-trade zone along their common border, to extend a highway from Eritrea to Port Sudan and to bring electricity provision from power stations in Sudan to towns in western Eritrea. In May 2014, during President Afwerki's visit to the Al Jeili oil refinery in Sudan, the Sudanese news agency announced that Sudan had agreed to supply Eritrea with fuel as part of its plans to boost economic cooperation between the two countries.[113]

163. Eritrea also experienced tensions with Yemen, eventually leading to open conflict. After supporting Eritrean liberation forces in the late 1960s and most of the 1970s, in 1977 the Government of Yemen aligned itself with the Soviet Union and broke its relations with the liberation forces. Yemen's support to the Ethiopian Derg regime declined at the end of the 1980s, along with the Soviet Union's. Yemen established diplomatic relations with Eritrea in 1991 and recognised its independence in 1993. Despite important trading exchanges, though, the relations between the two countries suffered from an unclear delimitation of their maritime boundary in the Red Sea. This led to a dispute about Yemeni fishing in Eritrean waters, settled by an agreement reached in November 1994. A second dispute erupted one year later, in November 1995, over the control of the Hanish Islands, a group of 23 hilly, barren islands, islets and rocks located at a point equidistant from the Eritrean and Yemeni coasts. Both Eritrea and Yemen claimed historic sovereignty over the archipelago, dating back to the Ottoman period. Tensions mounted when both Eritrean and Yemeni contingents occupied parts of the islands. In mid-December 1995 fighting erupted, leading to the killing of 12 soldiers from both sides and to the capture of 200 prisoners of war. On 17 December, Eritrea and Yemen agreed to a cease-fire. After several attempts at mediation by Ethiopia, Egypt and France succeed in 1996 in bringing the dispute to the Permanent Court of Arbitration. After two years of proceedings, the Court concluded that the Hanish Islands should be under shared sovereignty.[114] Both Eritrea and Yemen accepted the ruling, and since then relations between the two countries have been relatively stable in spite of repeated disputes over fishing.

[110] A normalisation agreement was signed by the Foreign Ministers of the two countries in Doha, in June 1999.

[111] Founded in 1983 as the political wing of the Sudan People's Liberation Army (SPLA) fighting forces, the SPLM, led by late John Garang, was one of the members of the NDA.

[112] http://news.sudanvision daily.com/.

[113] http://www.caperi.com/.

[114] Reports of International Arbitral Awards, Territorial Sovereignty and Scope of the Dispute (Eritrea and Yemen), 9 October 1998, Volume XXII, pp. 209-332.

(c) The "no war, no peace" relations with Ethiopia

164. The failure to delimit state boundaries was to have more serious consequences on the relations between Eritrea and Ethiopia where their shared border had never been demarcated, which meant that sovereignty over areas along the 1,000-kilometer frontier between the two countries remained unclear. This was the case of the western border locality of Badme, which fell under the EPLF control in November 1977 but over which sovereignty was not determined. On 6 May 1998, Ethiopian soldiers shot Eritrean soldiers near Badme, following which a heavy military response from Eritrea caused an escalation into a large conflict involving 500,000 troops from both sides. The border incident in Badme had in reality followed other minor disputes. In October 1997, Ethiopia provoked the Eritrean Government by issuing currency on which a map was printed that showed areas claimed by Eritrea to be part of Ethiopia. All these incidents occurred in an overall context of deteriorated relations between Eritrea and Ethiopia due to political, economic and military competition. In November 1997, Eritrea abandoned the Birr and adopted its own currency, the Nakfa, a decision that contributed further to political tensions. The military incident near Badme was the spark that started the fire.

165. The border war between Eritrea and Ethiopia continued until a peace agreement was signed on 12 December 2000 in Algiers.[115] The accord provided for the creation of a joint Eritrea-Ethiopia Boundary Commission (EEBC) under the auspices of the Permanent Court of Arbitration, with a mandate to delimit the disputed border. It also established the Eritrea-Ethiopia Claims Commission (EECC), which was mandated to resolve the damage claims arising from the border conflict. Headed by Cambridge Law Professor Sir Elihu Lauterpacht, who was chosen by both parties, the EEBC was composed of two members appointed by Eritrea[116] and two by Ethiopia.[117] By common consent the decision of the Commission was to be final and binding. However, on 13 April 2002, when the EEBC defined the border and granted the disputed village of Badme to Eritrea, Ethiopia rejected the ruling[118] and unsuccessfully appealed to the United Nations Security Council to set aside the decision. When this request was refused, Ethiopia refused to cooperate with the EBBC. Eritrea for its part accepted the findings of the EEBC. The EEBC dissolved itself on 30 November 2007, without having physically demarcated the disputed border. On the issue of compensations, in December 2005 the EECC found that because Eritrea had sent troops into the area of Badme before the outbreak of war, it had not acted in self-defence in 1998 and had, therefore, precipitated or caused the war. In December 2005, the Commission issued its final determination of liability and awarded Eritrea 161.4 million USD and Ethiopia 174 million USD. However, neither country has paid any compensation.[119]

166. The two countries remained in a stalemate defined by observers and Eritrea itself as a "no war, no peace" situation. Pursuant to the EEBC ruling, Eritrea has consistently accused Ethiopia of occupying its sovereign territory, while blaming the international

[115] See chapter III, C, Post-independence

[116] Yale professor Michael Reisman, former President of the International Court of Justice, and John Hopkins University professor Stephen M. Schwebel.

[117] Nigeria's former Attorney General and Minister of Justice Prince Bola Adesumbo Ajibola and British lawyer, diplomat, and arbitrator Sir Arthur Watts.

[118] Reports of International Arbitral Awards, Decision regarding delimitation of the border between Eritrea and Ethiopia, 13 April 2002, Volume XXV pp. 83-195.

[119] EECC, Partial Award, *Jus Ad Bellum*, Ethiopia's Claims 1-8 between the Federal Democratic Republic of Ethiopia and the State of Eritrea, by the Claims Commission composed of Hans van Houtte, President, George H. Adrich, John R. Crook, James C.N. Paul, Lucy Reed, 19 December 2005 (http://www.haguejusticeportal.net/index.php?id=6161).

community for failing to compel Ethiopia to comply with the Algiers Agreement. Ethiopia, on its part, has accused Eritrea of being at the origin of the border dispute and of fuelling conflict in the region, notably in Somalia.[120] Both countries have led a fight by proxy by providing support to opposition and rebel groups. In April 2011, the Ethiopian Foreign Minister officially recognised the support of its government to Eritrean political organizations based in Ethiopia.[121] He presented this support as one of the components of a three-layered approach to Eritrea, the two others being "diplomatic efforts to get the international community to act decisively about Eritrea" and "a proportionate response to any and every act by the regime in Asmara."[122]

(d) Involvement of Eritrea in Somalia and international sanctions

167. In June 2006, the Islamic Court Union (ICU), an alliance of various Islamists groups operating in Somalia, ousted the Ethiopia-backed Somali Transitional Federal Government (TFG) from Mogadishu.[123] The ICU had reportedly received some support from Eritrea in this endeavour. By the end of 2006, Ethiopia's counter-offensive in Somalia managed to restore the TFG in the capital city and displace the ICU from specific areas. In response, Eritrea supported the organizations that emerged from the ICU and which plunged Somalia into a civil war. The insurgents met in September 2007 in Asmara to form the Alliance for the Re-Liberation of Somalia (ARS).[124] The same year Eritrea withdrew from IGAD in protest at the organization's support for Ethiopia's intervention in Somalia. In January 2009 a peace agreement was reached and the Africa Union Mission in Somalia (AMISOM), set up in 2007, took over military operations in Somalia.[125] Members of the ARS were then integrated in the Somali Transitional Federal Parliament (TFP).

168. Eritrea's support to rebel and opposition groups in Somalia, nevertheless, did not cease. On 23 December 2009, the United Nations Security Council imposed an arms embargo on Eritrea, as well as a travel ban and the freezing of the assets of some of the countries' military officials.[126] It also extended the mandate of the United Nations Monitoring Group on Somalia, created in 2002, to monitor Eritrea's compliance with the new set of sanctions.[127] The Eritrean Government has never allowed the Group access to Eritrea.

169. The four reports of the Monitoring Group[128] have confirmed that until recently Eritrea supported Al-Shabaab, the main off-shoot of the ICU.[129] They have also found evidence of Eritrea's support for Ethiopian rebel groups based outside of Ethiopia. These groups include the Ogaden National Liberation Front (ONLF), based in Somalia, as well as

120 See chapter III, C, Post-independence.

121 For a list of Eritrean opposition groups, see chapter IV, B, 1, Political context.

122 The Ethiopian Minister for Foreign Affairs' statement can be read on: http://hornaffairs.com/

123 The TFG was established in 2004 by the Transitional Federal Parliament of Somalia. It functioned until 20 August 2012, when its tenure ended.

124 Somali opposition alliance begins fight against Ethiopia, Agence France Presse (AFP) report by Peter Martell, 20 September 2007 (http://reliefweb.in/).

125 AMISOM was created by the Africa Union Peace and Security Council on 19 January 2007 and approved by the United Nations Security Council on 21January 2007. AMISOM's mandate is still on-going.

126 S/RES/1907 (2009).

127 UN Security Resolution S/RES/1407 (2002).

128 S/2011/433, S/2012/545, S/2013/440, S/2014/727.

129 Al-Shabaab, literally the "Mujahedeen Youth Movement", formed in 2006 and pledged allegiance to Al-Qaeda in 2012. It still operates in Somalia, as illustrated by the 27 March 2015 attack against a hotel in Mogadishu that cost the life of the late Somali Ambassador to the United Nations in Geneva, H.E. Mr. Yusuf Mohamed Ismail 'Bari Bari'.

the Tigray People's Democratic Movement (TPDM)[130] and Ginbot Sebat,[131] based in Eritrea. The military intervention of Ethiopia against the Afar Revolutionary Democratic Unity (ARDUF)'s positions inside Eritrean territory in March 2012[132] indicates that Eritrea was also refuge for that Ethiopian rebel group.

(e) Relations with Djibouti

170. The 2009 United Nations Security Council Resolution that established international sanctions against Eritrea was also partly motivated by the refusal of the Eritrean Government to withdraw its troops from Ras Doumeira.[133] The Eritrean occupation of Ras Doumeira, which started in June 2008, ended two years later after mediation led by Qatar provided for a demilitarised zone in the area, monitored by Qatari contingents. The issue of prisoners of war captured during the skirmishes, though, could not be resolved. Eritrea has repeatedly denied having any Djiboutian prisoners of war, because it refuses to officially recognise the existence of a conflict with Djibouti. Yet, following the escape of two Djiboutian soldiers from Eritrea to Sudan, the United Nations Monitoring Group, whose mandate includes monitoring Eritrea-Djibouti relations, reported in 2012 that as of September 2011, at least five Djiboutian prisoners of war were still in detention in Eritrea. On its part, in April 2014 Djibouti handed over 267 Eritrean asylum seekers with military background who were detained in the Nagad Police Academy in Djibouti City to the United Nations High Commissioner for Refugees (UNHCR). Nineteen Eritrean prisoners of war are still held in custody. In 2014, Eritrea reportedly captured and detained a Djiboutian soldier who was accompanying Qatari officers in the demilitarised zone. The Djiboutian soldier was eventually released in September 2014, after condemnation of Eritrea by the Arab League.[134] Djibouti has replaced Eritrea as the port for Ethiopia; the country has also consistently joined Ethiopia in the condemnation of the Eritrean Government for being a destabilising influence in the region.[135] Relations between Djibouti and Eritrea remain tense.

171. While the country remains under international sanctions, since 2011 Eritrea has seemingly made proactive efforts to renew diplomatic ties with a number of countries, in particular European ones in the context of attempts to address migration.[136]

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130 As already highlighted (see chapter III, C), the TPDM, also known as "Demhit", was founded in 2001 by dissidents from the TPLF, who seized power in Ethiopia in 1990. In its last report (S/2014/727), the United Nations Monitoring Group on Somalia and Eritrea stated that the TPDM "continues to be trained in Harena", a Red Sea island under Eritrea's sovereignty. The TPDM is, according to the United Nations Monitoring Group, "the most important Ethiopian opposition group inside Eritrea" and "it had a dual function as an Ethiopian armed opposition group and a protector of the Afwerki regime."

131 Ginbot Sebat is an opposition group formed in 2005 by Amhara political elites committed to regime change in Ethiopia. It is banned by the Ethiopian Government. The United Nations Monitoring Group on Somalia and Eritrea has documented support of Eritrea to Ginbot Sebat in its 2011 and 2012 reports. In its 2014 report, it confirmed that "Eritrea continues to provide support to Ginbot Sebat" and that "Colonel Fitsum continues to direct and oversee training for Ginbot Sebat."

132 See chapter III, C, Historical Background- Post-independence.

133 Ibid.

134 http://www.geeskaadrica.com/.

135 See for instance: Djibouti, Ethiopia Accuse Eritrea of Sabotaging Stability (in http://www.bloomberg.com/).

136 See *infra.* In July 2014, the Italian Deputy Minister of Foreign Affairs, Mr. Lapo Pistelli, made a visit to Asmara during which he declared that it was "time for a new start" in the relations between Italy and Eritrea. This was the first visit of an Italian official since the expulsion of the Italian Ambassador, H.E. Mr. Antonio Bandini, in 2001.

2. Eritrea's relations with the United Nations and with regional organizations

(a) Eritrea's relations with the United Nations

172. Relations between Eritrea and the United Nations (UN) have been difficult. The "Eritrean Question" was put on the agenda of the newly established UN General Assembly in 1948, after the "Four Powers" (the United Kingdom, the United States, France and the Soviet Union) had failed to find an agreement on the future of the former Italian colony. The same lack of consensus, though, was to be found in the UN General Assembly, with States proposing various solutions including the partition of the country between Ethiopia and Sudan; unification/federation with Ethiopia; and independence.[137] The federal solution was eventually adopted by the UN General Assembly on 2 December 1949, after strong lobbying from the United States.[138] Protests by Eritreans against Ethiopia's attempts to dismantle the Federation during the 1950s were unheeded, and in 1962 the UN remained silent when Ethiopia officially annexed Eritrea.[139] The EPLF, which had become the only liberation front in Eritrea in the 1980s, found itself isolated on the international scene and lacked support for its struggle. Despite efforts made at that time by the EPLF to have the UN adopt resolutions on decolonisation applied to Eritrea, in the context of the Cold War balances the issue was never taken up.[140] It was only in 1991, when the new Ethiopian Government agreed on Eritrea's right to self-determination, that the UN turned its attention to the country and approved the UN Mission to Verify the Referendum in Eritrea (UNOVER).[141]

173. Eritrea officially joined the UN as its 182nd member on 28 May 1993. The following October, the UN Development Programme (UNDP) opened an office in Asmara. Tensions between the UN and Eritrea surfaced in 1993 and 1994 regarding the repatriation of refugees from neighbouring countries. These tensions were overcome with the acceptance of the Programme for Refugee, Reintegration and Rehabilitation of Resettlement Areas in Eritrea (PROFERI).[142] Further difficulties occurred between the authorities and the humanitarian community when the Government imposed high taxes on expatriate relief employees and restricted the operation of foreign aid agencies. In May 1997, UNHCR international staff members were ordered to leave the country within 48-hours.

174. UNHCR was invited back at the end of the border conflict between Eritrea and Ethiopia, which had generated large numbers of refugees and internally displaced persons. In July 2000, the UN Security Council established the UN Mission in Ethiopia and Eritrea (UNMEE)[143] to monitor the cease-fire concluded between Eritrea and Ethiopia one month

[137] The four proposals were respectively made by: the United Kingdom-Italy "Bevin-Sforza Plan" which failed at the Third General Assembly in 1949; Norway; Burma and South Africa; and Pakistan and Guatemala, after a ten-year trusteeship. See chapter III, A, 3, Historical Background - British administration.

[138] Resolution 390 A (V).

[139] Three petitions were taken by Eritreans to the UN General Assembly in 1957, 1962 and 1963, respectively.

[140] Mr. Bereket Habte Selassie, who would serve as president of the Constitutional Commission after independence, was sent to New York during the 1980s to represent the EPLF at the General Assembly.

[141] Created by UN General Assembly Resolution 47/114, UNOVER operated from 16 December 1992 to 25 April 1993.

[142] The plan was, however, coordinated by UNDP instead of UNHCR because of divergent views between the Eritrean Government and the UN refugee agency.

[143] S/RES/1312(2000).

earlier (confirmed in the Algiers Peace Agreement).[144] UNMEE was staffed with 1,676 military personnel, as well as with 147 international and 202 national civilians. Its mandate included human rights monitoring but was limited to the 25-kilometer-wide buffer Temporary Security Zone (TSZ) established inside Eritrea along the border with Ethiopia. Relations between the Eritrean Government and UNMEE deteriorated following the perceived UN failure to implement the 2002 decision of the EEBC that granted the disputed locality of Badme to Eritrea. The Eritrean authorities imposed severe restrictions on UNMEE's operations, including on helicopter flights along the border and the movement of its ground patrols inside the TSZ. These restrictions culminated with cutting-off of UNMEE fuel supplies, which forced the UN to close the Mission on 31 July 2008.[145]

175. In the meantime, the Eritrean Government has cooperated with the UN Country Team (UNCT). A first UN Development Assistance Framework (UNDAF) was concluded between the two entities for the period 2002-2006. It focused on three strategic objectives: the promotion of democratic governance; the promotion of access to basic social services; and the promotion of pro-poor economic growth and sustainable livelihoods. Programme expenditure exceed its indicative budget of 120 million USD, with actual expenditure, amounting to 462 million USD due to increased humanitarian support towards emergency and recovery. A second UNDAF was signed for the period 2007-2011. The promotion of democratic governance as an objective disappeared. The new five strategic areas of cooperation included: basic social services; capacity development for attaining Millennium Development Goals (MDGs); food security; emergency and recovery; and gender equality and the empowerment of women. This UNDAF had a total indicative budget of 116 million USD, but actual expenditure exceeded 175 million USD. During this period, relations between the Government of Eritrea and the UN became more complicated by the imposition of sanctions following UN Security Council Resolution 1907.[146] Discussions taking place in the context of the new Framework agreement saw Eritrean authorities' express an intention to curb external aid. Only an interim Framework Cooperation Agreement (2011-2012) could, therefore, be signed between the Government and the UN System in July 2011, earmarking support to health, safe water supply and sanitation. The Government also underscored its determination to see a new approach to UN cooperation in Eritrea, with a significant shift from emergency aid to development assistance.

176. The signing on 28 March 2013 of a Strategic Partnership Cooperation Framework (SPCF) between the Government of Eritrea and the UNCT for the period 2013-2016, witnessed improved cooperation between the two stakeholders. This new step coincided with Eritrea's efforts to improve its international image.[147] The SPCF, with a budget estimated at 188 million USD, builds on former UNDAFs while taking into account the priorities selected by the Eritrean government.[148] The SPCF strategic areas are: basic social services; national capacity development; food security and sustainable livelihoods; environmental sustainability; and gender equity and the advancement of women.

144 Signed in December 2000.

145 S/RES/1827 (2008) adopted by the UN Security Council on 30 July 2008.

146 See *supra.*

147 This effort has continued since then. For instance, on 16 March 2015, the Permanent Mission of Eritrea in New York, in partnership with the UNCT in Eritrea, organised a side event to the UN General Assembly entitled "Empowering women: Eritrea's achievement" to showcase the country's performance in that area.

148 Among others, the Eritrea SPCF 2013-2016 notes that "lessons learned from last UNDAF reveal that the UN has a role to play in accelerating the progress towards the MDGs while supporting the integration of critical enablers to effective programming such as … human rights."

177. On 28 March 2013, the Government of Eritrea endorsed the UNDP, UN Children's Fund (UNICEF) and UN Population Fund (UNFPA) Country Programme Actions Plans (CPAP), all based on the priorities set in the SPCF. UNDP- CPAP focuses on capacity development; environmental sustainability; food security and sustainable livelihoods; and gender equity and the advancement of women. UNICEF-CPAP components are: health and nutrition; basic education; water; sanitation and hygiene; and child protection. UNFPA's priorities include data for development and safe motherhood and women and youth empowerment policies. Other UN departments and agencies currently working in Eritrea are the UN Office for the Coordination of Humanitarian Affairs (OCHA); the Joint UN Programme on HIV/AIDS (UNAIDS); the World Health Organization (WHO); the Food and Agriculture Organization (FAO); and UNHCR. Other United Nations entities, such as the Office of the UN High Commissioner for Human Rights, are known to have conducted *ad hoc* missions.

(b) Cooperation of Eritrea with United Nations human rights mechanisms

178. The cooperation of the Eritrean government with the UN human rights has so far been limited. Outcome four of the Eritrea SPCF 2013-2016 provides for "human resource development and institutional strengthening in human rights." To that end, "the UNCT aims to deepen the knowledge of International Law and Human Rights Law, particularly of relevant International Conventions and standards … Furthermore, support will go towards the implementation of the Universal Periodic Review on Human Rights (UPR) recommendations."

(i) The Universal Periodic Review (UPR)

179. In November 2009 and in February 2014, Eritrea participated in the first and second cycles of UPR, respectively, which took place under the auspices of the Human Rights Council. In the two reports it submitted for the UPR reviews, the Eritrean Government only provided information and concrete data about the implementation of its policies related to MDGs and children rights.[149] Eritrea's efforts to achieve the MDGs, to promote gender equality and to progress towards the elimination of female genital mutilation (FGM) were duly acknowledged by Member States of the Council. It was also noted that Eritrea was one of the rare African country to be on track with the three MDGs related to the child and maternal health and the environmental sustainability; and that significant progress was being recorded in the fight against HIV/AIDS and other serious contagious diseases such as tuberculosis and malaria. The Eritrean government recognised that further efforts were needed with regard to the eradication of poverty and hunger and universal access to primary education.[150]

180. Information about other fundamental rights, nevertheless, was limited to statements according to which these rights are enshrined in the Constitution and relevant pieces of legislation and, therefore, guaranteed. Yet, no information about their implementation in practice or details about the legal safeguards provided by the law were given. The reports make no mention of the national service, except to explain that it had to be prolonged beyond the 18-month period provided by law because of the country's unresolved disputes with its neighbours on sovereignty and territory.[151]

181. During the UPR reviews, many Member States of the Human Rights Council expressed their concerns about the situation of human rights in Eritrea, its lack of

[149] A/HRC/WG.6/6/ERI/1 and A/HRC/WG.6/18/ERI/1.
[150] A/HRC/WG.6/18/ERI/1, par 50. See chapter IV, D, Economic and development context.
[151] See Eritrea report, A/HRC/WG.6/18/ERI/1, par. 91.

cooperation with established human rights mechanisms and – during the second UPR – the lack of implementation of the recommendations accepted during the first one.[152] During the second UPR, Member States made 200 recommendations to the Eritrean Government aiming at ensuring better respect for, protection and implementation of human rights in the country and in particular the civil and political rights. The Government had accepted 90 of the recommendations.[153]

(ii) Special Procedures

182. Eritrea maintains on principle that a country-specific mandate should not exist, since in its view country specific mandates are politically motivated and undermine the UPR-initiated constructive dialogue between States.[154] On that basis, Eritrea has never cooperated with the Special Rapporteur on the situation of human rights in Eritrea and did not allow her to visit the country following her visit requests. The same attitude was maintained vis-à-vis the Commission.

183. During its Universal Periodic reviews, the Eritrean Government stated its refusal to grant standing invitations to the Special Procedures mandate holders. It added, however, that it would consider requests for visits by thematic mandate-holders on a case by case basis. Nevertheless, so far the Government has not accepted any of the visit requests that have been made by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression in 2003,[155] the Special Rapporteur on freedom of religion or belief in 2004, the Special Rapporteur on the right to food in 2003, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment in 2005,[156] and the Special Rapporteur on extrajudicial, summary or arbitrary executions in 2010.

184. The Government has only replied to one of the communications sent by the Special Rapporteur on the freedom of religion or belief sent in October 2003 about the arrest and detention of Jehovah's Witnesses and members of other Christian religions.[157] Since then, the Government did not reply to the communications and urgent appeals sent by Special Procedures mandate holders. Three communications were sent in March, June and November 2004 by the Special Rapporteur on the freedom of religion or belief related to the arrest and detention of religious leaders.[158] A communication by the Chairperson of the Working Group on arbitrary detention together with the Special Rapporteur on freedom of religion or belief and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health was sent in 2007 and reiterated in 2012. It raised the case of Abune Antonios, the Patriarch of the Eritrean Orthodox Church, who had been under house arrest from January 2006 until 27 May 2007 and detained *incommunicado* since then.[159] In 2010, the Special Rapporteur on torture sent urgent appeals on the conditions of detention of 26 journalists and two media workers.[160] In May 2014, the Working Group on arbitrary detention, together with the Special Rapporteur on the situation of human rights in Eritrea, the Special Rapporteur on freedom of religion or

[152] During the First UPR review, Eritrea had accepted only 14 out of the 131 recommendations that had been made (see A/HRC/13/2 and A/HRC/13/2/Add.1).
[153] See A/HRC/13/2 and A/HRC/26/13.
[154] A/HRC/26/13, par. 96.
[155] Request reiterated in 2005.
[156] Request reiterated in 2007 and 2010.
[157] E/CN.4/2005/61/Add.1, p. 25 -26.
[158] E/CN.4/2005/61/Add.1, p. 25 -26.
[159] A/HRC/WG.6/18/ERI/2. See chapter VI, A, 4, Freedom of religion and belief.
[160] A/HRC/WG.6/18/ERI/2, par. 19 and 24.

belief and the Special Rapporteur on torture sent an urgent appeal about the alleged arrest and arbitrary detention of five members of the Evangelical Lutheran Church for their religious beliefs.[161] In June 2014, the Working Group on arbitrary detention, together with the Working Group on enforced and involuntary disappearances, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, the Special Rapporteur on torture and the Special Rapporteur on the situation of human rights in Eritrea sent an urgent appeal on the alleged arrest and arbitrary detention of Eritrea's Ambassador to Nigeria that is believed to be politically motivated.[162] None of these requests or appeals was acknowledged.

(iii) Treaty Bodies

185. The Government of Eritrea has submitted initial and subsequent regular reports on the implementation of Convention to Eliminate All Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child (CRC).

186. It submitted its first report (combined with its second and third periodical reports) on the implementation of CEDAW in 2004, which was considered by the Committee in February 2006. It submitted its fourth and fifth reports in 2012, which were considered together by the Committee in February 2014.

187. In 2001, Eritrea submitted its initial report to CRC, due since 1996. The report was considered by the Committee in July 2003. It then submitted its combined second and third reports in 2007. They were considered by the Committee in October 2007. Finally, the Government submitted its fourth report in 2012, which was considered by the Committee during its 69th session of May-June 2015.

188. Eritrea did not submit its initial reports on the implementation of the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic Social and Cultural Rights (ICESCR), and the Convention on the Elimination of Racial Discrimination (CERD). The reports are overdue since 2003 under ICCPR and ICESCR and since 2002 under CERD. During its first UPR review in 2009, the Eritrean Government stated that it had not been in a position to submit these overdue reports in a timely manner because most of the country's legal experts are occupied with the issue of the delimitation and demarcation of the border with Ethiopia by the EEBC. The Government stated that it would restart working on them once the arbitration decision had been finalised.[163] In its report for the second UPR review in 2014, it did not mention the issue of the overdue reports to these three Committees but accepted the recommendation that it should submit all the reports due to Treaty Bodies and cooperate with these mechanisms.[164]

189. The initial report on the implementation of the Convention against Torture (CAT) is due in November 2015.

190. Eritrea has not accepted the competency of any core human rights Treaty Bodies to examine individual communications about alleged human rights violations.

[161] A/HRC/2772, p. 66.
[162] A/HRC/28/85, p. 14.
[163] A/HRC/WG.6/6/ERI/1, par. 83.
[164] A/HRC/26/13/Add.1 par, 122.74 and 122.75.

(b) Eritrea's relations with regional organizations

(i) The Africa Union and the Intergovernmental Authority on Development

191. Eritrea joined the Organization of the African Unity (OAU), later to become the African Union (AU), and the Intergovernmental Authority on Development (IGAD) in 1993, after it became independent.[165] The relations with these two regional organizations were, however, impacted by Eritrea's foreign relations with Ethiopia. For a long time, Eritrea withdrew from the AU in protest against the organization's support to the Ethiopian intervention in Somalia. For the same reason, it withdrew from IGAD in 2007. In 2011, the United Nations Monitoring Group on Somalia and Eritrea reported an attempt by the Eritrean intelligence services to organise a bomb attack at the January 2011 AU Summit.[166] The same month, though, perhaps with a view to break its isolation on the international scene, Eritrea reoccupied its seat in the AU. Similarly, in July 2011 the Eritrean Minister of Foreign Affairs sent a letter to the Executive Secretary of IGAD expressing Eritrea's wish to reactivate its membership. This request has not yet been examined by the IGAD Assembly of Heads of State and Government.

(ii) The African human rights mechanisms

192. The African human rights system provides for mechanisms to ensure the respect, implementation and promotion of the rights enshrined in the African Charter on Human and Peoples' Rights. Accordingly, every two years each State party to the Charter has the duty to submit to the African Commission on Human and Peoples' Rights reports in which it must detail the measures taken to fulfil its obligations under the Charter. The Commission considers the reports during a public session in the presence of State party representatives and NGOs. Eritrea ratified the Charter in 1999 but has never submitted a report. In October 2013, Eritrea submitted its report on the protection and implementation of the rights enshrined in the African Charter on the Rights and Welfare of the Child. Its initial report was due in 2001 and its first periodical report was due in 2004. The report will be considered by the African Committee of Experts on the Rights and Welfare of the Child.

193. In addition, the African Commission has a system of Special Rapporteurs mandated to undertake missions to specific countries in order to collect information on the human rights situation and disseminate knowledge about human rights. One of the objectives of such missions is also to enhance the visibility of the Commission and raise awareness about its work and its mechanisms established to protect and promote human rights on the African continent. Such missions, which may sometimes include a fact finding component, can only be organised with the consent of the State. Eritrea has never invited any Special Rapporteur of the African Commission to undertake a promotional mission and it explicitly refused the request made by the Special Rapporteur on Prisons and Conditions of Detention to visit the country.

194. Eritrea did not recognise the competency of the African Court on Human and Peoples' Rights to examine individual communications about specific cases of human rights violations. However, the African Commission has a mechanism that allows it to consider individual communications presented by individuals without requiring pre-approval by the State party. In this context, several communications were submitted against Eritrea and deemed admissible by the African Commission.

[165] See *supra*.
[166] S/2011/433.

195. In October 1999, communication No. 234/99 was submitted against Eritrea by the NGO Interights (on behalf of the Pan African Movement and Inter African Group), in parallel to communication No. 233/99 against Ethiopia, also submitted by Interights (on behalf of the Pan African Movement and Citizens for Peace in Eritrea). The two communications related to alleged human rights violations committed by both Governments during the border conflict between the two countries that began in 1998. It was alleged by the complainant that thousands of Ethiopian nationals were expelled from Eritrea directly or by coercing them to leave the country and that about 61,000 people of Eritrean ethnic descent were deported from Ethiopia while they were legal residents there. It was also alleged that during these events, numerous human rights violations occurred, including arbitrary detention, mass internment, torture, murder, enforced disappearances, forced conscription into the military, rape and confiscation of property. The communications were considered to be admissible by the Commission during its 27th ordinary session (2000). The two respondent States shared the view that the matters of the claims had been submitted to the Eritrean-Ethiopian Claims Commission (EECC) established under the 2000 Algiers Peace Agreement. The African Commission decided in May 2003 to suspend the consideration of the two communications pending the decision of the Claims Commission and that the Respondent States should keep the EECC regularly informed of the process. The EECC rendered its final award on Damages on 17 August 2009. The African Commission has so far not reopened the two communications.

196. Two individual communications were submitted to the Commission in 2002 (No. 250/2002) and 2003 (No. 275/2003) on behalf of 11 members of the G-15[167] and 18 journalists[168] respectively, who have been detained *incommunicado* since 2001.[169]

197. The African Commission considered communication No. 250/2002 in November 2003; and decided on the admissibility of communication No. 275/2003 in December 2004 and its merits in May 2007. Eritrea participated in the two quasi-judicial procedures by transmitting submissions on the admissibility and merits of the two communications. In its submissions, the Government of Eritrea stated that all the rights referred to by the complainants are guaranteed and protected in the Constitution. In its decisions, the Commission declared that human rights violations were committed by the Eritrean authorities who arbitrarily arrested and held in *incommunicado* detention the 11 political opponents and 18 journalists. It found violations of the right to freedom of expression and to receive information, the right to dignity and security of the person, the rights to fair trial and other related rights and the right to family life. The Commission urged the Government of Eritrea to order the immediate release of all the detainees and/or to bring them immediately before a court and to grant them access to their families and legal representatives. It also recommended that they be compensated and that the ban on the press in Eritrea be lifted. Eritrea has not complied with any of the recommendations.

198. In 2012, another individual communication on behalf of the Swedish-Eritrean journalist writer and playwright Mr. Dawit Isaak, who has been held in *incommunicado* detention since 2001, was submitted against Eritrea to the African Commission. The main claim is related to Eritrea's failure to act on a writ of *habeas corpus* that was sent in 2011 to the High Court in Asmara on Mr. Dawit Isaak's behalf. The Government of Eritrea also participated in the proceedings and made a submission on the admissibility of the

[167] African Commission of Human and People's Rights, Communication no. 250/2002 (2003), *Liesbeth Zegveld and Messie MUSSIE Ephrem v. Eritrea*.

[168] African Commission of Human and People's Rights, Communication No. 275/2003 (2007), *Article 19 v. the State of Eritrea*.

[169] See chapter III, C, Historical Background - Post-independence.

communication. In July 2014, the African Commission declared the communication admissible. The proceedings are on-going.

(iii) The European Union

199. Relations between Eritrea and the European Union (EU) date back to the first years of Eritrea's independence. The EU opened a delegation in Asmara in 1995, engaging in reconstruction activities and developing trade and economic exchange. Relations started to deteriorate following the 2001 political crackdown and the arrest and detention of the Swedish-Eritrean journalist Mr. Dawit Isaak. On 28 September 2001, the then Italian Ambassador to Asmara, His Excellency Mr. Antonio Bandini, presented a letter of protest to the authorities and was expelled. In response, all EU countries withdrew their Ambassadors, leading to a halt in the cooperation between the EU and Eritrea.[170] Yet, the EU re-evaluated its relations with Asmara at the end of the 2000s. In May 2007, President Afwerki visited Brussels, where he was welcomed by the then EU Development Commissioner, Mr. Louis Michel. The latter visited Asmara in August 2009 and, contrary to his expectations, was not allowed to visit Mr. Isaak. Notwithstanding this, the EU signed with Eritrea a Country Strategy and National Indicative Programme for the period 2009-2013 amounting to € 120 million.[171] The Programme mainly targeted food security (€ 70 million). It acknowledged the past "slowdown in EU-Eritrea development cooperation" as well as "limited" political dialogue. In November 2011, the EU drew up a Strategic Framework for the Horn of Africa and in 2012 appointed a Special Representative for that region. The Strategic Framework insists on the EU's support to "the development of democratic processes and institutions that contribute to human security and empowerment", notably through "promoting respect for constitutional norms, the rule of law, human rights, and gender equality through cooperation and dialogue with Horn partners."

200. Throughout the years, the EU has regularly raised the issue of Eritrea's human rights obligations. On 18 September 2014, the Spokesperson of the EU External Action Service reiterated previous calls to the Eritrean authorities to release the 11 detained members of the G-15 as well as all the journalists detained in Eritrea, including Mr. Isaak. He also said that "the EU calls on the Government of the State of Eritrea to honour its international human rights obligations and to urgently improve its human rights situation. The EU also calls on the Government to fully co-operate with the UN Special Rapporteur on the human rights situation in Eritrea as well as to implement the recommendations made by the UN Human Rights Council during the Universal Periodic Review of the State of Eritrea in 2014."[172]

201. In the context of an increasing number of refugees trying to reach Europe from the Horn of Africa (and particularly from Eritrea), the EU has recently renewed its engagement with Eritrea on migration and trafficking issues. In December 2014, Eritrea, along with Ethiopia, Somalia, South Sudan, Sudan, Djibouti, Kenya, Egypt and Tunisia, was one of the signatories of the EU-Horn of Africa Migration Route Initiative, now known as "Khartoum Process". This new initiative aims at increasing EU support to these countries to tackle trafficking and smuggling of migrants. Specifically with regard to Eritrea, reports have appeared suggesting that the EU is considering a multi-million development package for the country.

[170] The diplomats of four countries (Germany, the Netherlands, France and Denmark) returned to Eritrea shortly thereafter.

[171] http://ec.europa.eu/.

[172] http://eeas.europe.eu/.

202. In this changing context, Eritrean opposition parties, diaspora organizations and academics recently questioned the EU policy vis-à-vis Eritrea for lacking consistency with its human rights objectives.[173] In particular, Eritrean organizations fear that EU leaders may de-emphasise the Eritrean human rights situation in a bid to resolve the problem of migration flows from the Horn of Africa, or change their migration policies in disregard of the prevailing human rights situation in the country.

D. Economic and development context

1. Economic context

(a) Indicators[174]

203. After a rapid economic development, averaging an annual growth of gross domestic product (GDP) of 7 per cent in the years following independence, the Eritrean economy registered a significant slowdown as a consequence of the border war with Ethiopia. GDP dropped to an estimated one to two per cent growth for the 2007-2008 period. The downward trend of GDP performance was reversed in the following years thanks to surging profits in the mining sector. GDP growth was of 2.2 per cent for 2010, peaking at 8.2 per cent in 2011 and slowing down to 6.3 per cent in 2012 because of falling mineral prices. Financial institutions have forecasted real GDP growth to pick up from 3.5 per cent in 2013 to an annual average of 8.2 per cent in 2014-2015.

204. Since its independence, Eritrea has faced chronic fiscal deficits impacting on economic performance. The average deficit was eighteen per cent of GDP in the 2000-2010 period. The Nakfa has been pegged to the dollar (USD) at Nakfa 15.38/USD 1, since 2005.[175] Over this period the Nakfa has become severely overvalued because of high inflation and large current-account deficits. The misaligned exchange rate has resulted in foreign-exchange shortages. The Eritrean Government substantially liberalised foreign currency transactions in early 2013 to adjust the Nakfa's rate against the USD and bring it closer to the market rate. According to the African Development Bank Group (AfDB),[176] the fiscal deficit of Eritrea is expected to decrease from an estimated 11.7 per cent of GDP in 2013 to 10.3 per cent of GDP in 2014 and 9.08 per cent of GDP in 2015, on account of the growth in revenues from mining.

205. AfDB also estimates that remittances from the Eritrean diaspora have declined as a consequence of the 2011 United Nations Security Council sanctions, which have prohibited UN member countries from facilitating transfer of the two per cent "Rehabilitation Tax" paid by Eritreans living abroad.[177]

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[173] See in particular: "Listen to our agony – responding to the Eritrean crisis", published in December 2014 by the Eritreans for Human and Democratic Rights-UK, Stop Slavery in Eritrea Campaign, Release Eritrea-UK, Freedom Friday, Citizens for Democratic Rights in Eritrea, Coordinamento Eritrea Democratica, Eritrean Initiative on Refugee Rights-Sweden, Human Rights Concern Eritrea/UK; the letter sent on 30 March 2015 by the Eritrean People's Democratic Party to EU authorities; and the statement on the European asylum and aid policy to Eritrea, published on 31 March 2015 by 22 academics, researchers and journalist working on Eritrea.

[174] Sources: World Bank, International Monetary Fund, UN Human Development Index, Economist Intelligence Unit.

[175] According to open source information, one USD would trade against about 50 Nakfa on the black market – but the exchange rate oscillates.

[176] East Africa Quarterly Bulletin, third quarter of 2014.

[177] See chapter VI, A, 1, Surveillance of the population in violation of the right to privacy.

(b) International Trade[178]

206. Eritrea's international trade has been characterised by large deficits. The main constraints to trade include infrastructural deficiencies, institutional capacity weaknesses, governance challenges and unresolved regional instability and conflict. These constraints have resulted, inter alia, in Eritrea having little interregional trade with countries of the Common Market for Eastern and Southern Africa (COMESA)[179] – only 20 per cent of Eritrea's total international trade according to the United Nations Conference on Trade and Development (UNCTAD).

207. The Bank of Eritrea does not provide data on foreign direct investment (FDI). UNCTAD's 2011 FDI Report states that Eritrea had 74 million USD in FDI inward flow and 779 million in FDI stock (accumulated inflows) in 2012, the most recent year for which data is available. No data is available on outflows.

208. The total number of bilateral investment agreements reported by UNCTAD as of 1 June 2013 is four: one signed with Italy on 6 February 1996, one with Qatar on 7 August 2000, one with Uganda on 7 August 2001 and one with the Netherlands on 2 December 2003.

(c) Mining and other sectors[180]

209. Activity in the mining sector has surged, with considerable impact on the recent economic growth of Eritrea. In 2012, the AfDB estimated that mining, along with quarrying and construction, represented 30 per cent of Eritrean GDP, against 58.4 per cent coming from the services sector. With 11.6 per cent of GDP, agriculture represents a small share of the Eritrean economy, although it constitutes the main source of livelihood for 80 per cent of the population. The agricultural sector in Eritrea is subjected to risks of drought and suffers from a lack of infrastructure, with reportedly less than 10 per cent of arable lands being irrigated.

210. The Mining Sector is regulated by Proclamation No. 68/1995 promulgated in April 1995. The Proclamation provides that the Eritrean National Mining Corporation (ENAMCO) is entitled to a 10 per cent share in any international mining project in Eritrea. In addition, ENAMCO has the right to purchase a further 30 per cent interest in all new mining projects in Eritrea. This requires ENAMCO to contribute approximately one third of the project's capital costs but it is entitled to 40 per cent of the dividends. Prospecting licences are valid for one year and are non-renewable. Exploration licences are valid for an initial period of three years, with the option to be renewed twice for additional terms of one year each. Mining licences, for their part, are valid for a period of 20 years, with the option for one 10-year renewal.

211. Nevsun Resources Ltd., a Canadian company, is the only mining company currently operating in Eritrea. It operates a mine in Bisha (150 kilometres west of Asmara) that produces gold, silver, copper and zinc. Nevsun is also the only foreign mining company paying royalties and taxes to the Eritrean treasury. Its published data show that it paid over

[178] Sources: UNCTAD, US Department of State Investment Climate Statements 2014, African Economic Outlook 2014 County Report on Eritrea, Economist Intelligence Unit.

[179] The COMESA is a common market formed in 1994 to replace a Preferential Trade Area which had existed since 1981. The COMESA gathers Djibouti, Eritrea, Ethiopia, Egypt, Libya, Sudan, Comoros, Madagascar, Mauritius, Seychelles, Burundi, Kenya, Malawi, Rwanda, Uganda, Swaziland, Zambia, Zimbabwe, the Democratic Republic of Congo, and South Sudan. Eritrea joined the COMESA in 1994.

[180] Sources: United Nations Monitoring Group on Somalia and Eritrea and Human Rights Watch report, Hear No Evil: Forced Labour and Corporate Responsibility in Eritrea's Mining Sector, 2013.

85 million USD to the Government of Eritrea in income taxes, royalties and other fees. The company estimates that it will pay a total of 14 billion USD to the Government of Eritrea over the next ten years. On 20 November 2014, three Eritreans filed a lawsuit against Nevsun in the Supreme Court of British Columbia, Canada, in relation to whether Nevsun relied upon forced labour.[181]

212. Three other foreign companies have received approval to develop mining projects in Eritrea and plan to launch production in 2015 and 2016. ENAMCO and the SFECO Group, a subsidiary of the Chinese firm "Shanghai Construction Group Co. Ltd.", have created a joint venture to exploit the Koka gold mine, in northern Eritrea. The project plans to start operations during the third quarter of 2015. Two other projects are scheduled to launch operations in 2016. The first one is run by the Canadian-Chinese "Shanghai Construction Group Company and Sunridge Gold Corp" and will operate a gold, silver, copper and zinc mine in the Asmara region. The second is operated by the Australian company "South Boulder Mines Ltd.", which was awarded an exploration licence in 2009 for the potash Colluli tenements in southern Eritrea. Colluli is reported to have the potential to be the world's first and largest modern open-cast potash mine.

(d) Economic cooperation and regional integration

213. Eritrea is currently a member of COMESA, the Community of Sahel-Saharan States, the New Partnership for Africa's Development, and the Intergovernmental Authority on Development (IGAD). Eritrea is also participating in a regional programme for financial integration under COMESA and is a beneficiary of the Generalised System of Preferences with a number of industrialised countries and regions, including the United States and the European Union.

(e) Support provided by international and regional financial institutions

214. The World Bank (WB) has no Country Partnership Strategy for Eritrea and no active projects with it. From 1997 to 2011, in partnership with the Eritrean Government, the European Union and the Italian government implemented a "Ports Rehabilitation Project" amounting to 36.6 million USD. The International Monetary Fund (IMF), for its part, has had no transactions with Eritrea since 1 January 1984.

215. The African Development Bank has two on-going projects: one to support Technical and Vocational Education and Training, implemented since 2012 and amounting to UA 13.3 million; and a second to support higher education development, implemented since 2010 and amounting to UA 15.6 million.[182]

2. Development context

216. Reliable data on Eritrea focusing on development in various sectors is not available. The Government has recognised the need to strengthen its Statistics Office and has requested UN assistance to do so. In the meantime, it provides some statistical data through its Local Government Ministry. United Nations agencies are restricted in their access to vast areas of the country and are, therefore, unable to regularly collect data as they do in other countries. Information in the following paragraphs is, therefore, based on the limited data that is publicly available.

[181] See chapter VI, C, 2, Forced labour.

[182] UA are "units of account" used by the African Development Bank. In 2010, the exchange rate to the dollar was set at 1.54.

217. Despite recent economic growth, Eritrea remains one of the least developed countries in the world, with an average annual per capita income of 531 USD in 2013, for a population estimated today at 6.3 million.[183] Eritrea is ranked 177th out of 187 countries in the 2011 United Nations Human Development Index.

218. In January 2015, the United Nations Country Team (UNCT) made available on its website a concept note for the preparation of Eritrea's 2014 Millennium Development Goals (MDGs) progress report, which will assess progress towards attaining the MDGs since the publication of the last progress report in 2006.[184]

(a) Progress in achieving health MDGs

219. The United Nations Development Programme in Eritrea (UNDP-Eritrea) considers that the country has made progress towards the achievement of health-related MDGs (i.e. MDG 4 on child health, MDG 5 on maternal health, and MDG 6 on combating HIV/AIDs, malaria and other diseases) and is one of the few African countries on track to meet these indicators.[185]

220. Regarding MDG 4, Eritrea managed to reduce under-five mortality from 150 per 1,000 live births in 1990 to 50 by 2013.[186] UNDP-Eritrea points out that "the under-five mortality rate was 49.5 per cent in 2013, which surpassed 50 per cent target set for 2015. Infant mortality was 42 per cent in 2010 and is projected to meet the target of 20 per cent by 2015. The proportion of one-year old children immunised against measles was 99 per cent in 2013, which will surpass the target of 98 per cent set for 2015".[187]

221. Similarly, significant reductions of maternal mortality (MDG 5) have been achieved, with figures showing that rates have decreased from 1,700 per 100,000 live births in 1990 to 380 in 2013.[188] MDG 5 is divided in two. The first MDG 5 target is to reduce the maternal mortality ratio by three-quarters between 1990 and 2015. The maternal mortality ratio in Eritrea was 209 in 2013, while the target that had been set for 2015 was 220; the proportion of births attended by skilled health personnel was 55 per cent in 2013 and is projected to meet the target of 69.6 per cent set for 2015.[189] The second MDG 5 target aims at achieving universal access to reproductive health by 2015. In 2013, antenatal care coverage (women visited between at least one and four times by skilled health personnel) was 93 per cent in Eritrea. With regard to family planning and contraceptive prevalence, the indicators for 2010 are rather low suggesting that meeting these indicators by 2015 could be a challenge. No recent information on adolescent birth rates is available to assess progress made against this indicator.[190]

222. Regarding MDG 6, as of 2010 HIV prevalence among population aged 15-24 years was 0.93; condom use for high-risk sex was 20 per cent; and the proportion of population aged 15-24 years with comprehensive correct knowledge of HIV/AIDS was 96 per cent.[191] As for malaria, incidence and death rates associated with malaria (per 1,000) was 12 in

[183] In the absence of an official census, Eritrean population is estimated in-between 3.2 and 6.5 million.
[184] See: http://www.er.undp.org/.
[185] UNDP in Eritrea, People-Centred Development, February 2015.
[186] State of Eritrea, Health Millennium Development Goals Report, Innovations Driving Health MDGs in Eritrea, September 2014.
[187] See: http://www.er.undp.org/.
[188] State of Eritrea, Health Millennium Development Goals Report, Innovations Driving Health MDGs in Eritrea, September 2014.
[189] See: http://www.er.undp.org/.
[190] Ibid.
[191] Ibid.

2010, down from 36 in 2001-2003. The proportion of children under five sleeping under insecticide-treated bed-nets was 67 per cent in 2010, up from 4 per cent in 2001-2003. Similarly, the proportion of children under five with fever who are treated with appropriate anti-malarial drugs was 60 per cent in 2010 compared to only 4 per cent in 2001-2003. The incidence, prevalence and death rate associated with tuberculosis was 97 per cent in 2011.

(b) Other Millenium Development Goals

223. According to UNDP, Eritrea is on track to achieve MDG 7 on environmental sustainability: in 2010 the proportion of population using improved drinking water was 74.5 per cent compared to the 2015 target of 50 per cent; and the proportion of the population using improved sanitation facilities was 24.2 per cent compared to the 2015 target of 50 per cent.[192]

224. UNDP-Eritrea considers that much remains to be done to meet MDGs critical to human development. Out of the nine indicators designed to assess progress in the eradication of poverty and hunger (MDG 1), available information on three indicators show relatively little progress, especially with regard to the share of the poorest quintile in national income/consumption expenditure, which was 20 per cent in 2010; and employment to population ratio (women/men) which was 23/63 per cent in 2010. The prevalence of underweight children under-five years of age was 38.5 per cent in 2010 and is projected to meet the target of 22 per cent by 2015.[193]

225. Regarding MDG 2 on universal primary education, education in Eritrea is officially compulsory between seven and 14 years of age and there are five levels of education: pre-primary, primary (five years), middle (three years), secondary (three years) and tertiary (vocational/technical school and university). As of 2010, net enrolment ratio in primary education was 66.2 per cent. The proportion of pupils starting grade one who reach last grade of primary education was 58.6 per cent. The literacy rate of 15-24 years-olds was 90 per cent , whereas literacy rate of the whole population is 68.9 per cent.[194]

226. On MDG 3 (promote gender equality and empower women), UNDP-Eritrea notes that, while the Government has demonstrated a strong commitment to promoting gender equality, much work is needed to fully integrate gender issues into national development policies and strategies. While significant progress has been made in moving towards gender parity as indicated by the ratios of girls to boys in primary, middle and secondary schools, other indicators (i.e. share of women in wage employment in the non-agricultural sector and proportion of seats held by women in national parliament) require substantial improvements.[195]

227. Finally, lack of data has hampered the assessment of progress made in MDG 8 (develop a global partnership for development) in Eritrea.

E. The situation of women

1. Efforts to overcome traditional inequalities prior to independence

228. Prior to independence, as in many countries, Eritrean society was traditionally patriarchal and women did not enjoy the same social status as men. The diversity of ethnic groups and livelihood systems meant that multiple gender norms existed. Discrimination

[192] Ibid.
[193] Ibid.
[194] Ibid.
[195] Ibid.

against women was evident across all social groups. For example, historically women were excluded from community or leadership decisions in most ethnic groups. The exception appears to be among the Kunama. Similarly, women in all ethnic groups except the Kunama were not able to influence decisions about their marriage. Conversely, ethnicity affects the specific form in which Female Genital Mutilation/ Cutting (FGM/C) is carried out. The high prevalence of FGM/C in Eritrea is also linked to factors such as religion, rural residence, economic status and wealth.[196]

229. Women's role and status were clearly proscribed by all social groups. Tradition dictated how and to whom a woman could be married, how her virginity could be tested and what penalties would be borne by the woman's family should her husband claim that she was not a virgin. Marriage payments, including dowries and bride-wealth, were also regulated, as were rules defining who a widow must/could marry upon the death of her husband. Suffice to say, traditional codes and practices governed all aspect of women's lives prior to the liberation struggle Eritrea, leaving them little autonomy or space to decide their own lives.

230. It is unclear whether there was a formal movement for equality of women in Eritrea prior to the armed struggle, and whether it developed independently of the nationalist struggle. Either way, a women's movement for gender equality emerged and was subsumed into the nationalist struggle. Women's involvement in the liberation Fronts (the ELF and the EPLF) began the transformation of gender relations in Eritrea. The degree to which changes in gender relations and the status of women actually took place, though, depended on several factors, including the degree of control each Front had in various regions of the country and the fronts' acceptance of proposed changes.[197]

231. Women were involved in the nationalist movement from its earliest days, performing a variety of tasks from clandestine message delivery to frontline fighting. Neither the ELF nor the EPLF initially welcomed women's participation, but both soon came to realise the important roles that women could undertake and eventually accepted their participation. Women proved to be capable fighters, just as willing as men to die for the liberation cause.[198]

232. Women's involvement in the liberation struggle was not without its difficulties. Within both Fronts, women had to fight to be included and, according to individual accounts, suffered ridicule and discrimination, and at times, abuse and violence from their male comrades-in-arms.[199] Nonetheless, with a strong belief in the goals of independence for Eritrea and gender equality, many women devoted themselves whole-heartedly to the cause of the ELF or EPLF.

233. Women not engaged on the frontline, including women refugees in neighbouring countries, were also instrumental during the liberation struggle at the community level. Many became heads of households while their husbands, fathers, brothers and sons were

[196] United Nations Children's Fund, *Female Genital Mutilation/Cutting: A statistical overview and exploration of the dynamics of change* (UNICEF, New York, 2013).

[197] B Byrne, R Marcus and T Powers-Stevens, *Gender, conflict and development Volume II: Case Studies: Cambodia, Rwanda, Kosovo, Algeria, Somalia, Guatemala and Eritrea* (BRIDGE Report No 35, December 1995), p 131.

[198] TSH086; TSH087; TSH088; TSH089; V Bernal, *From Warriors to Wives: Contradictions of Liberation and Development in Eritrea* (Northeast African Studies 2001, Vol. 8 No 3) pp 129-254, 133.

[199] TSH086; TSH087; TSH089; TSH095; C Mason, *Gender, Nationalism and Revolution: Re-Assessing Women's Relationship with the Eritrean Liberation Front* (Working Paper #274, December 2001), p 10.

away fighting or in exile, taking on roles of responsibility in businesses and on farms while caring for their families.

234. The discourse of women's participation in the liberation struggle became part of the political battle for prominence between the EPLF and the ELF. The EPLF, inspired by Marxist and Maoist ideologies, emphasized equality and grass-roots efforts. Within this framework, the EPLF promoted itself as the only vehicle through which women could achieve gender equality and presented the role of women in the ELF as passive compared to their more active roles in the EPLF. In reality, women did participate in the ELF, albeit not in senior roles and while more women and girls joined the EPLF than the ELF, this should not diminish women's important contribution to the liberation efforts in the ELF.[200] The ELF, perhaps somewhat belatedly, acknowledged women's participation in the Front in 1971 at the behest of the General Union of Women. It re-affirmed it in 1975, when at its Second National Congress the ELF also declared that once Eritrea was liberated, women would be freed of all historic inequalities:

> "*The revolutionary state shall protect the rights of women workers. It shall remove all historical prejudice against women and will safeguard equal opportunities for women in the different activities of the state, social and private life. Women shall have a revolutionary place in revolutionary Eritrea. Any manifestation of discrimination against women shall be severely punished*."[201]

235. Meanwhile, the EPLF consistently championed efforts to improve the status of women. It assured women that they would be liberated if they took up the armed struggle and fought with the EPLF. In 1979, along with other mass organizations, the EPLF created the National Union of Eritrean Women (NUEW) to further the cause of the EPLF through engaging women's participation in the war effort. The NUEW, as the EPLF's women's engagement arm, supported the EPLF's efforts in this respect. For example, in 1983 when speaking of the EPLF's Second Congress, the NUEW Secretary General Ms Luul Gebreab reported that "[T]he skill and cultural levels of women … at the moment are very low",[202] and that the EPLF should focus "special attention to raising the skill levels and political consciousness of women through education". The NUEW consistently emphasized that gender equality could only be achieved through participation in the nationalist struggle: "At a time when the Ethiopian occupationist [sic] regime is trying to eliminate the entire population, the primary goal of the NUEW is to mobilise and organise women to participate in the national liberation struggle, until independence has been achieved".[203] As a women's organization, the NUEW was an integral part of the EPLF, implementing its programmes and encouraging women to participate in the liberation struggle with the EPLF.[204]

236. Within the EPLF significant changes to traditional gender relations were seen as it attempted to put gender equality into practice in the Front. Women fighters were not restricted to traditional roles and after the initial reticence to train them as fighters, the EPLF recruited over 30,000 women (approximately one third of the 95,000 strong force) who were visibly engaged in combat. According to one of the first women fighters, the majority of women fighters were assigned to combat as they lacked specialised skills to

200 C Mason, *Gender, Nationalism and Revolution: Re-Assessing Women's Relationship with the Eritrean Liberation Front* (Working Paper #274, December 2001), p 1-4.

201 The ELF Social and Cultural Practice of the Program, article 2.

202 Women's Movement in Eritrea: An Interview Briefing by Luul Gebreab from Vol.10 No.27/28 of the *Review of African Political Economy* (Winter 1983, pp152-155), p 154.

203 The National Union of Eritrean Women, *Voice of Eritrean Women* (1989, Issue 89) p 7.

204 Dan Connell, *Eritrea : A Revolution in Progress* (Monthly Review 1993, Vol. 45, 3), p 17.

perform other tasks.[205] While some women became senior officers, generally their low education and experience restricted their ability to be promoted.[206] In 1987, eight women were elected to the EPLF Central Committee,[207] but no women ever served on the EPLF Executive Committee during the war.[208] Traditional women and girls' tasks such as cooking, cleaning, laundry and child rearing were systematised, becoming the responsibility of both men and women and undertaken according to rotation within units. After an initial ban on sexual relations between fighters, the EPLF later permitted marriages between its members, and allowed premarital sex.[209] Fighters lived a collective life in which one's gender was not supposed to determine one's activities or status.

237. In liberated areas, the EPLF also attempted to improve the situation of women through the implementation of the National Democratic Programme (NDP).[210] Under the NDP, health and education services were provided and legal reforms aimed at abolishing discriminatory practices were instituted. The cornerstone of the NDP was the 1977 Marriage Law introduced in liberated areas. Among other things, the law abolished polygamy, stipulated that marriage must be at the free consent of both man and woman, forbade the repudiation of non-virgin brides, enabled divorce to be initiated by women and men and provided for the division of property between women and men upon divorce.[211] This was a significant departure from traditional marriage practices.[212] In 1980, the EPLF also began a land reform policy that for the first time allocated small allotments of land to women.[213] The impact of the NDP varied by region.[214]

238. Upon achieving independence, the EPLF continued to improve the position of women by changing the discriminatory legal system. Between 1991 and 1993, with the adoption of the transitional codes, the Government changed the Ethiopian civil code to

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205 V Bernal, *From Warriors to Wives: Contradictions of Liberation and Development in Eritrea* Northeast African Studies (2001), Vol. 8, No. 3, pp. 129-54, p. 134.

206 A Mehreteb, *Wake Up Hannah!: Reintegration and Reconstruction Challenges for Post-War Eritrea* (2004), p 153; V Bernal, *From Warriors to Wives: Contradictions of Liberation and Development in Eritrea* Northeast African Studies (2001), Vol. 8, No. 3, pp. 129-54, p 135; C Mason, *Gender, Nationalism and Revolution: Re-Assessing Women's Relationship with the Eritrean Liberation Front,* Working Paper #274 (December 2001), p. 7.

207 A Mehreteb, *Wake Up Hannah!: Reintegration and Reconstruction Challenges for Post-War Eritrea* (2004), p. 154.

208 V Bernal, *From Warriors to Wives: Contradictions of Liberation and Development in Eritrea* Northeast African Studies (2001), Vol. 8, No. 3 pp. 129-54, p. 135.

209 V Bernal, *From Warriors to Wives: Contradictions of Liberation and Development in Eritrea* Northeast African Studies (2001), Vol. 8, No. 3, pp. 129-54, p 135.

210 B Byrne, R Marcus and T Powers-Stevens, *Gender, conflict and development Volume II: Case Studies: Cambodia, Rwanda, Kosovo, Algeria, Somalia; Guatemala and Eritrea*, BRIDGE Report No 35 (December 1995), p. 133.

211 Laws passed at the second regular meeting of the central committee in November 1977. C Green and S Baden, *Gender profile of the state of Eritrea*, BRIDGE report No. 22 (February 1994), p. 13.

212 V Bernal, *From Warriors to Wives: Contradictions of Liberation and Development in Eritrea* Northeast African Studies (2001), Vol. 8, No. 3, pp. 129-54, p. 135. Common traditional features included: marriages were arranged by male elders, generally within the same religious, ethnic and linguistic groups; girls were betrothed between 8-14 years and married between 13-15 years; and virginity was highly valued (C Green and S Baden, *Gender profile of the state of Eritrea*, BRIDGE report No. 22 (February 1994), p. 13-4).

213 See chapter III, B, The struggle for independence.

214 C Green and S Baden, *Gender profile of the state of Eritrea*, BRIDGE report No 22 (February 1994), p. 12; B Byrne, R Marcus and T Powers-Stevens, *Gender, conflict and development Volume II: Case Studies: Cambodia, Rwanda, Kosovo, Algeria, Somalia, Guatemala and Eritrea*, BRIDGE Report No. 35 (December 1995), p. 133.

include new provisions promoting women's rights and gender equality. While these changes reflected the EPLF Marriage Law, the new law was not implemented in its entirety.[215]

239. Positive legal reforms continued in the early years of formal independence were not completed. The preamble of the Constitution underlined that Eritrean women have earned equality:

> "*Noting the fact that the Eritrean women's heroic participation in the struggle for independence and solidarity based on equality and mutual respect generated by such struggle will serve as an unshakable foundation for our commitment and struggle to create a society in which women and men shall interact on the bases [sic] of mutual respect, fraternity, and equality*".[216]

240. The Constitution included 59 articles prohibiting discrimination and acknowledging women's rights to development, land ownership, property etc. However, the Constitution has never been implemented.[217] The Government of Eritrea has stated that it intends to reform the civil and penal system to address discriminatory provisions and to criminalise domestic violence. However, such changes did not occur in the 22 years to date. The new civil and penal laws proclaimed on 11 May 2015 have not been reviewed by the Commission. Socialisation campaigns to complement legal reforms have not been undertaken.

2. Post-independence status of Eritrean women

241. At the end of the liberation struggle, options were needed to secure the future of former fighters. A demobilisation process began in 1992 that was to provide former EPLF fighters with skills necessary for reintegrating into civilian life. By 1995, approximately 50,000 fighters were released. According to the Eritrean Relief and Refugee Commission (ERRC), approximately 80 per cent of released fighters lacked non-military skills and almost two-thirds had left school before the fifth grade.[218] By 1995, about 12,000 of the 30,000 women fighters had been discharged; they received the stipulated 10,000 Birr promised by the Government to facilitate them to civilian life. Women were discharged, mainly due to their age or because they had children. The EPLF fighters that were transitioned into government posts received salaries (and positions) according to their ranks and years in the EPLF. As they generally had lower rank and fewer years in the EPLF, the women who were transitioned into Government posts tended to receive lower salaries and positions than men. Thousands of women were left without a formal decision on their status.

242. In 1994, a group of former women fighters established the Eritrean Women War Association (BANA) to assist released former women fighters to retrain in income generating activities. A separate share company was established to invest the monies that

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[215] Key components that remained included marriage to be only with full consent of both parties; the eligible age for marriage increased from 15 to 18 for women (the same as men); both parents recognised as heads of the family; discrimination of women prohibited in divorce; abortion made legal in cases where the mother's mental or physical health was at risk, and in cases of rape or incest; and the sentence for rape was increased to 15 years: Eritrea Transitional Code, Proclamation No. 1/1991 as noted by Eritrea in its first and second report to CEDAW (2004), UN Doc CEDAW/C/ERI/1-2, p.7.

[216] Preamble of the 1997 Eritrean Constitution.

[217] For more details, see chapter V, A, 1, Structure of the State.

[218] V Bernal, *From Warriors to Wives: Contradictions of Liberation and Development in Eritrea* Northeast African Studies (2001), Vol. 8, No. 3, pp. 129-54, p. 145.

released women fighters received into a fund supporting the establishment of income generating activities that could create jobs. In less than a year, the Association had over 1,000 members, raised about half a million US dollars in cash and kind (largely from foreign sources), trained over one hundred women and created two income generating activities, a fish market and a bakery.

243. The same year, another group of former women fighters established the Tesfa Association to address the lack of child care facilities. The Tesfa Association established the Aghi kindergarten and ran public campaigns and fundraising events to support its activities. Like BANA, the Tesfa Association was also successful in attracting substantial foreign funds. Although the two organizations were operated independently, their services complemented each other and both organizations planned to work closely together as they grew.

244. In 1996, the Government forced BANA and Tesfa to close, turning BANA's resources over to the ERRC and Tesfa's to the NUEW. According to official explanations at the time, they were closed because of the perceived duplication of activities with the NUEW. The forced closure of BANA and Tesfa posed a significant challenge to the welfare of women ex-fighters who did not transition into a government position. Without the services of BANA and Tesfa, they faced unemployment and had no childcare facilities.[219]

245. During the liberation, the EPLF systematised traditional domestic-related tasks such as laundry, cooking and child rearing services so that fighters could serve the Front free from these burdens. At the cessation of hostilities, these traditionally female tasks reverted back to the responsibility of women as a consequence of the underlying patriarchal culture. The expectation that women should undertake these tasks and the existence of very few state-run childcare facilities, effectively prevented women ex-fighters from wholly engaging in the workforce in post-independence Eritrea.

246. Several academic researchers contend that former female fighters also found it difficult to reintegrate into society because the qualities that made them heroic fighters were considered unfeminine and undesirable in a wife. Many were divorced by their ex-fighter husbands in favour of a civilian wife who did not embody notions of equality in the way that women fighters did.[220] These researchers suggest that many men faced pressure from their families to divorce their fighter-wives, not only because of the assertiveness they embodied or the assumed promiscuous sexual behaviour of fighter women, but also because marriage was traditionally a relationship that parents controlled.[221]

247. Some women former fighters that were unmarried at the end of the struggle faced difficulties in getting a partner. Many men wanted a wife who would not claim male privileges as women fighters were perceived to, and many parents wanted a daughter-in-law that did not embody the bold concepts of equality. The absence of children was a further cause for divorce among fighters who had married.

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[219] See chapter VI, A, 4, Freedom of religion and belief.

[220] TSH087; TSH102; A Mehreteb, *Wake Up Hannah!: Reintegration and Reconstruction Challenges for Post-War Eritrea* (2004), p 156; V Bernal, *From Warriors to Wives: Contradictions of Liberation and Development in Eritrea*, Northeast African Studies (2001) Vol. 8. No. 3. pp. 129-54, p. 137.

[221] B Byrne, R Marcus and T Powers-Stevens, *Gender, conflict and development Volume II: Case Studies: Cambodia, Rwanda, Kosovo, Algeria, Somalia, Guatemala and Eritrea*, BRIDGE Report No 35 (December 1995), p 141; V Bernal, *From Warriors to Wives: Contradictions of Liberation and Development in Eritrea* Northeast African Studies (2001) Vol 8 No 3 pp 129-54, p 137; A Mehreteb, *Wake Up Hannah!: Reintegration and Reconstruction Challenges for Post-War Eritrea* (2004), p 156.

248. Moreover, many released or discharged former fighters found themselves in competition with civilian women for the few employment opportunities that existed in post-independence Eritrea. In contrast to civilian women, former fighters often did not have the requisite skill set or education for such positions. With the closure of BANA, many women ex-fighters were left in a difficult situation.

249. Women who were transitioned into the Government were often discriminated against. They were generally accorded lower ranks in the formal military structure than their male counterparts. Few women were accorded positions in the central Government and to date there are only a few women in high ranking political positions.

250. Many civilian women were also affected by the demobilisation of fighters. As men returned home, the majority of women who had been managing households, farms and businesses were moved aside by their fathers, husbands, brothers or sons who reasserted their claim as the head of the household. Rural civilian women in particular were disadvantaged as the small plots of land allocated to them during the land reforms of the 1980s were taken by male family members.[222]

251. Women refugees were similarly disadvantaged. When they returned home, many were ineligible for land allotments or had their land allotments appropriated by others. It has been noted that many men resisted the land reform and sought to block women from the peacetime distribution of land.[223] Women were also vulnerable to the pressure of male relatives to hand over land allocated to them.[224] In areas in which the land reforms had not been implemented,[225] and in areas of land scarcity, refugee women faced particular difficulty in negotiating access to land.[226] Perhaps as a consequence, up to 70 per cent of women refugees returning from Sudan preferred to return to urban areas.[227] Urbanisation, few work opportunities and the burden of family care contributed to the difficulties faced by many women and girls in post-independence Eritrea.[228]

252. Women were not traditionally involved in community decision-making structures.[229] During the conflict, initiatives were introduced in liberated areas to include women in political structures at the local level and these efforts continued through independence. At the most recent review of Eritrea by the Committee on the Elimination of Discrimination against Women, an elevation in the position of women in regional Assemblies was noted.[230]

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222 TSH103; D Connell, '*Strategies for Change: Women & Politics in Eritrea & South Africa*' in *Review of African Political Economy* Vol.25 No.76 (June 1998, pp. 189-206) p 189.

223 The National Union of Eritrean Women, as cited in B Byrne, R Marcus and T Powers-Stevens, *Gender, conflict and development Volume II: Case Studies: Cambodia, Rwanda, Kosovo, Algeria, Somalia, Guatemala and Eritrea*, BRIDGE Report No 35 (December 1995), p 135.

224 B Byrne, R Marcus and T Powers-Stevens, *Gender, conflict and development Volume II: Case Studies: Cambodia, Rwanda, Kosovo, Algeria, Somalia, Guatemala and Eritrea*, BRIDGE Report No 35 (December 1995), p 136.

225 As of independence, approximately 60 per cent of rural areas had not been subject to land reforms. Land reforms prior to 1991 had been focussed in the land-scarce highlands: B Byrne, R Marcus and T Powers-Stevens, *Gender, conflict and development Volume II: Case Studies: Cambodia, Rwanda, Kosovo, Algeria, Somalia, Guatemala and Eritrea*, BRIDGE Report No 35 (December 1995), p. 135.

226 B Byrne, R Marcus and T Powers-Stevens, *Gender, conflict and development Volume II: Case Studies: Cambodia, Rwanda, Kosovo, Algeria, Somalia, Guatemala and Eritrea*, BRIDGE Report No 35 (December 1995), p. 136.

227 Ibid, p. 134.

228 See chapter VI, B, 6, Violations of the right to property.

229 B Byrne, R Marcus and T Powers-Stevens, *Gender, conflict and development Volume II: Case Studies: Cambodia, Rwanda, Kosovo, Algeria, Somalia, Guatemala and Eritrea*, BRIDGE Report No 35 (December 1995), p. 132.

230 CEDAW/C/ERI/CO/5, para. 24.

At the national level, there are few women in high level positions despite the 30 per cent quota. Low levels of representation are also seen in diplomatic and senior government positions. Efforts have been made to include women in the political and public spheres; however, this has been difficult because of the failure to hold elections.

253. The NUEW remained the only organization for women in post-liberation Eritrea. The mission of the NUEW is "to ensure that all Eritrean women confidently stand for their rights and equally participate in the political, economic, social, and cultural spheres of the country and share the benefits".[231] Although the NUEW planned to become an independent civil society organization, it remains in the PFDJ, and only women affiliated with the PDFJ are members. The organization's lack of independence and insufficient human and financial resources negatively impact upon its ability to operate effectively.[232]

V. The institutional and domestic legal frameworks

A. Political and security frameworks

254. The structure and operation of the Eritrean state reflects decisions by President Afwerki and the wider political and international context. The failure to put into place the Constitution adopted by the Constituent Assembly in 1997,[233] has left Eritrea with institutions that were supposed to be transitional (many institutions exist in name only). During the past 15 years, the political system has progressively become more centralised and controlled by the President. The military and security apparatus remains very opaque but, again, is tightly controlled by the President.

1. Structure of the State

(a) From the Provisional Government of Eritrea to the Government of the State of Eritrea

255. In May 1991, during the last phase of the armed struggle, which culminated in the liberation of Asmara, the Executive Committee of the EPLF set up the Provisional Government of Eritrea (PGE). Isaias Afwerki, who had been the secretary general of the EPLF since 1987, became the head of the PGE. In May 1992, the Central Committee of the EPLF, created in the 1970s to manage the Front's day-to-day operations, was transformed into the "legislative body" of the PGE. The first measure taken by this new body was to adopt Proclamation No. 23/1992, which formalised the structure of the PGE.

256. Proclamation No. 23/1992 stated that "until the Eritrean people decides its rights to self-determination through a plebiscite and until a constitutional government is established … the EPLF, in this transitional period, has the responsibility to proclaim and establish a transitional government so as to take its fight for Eritrean independence to its final destination."[234] Article 3 of the Proclamation confirmed the legislative status of the Central Committee of the EPLF. Article 4 established an Advisory Council to serve as the executive wing of the Government. The Advisory Council was composed of 28 members including the heads of the 12 departments of the EPLF, the provincial administrators, the

[231] As stated on the NUEW website (http://www.nuew.org/).
[232] CEDAW/C/ERI/CO/5, para. 24.
[233] Simon M Weldehaimanot, *The status and fate of the Eritrean Constitution* (African Human Rights Law Journal, 2008 1), pp. 108-137.
[234] Translated by GlobaLex: http://www.nyulawglobal.org/globalex/Eritrea.htm.

military zone commanders and the navy. Article 6 of the Proclamation provided for the establishment of the Eritrean judicial system.[235]

257. On 19 May 1993, the PGE adopted Proclamation No. 37/1993, which amended Proclamation No. 23/1992[236] and set the basis for a transitional government for a four-year period "until a constitution is adopted".[237] Proclamation No. 37/1993 created a three-branch government. A unicameral Parliament was established with a National Assembly *(Hagerawi Baito)* composed of 150 members comprising the whole Central Committee of the EPLF and 75 elected representatives.[238] The legislative powers of the National Assembly included the elaboration of domestic and foreign policies, the ratification of international treaties and conventions, and the approval of the establishment of ministries and other government agencies.[239] The National Assembly was also empowered to adopt proclamations but Proclamation No. 37/1993 did not specify the procedure for the enactment of legislation.[240] The Judiciary remained independent from the other branches of the Government.

258. The National Assembly also had the authority to elect the President, who in turn served as its chair.[241] On 21 May 1993, Isaias Afwerki was confirmed in that position. On 7 June 1993, through endorsement by the National Assembly, the Advisory Committee of the PGE became the Executive Branch of the Government, or State Council. The President, supported by the Office of the President[242] set up since 1992, headed the Council of Ministers. The Proclamation stated that his tasks included presenting legislative proposals and the national budget to the National Assembly. He was also given the power to appoint ministers, regional administrators, ambassadors, justices of the Supreme Court and judges, among others.[243]

(b) Building of a constitutional state and administrative division of the country

259. In February 1994, at its Third Congress, the EPLF reorganised itself into a political party – the People's Front for Democracy and Justice (PFDJ). It reconfirmed Isaias Afwerki as its secretary general and adopted a new structure with a 19-member[244] Executive Council and a 75-member[245] Central Council which succeeded the EPLF Political Bureau and Central Committee. The members of the new Central Council continued to sit in the National Assembly. During the same congress, the PFDJ adopted a National Charter aimed at guiding the party and the Government's policies and actions. The Charter called for the creation of a body to draft a constitution. Proclamation 55/1994, adopted on 15 March 1994, provided for the establishment of a constitutional commission tasked to organise a

[235] See *infra.*
[236] Proclamation No. 37/1993 was itself afterwards amended by Proclamation No. 52/1994.
[237] Article 3 (2) of Proclamation No. 37/1993.
[238] This composition is provided by Proclamation No. 52/1994.
[239] Article 4 (3) of Proclamation No. 37/1993.
[240] Ibid.
[241] Article 4 of Proclamation No. 37/1993.
[242] There is no publicly available information on the structure of the Office of the President, except that Mr. Gebre Meskel's official title had been "Director of the Office of the President" until he was appointed Minister of Information in March 2015.
[243] Article 5 of Proclamation No. 37/1993.
[244] Out of which 12 are reportedly still in office, two in exile, one in prison, and three have died.
[245] Out of which 30 are reportedly still in office, six "frozen", six in exile, seven arrested, and 18 have died.

national debate and public awareness on constitutional principles and practices, draft a constitution, and submit it to the National Assembly for approval.[246]

260. During its Third Congress the PFDJ also called for a new administrative division of the country. In April 1996, Proclamation No. 86/1996 was adopted.[247] It abolished the historical nine provinces of Eritrea and established six administrative regions or *zobas*, instead. These regions, which still exist, are: Southern Red Sea; Northern Red Sea; Anseba; Gash-Barka; Southern; and Central (which includes the capital Asmara). Regions are further sub-divided into sub-regions, or sub-zones (*nus-zobas*), themselves divided into administrative areas and/or villages (*kebabi/adi*), which constitute the smallest administrative units in Eritrea.[248]

261. This new organization entailed a change in the system of local administration and governance. After the liberation of Eritrea, the EPLF had formalised a customary system based on elected assemblies *(baitos)*. Local elections were organised between 1992 and 1993 to appoint people's representatives to the local assemblies created at each of the four levels of administration, namely the village (*adi*), the district (*woreda*), the sub-province (*nus-awraja*), and the province (*awraja*). In that system, members of local assemblies were accountable to the constituencies that had elected them. The EPLF, however, maintained control over the administration. At the level of the sub-provinces, the EPLF appointed administrators to guide and assist members of local assemblies in their decision-making. Similarly, assemblies in the nine provinces were composed in part by members designated by the EPLF, while the executive branch of provincial administrations were staffed by EPLF appointed cadres and administrators.

262. The new system introduced in 1996, besides reducing the number of regions to six, removed one level of administration – the districts – and elected assemblies at the level of the sub-regions and villages. Proclamation No. 86/1996 reinforced the control of the central government and the PFDJ over each administrative level. It established a direct line of command from the President all the way down to villages, through the Ministry of Local Government. Since then, administrators at each level have been appointed by the President or the Minister of Local Government. They report and are accountable for the conduct of their office to their immediate superior, ending with regional administrators who are accountable to the Minister of Local Government.[249] Proclamation No. 86/1996 did not abolish local democracy. At the level of villages, a customary council called *megaba'aya* which replaced *baitos*. *Megaba'ayas* comprise all village inhabitants who are above the age of 18.[250] *Megaba'ayas* are expected to meet every two or three months under the chairmanship of village administrators.[251] They are mandated to discuss programmes to be carried out in the village/area, make comments and recommendations and approve programmes requiring their participation.[252] They also hear and comment on performance

[246] Art 4 of Proclamation No. 55/1994.

[247] Proclamation for the establishment of Regional Administrations, published in the Gazette on 15 April 1996.

[248] The exact number of sub-regions, areas and villages is difficult to know. According to an interview given by the Vice-Minister for Local Government, published on 17 February 1996 in Eritrea Profile, the weekly newspaper of the Ministry of Information, Eritrea is divided into six regions, 54 sub-regions and 2,000 villages/areas.

[249] Article 20 (3) of Proclamation No. 86/1996.

[250] Art. 3 of Proclamation No. 86/1996.

[251] Ibid.

[252] Ibid.

reports presented by the village administrators and pass on to regional administrations their objections and reservations. [253]

263. The only remaining local assemblies are the regional ones, called *baito zobas*. However, Proclamation No. 86/1996 does not grant them any power of initiative. Article 13 (1) of the Proclamation states that *baito zobas* are to prepare regional development programmes relating to economic and social services, pass resolutions, and issue directives "in harmony with central government policies, proclamations and regulations." Regional assemblies do not have fiscal authority but are mandated to collect local revenues. They may recommend solutions based on people's wishes but they have to abide by national priorities defined by the Government. In this regard, regional administrators may decide not to implement recommendations taken by *baito zobas* until the Minister of Local Government decides on them, when they think that policies and regulations of the Government are violated. In order to avoid resorting to such a measure, regional administrators attend all meetings of the *baito zobas* where Proclamation No. 86/1996 entitles them to make recommendations and advise on matters related to the Government's policies, regulations, and programmes.[254]

264. Elections of designate members of the regional assemblies were held between January and March 1997. Proclamation No. 86/1996 reserved 30 per cent of the seats for women, a provision welcomed by CEDAW in its 2006 concluding comments.[255] The 399 newly elected representatives, along with the 150 members of the National Assembly and representatives from the diaspora, formed the Constituent Assembly that on 23 May 1997 adopted the Constitution drafted by the Constitutional Commission.

(c) Structure of the State as outlined in the 1997 Constitution

265. The proposed constitution sought to ensure a separation of powers between the legislature, the executive, and the Judiciary.[256] The political system stipulated in the Constitution mixed characteristics of parliamentary and presidential systems. The unicameral National Assembly, composed of representatives elected by Eritrean citizens of 18 years of age or more, was to elect "from among its members, by an absolute majority vote of all its members, the President." Once a year, the President was to deliver a speech on the state of the country to the legislature. The President, though appointing ministers and heading the Cabinet,[257] is not responsible to the National Assembly. Nevertheless, the National Assembly can impeach the President under certain conditions.[258] For their part, ministers are collectively accountable to the National Assembly for the work of their departments. Both the President and the National Assembly are elected for five years. The President cannot serve more than two terms.

266. Article 32 of the Constitution lists the powers and duties of the National Assembly. They include the enactment of laws and the passing of resolutions; overseeing of execution of the legislation; approval of the national budget and the imposition of taxes; ratification of international agreements by law; and approval of states of peace, war or national emergency. The President initiates legislation. He or she is entitled to "present legislative

[253] Ibid.
[254] Articles 13 (6), 14 (4) and 20 of Proclamation No. 86/1996.
[255] CEDAW/C/ERI/CO/3.
[256] See *infra*.
[257] Articles 30 (1) and 31 (2), 32 (8), 42 (1) and 46 (1) and (2) of the 1997 Constitution.
[258] Article 42 (14) and Articles 32 (9) and 41 (6) provide three reasons for impeachment: (i) violation of the Constitution or grave violation of the law; (ii) conducting himself in a manner which brings the authority or honour of the office of the President into ridicule, contempt and disrepute; and (iii) being incapable of performing the functions of his office by reason of physical or mental incapacity.

proposals and the national budget to the National Assembly." The President is also the one who signs and publishes the laws approved by the legislature, and ensures their execution. Besides ministers, the President appoints, with the approval of the National Assembly, a number of officials, including justices to the Supreme Court and judges of the lower courts. As the Commander-in-Chief of the Defence Forces, he or she also appoints high ranking members of the Armed and Security Forces. The Cabinet assists the President in directing, supervising and coordinating the affairs of the Government; preparing the national budget; drafting laws to be presented to the National Assembly; and preparing government policies and plans.[259]

(d) Current Government of Eritrea

267. The Constitution adopted by the Constituent Assembly did not provide transitional provisions to ensure the entry into force of the new system. President Afwerki and government officials decided that the text would not come into effect before elections for a new National Assembly were conducted.[260] The outbreak of the border conflict with Ethiopia delayed the elections originally scheduled to take place in 1998. After the war, elections were re-scheduled for December 2001. A committee, headed by the then Minister of Local Government Mahmoud Ahmed Sherifo, prepared a draft Proclamation "on the Formation of Political Parties and Organizations." President Afwerki rejected it after the text was leaked to the media in January 2001.[261] National elections were again postponed due to the political crackdown that occurred the same year. In February 2002, the National Assembly prepared a draft electoral law[262] that provided for a majority rule system. However, it is not known whether the draft electoral law has entered into force. President Afwerki appointed a five-person electoral commission with responsibility to prepare and organise national elections, yet elections never took place and the Constitution has never been implemented.[263]

268. Given the failure to adopt the Constitution, it appears that the Government of Eritrea is still regulated by Proclamation No. 37/1993, although the system set up by that decree was to be transitory. Over the years, the role of the Executive has become predominant. The National Assembly, which apparently is still in place,[264] has not convened since February 2002. The Judiciary is closely controlled by the President, who for example appoints the judges of the Special Court. Created in 1996 to deal with cases of theft, corruption, illegal foreign currency exchange and embezzlement, its jurisdiction has superseded other courts.[265] According to witnesses and officials who have defected, most of the decisions are taken by the President and his entourage, often without consulting concerned ministers.[266]

269. Regional and local administrations were brought under President Afwerki's control after Mr. Sherifo was ousted from his post of Minister of Local Government and arrested with other members of the G-15 in September 2001. Elections to new regional assemblies

[259] Articles 42 (15), 42 (4), (5), (7), (8), (9) and (11) and 39 (1) of the 1997 Constitution.

[260] Simon M Weldehaimanot, *The status and fate of the Eritrean Constitution*, African Human Rights Law Journal, (2008) 1,, pp. 108-137.

[261] Dan Connell and Tom Killion, *Historical Dictionary of Eritrea* , 2nd ed. (The Carecrow Press, Inc, 2011), p. 196.

[262] Available on: http://www.parliament.am/.

[263] According to information collected by the Commission, the electoral commission officially ceased to function in autumn 2014.

[264] For example, in April 2010, members of the National Assembly met with their German counterparts to discuss the situation in Eritrea and the region (http://www.shabait.com/).

[265] See *infra.*

[266] See Annex II.

have taken place twice since 1997[267] and the assemblies have held regular meetings. However, they remain tightly controlled by regional administrators appointed by the President.

(e) The role of the People's Front for Democracy and Justice (PFDJ)

270. Since its creation in February 1994, the PFDJ has remained the only political organization allowed in Eritrea.[268] The PFDJ followed EPLF strategies and maintained its strong presence throughout the country. Its organs were organised in parallel to central government, through a number of departments that replicated ministerial[269] and local government structures, through offices headed by secretaries at regional, sub-regional, and village level. Candidates seeking central and local posts usually come out the PFDJ or are endorsed by it. In this way the party aims to control local administrations and citizens.

271. The line between party and Government is blurred at the highest level as the President maintains his role as secretary general of PFDJ. Apart from the daily management of the Party, he also presides over the PFDJ Executive Council and its Central Council, whose members also sit in the National Assembly.[270]

272. From 1994, through the border war with Ethiopia and then particularly since the events of 2001, the significance of the PFDJ has consistently shrunk – to the point that some observers now consider it to have become an empty shell. In 2001, the G-15 group noted how the Executive Council, expected to hold meetings on a monthly basis, had only met 11 times between 1994 and 2001. They also criticised the indefinite postponement of the PFDJ Fourth Congress, first scheduled for 1996 and then rescheduled to five years later, in March 2001; and the role played by the Central Office of the Front and its secretary general, who according to them exceeded their mandate by unduly interfering in the affairs of Government. After their purge from the party, arrest and disappearance the decision to reduce democratic spaces of discussion, even within the PFDJ, became clear. The Party has not held a congress since then.

(f) Drafting of a new constitution

273. In May 2014, in his speech at Independence Day, President Afwerki announced the drafting of a new constitution. He confirmed that decision in an interview granted to Eritrean TV on 31 December 2014, during which he said that a new constitution was being drafted by a committee of experts. Asked about the rationale of drafting a new text while the 1997 Constitution was still awaiting implementation, President Afwerki replied: "After 15 years of government, we, the People of Eritrea, have learned a lot. We needed to use that knowledge to create a more suitable constitution. We do not do this to please any foreign influence or request. We do this intending to leave a document to the coming generations of Eritreans, a document that will help better shape their lives."[271] The drafting of a new

[267] Notably in 2002 and 2004.

[268] Decision reconfirmed by the National Assembly during its last meeting in February 2002.

[269] There is no official list of the PFDJ Departments. The functions of the Directors of these Departments seem to be those of special advisors but at least in some instances they have reportedly become similar to those of *de facto* ministers. For instance, Mr. Yemane Gebreab, in addition to being Director of the PFDJ Political Affairs Department, is known to undertake the functions of a minister of foreign affairs. Similarly, Mr. Hagos Gebrehiwet, Director of the PFDJ Economic Affairs Department, is known to operate as *de facto* Minister of Economy of Eritrea, a post which does not exist in the Government organization chart.

[270] Proclamation No. 37/1993.

[271] Translated by the Commission of Inquiry, from public records of the President interview available at http://eastafro.com/.

constitution was confirmed by the Eritrean delegations to the Committee on the Elimination of Discrimination against Women and to the 28th session of the Human Rights Council, held in February and March 2015 respectively. Nevertheless, no details on the composition of the committee or on the status of its work have been given.

2. Security sector

(a) Historical overview

274. The existence of a security apparatus in Eritrea can be traced to the struggle for independence. During that period, the EPLF set up two entities dealing with security matters. The first one – *Halewa Sewra* (lit. the "Guardians of the Revolution") – was in charge of internal security and the second – *Seban Keleten*, alias "72" – of military intelligence. Until 1987, *Halewa Sewra* was headed by Mr. Ali Said Abdella, with Mr. Musa Naib as his Deputy. During the same period, Mr. Petros Solomon, who was later to be arrested as a member of the G-15, headed *Seban Keleten*.[272]

275. After the Second Congress of the EPLF in 1987, *Halewa Sewra* was renamed the "Vigilance Department" and put under the leadership of Mr. Naib. The Vigilance Department held normal police functions in EPLF-controlled parts of Eritrea. Following the liberation of the country in 1991, the police functions of the Vigilance Department were transferred to the newly set up Eritrean Police Force (EPF), headed by Brigadier General Musa Raba, with Colonel Simon Gebredengel as his Deputy. For its part, *Seban Keleten* was transformed into a Military Intelligence and Security Department, with Mr. Kiflu as its head. In 1993, the Military Intelligence and Security Department was criticised for not foreseeing the veterans' protest that took place just days before the declaration of independence.[273] The Department was consequently split into two entities which exist to this day. The first is the National Security Office headed since its creation by Major General Abraha Kassa; it reports directly to the President. The National Security Office inherited the archives of *Halewa Sewra* and *Seban Keleten*. Its size and functions have expanded following the border conflict with Ethiopia and it has created a pervasive system of state control. The second entity is Military Intelligence, headed by Brigadier General Tekesteberhan Gebrehiwot. Military Intelligence reports to the Chief of Staff of the Eritrean Defence Forces, the Minister of Interior, and ultimately to the President.

276. In 2001, following public unrest, President Afwerki created a security committee which was involved in suppressing dissent.[274] Mr. Kiflu was put in charge of this Committee. Since then, it is unclear whether the Committee has disappeared or whether it has been replaced by other ad hoc entities, such as the "Supra-Committee" which was reportedly in charge of suppressing events following the January 2013 incident at Forto.[275] At the end of 2013, during President Afwerki's absence from Eritrea for medical reasons, the media reported the existence of a "national security team" in charge of the country. Since no further information is available from public sources, it is impossible to know the composition and function of this team.

[272] As military intelligence, *Seban Keleten* had reportedly been in charge of dealing with dissenters within the armed forces and competing military organizations like the ELF.

[273] See Chapter III, C, Post-independence.

[274] Ibid.

[275] See *supra*.

(b) The current security apparatus

277. Eritrean Police Forces (EPF) are responsible for maintaining internal security, and the Eritrean Defence Force (EDF) is responsible for external security.[276] In practice, however, the President resorts to national security officers, armed forces, reserves, released soldiers and the newly created People's Army for the domestic security to carry out domestic and external security activities.[277]

(i) The National Security Office

278. The National Security Office is under the Office of the President. There is no official information on the structure or functioning of this entity, except that it has always been headed by Major General Abraha Kassa. However, according to testimonies collected by the Commission, the National Security Office allegedly operates through a group of Special Forces also known as "Unit 72" or the "Middle Office." The head of the Special Forces is not known. Used in arresting high-ranking officials or high-profile figures, their members usually hide their faces. However, in January 2013, Special Forces, reportedly headed by Brigadier General Hadish Efrem, led the assault against the mutineers who had taken over control of Eritrean TV.[278]

279. Since an assassination attempt against him in 2007, while he was allegedly investigating a corruption ring, Brigadier General Gebredengel seems to have gained a direct reporting line to the President, thus by-passing Major General Kassa, who is his superior. The "Middle Office" apparently oversees the whole network of undercover security officers that is spread throughout the country. The Asmara Office covers the capital city through a network of sub-offices, not officially identified and anonymously located in various neighbourhoods, and sometimes in public places such as bars or hotels. Each sub-office is organised in three sections: one in charge of intelligence activities, one in charge of arrests and one responsible for the interrogation of those who have been arrested. Testimonies collected by the Commission indicate that each section may comprise over a hundred officers. Outside Asmara, offices are located in each of the five military zones.[279] These offices can have branches in the localities under their surveillance. Moreover, the National Security Office has been reported to have under-cover agents in local administrations and immigration offices throughout the country.

(ii) The Eritrean Police Force

280. There is very little public information available about the Eritrean Police Force (EPF), except that its head, Colonel Beraki Mehary Tsegai, allegedly reports to Brigadier General Gebredengel who has been presented as "Commander of National Police and Security Forces."[280] According to Interpol, the EPF mission is to: (i) enforce and uphold the law; (ii) prevent, detect and investigate crime; and (iii) control traffic.[281] From information

[276] On the Eritrean Police Force, public information is available for example on the Interpol site at http://www.interpol.int./.

[277] See *infra.*

[278] See: "Issayas staggers a little", Africa Confidential, 15 February 2013 (http://www.africa-confidential.com/). The United Nations Monitoring Group on Somalia and Eritrea reported that Brigadier General Hadish Ephrem is "a key member of President Afwerki's informal military intelligence network and had previously been arrested and deported from Kenya after fleeing from Somalia in 2007 following the defeat of the Islamic Courts Union." (S/2013/440).

[279] See Chapter III, B, Historical Background - the struggle for independence.

[280] See : "INTERPOL Chief discusses regional security needs during Eritrea visit" (http://www.interpol.int/).

[281] http://www.interpol.int/.

collected by the Commission, it would appear that in reality police functions are also conducted by other security entities, ranging from the EDF to the People's Army. There is no official information on the strength of the EPF contingent or about how it is organised.

(iii) The Eritrean Defence Forces

281. As is the case with the entire security sector, there is very little public information available about the Eritrean Defence Forces (EDF). Major General Philipos Woldeyohannes reportedly heads the EDF, as their Chief of Staff. He also seems to act as *de facto* Minister of Defence since Major General Sebhat Ephrem, who had held that position since 1995, was appointed Minister of Energy and Mines in June 2014. Major General Woldeyohannes reports directly to President Afwerki.

282. The EDF is composed of the Eritrean Air Force headed by Major General Teklai Habteselassie who is also EDF Chief of training; the Navy, commanded by Major General Humed Mohamed Karekare; and the Eritrean Army, which was headed by Major General Ahmed Umer Kakay until he died on 16 February 2015.[282] The Eritrean Army constitutes the main component of the EDF. It is reportedly composed of four corps and of one commando division and one mechanised brigade, with their commanders reporting to the Chief of Staff.[283] Each Corps *(kflä särawit)* reportedly contains 20 infantry brigades *(brgedä)*. Following the traditional structure of defence forces worldwide, there should be an additional entity – the Division – between Brigade and Corps levels. However, there is no information available on the current number of divisions in the Eritrean Army.

283. The EDF was built out of the fighting forces of the EPLF, which were organised around small units called *mäsri* composed of three lines/rows of five to ten soldiers each. Three *mäsri* form a *ganta*, equivalent to a platoon, with a strength of about 30 to 45 fighters. Three *ganta* form a *haile* (meaning power), equivalent to a company, often equipped with heavy weapons and numbering about 100 fighters. Three *haile* form a battalion, or *boṫoloni*, and three battalions a brigade. Three brigades supposedly form a division, with three divisions then forming a corps.[284]

284. Eritrean defence forces are deployed throughout Eritrea, and the country is divided into five military operation zones or command zones, created out of the fighting zones defined in 1965 by the Supreme Council of the ELF and maintained by the EPLF.[285] The operation zones are: Gash-Barka (Zone 1); West (Zone 2); South (Zone 3); East (Zone 4); and Centre, including Asmara (Zone 5). Each of them is headed by a general. Again, there is almost no information on how operation zones are staffed and structured.[286] They seem to

[282] Some Eritrean media reported that Major General Ahmed Umer Kakay had been under house arrest since the January 2013 Forto incident.

[283] According to the Defence and Foreign Affairs Handbook (2006), published by the International Strategic Studies Association.

[284] The online *International Encyclopaedia of Uniform Insignia Around the World* lists several ranks in the Eritrean Army, including Major General, Brigadier General, Colonel, Lieutenant Colonel, Major, Captain, Lieutenant 1st Class, Lieutenant 2nd Class, Master Sergeant, Staff Sergeant, Sergeant, Corporal and Private 1st Class.

[285] See Chapter III, B, The struggle for independence.

[286] In 2013, Major General Haile Samuel "China" was reportedly heading Zone 1 and Brigadier General Teklai "Manjus" Zone 2. It seems that they have been removed from their duties in 2014. Major General Umar Hassan "Teweel" commanded Zone 3 before being arrested in 2013, following the Forto incident. He reportedly died in prison in May 2014. Major General Gerezgiher Andemariam "Wuchu", who died in April 2014, used to head Zone 4. Major General Philipos Woldeyohannes commanded Zone 5 before being appointed as Chief of Staff of the EDF.

integrate all three elements of military power.[287] Reports indicate that operation zone commanders have gained power since the border conflict with Ethiopia, to the extent that they supersede civil administrators in many regions. It has also been reported that President Afwerki routinely shifts zone commanders around, apparently to encourage rivalries between them, distribute profits, and prevent them from building up too close a rapport with the units under their command. Similarly, deputy commanders are reportedly carefully selected for their loyalty to the President, who maintains control over zonal commanders through them.

285. The strength of the EDF is difficult to evaluate. Most of their manpower is provided by Eritreans between 18 and 40 years of age who are conscripted into military service.[288] According to public sources, the Eritrean army has between 250,000 and 300,000 troops.[289] Recent reports, however, indicate that the actual number of troops is lower, with some units operating half-strength. This is allegedly due to the number of potential or actual conscripts fleeing the country.

(iv) The People's Army

286. The "People's Army" *(Hizbawi Serawit)* was created in 2012. The People's Army is composed of citizens released from the national service and conscripts assigned to civil assignments as part of their open-ended national service. People's Army's units are organised by profession (e.g. teachers' militia, artists' militia, etc.) or by geographic area or neighbourhood. They are assigned tasks that range from guarding public sites, looking for evaders of the national service to undertaking development projects. Units meet regularly, i.e. one day per week or one week per month. The members of the People's Army are supposed to keep their current jobs but they have to undertake military training prior to starting their function and are given a Kalashnikov with ammunition.[290] It seems that short military practices or training are held regularly, in some cases every two weeks. The United Nations Monitoring Group on Somalia and Eritrea reported that in 2013 the People's Army was headed by Brigadier General Teklai "Manjus".[291] Interviews by the Commission, however, indicate that Brigadier General Teklai "Manjus" was allegedly relieved of his duties in 2014 and that the People's Army has since come under the command of the EDF Chief of Staff.[292]

B. The domestic legal framework[293]

287. The domestic legal framework in Eritrea was structured to follow a classic hierarchy of norms. The Constitution is officially the supreme text establishing the structure of the government, delimiting the powers of the various institutions, defining the procedure to

[287] Defence and Foreign Affairs Handbook (2006).

[288] See Chapter VI, C, 1, National service.

[289] 2015 CIA World Factbook.

[290] The United Nations Monitoring Group on Somalia and Eritrea reported in 2013 (S/2013/40) that, "throughout 2012, President Afwerki ordered village-based government administrators to draw assault rifles, principally AK-47s, from official military weapon stores and to initiate their widespread distribution to the civilian population."

[291] S/2013/40.

[292] See Chapter VI, C, 2, Forced labour.

[293] This chapter does not intend to provide a comprehensive review of the Eritrean current domestic legal framework, which is impossible to do because of the lack of information available about existing domestic legislations. Information gathered in the course of the investigation enabled the Commission to confirm the data presented in this chapter.

enact laws and ensuring the protection of fundamental rights of individuals. Under the hierarchy, below the Constitution come the Transitional Codes adopted in 1991 and Proclamations enacted after 1991, which constitute the law of the country. Eritrea is a dualist State in which international treaties that have been ratified by the Government are not automatically included in the domestic legal framework. The Government of Eritrea is, therefore, responsible for giving effect to the international treaties, including the core human rights conventions, by integrating them in its domestic legal framework. Laws come into force by legal notices and regulations enacted by Ministers and the administration.[294]

1. The non-implemented 1997 Constitution and its Bill of Rights

288. The content of the Constitution is generally consistent with international standards related to rule of law, separation of powers, democratic society and fundamental rights and freedoms. In its preamble, it recognises and protects the "rights of citizens, human dignity, equality, balanced development and the satisfaction of the material and spiritual needs of citizens". The Constitution is supposed to be the basis for the protection of the rights, freedoms and dignity of citizens and of just administration, as well as the supreme law of the country and the source of all laws of the State.[295]

289. A bill of rights is included in Chapter III of the Constitution, entitled "Fundamental rights, freedoms and duties". Most of the core human rights are directly provided for thereunder:

- Equality under the law of all persons and non-discrimination on any ground (Article 14)
- Right to life and liberty (Article 15)
- Right to human dignity (Article 16), which includes the right not to be subjected to torture or cruel, inhuman or degrading treatment or punishment, interdiction of slavery, servitude or forced labour.
- Right to liberty and security (Article 17) – not to be arbitrarily arrested or detained, right to due process and fair trial, presumption of innocence. This constitutional provision contains detailed legal safeguards in the context of the arrest and detention of persons, which are globally consistent with international standards: the right of every person arrested or detained to be informed of the grounds for his/her arrest or detention and of the inherent rights in a language that he/she understands; the right to be brought before a court of law within 48 hours of his/her arrest; the right to submit a writ of *habeas corpus* to a court of law;[296] the right to a fair, speedy and public hearing by a court of law; the right to the presumption of innocence; the right to appeal and not to be tried twice for the same offence.
- Right to privacy (Article 18)
- Freedom of conscience, religion, expression of opinion, movement, assembly and organization, freedom to choose one's profession as well as the right to

[294] Due to lack of information on legal notices and regulations, no further details on these texts can be provided.

[295] Articles 2.1 and 2.3 of the Constitution.

[296] "A writ of *habeas corpus* is used to bring a prisoner or other detainee (e.g. institutionalized mental patient) before the court to determine if the person's imprisonment or detention is lawful", definition from the Legal Information Institute of the Cornell Law School.

leave and return to Eritrea and to be provided with a passport and other travel documents (Article 19)

- Right to take part in public affairs, i.e. to vote and be a candidate to an elective office (Article 20)
- Economic, social and cultural rights, including access to health, education, cultural and other social services, as well as the right to participate freely in any economic activity (Article 21)
- Right to family life, right to marry and found a family freely (Article 22)
- Right to property, right to acquire and dispose of property. However, "all land and all natural resources below and above the surface of the territory of Eritrea belong to the State. The interests that citizens shall have in land shall be determined by law" (Article 23)
- Right to redress, to seek remedy in a competent court for any infringement of the rights enshrined in the Constitution (Article 28)

290. The Constitution states that fundamental rights and freedoms may only be limited in so far as it is in the "interests of national security, public safety or the economic well-being of the country, health or morals, for the prevention of public disorder or crime or for the protection of the rights and freedoms of others". It also states that the principle of equality under the law, the right to life and liberty, the right to human dignity (and not to be subjected to torture, ill-treatment or slavery and forced labour), the right not to be tried or convicted for a criminal offence that did not exist at that time, the right to submit a writ for *habeas corpus*, the right to appeal and to be tried twice for the same crime, the presumption of innocence, the freedom of thought, conscience and religion, cannot be limited.[297]

291. In addition, Chapter VI of the Constitution is dedicated to the administration of justice and provides for the implementation of rule of law in the country.[298] Judicial power is to be vested in a Supreme Court and in lower courts that should be established by law. All courts should be independent and impartial.[299]

292. The Constitution, as ratified by the Constituent Assembly, did not contain a specific clause dealing with its entry into force or any transitional provisions. Implementation measures were required for its entry into force but since nothing was done by the Constituent Assembly or by the Provisional Government of Eritrea, the Constitution was never implemented.[300] The President claimed that the war against Ethiopia that started in May 1998 and lasted until 2000 prevented the implementation of the Constitution.[301] At the end of the border dispute and under internal and international pressure, the Government of Eritrea agreed to a timeframe for the implementation of the Constitution and started to take preparatory steps.[302] However, following the crackdown in 2001 "the term 'constitution' itself became prohibited and citizens did not dare mention it in public. Effectively, the

297 Article 26 of the Constitution.
298 Articles 48 to 54 of the Constitution.
299 Article 48 of the Constitution.
300 See Bereket Habte Selassie, Constitution Making in Eritrea – a Process-Driven approach, Chapter 3, in Endowment of the United States Institute for Peace.
301 Simon M Weldehaimanot, *The status and fate of the Eritrean Constitution* (African Human Rights Law Journal, 2008 1, pp. 108-137), p. 122.
302 See *supra.*

[Government of Eritrea] eliminated the Constitution not only from its priorities but even from its propaganda."[303]

293. In this context, the status of the Constitution is remains unknown and the Government has not shown a consistent or coherent position in this regard. Sometimes, the Government has stated that the Constitution had never been implemented because its population was not considered ready for a full democratic system. On other occasions, the Government has indicated that some of the provisions of the Constitution had actually been implemented and that full implementation would happen in due time. In contradiction to both positions, the Government has also stated that the Constitution was fully in force and was implemented. For example, during its first Universal Periodic Review in 2009, the Government stated that "the Constitution is the supreme law of the land and the Government is implementing it, including the holding of democratic elections at the local, sub-regional and regional levels. However, some institutions provided for in the Constitution are yet to be established. National elections will be held once the threat to national security and the country's sovereignty is irrevocably removed."[304] During its second Universal Periodic Review in 2014, the Government reiterated that "all the provisions enshrined in the Constitution, with the exception of those dealing with national elections – for the obvious reason of the "no-war-no-peace situation" – were strictly implemented and adhered to".[305] Similarly, constitutional provisions were heavily referenced in two individual communications submitted by the Government to the African Commission on Human and Peoples' Rights [306] and in its consolidated second and third reports presented under the Convention on the Rights of the Child.[307]

294. *De facto*, the Constitution that should be the supreme law of the country and in which are enshrined the fundamental rights, has not come into force nor has it been implemented. The existing national legal framework is not satisfactory to guarantee basic human rights. Some laws and practices are not consistent with international standards and contradict the rights enshrined in the Constitution.[308]

2. The law: Transitional Codes and Proclamations[309]

295. On 11 May 2015, the Government of Eritrea promulgated the new Eritrean Penal Code, Procedural Penal Code, Civil Code and Procedural Civil Code. They replace the Transitional Codes, which were until that date the backbone of the legal framework of Eritrea since its independence, as provided by "Proclamation No. 1/1991 on the Transitional Institutions of the Administration of Justice." This text was the first legislation enacted by the Provisional Government of Eritrea. It is also called the "Law Reform Proclamation" as it provided that the penal, civil and related procedural codes enacted at the end of the 1950s in Ethiopia would be the basis of the transitional legal framework of the new State of Eritrea.[310] This Proclamation repealed all discriminatory clauses and included

303 Simon M Weldehaimanot, *The status and fate of the Eritrean Constitution* (African Human Rights Law Journal, 2008, 1, pp. 108-137), pp. 122-123.

304 A/HRC/13/2/Add.1. par. 11.

305 A/HRC/26/13, par. 92.

306 For further details, see Chapter IV on the current context to human rights violations in Eritrea.

307 Simon M Weldehaimanot, *The status and fate of the Eritrean Constitution* (African Human Rights Law Journal, 2008, 1, pp. 108-137), p. 123.

308 See *supra.*

309 The Commission had to rely on unofficial translations of national legislation that are publicly available and, therefore, is not responsible for possible inaccuracies of these translations.

310 "The Ethiopian codes were grounded in the civil law tradition, excepted for the codes of civil and criminal procedures, which were prepared by Anglo-Saxon lawyers and, therefore, based on the

protective legal measures, in particular with regard to discrimination against women and to marriage.[311]

296. Subsequent Proclamations (No. 2 to No. 7) amended the Ethiopian codes to constitute the Transitional Code of the new State of Eritrea. These Transitional Codes were pieces of legislation that were meant to regulate the passage from the Ethiopian legal framework to the new Eritrean legal framework, which was initiated in 1997. In 1997 the Ministry of Justice started a comprehensive law reform project aimed at drafting new legal codes that would constitute a comprehensive framework reflecting Eritrean realities and that would be consistent with the Constitution. The Eritrean authorities repeated on several occasions, including during the Universal Periodic Reviews and reviews by the Committee on the Elimination of all forms of Discriminations Against Women, the Committee on the Rights of the Child and the International Labour Organizations, that the definitive Eritrean codes were about to be finalised and adopted. For example, during its first Universal Periodic Review in 2009, the representative of Eritrea stated that its Government was "now at the final stage of drafting civil, penal, commercial codes and a civil procedure and criminal procedure codes with the collaboration of UNDP".[312] The civil, penal, civil procedure and criminal procedure codes were finally promulgated by the Government of Eritrea on 11 May 2015. The Commission welcomes the promulgation of these Codes. Because of its coincidence with the end of its own investigation, the Commission is not in a position to review the content of these Codes and express an opinion about their compatibility with the human rights treaties ratified by Eritrea. The Commission is not able to determine to which extent the various Proclamations may be amended or superseded by the new Codes. Thus, the information on the national legal framework presented in this report only refers to the laws that were in force during the period covered by the investigation. As such, this information, which does not reflect the brand new legal framework of Eritrea, remains nevertheless relevant.

297. The Transitional Codes were:

- The Transitional Civil Code based on the Ethiopian Civil Code of 1960 as amended by Proclamation No. 2/1991.[313]
- The Transitional Code of Civil Procedure, based on the Ethiopian Code of Civil Procedure of 1965 as amended by Proclamation No. 3/1991.[314]
- The Transitional Penal Code, based on the Ethiopian Penal Code of 1957 as amended by Proclamation No. 4/1991.[315]
- The Transitional Code of Penal Procedure, based on the Ethiopian Code of Penal Procedure of 1957 as amended by Proclamation No. 5/1991.[316]
- The Transitional Commercial Code, based on the Ethiopian Commercial Code of 1960 amended by Proclamation No. 6/1991.[317]

common law system", in Teame Beyene, *The Eritrean Judiciary: Struggling for Independence* (Eritrean Law Society Occasional Papers, No. 7, December 2010), p. 3.

311 CRC/C/41/Add.12 p. 9 and CEDAW/C/ERI/1-2, p. 7. – No copy of the text could be obtained.

312 A/HRC/WG.6/6/ERI/I, para. 13.

313 Transitional Civil Code of Eritrea, Vol. 1/1991, Call No. Law Ethiopia 3 Civil Code 1960.

314 Transitional Code of Civil Procedure of Eritrea, Vol. 1/1991, Call No. Law Ethiopia 3 Civil Procedure 1965.

315 Transitional Penal Law of Eritrea, Vol. 1/1991, Call No. Law Ethiopia 3 Criminal 1957.

316 Transitional Code of Penal Procedure of Eritrea, Vol. 1/1991, Call No. Law Ethiopia 3 Crime Procedure 1961.

317 Transitional Commercial Code of Eritrea, Vol. 1/1991, Call No. Law Ethiopia 3 comm 1960.

- The Transitional Maritime Code, based on the Ethiopian Maritime Code of 1960 amended by Proclamation No. 7/1991.[318]

298. By general practice, the Transitional Penal Code (TPC) and the Transitional Code of Penal Procedure (TCPP) provided the fundamental legal safeguards for individuals during judicial proceedings. The Transitional Civil Code (TCC) and the Transitional Procedural Civil Code (TPCC) also contained provisions to guarantee some fundamental rights and freedoms.[319]

299. Moreover, about 180 Proclamations have been adopted since independence. It should be noted that since there is no legislation that regulates law-making procedures,[320] codes, decrees and domestic legislation is prepared and adopted in the absence of a clear, transparent, consultative and inclusive process. Nobody really knows the procedure leading to the enactment of legislation or the author of a specific decree.[321] The majority of Proclamations have been enacted by the President, the Government of Eritrea and residually, before it became obsolete, by the National Assembly. In addition, some important policies decided by the Government are not embodied in law but are just "announced" through Government media or through messages passed on by local administrations and implemented in practice, with all the ambiguities that such a procedure gives rise to. The most striking example of this is the "*Warsai Yikealo* development campaign", announced and implemented by the Government which lacked a formal legal basis.

300. As per Proclamation No. 9/1991, Proclamations should enter into force on the date of their publication in the Gazette of Eritrean Laws. However, the Commission could not find evidence that all Proclamations were published. It is not clear how the Gazette is distributed and/or made available to the public.[322]

301. Between 1991 and1998 more than 100 proclamations were enacted. Most of them dealt with the structure of the Government and aimed at establishing a political system based on the principles of democracy and the rule of law that would be in accordance with the Constitution that was being prepared. The Proclamations related to the economic field have a liberal approach. This is also the period during which the Constitution was being prepared and ratified and Proclamations reforming the land tenure system, adopting the transitional codes, establishing the national service and regulating the Press and activities of churches and religious institutions were adopted. The drafting of the Eritrean penal, civil and procedural codes started in 1997.

302. Between 1999 and 2000 the law-making process was fairly limited, with less than five proclamations enacted. This was certainly due to the war with Ethiopia.

303. From 2001 to 2009, about 50 proclamations were enacted. They provide for State welfare and State intervention in the economy (establishment of State enterprises, control of the foreign currency, regulation of import permits, regulation of private contracts, including those related to construction and lease). It is also the period during which Proclamations

[318] Transitional Civil Code of Eritrea, Vol. 1/1991.

[319] The texts of the Eritrean Transitional Codes could not be obtained, only the text of the Ethiopian codes. As the exact scope of revision of the original Ethiopian Codes made by the various Proclamations remains uncertain, this part only covers the provisions of the Transitional Codes which have been confirmed or taken directly from Government's submissions to human rights mechanisms.

[320] Luwam Dirar and Kibrom Testafagir, *Introduction to Eritrean legal system and research*, available at http://www.nyulawglobal.org/globalex/Eritrea1.htm.

[321] Simon M Weldehaimanot and Daniel Mekonnen, *The nebulous law-making process in Eritrea* (Journal of African Law 2000 53 (2) pp. 171-193), pp. 181-182.

[322] The titles of Proclamations the Commission has been able to identify are provided in Annex III.

regulating the formation and activities of political parties and NGOs were adopted in the wake of the crackdown on perceived critics and opponents to the regime. These Proclamations aimed at curtailing fundamental freedoms and/or tightening the control of the Government on the activities of persons and institutions in Eritrea, and they contain provisions that are not compatible with human rights principles and international legal standards.[323]

304. Between 2010 and 2013, the law-making process was relatively slow, with less than 15 proclamations enacted. Most were issued between 2012 and 2013 and aimed at deregulating some aspects of the economy and transforming state enterprises into share companies open to international investors.

3. Other sources of law

305. The Government recognises that some personal matters related to Muslim communities are regulated by Sharia law. Additionally, various communities in Eritrea had been historically governed by various customary laws and practices, often dating back to several centuries. Certain of these customary practices remain in force.

(a) Sharia law

306. Sharia law regulates the personal status of Muslims and is enforced through separate Sharia chambers in the civil court system. Indeed, Proclamation No. 2/1991, which established the Transitional Civil Code of Eritrea, provided that provisions on marriage and succession contained in the Code do not apply to marriages concluded according to Sharia Law.[324]

307. Some customary codes also include Sharia law provisions, which may be used as the basis of the negotiated settlement of disputes in community courts.

(b) Customary laws

308. Since Eritrea is a heterogeneous nation composed of nine ethnic groups, each with its indigenous language, traditional values and customary laws, a certain flexibility in recognising some customary practices has always existed.[325] During Ethiopia's rule, the 1960 Civil Code repealed all customary laws, except where explicitly provided otherwise (Article 3347 of the Civil Code). Article 3347 was not amended in the Transitional Civil Code of Eritrea and thus, customary laws are not officially included in the current legal framework of Eritrea. However, in practice the Government has recognised a role for customary laws as a basis for the negotiated settlements of disputes within community courts.[326]

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[323] These specific legal provisions are further detailed in the relevant chapters of this report dedicated to the findings of the investigation since they are helpful to understand the functioning of the system and put the findings in the specific Eritrean context.

[324] "The Sharia law exercises its own divorce, inheritance and property management regulations, separate from the civil code. Once a woman is married under Sharia law, she is obliged to go by Sharia provisions in case of divorce, child custody and alimony, succession where it differs from the provisions given in the civil code." CEDAW/C/ERI/1-2, p. 55.

[325] Customary laws are community-based and usually well integrated and respected by members of the community, in particular because such customary system is based on the principle of reciprocity of duties among the members of the community. In addition, it strives to find solutions through peaceful mechanisms to resolve disputes, and negotiation and persuasion are the most important elements.

[326] See *infra*.

309. There are no less than 21 customary laws in Eritrea.[327] A given customary law applies to a tribe or group of tribes (an ethnic group), usually with the same religion. All the groups regulated by the same customary law have a common ancestor or live in the same part of one of the nine historical regions.[328] Many customary laws were codified during the colonial period,[329] but the codification procedure has continued through time. They usually address only a limited number of legal issues related to commercial, civil matters such as land property marriage, inheritance or criminal matters, including homicide. In addition, some specialised traditional institutions are charged to specifically settle cases of homicides to avoid blood feuds between clans, families and communities.[330]

310. The Eritrean domestic legal framework is problematic because the Constitution has never been implemented and the Transitional Codes inherited from the Ethiopians were outdated and did not provide a comprehensive protection of human rights and fundamental safeguards, in particular with regard to the administration of justice. Also the procedure for drafting and enacting a proclamation is not transparent and is contrary to the procedure set out in the 1997 Constitution as well as of the principle of separation of powers.

C. The judicial system

311. The existing jurisdictions have been established and amended through Proclamations. Chapter VI of the 1997 Constitution describes the judicial system and the administration of justice that is supposed to exist in Eritrea. It includes the establishment of a Supreme Court as the court of last resort and the only institution with jurisdiction to interpret the Constitution and review the constitutionality of any law enacted or any action taken by the Government. It is supposed to be the sole jurisdiction to try a President who has been impeached by the National Assembly. However, since the Constitution has never been implemented, the Supreme Court has not been established.

1. Types of jurisdictions

312. There are various types of courts existing and functioning to a greater or lesser degree in Eritrea. Most of them are integrated in a formal and regular system, whether civilian or military, but there are some with special jurisdiction.

(a) Regular civilian jurisdictions

313. The civilian judicial system is composed of four courts: community courts, regional *(zoba)* courts, high courts, and the Bench of the High Court of Asmara. In Eritrea "there is no case reporter and one has to get official permission to access court judgements".[331] Therefore, in general, there is no publicly accessible information available on the functioning of the courts, the number of cases on the dockets of the courts, the number of decisions given on average every year, the type of cases, sanctions imposed, etc. A possible exception is community courts, the development of which has been supported by the international community.

[327] A list of the main customary laws is attached in Annex IV.

[328] Superseded by the six new administrative regions in 1996.

[329] See: NUEW, *An Assessment of Legal issues affecting women's lives in Eritrea*, March 2001 and CEDAW/C/ERI/1-2, para. 54.

[330] See Muluberhan Berhe Hagos, *Customary versus modern laws of Eritrea on gender equality*, (Atlas Graphic Printers, Asmara, February 2014) p. 343.

[331] See Luwam Dirar and Kibrom Testafagir, *Introduction to Eritrean legal system and research*, available at http://www.nyulawglobal.org/.

(i) Community courts

314. Community courts, established in 2003 by Proclamation No. 132/2003,[332] are courts of first instance. Currently, there are 368 community courts.[333]

315. Community Courts have jurisdiction over disputes arising from the "daily lives of the communities" and that are "not complicated". Thus, the matters falling under their jurisdiction include civil disputes involving movable property not exceeding 50,000 Nakfa and immovable property not exceeding 100,000 Nakfa;[334] land related rights under Proclamation No. 58/1994, such as the rights to fence the land, the right to mark the perimeter of a plot, right to require the cutting of branches and roots when they invade someone else's land, right to protect an allotted plot of land. They also hear minor criminal cases, such as intimidation, minor damage to property caused by herds or flocks, disturbing the possession of others without use of force, petty assault and minor acts of violence as well as slight offences against honour (simple insult or defamation).[335]

316. Community courts should try to find a negotiated settlement between the parties to the dispute, taking into account customary law and practices. If no solution is reached, the court makes a binding judgment based on national law. In this case, the losing party may appeal the judgment to the regional court. About two-third of the disputes are resolved through negotiated settlement.[336] During proceedings parties are not represented by lawyers as the judges most of the time act as negotiators and conciliators between the parties to the dispute. In criminal matters, the maximum sanction that may be imposed by community courts is a fine of 300 Nakfa,[337] which may be substituted by a 15-day imprisonment fine.

317. Community courts are composed of three judges, who are elected for two years by the community and may be re-elected – the number of mandates allowed, though, is unknown. Judges must be at least 25 years old, have completed their national service obligations and not have been previously convicted of theft, embezzlement, corruption or perjury. Judges hold hearings on average three times per week. In practice, most of the judges are above 45 years old and usually one of them is a woman.[338] Some judges are not literate (the Ministry of Justice attaches college students to the courts of such judges to assist them). Additionally, all judges undergo legal training on domestic law.

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[332] In 2003, community courts replaced both the village courts created in 1992 (Proclamation No. 25/1992) and the sub-regional courts that had been established in 1996 (Proclamation No. 86/1996 on the regional administration) and had taken over the competencies of the village courts, deemed ineffective. Their judges, who were appointed by the Government from the village elders, were often illiterate and were not taking into account customary law and practices of the community in arriving at their decisions. At the same time, they did not have a sufficient legal background to base their judgments on the national law (See: Ensuring Access to Justice through community courts in Eritrea, in Tradition justice: practitioners perspectives, Senai W, Andemariam, Working Paper Series Vol.3, International Development Law Organization, 2011, Chapter 6, page 116).

[333] Initially, 683 community courts were established but it quickly appeared that this number was excessive.

[334] 3,319 USD and 6,638 USD respectively.

[335] Relevant articles of the Transitional Penal Code (TPC): art. 55, 649 (2), 650 (1) and 798.

[336] Senai W, Andemariam, *Ensuring access to Justice through community courts in Eritrea*, (Tradition justice: practitioners perspectives, Working Paper Series Vol.3, International Development Law Organization, 2011), pp. 113-129.

[337] Approximately 20. USD.

[338] This is not an obligation under Proclamation No. 132/2003 but it is an expectation that is actually realised in practice. 30 per cent of judges elected in 2008 were women (See Senai W. Andemariam, *Ensuring Access to Justice through community courts in Eritrea*, (Tradition justice: practitioners perspectives, Working Paper Series Vol. 3, International Development Law Organization, 2011), p. 121.

318. Community courts, established throughout the country, are usually seen as successful and as having facilitated access to justice for people living in rural and remote communities who had to travel long distances to get to the nearest court. On average, more than 20,000 cases are brought to community courts every year. Reports indicate that the number of pending cases is relatively low but no precise data is available on the average duration of a procedure.[339] Similarly, there is no information available on the rate of appeals made against judgments given by community court judges, nor about the rate of reversal of these judgments by regional courts. However, it seems that some communities (such as the Afar) do not resort to community courts and prefer their traditional modes of dispute resolution.[340]

319. The development of community courts has been supported by the international community, in particular the European Union and UNDP.[341] In May 2007, the Government of Eritrea carried out a review of community courts and studied the possibility of: extending their jurisdiction to include more civil and criminal matters that were under the jurisdiction of regional courts (including divorce, custody of children, succession and guardianship); extending the term of judges to four years; and a proposal that at least one of the three judges sitting at a court should be literate.[342] In terms of their effective functioning, however, it should be noted that former Eritrean judges are of the view that the establishment and development of community courts were seen as a means for the Government to increase its control and weaken the judicial system. This is evidenced by the fact that community court judges are under the direct control of the Ministry of Justice and the local administration, and that untrained community judges have created legal chaos when trying to resort to positive national law.[343]

(ii) Regional (zoba) courts

320. The regional courts - or *zoba* courts - constitute the second degree of jurisdiction. There are 36 *zoba* courts. They are courts of first instance for civil cases involving moveable property above 50,000 Nakfa in value, and immoveable property above 100,000 Nakfa in value[344] and for suits that cannot be expressed in monetary terms. They also hear criminal cases and appeals from community and Labour courts.[345] In first instance proceedings, there is a single judge bench system, while three judges' panels are required for appeal proceedings.

321. According to information provided by the Government, separate chambers have been recently established to try children and a probation service has been created to counsel convicted children.[346] However, no additional information is available on the functioning of these chambers or about the laws they apply.

339 Ibid, p. 124.
340 Ibid, p. 119.
341 The European Union provided € 9.7 million to support the community courts as part of the overall financial assistance of € 122 million agreed in the Country Strategy Paper and National Indicative Programme for 2009-2013.
342 A draft law was prepared but it could not be confirmed whether the draft law was promulgated and entered into force and when, as well as whether the term of office of judges was extended to four years.
343 Submission S033 to the Commission.
344 See *supra* for exchange rate in USD.
345 See *infra.*
346 See Report by Eritrea, UPR, 1st cycle review, A/HRC/WG//ERI/.

(iii) High Court

322. The High Court constitutes the third degree of jurisdiction. There are five High Courts: one in Asmara, two in the Debub region, one in the Anseba region and one in the Gash-Barka region. They serve as the appeal courts for the Zoba courts located in their region. The High Court in Asmara is also the appeal court for decisions by the Labour Relations Board.[347]

323. They have first degree jurisdiction on major criminal cases (murder, rape and other serious crimes) and jurisdiction for cases dealing with the formation, dissolution and liquidation of corporate bodies, enforcement of foreign judgements and arbitral awards and the expropriation of property.[348] It is presided over by a panel of three judges and there are separate benches for civil, commercial and criminal cases. There is also a separate bench for matters regulated by Sharia law. The President of the High Court is considered to be the Chief Justice of Eritrea.[349]

(iv) The Bench Court of Final Appeal within the High Court of Asmara

324. The Bench Court of Final Appeal within the High Court of Asmara is the court of last resort. It is constituted by a panel of five judges. It was supposed to be replaced by the Supreme Court, but it continues to exist and to perform as the Court of last resort in the country. However, it does not have jurisdiction over the interpretation of the Constitution.

(b) Military Courts

325. According to Proclamation No. 4/1991, Eritrean military courts have exclusive jurisdiction to prosecute military personnel for criminal matters and authors of crimes perpetrated against members of the military as well as material jurisdiction over offences listed in articles 296-353 of the Transitional Penal Code of Eritrea. Such offences include the refusal to perform military service, self-maiming to avoid military service, evasion and desertion, absence without leave, abuse of authority, threats or violence against lower ranking officers or soldiers, provision of incomplete or inaccurate official statements, drunkenness on active duty, breach of discipline, insults, threats of or assault of superior officers, insubordination, mutiny, misuse or waste of material, failure to report danger or to take essential security measures, cowardice, sabotage, unauthorized wearing of military uniforms, decoration or insignias and disclosure of military secrets.

326. There are two levels of jurisdiction: lower military courts and higher military courts. However, there is no right of appeal against a decision of the lower court to the higher court since they have different material jurisdiction based on the seriousness of the alleged offence. According to Proclamation No. 25/1992, lower military courts have jurisdiction over offences that are punishable with simple imprisonment from three days to ten years. Higher military courts have jurisdiction over offences that are punishable with rigorous[350]

[347] *See infra.*

[348] First degree jurisdiction refers to the fact that a court is the first instance to be seized on a case; material jurisdiction refers to a court having the mandate to deal with a specific kind of cases (e.g. expropriation of property).

[349] Menkerious Beraki was Chief Justice until 2013 but it could not be confirmed whether he still occupies this position.

[350] According to article 107 of the Transitional Penal Code, "Rigorous imprisonment is a sentence applicable only to offences of a very grave nature committed by offenders who are particularly dangerous to society. Besides providing for the punishment and for the rehabilitation the offender, this sentence is intended also to provide for a strict confinement of the offender and for special protection to society. (…) The sentence of rigorous imprisonment shall be served in such central

imprisonment from one year to twenty-five years, life imprisonment, and capital punishment.[351] All judges are military officers; and no information is publicly available on how these judges are appointed or how they perform their tasks.

(c) Courts with special jurisdictions

327. Courts with special jurisdictions have been established in addition to the regular civilian and military jurisdictions.

(i) The Special Court

328. The Special Court was established in 1996 by Proclamation No. 85/1996, with the jurisdiction over cases of theft, corruption, illegal foreign currency exchange and embezzlement. Since then, their jurisdiction seems to have extended to general criminal cases, including cases of smuggling. It was reported that ten years after its creation, a special bench within the Special Court (*Nay Fluy Fluy*) was established to revise its decision, even if this is not formally an instance of appeal.[352] In practice, the Special Court also tries some political offences by opponents and critics of the regime, often presented as cases of terrorism or treason. It is reported that in less than one year, the Special Court had considered 1,331 cases of corruption, embezzlement and fraud. Three-hundred and sixty accused were acquitted, 237 were given a warning and 1,279 were sentenced to fines and imprisonment, the maximum sentence being 12 years.[353]

329. The Special Court is not part of the ordinary judicial system and it does not have any formal links with the High Court and the Chief Justice. It derives its powers from the Ministry of Defence rather than from the Ministry of Justice but it is the Attorney-General who decides which cases go to the Special Court.[354] The procedure before the Special Court clearly disregards the most basic safeguards related to due process, including those explicitly provided for under the Transitional Codes. Judges are senior military officers without legal training, directly appointed by the President and directly accountable to him. Some judges such as the renowned singer Mr. Estifanos Abraham "Zemach" are appointed because of their popularity. One judge acts as Prosecutor. There is no right to have a legal representative or to present one's defence. Trials are not public and there is no public record of the proceedings. Decisions are not published. The Special Court has the capacity to re-open cases that have already been decided by other courts. In fact the Special Court is empowered to use any method to pursue the truth. The decisions, which are final and binding since there is no right of appeal, are reportedly not taken on the basis of the domestic laws in force in Eritrea or established jurisprudence but on the basis of the judges' opinions.

(ii) Labour Relation Board and the Labour Court

330. The Labour Relation Board has exclusive jurisdiction over collective labour disputes and for the interpretation of the Labour Proclamation No. 118/2001. The Labour Court has

prisons as are appointed for the purpose. The conditions of enforcement of rigorous imprisonment are more severe than those of simple imprisonment". This Code was replaced by the new Penal code promulgated on 11 May 2015 by the Governement.

351 See Luwam Dirar and Kibrom Testafagir, *Introduction to Eritrean legal system and research*, available at http://www.nyulawglobal.org/globalex/Eritrea1.htm, para .4.4.

352 Submission S033 to the Commission.

353 United States' State Department Country Reports on Human Rights Practices 2001.

354 See *infra*.

exclusive jurisdiction over individual labour cases and is presided over by a panel of three judges.

(iii) Sharia Courts

331. Sharia courts have separate Sharia chambers established within Zoba Courts and in High Courts in the civil court system. They have limited jurisdiction on guardianship, succession, divorce and the partition of estates of Muslims.

2. The independence of the Judiciary

332. Article 48 of the Constitution provides that justice should be administered in an independent manner and should be free from interference from executive or legislative powers. The independence of the Judiciary is also provided for in different Proclamations regulating the structure of the Government.

333. In accordance with the principle of the separation of powers and to ensure the independence of the judiciary, the Constitution provides that a Judicial Commission should be established and be in charge of appointing judges.[355] However, the Constitution is not in force and the Judicial Commission has never been established. Judges are appointed, reassigned and dismissed at the will of the President. There are different procedures to appoint judges but all are generally directly appointed by the Government or require its express approval after being proposed by the Ministry of Justice. The Attorney General's Office has the power to initiate public prosecutions, to make complaints in accordance with the law and to oversee the investigatory activities of the police and of law enforcement in prisons. Prosecutors are appointed the same way as judges, by the Government, and may be rotated to the function of judges and vice-versa. A few of judges were trained at the Law Faculty in Asmara; however most are military officers without legal training and/or they are conscripts assigned as judges during their national service whose "careers" are managed by the Ministry of Defence and the Ministry of Justice. In 2001, the Chief Justice, Mr. Teame Beyene, was dismissed from his position by the Government after he criticised the frequent interference of the executive in the judicial proceedings and called for the abolition of the Special Court, whose establishment and functioning he described as illegal and unconstitutional.[356]

3. The legal profession

334. Proclamation No. 88/1996 regulates legal practice, including professional responsibility and the management of disciplinary matters. There is no professional association of lawyers. Therefore, it is the Legal Committee of the Ministry of Justice, chaired by the Minister of Justice, which has the power to admit applicants to the bar.[357] Virtually no licenses have been issued by this Committee for several years. Consequently, since many lawyers have left the country, the number of lawyers has sharply decreased.[358]

[355] Article 53 of the Constitution.

[356] See chapter III, C, Post-Independence, and chapter VI, B, 1, Administration of justice.

[357] Report of the Secretary-General: The rule of law and transitional justice in conflict and post-conflict societies" (2004).

[358] There are reportedly very few lawyers in private practice in Eritrea.

335. Disciplinary matters are managed by the Disciplinary Committee of the Ministry of Justice.[359] This arrangement may constitute a breach of the independence of the legal profession as it puts lawyers at risk of undue pressure from the Government.

336. There is no functioning and institutionalised system of public defence, not even for criminal matters. Nevertheless, according to national law a private lawyer should be assigned to represent the accused in cases before military courts, for trials of children and in the most serious criminal cases. In addition, following the closure of Asmara University in 2006, no legal education was available in Eritrea until the Legal College opened in 2010.

VI. Findings of the Commission

A. Controlled, Silenced and Isolated

1. Surveillance of the population in violation of the right to privacy

(a) Legal framework

337. The right to privacy guarantees the protection of all persons against arbitrary and unlawful interference with privacy, family, home or correspondence. It is enshrined in article 17 of the International Covenant on Civil and Political Rights. Under international human rights law, any interference with the right to privacy must be prescribed by law and comply with the principles of legality, necessity and proportionality.[360]

338. Accordingly, the Eritrean Government should guarantee that information gathered by State officials with regard to an individual's private life is limited to what is essential in the interests of society. In this regard, the surveillance of individuals and their communications by any measures should not arbitrarily or unlawfully interfere with an individual's privacy, family, home or correspondence. Such measures should be strictly regulated by law and restricted to what is necessary, for example for legitimate law enforcement or intelligence purposes. Mass surveillance programmes are consequently deemed to be arbitrary, even if they serve a legitimate aim, such as protecting national security, and are provided for by law.[361] Furthermore, the Government should ensure that the gathering and storage of personal information in electronic databases is regulated by law and that individuals are informed of the kind of information collected as well as of the intended purpose of establishing such databases.

339. The Commission notes that during the period under investigation, Eritrean law provided that the domicile of natural persons is inviolable and that no one may enter against their will, nor may a search be carried out therein except in the cases provided by law.[362] Due to a dearth of information on national laws, the Commission was unable to establish whether other provisions that protect the right to privacy and regulate the interferences and restrictions to the enjoyment of this right exist.

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[359] See Luwam Dirar and Kibrom Testafagir, *Introduction to Eritrean legal system and research*, para. 4.2, available athttp://www.nyulawglobal.org/globalex/Eritrea1.htm.

[360] Human Rights Committee, General Comment no. 16, para. 3 and 4 and General Comment no. 31, paragraph 6.

[361] Report of the High Commissioner on Human Rights on the right to privacy in the digital age, A/HRC/27/37, para. 25.

[362] Article 13 of the Transitional Criminal Code and 571 of the Transitional Penal Code – see CRC/C/41/Add.12, par. 132. The Commission notes that these Transitional Codes have been replaced by new Codes promulgated by the Eritrean Government on 11 May 2015.

(b) The system for mass surveillance and control of the population

340. The Commission collected a body of testimony that indicates the existence of a complex and multi-layered system to conduct surveillance of and spying on the Eritrean population, both within and outside the country, with the ultimate purpose of controlling it. Information collected through this system is then used to take actions aimed at instilling fear in people and maintaining a state of control leading to arbitrariness that paralyses them: arbitrary arrests, unjustified detentions, torture, enforced disappearances, extrajudicial killings, etc.[363] This system is partly a continuation of structures operating within the Eritrean People's Liberation Front (EPLF) during the armed struggled and inherited by the current ruling party and successor to the EPLF, the People's Front for Democracy and Justice (PFDJ).[364] The Commission gathered testimony from victims and witnesses as well as former spies. They informed the Commission that the Eritrean Government systematically recruits individuals to spy and conduct surveillance activities on individuals and entities within and outside the country.

(i) Local population

341. The information that the Commission collected abounds with testimonies detailing the rampant use of spies in Eritrea in order to collect information on the conduct of individuals and entities. The determination to control the local population has generated a complex web of spying networks such that there are spies almost everywhere.[365] This web is run by numerous individuals in different entities: the political machinery of the PFDJ, the National Security Office, military intelligence units, and administration units at local government level.[366] It has multiple layers of reporting; nevertheless, all these entities finally report to the Office of the President. The recruitment of spies is done at the political party level - where recruits assume the functional title of political cadres[367] - and at every level of the administration (through the local administrative zones) and the military (as part of its intelligence).[368] In a country where spying is so widespread, almost everyone is suspected or expected to be spying for the Government.[369]

> To give an idea of the pervasiveness of the spying web, these are the words of a witness: "*In Eritrea everyone is a spy - local housewives, farmers, etc. So they know when you arrive and when you leave. Your own neighbours report you to the authorities.*"
>
> Another person stated: "*The distrust between people is very high. You do not even trust your own brother; he could be even part of the national security. One never knows exactly who is a spy in the prisons too.*"
>
> A former university student also informed the Commission of how he and many others were recruited by a minister to spy on university students in 2001 and of the perceived benefits attached to this: "*The university students, he said, were demanding this and that ... I was called in and he asked me to go and find out what was going on. I realised later that it was an intelligence mission ... He wanted me to gather information – to be like an insider. At first, there was not much to report on.*

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363 See chapterVI, B, Rule by fear.
364 See chapter III, B, Historical Background - The struggle for independence.
365 TBA061, TNR018, TNR008, TFM025.
366 TSH001, TBA055. For information on national security and military structures, see chapter V, A, 2, Security sector.
367 TBA055, TFM032.
368 S143d, TSH001, TBA055, TSH082, TBA061, TNR022.
369 TBA061, TNR018, TCDP043, TSH018, S035, TAM076.

Whatever information I gave him, he already knew of it. I came to understand that I was not the only one on the ground. Other people could also know what I was doing… We do not know who is hired as a spy. In a room with ten people, maybe three could be spies. These people that are mandated to do surveillance work do it for a number of reasons: easy money, little labour, exemption from national service, being untouchable. They were lots of them, I had friends that I have no idea they were selected. They were selected probably by word of mouth."

342. Even without being officially recruited as spies, people in Eritrea are expected to spy and report on their neighbours. If one's neighbours engage in "deviant" conduct, one could be arrested and detained for not detecting it and reporting it to the authorities. Furthermore, if you refuse to spy on others, you can be subjected to torture or detention.[370]

343. According to accounts received, individuals are recruited into the spying web for a number of reasons, because of their or their family's perceived allegiance to the PFDJ; their young age which provides a better opportunity to indoctrinate them; their status in society and their capacity to access specific environments where opposition may grow, such as educational institutions; or who they know and are friends with.[371]

One witness spoke to the Commission about being recruited as a 15-year-old child, after a failed attempt at military training in Sawa. He told the Commission how he was trained and what he was expected to do: "*We were 13-14 at that time ... They gave us training in Asmara at a Government office. We came to the office two to three times a week. They taught us how to behave, what information to tell them. They gave us IDs. I went there every day for four months. You spy on the neighbours and report to them: they take notes. I used to have a red book with my name ... I was asked to spy on a big businessman. When he went to a café, I also went to the same café.*"

Another former spy said: "*After the work on the farm was finished we were all separated. I was sent to the intelligence unit because my parents were freedom fighters and my father was a martyr. They thought they could trust me. All the people in the intelligence unit were children of former freedom fighters.*"

344. Spies' assignments range from extracting specific information to conducting general surveillance activities in order to detect "sanctionable" conduct. The spy network targets almost everyone in Eritrean society. This includes spying on your neighbours; conscripts during national service; people trying to avoid or escape from national service; people suspected to be planning to flee the country; relatives and/or critics of the Government; members of non-governmental organizations and religious groups; detainees in places of deprivation of liberty, as well as on individuals who are suspected to be spies for foreign entities and governments.[372]

345. This list shows how anyone's life is up for scrutiny in Eritrea. Such spying and surveillance constrain Eritreans' freedom to manage their daily lives and conduct business and other activities[373] since accusations made on the basis of the information collected through the spying web often entail arbitrary arrests, interrogation, torture and detention.[374]

[370] S014, S077t, TBA031.
[371] TSH082, TNR024.
[372] TNR024, TBA043, S135, S014, TBA031, TBA064, TFM025, TAM068, S143d, TNR018, TBA048, TCDP034, TBA043, S140, TBA018, TBA060.
[373] TNR018, TNR008, TBA043.
[374] See chapter VI, B, 2, Liberty and security of the person.

> One person spoke about how the family was compelled to close its business because of the constant monitoring of their activities: "*We had a shop … Our business got under scrutiny, we were spied on. Neighbours were asked to telephone authorities if there was a new thing happening. We were on the watch list. Neighbours were supposed to phone and inform them about meetings and who was coming in ... We had friends who were national service conscripts and employed in the ministry. They informed us about what was going on. Some of the recruits were placed as staff in the ministry, they warned us that our names got mentioned and that we should stop what we were doing ... Our neighbour was told to spy on us and given a number to pass on information about us. Someone whom we knew came in the middle of the night warning us that our names came up too often. When the pressure started, we had to cover up our business a bit; eventually we had to stop the business.*"
>
> A former staff member of a local non-governmental organization spoke about how their work and the activities of the organization were under constant surveillance. "*The associations are under the national security, the Government was spying on what we do. The executive committee usually has meetings with them. One of the university students, he was part of the national security, he sometimes came to the association … I was under their surveillance. When we had the general assembly, we reported to them, if they had questions, we answered them professionally. They knew in detail what projects we were doing. I usually did not mention any political opinion. I even tried to act as if I was sympathetic of the Government because everywhere there are spies. Two people who were in the association said that they were from the national security … Everywhere there are spies. In Eritrea, you don't really trust anyone next to you.*"

346. The spy network itself is littered with suspicion about the spying activities of other people. This is the case of people who are accused of spying for foreign entities and governments.[375] The Commission heard testimony detailing how people were accused of spying for foreign entities and companies solely on the basis that they hailed from border towns or for reasons such as providing career guidance on study opportunities abroad.[376]

> One witness spoke about how an accusation by a fellow villager that he was spying for a foreign government led to his arrest and torture: "*I was working in an Orthodox church ... One guy ... in our village blamed me to be a spy for the [x] government. My village is close to the border. They jailed me for one year. In 2013, they sent five soldiers to my house … Two soldiers came into my house, tied my hands behind my back and took me to Adi Quala prison. They told me I was needed. In Adi Quala, they took me to the office of National Security, close to Diga Sememo, which is a dam. They told me I was working for government [x]. The national security guys beat me. They wore civilian clothes. For three days my elbows were tied in the 'otto' position and I was left on the ground. They beat me on the sole of the feet with a wooden stick, thin, from a plant called koba. In the cell, we were 10 detainees; their cases were similar. I said I did not have any contacts with [x] government.*"
>
> Another witness informed the Commission : "*In 2007, people came to my house to arrest me. These were spies in civilian clothes. During one month, they came twice a day to search for me. I was hiding. I was sure they would arrest me. Usually, when someone is going to be arrested, false rumours are spread to discredit the person. Other people asked my father whether it was true that we were receiving people*

[375] TSH006.
[376] TSH006, TBA060, TBA018.

from [a foreign country] at our place. I was suspected of collaborating with [a foreign country] and passing on information."

One witness spoke about how she was arrested and interrogated by security agents after giving a lecture to undergraduate students on career choices and opportunities for summer programmes in [a foreign country]. She was accused of being an agent for intelligence agency Y because some of her students had eventually managed to get scholarships and leave for a summer programme in [a foreign country]. She was specifically accused of being an agent for intelligence agency Y and helping people to leave the country. She was detained and later released, but was continuously under the surveillance of security agents.

347. The tentacles of the spy network have stretched to every part of Eritrean society and have consequently ruptured the trust that people normally have in their neighbours, friends and relatives.[377]

One person expressed this mistrust to the Commission as follows: "*Freedom is simply finished. People don't even get together for big birthday parties anymore. People don't dare being together in public.*"

Another testimony said "*In Eritrea, the land is free but not the people … I continued my work as a pastor, but it was dangerous. We had to work in hiding. We lived in one house. We did not trust each other. If someone knows something he can use it against you, one day he will tell the Government. Everyone is working as a spy*."

(ii) Eritrean diaspora

348. The spying web has its outposts outside Eritrea, used to control the Eritrean population in the various countries where they reside. Eritrean resentations in foreign countries recruit spies to conduct surveillance of Eritreans in the diaspora. Allegedly, Government operatives are active in almost every other place Eritreans live.[378] Information obtained by the Commission indicates that, to conduct spying activities on their behalf, embassies often approach individuals from within the Eritrean communities abroad, in particular those who pay the 2 per cent Rehabilitation Tax as this is perceived as a form of support to the Government.[379]

One witness who reported having been a spy for an Eritrean embassy told the Commission that "*In 1997, Mr. [A], the consul in [a foreign country]… called me for a meeting joined by other spies. They told us we should continue our struggle in [a foreign country]. He introduced us to each other and started meeting us individually. There was an organisation ... We were assigned to this organisation, not to work but to ensure the PFDJ was represented in every organisation. They wanted me to join the board. I refused, arguing I was too young and inexperienced. Later, Mr. A told me he had a job for me. He told me I should work for them as a security agent in [city Z]. He said this would only be between him and me. Later, he gave me appointments and said I would always be able to enter the consulate, without needing permission and without having to wait for an appointment. Even the people at the consulate were not allowed to ask us any questions. I received a schedule for the entire week. I was asked to go every day to different hotels or restaurants. There were three shifts per day. We were asked to chat with people who*

[377] TFM041, TBA061.
[378] TAM066, TAM001.
[379] TBA038, TCDP067, TBA094. Also known as "Diaspora Tax", this tax is levied of Eritrean citizens abroad by the Government of Eritrea, through its local embassies.

came to those places and report on what we heard. Every day, I had to report back to the consul in person. I believed this was the right thing to do ... We had to observe every religious group. Those working in the religious groups are church members and PFDJ members at the same time … We did not know who was an agent and who was not. The work was organised by the consul alone, not with others. Now they have people who don't trust each other. At the time, it was different … I decided to discontinue my work with them."

349. The Commission heard accounts of how spies track individuals who are considered to be political dissidents or engaging in religious activities that are not authorised in Eritrea.[380]

A person told the Commission that: "*My brother and my father cannot go back to Eritrea because they belong to the opposition party. There are spies in [a foreign country] who spy on what Eritreans do there*."

Another person told the Commission that: "*People cannot speak freely. Even here in [a foreign country], Eritreans cannot speak freely because the Government of Eritrea sends people to spy on those who have fled Eritrea*."

350. The focus of this espionage also includes political organizations and religious entities. However, more generally the purpose of the surveillance by embassy operatives is for the Government to detect any suspicious and undesirable conduct, namely conduct that is perceived to be against the policies or needs of the Government.[381]

351. Eritreans in the diaspora, for fear of reprisals, have felt the negative impact of the spying and surveillance on their lives. Many people spoke about the fear of returning to Eritrea to visit because they might have been backlisted due to their political and other activities. Other people told the Commission about how they felt constrained to join organisations in the diaspora or express free opinions regarding the situation in the country. Most importantly, the Commission found that there are legitimate fears among Eritreans in the diaspora that the Eritrean Government engages in phone tapping and email surveillance in Eritrea such that they cannot freely communicate with their relatives in the country.[382]

(c) Other means to conduct spying and surveillance

(i) Intimidation and harassment

352. The Commission gathered information indicating that the spy web of the Government of Eritrea uses intimidation – specifically in the form of threats and retaliation against family members – and harassment to collect information. This is done to put pressure on people within and outside Eritrea.[383]

A witness told the Commission that: "*When I left the country, the security forces kept on asking my wife if I was coming back or not. They made frequent visits to the house. They tried to make her their informant so that they could extract information about my activities. They thought that I was involved in political activities. In 2008, due to the visits and harassment, she packed and left the country with the children.*"

380 S020, TAM065, TBA094, TSH023, TAM001.
381 TNR046, TCDP067.
382 TNR023, TNR046, TNR011, TAM065, TBA038, TAM066, TSH037, TBA016, TCDP078-082, TNR10, TRDV003, TSH103, TSH143, TBA040, TSH005, TBA034.
383 TSH098, TAM072, TAM053, TSH032, S133, TSH023.

In a submission received by the Commission, a man who was harassed by security agents reported: "*The darkest night for me was actually after I was released from jail. Every morning and every evening the national security forces were coming to my family and asking, 'What did you do? Did your daughter recant? What did you do?' This happened almost every day. My family kept telling me, 'If you do not recant, if you do not leave this religion, you are going to send us to prison'*."

Another person whose mother was detained for asking questions told the Commission that: "*In Asmara, there were always people watching our family. I first began to notice it in 2009. They were always in the same cars, the same people. They just sat outside our apartment when we were home and followed us when we went out. They never said anything to us or touched us. However, on one occasion my mother was stopped on her way home from work. She was asked where she was coming from and she asked who they were. They told her that they were from the security agency. She asked to see their badges. She was not satisfied and told them that she would not respond. She was arrested and detained for a day.*"

During the conduct of interviews with Eritreans in the diaspora, one witness told the Commission that "*A colleague and I have received death threats for the past three weeks from someone in Asmara. My colleague … called back and recorded the conversation. We are told the number is an intelligence number.*"

A son whose father was arrested and detained for the former's alleged political activities in the diaspora told the Commission that: "*My father was imprisoned for 20 months when he returned from [a foreign country]… We do not know why he was arrested and he was not told the reasons either. But when he returned to Eritrea, before he was arrested, intelligence people asked him about my political activities. He was told to ask me to leave the political organisation I was affiliated to.*"

Another witness told the Commission that while he was living abroad, his mother was approached by national security officers: "*One day when going to work she spoke to a woman in the intelligence unit who said to her 'Your son is very active in the opposition, why don't you tell him to just concentrate on his studies?' to which my mother replied 'You know today's children, they don't listen to their mothers'*."

(ii) Travel passes

353. Perhaps the most effective means of surveillance and monitoring is the system of travel passes/permits, accompanied by the ubiquitous check points that operate all over Eritrea. The travel pass, which is locally known as the *menkesakasi*, entitles the holder to move within a defined area, including crossing checkpoints *en route* to their destination. The Commission heard that most people in Eritrea need this travel authorisation document to be able to move within the country. The travel pass, which is issued by authorised Government officials including heads of military units and local administration, restricts the person's authorised movement to a specific area.[384] It also defines the status of the individual at a given moment in time and makes it easy to identify students, military conscripts on vacation or those who have overstayed their national service leave.[385]

[384] TNR067.

[385] For more details, ee Chapter VI, A, 2, Freedom of movement.

(iii) The coupon system

354. The coupon system entitles families to purchase a limited amount of food at subsidised prices.[386] It is also needed to register children in school and access services such as the renewal of passports and the issuance of exit visas.[387] The Commission understands that this system was originally implemented in Asmara and may not be uniformly applied throughout the country. In order to run the coupon system, the Government operates a database where the names of family members composing a family unit are registered. However, the database is also used for the additional purpose of controlling family members of draft evaders and deserters. All family members making up a family unit must present themselves or be accounted for to Government authorities when asking for the renewal of their coupons. The absence of a family member results in the withdrawal of coupons from the family, with all its related consequences.[388]

> A woman whose husband planned to escape explained how the Government uses the coupon system to control the population by ensuring their presence in the country. She told the Commission that: "*As a family, you have coupons, you have to go to the administration zone and they ask you about the whereabouts of all your family members, and about your religion. Without the coupon, you cannot shop in the Government stores. The price is triple outside Government stores. You cannot afford it. You need the coupon to shop. As people leave the country, they check from time to time.Then you have to bring a paper from the military officer certifying the whereabouts of your husband. You have to bring a paper for each individual in your family. The coupon is for one year. You have to renew it each year but they can ask you anytime about the whereabouts of your family members. Therefore, people who are in hiding do not get anything.*"
>
> Another person told the Commission that: "*The coupon system is spreading throughout the country – not only in Asmara as it was before. The coupon system aims at controlling people. Its official objective is to deliver low-price articles. In practice, however, this system prevents someone from escaping as the whole family will be impacted and the coupons will be cancelled. The coupons are needed to undertake any administrative procedure such as the issuance of passports, exit visas and many other procedures. There is a comprehensive electronic database, at least in Asmara. Coupons are requested in order to register a student at school and they are checked every year. Coupons … are needed for the enjoyment of basic rights. Coupons are unofficial ID cards for the whole family... If you refuse to join the militia, your coupons will be cancelled and your life is in danger.*"
>
> Another person told the Commission that: "*There is a coupon system for sugar, bread, oil, sorghum. You have a card that entitles you to these rations. You pay for it but it is cheaper. You can use the card in Government shops. Often, they take the coupons away if one family member escapes.*"

355. These reprisals by the Government have a disparate impact on women, particularly wives, who are often left destitute with children when their husbands or male family members escape or desert the national service.[389]

> A woman whose husband escaped told the Commission that: "*It was very difficult to survive … When my husband left, I did not get any coupons. We were only given*

386 TSH046, TSH062.
387 TLA019.
388 TSH046, TBA095, TAM073, TAM017, TLA019,TFM030, TAM003, TBA051.
389 TBA087, TBA090, TLA019.

sugar. The other people in the village received sorghum, oil and cigarettes, but only those who had husbands in the military."

Another woman whose husband escaped told the Commission that: "*We had a coupon system in my village, but only for sugar. Once my husband had left, I did not get the coupons any longer. I received the coupons through my family. The administrator knew that my husband had escaped*."

(iv) "Freezing" of State officials and employees

356. In Eritrea, the surveillance and control of the civilian population also entails the systematic exclusion of government employees from the labour market by removing them from posts while they keep their pay. This act is known as *midiskal* or "freezing." The types of conduct that trigger "freezing" are manifold. However, they range from political involvement with the opposition (suspected or otherwise) to disagreeing or criticising the Government's policies or decisions. During the "freezing" period, officers are tightly controlled by the Government and are denied the right to leave Eritrea or to work elsewhere.

357. President Afwerki heads the Government which is the main employer in Eritrea, with people deployed in the civil service and the military. The civil service is largely composed of former military officers from the liberation struggle and national service conscripts,[390] providing a training ground for unskilled conscripts assigned government ministries and departments. Reportedly, President Afwerki frequently reshuffles Ministerial portfolios to keep occupants from developing power bases. He also intervenes when high-ranking officers and government officials question his judgement and decisions.[391] To disempower such officials, the President resorts to the practice of "freezing". Some officers may be reinstated when considered to have "rehabilitated" themselves. However, others are "frozen" for long periods spanning years without knowing the reasons for their suspension. The removal of Ministers and senior State officials at the discretion of the President may be considered one of his prerogatives. However, the practice of "freezing" involves suspension with full pay and the interdiction to undertake any other activity or to leave the country, which goes beyond presidential prerogatives or disciplinary actions in the course of duty. More importantly, the "frozen" officials cannot challenge the legality of the decision suspending them from work before an independent mechanism.

358. A well-known case of freezing involved the former Chief Judge of the High Court of Eritrea, Mr. Teame Beyene.[392] On 10 August 2001, he was removed from his post after complaining of executive interference in judicial affairs. The message ordering his removal was verbally communicated to him by his the Minister of Justice, Ms. Fozia Hashim. Later in the year, the Government, through the PFDJ's Political Director, Mr. Yemane Gebreab, explained at the Eritrean Festival in Washington, D.C. that the Chief Justice's removal was prompted by his alleged involvement in politics which, according to the former, endangered the impartiality of the Court. Subsequently, the Minister of Justice, in an interview posted on the PFDJ's website stated that the Chief Justice had presented accusations instead of an academic paper at a conference of the Eritrean Studies Association.[393]

359. The Government systematically uses the practice of "freezing" to stifle political dissent or to punish people who were considered to be sympathetic to political dissidents

[390] See Freedom House, https://freedomhouse.org/report/countries-crossroads/2007/eritrea#.VTXyBCGqpHw.

[391] TAM067, S077m, TBA096, TNR010.

[392] See Freedom House (https://freedomhouse.org/)

[393] See *The Eritrean Judiciary Struggling for Independence* (in http://www.researchgate.net/)

who criticise the Government. During the 2001 crackdown on the G-15 group and its sympathizers, over 300 people were "frozen."

> The Commission heard from a victim who was part of a group of those 'frozen' following the G-15 crisis. He said: "*I could not work and I was told to wait. Since the situation was at the time when the G 15 crisis happened, I was frozen. They did not want to assign any responsibilities to me. I was frozen from January up to the day I went to prison in July. After my release, I also did not work until I left the country ... From our office, there were a lot of people who were frozen. Everyone who was suspected of sympathising with the G-15 was frozen*".[394]

> Another person among those frozen in the aftermath of the G-15 arrests informed the Commission that "*After the G-15 were arrested I was blocked from my job for 6 months. Because Mohamed Sherifo (one of the members of the G-15) was the Minister of Local Government and he was influential, the President froze all the administrators and sub-administrators under him and had the military take over the roles... About 300 of us were frozen out at the same time. We still received our pay, my pay was 1,500 Nakfa*".[395]

360. The Commission heard that people are "frozen" as a form of reprisal for the conduct of their relatives.[396] The Commission also documented accounts where people were "frozen" for questioning the policies and directives of the President.

> A former senior government officer who had been 'frozen' once told the Commission that: "*I couldn't continue because of differences between the President and me. He interfered with matters concerning the things which I was responsible for. I asked to be moved from my post. I openly told him that I couldn't work with him. I stayed for nine months without a job. Then I was moved ... Then the differences opened again, especially with the G15*".[397]

> A former Colonel who was also "frozen" told the Commission that: "*I left the country in 2006 – before that I was frozen for almost five years… I was giving my opinions – they do not tell you why you are frozen but I know why. I was a member of the party. At the end of 1993, I asked them at the first and Second Congress of the EPLF the programme of promises that were made– multi-party system, democracy, etc. During the Third Congress of the party, I said that we promised to establish a democratic Eritrea but we still do not have any political democratic institutions. They said it takes time and we will arrive at that stage. When the Congress was established, there were elections in the districts but all the central committee members became members of the Congress – I opposed this. I asked why they did not conduct elections for them too. Such questions were not making them comfortable. They had to side-line people who do not go with their programmes or with what they think.*"[398]

361. The Commission finds that the decisions that the President and the Government take to "freeze" individuals are specifically intended to control and suppress any potential dissent by deliberately excluding such people from the labour market.[399] Since the Government is the main employer in the country, the practice of "freezing" effectively

394 TAM072.
395 TSH078.
396 TAM068.
397 TBA096.
398 TFM034.
399 TSH076.

excludes their involvement in the labour market and jeopardises their careers. Individuals find themselves in difficult situation as they are left with no option but to remain at home helplessly waiting for a possible order from the President that would lift the "freeze". During this period, their activities are monitored by the Government.

362. The Commission heard that the practice of "freezing" is both frustrating and agonising for those affected as they are not aware of the length of time that they would, for instance, stay at home without a job.[400] The Commission finds that the length of the "freezing" period and the decision to lift the "freeze" is never certain. While people may be frozen for short periods such as two months, the Commission established that in the majority of cases, people are frozen for periods exceeding two years.[401] Exceptionally, like in the case of the former Chief Judge of the High Court of Eritrea, people are "frozen" for periods of over 10 years.

(v) Other means of control

363. The Commission also gathered information about a number of other means of control used by the Government. The issuance of mobile telephone numbers, for example, is strictly controlled as the application process for a mobile phone number involves approval by a Government-appointed committee.[402] However, the Commisison could not confirm if this continues up to now.

364. The Commission also found that local administrators keep lists of names and ages of each family member, whom they track for purposes of military conscription. Additionally, the military and local administrators visit houses to verify the presence of each family member and their ages. The Commission also heard that the Government required private shop owners in certain parts of the country to keep lists of people buying from their shops.[403]

(e) Principal findings

365. The Commission finds that the Government of Eritrea, through its extensive spying and surveillance system targeting individuals within the country and in the diaspora engages in the systematic violation of the right to privacy. Mass spying and surveillance in Eritrea go beyond the needs of national security or crime prevention and are arbitrary.

366. The Commission observes that as a result of this mass surveillance, Eritreans live in constant fear that their conduct is or may be monitored by security agents and that information recorded by state agents may be used against them - to arrest them, detain them, torture, disappear or kill them. They therefore engage in self-censorship with regard to most aspects of their lives. This happens because, as demonstrated throughout this report, it is impossible for an individual to know what activities may be considered "deviant" and "sanctionable" at a specific moment in time and what the consequences for such activities might then be. The intrusiveness of the spying and surveillance system not only compels individuals to exercise self-restraint in the conduct of their affairs but also largely curtails the exercise of other rights and freedoms such as freedoms of expression, movement, association and assembly. It generates mistrust within families and communities by subjecting people to control and instilling fear in them. In the words of one witness: "*When*

[400] TAM067.
[401] TAM067, TFM034, TSH076, TBA042
[402] Report of the Special Rapporteur on the situation of human rights in Eritrea, A/HRC/23/53, para. 60. See also chapter VI, A, 3, Freedoms of opinion, expression, assembly and association.
[403] TAM043, TAM060.

I am in Eritrea, I feel that I cannot even think because I am afraid that people can read my thoughts and I am scared."[404]

367. Eritrea's leadership uses its security and political party machinery, including its official representations abroad, to intimidate and control the population. As a result, Eritreans are afraid to join certain political or religious organisations in the diaspora or to freely express their opinions regarding the situation in their country.

368. The Commission finds that the coupon system has been diverted from its official objective of providing subsidised goods locally. It is now largely used as a measure to engage in surveillance activities and control the civilian population in Eritrea. Principally, the registration of family members, which is required for purposes of benefiting from this scheme, keeps families under the tight control of security agents as the continuation of this entitlement is dependent on the physical presence of all family members in the country. In this regard, the escape of a family member triggers the cancellation of the entitlement. Women, particularly wives, are largely impacted as they suffer reprisal in the form of cancellation of this entitlement when their husbands flee the country or desert national service.

2. Freedom of movement

369. The right to freedom of movement, which includes the right to leave one's own country, to move around the country without undue restriction and the right to choose one's place of residence, is binding on Eritrea under article 12 of International Covenant on Civil and Political Rights and article 12 (1) and (2) of African Charter on Human and Peoples' Rights.[405] This right is considered to be an indispensable condition for the free development of a person.[406] There should be no restrictions to the right to freedom of movement except if it is prescribed by law and necessary to protect national security, public order, public health or moral or the rights and freedoms of others, and if the restriction does not impair the enjoyment of the other human rights. The right to leave one's country should not be made dependent on any specific purpose or length of time that the person will stay outside of the country. It includes the right to obtain the documents necessary to leave one's country such as a national passport.[407] Unduly burdensome rules and administrative procedures to obtain travel documents may constitute an infringement of the right to freedom of movement.[408]

370. Any restriction imposed on the right to freedom of movement should not impair the essence of the right and inverse the relation between the right and the exception.[409] While certain restrictions of the freedom of movement of persons in armed forces are usually compatible with international human rights law, they should be strictly limited to the exigencies of the military readiness and should not jeopardise the enjoyment of the right. Systems that require the approval of authorities to move within the country and impose delays in processing these internal travel authorisations, or require supportive statements of family members or employers to be authorised to travel abroad, or high fees for the issuance of travel documents or unreasonable delay in issuance of travel documents or restrictions on the family members travelling together, are usually considered restrictions

[404] TFM038.
[405] Right also protected by article 5. (d) (i) and (ii) of International Convention on the Elimination of all forms of Racial Discrimination.
[406] Human Rights Committee, General comment No. 27, para. 1.
[407] Ibid, para. 8 and 9.
[408] Ibid, para. 8 and 9.
[409] Ibid, para. 13.

beyond what is permissible under international human rights law.[410] The enjoyment of the right to move within the territory should not be dependent on the purpose or reasons of the person who wants to move.[411]

371. In Eritrea, restrictions on the freedom of movement, both within and outside the country, seem to be primarily aimed at controlling and ensuring the fulfilment of national service duties. Proclamation No. 82/1995 on national service provides that Eritrean citizens may be allowed to travel abroad only if they provide evidence that they are exempted from or have completed their service[412].

372. Foreigners who are lawfully within the territory of Eritrea should be allowed to move freely in the country. Restrictions to the freedom of movement of foreigners that differ from those imposed on nationals should comply with the requirement of legality, necessity and proportionality.

(a) Liberty of movement inside the country

373. Freedom of movement inside Eritrea is restricted through a system which does not appear to have a legal basis. The system utilises a combination of identity documents and travel permits, the practice of identity checks and the existence of checkpoints. Travel permits are required to travel outside one's zone of residence or employment but necessarily require identity documents to obtain or utilise. The system also includes punitive elements for non-compliance, involving arrest and detention. These measures affect the individual's ability to move freely within the country.

(i) Identity and travel documents

374. When they reach 18 years of age, Eritreans are issued a national identity card which identifies their place of origin. Testimony collected by the Commission suggests that the Government delivers additional identity documents to certain categories of people, including students, teachers, and those in the military, which in principle protect them from being arrested during identity checks.[413] Individuals who have fulfilled their national service obligation are issued a certificate attesting thereof. Witnesses also indicated that there were frequent changes to the types of identity documents delivered by authorities.[414] Recently, the Government announced the introduction of new identification documents.[415] Therefore, without access to Eritrea's latest regulations, the Commission was not able to ascertain the identity documents which are currently valid in the country.

375. Eritreans wishing to travel outside their town or city of residence or having to commute to their place of employment must carry travel documents.[416] Testimony collected by the Commission refers to travel documents as *laissez-passer*, pass, permit or *menkesakasi*. Testimony also indicates that only a few categories of persons appeared not to need a permit to travel inside the country. Among them are high-level officials, employees

[410] Ibid, para. 17.
[411] Ibid, para. 5 and 6.
[412] Art. 17(1) of Proclamation No.82/1995. It is also provided that these persons of military age may be authorised to go abroad if they produce their registration card and deposit a bond of 60,000 Nakfa (art, 17(2)). However, as the registration card system has never been put into place, it is doubtful that such possibility exists in practice in Eritrea. See *infra*.
[413] TNR046, TNR018, TSH005.
[414] TNR014, TNR046, TNR018.
[415] https://www.youtube.com/watch?v=iVC_w_GekLo, accessed 28 May 2015.
[416] TBA078, TNR046, TNR069, TSH005.

of the People's Front for Democracy and Justice (PFDJ), members of the National Security Office, and individuals who have fulfilled their national service obligations.[417]

376. The first condition to obtain a travel permit is indeed the applicant's status with regard to the national service. For conscripts in the civil service, travel permits are issued by their employer when they need to travel for professional reasons or on family visit. For conscripts in the active military service or doing their military training, travel documents are issued by their commander when they request family leave. In both cases, the main difficulty is to obtain one's supervisor to approve a leave.[418]

> A former conscript described the travel paper for those in the national service: "*For the military, it is a square piece of paper, yellowish. It has your name, your unit and from where to where you go, and the name of the supervisor who gave it to you*." The paper also indicates the specific purpose of the travel.

377. Draft age individuals who are not in the national service and therefore do not have travel permits may circumvent the requirement by bribing officials or by using someone else's pass.[419]

378. For the rest of the population, travel is authorised by the local administration. Interviewees stressed that it was difficult to obtain a travel permit and that decisions were at the discretion of local government officials. [420]

> A woman described the process for civilians: "*You have to get the laissez-passer from the civil migration office within the regional administration … It is just a white paper to pass check-points. You can only travel with the authorities' permission with a signature. If they want, they can refuse you, it is as they wish*".
>
> A former school director described how strict the procedure was: *"Every citizen needs to have a permission to move from one zoba to another one. You ask permission to the administrator. Until the age of 50, they know that you are part of the national service and they are very careful. It is easier if you are above 50. It has always existed but now it is tighter. They are more serious about it."*

379. Reference to the delay in issuing the laissez-passer was also pointed out. *"It can take a month or longer to get it, or they just do not give it to you at all"*, said an interviewee.[421]

380. Travel permits are delivered only for specific reasons such as family visits, medical care, or social occasions like a wedding or the funeral of a relative. The Commission did not hear cases of permits issued for leisure travels. Moreover, in the case of draftees, permits are delivered only for travels to places where they have links, such as their hometown. The pass enables its holder to travel solely to the destination, through a direct itinerary, and for the duration inscribed thereon. Any deviation is prohibited. Therefore, a travel permit does not grant its holder full freedom of movement.[422]

> A former clerk in charge of the issuance of travel permits explained: *"You cannot move wherever you want in the country. Whether you are civil or military, you need to show your paper to all checkpoints. There are check points everywhere. … You have to put the place where the person is going, you need to have a link."*

[417] TNR086.
[418] TNR046. See also chapter VI, C, 1, National service.
[419] TAM011, TBA014, S079.
[420] TNR033, TCDP035.
[421] TSH042, TCDP034.
[422] TAM021, TCDP007, TNR001, TNR078.

A witness recalled: *"You cannot take a detour from what is written on the paper. You just have the right to do stops. If I decided to go over the indicated destination, for example in Sanafe which is 25 kilometres away from my home, I would get punished."*

Another witness explained that individuals were suspected of attempting to flee the country if they were found outside the areas listed on their paper.

381. The Commission also heard that some organizations applied for travel permits on behalf of their employees so that they did not need to request on each time they travel for professional purpose.[423] However, the Commission was not able to ascertain the types of organization which were granted this privilege and whether it is still granted. Moreover, the Commission was informed that members of foreign representations as well international organizations based in Eritrea need permission to travel outside Asmara.[424]

(ii) Identity control and checkpoints

382. Eritreans are to produce identity and travel documents during identity checks. They have therefore to be permanently in possession of documents that justify their presence wherever they are, including at their place of residence. Identity checks are usually carried out by the military on the streets. Sometimes, they consist of a stop and search routine. However, on occasion, verification is not done on the spot. Rather, military officers arrest and detain individuals while their papers are verified.

383. Occasionally as well, identity checks are carried out when authorities are attempting to locate specific individuals.[425] Most of the time though, they are conducted with a view to arresting draft evaders and deserters. As such, only documents that attest one's status with regard to the compulsory national service can safely protect holders during these identity checks. Testimony collected by the Commission reveals that round-ups, or *giffas*,[426] could be carried out several days in a row. As a consequence, during a period of *giffas*, individuals could be stopped several times and movement inside a city or town is significantly affected.[427]

A former resident of Asmara explained: *"The giffas continued. When I went home on the day before I left in January 2015, there was a very serious giffa in Asmara. Everyone was checked, but I had my permit. The giffas were done by the military. They catch those without ID or a travel permit between home and workplace."*

Another witness who left in 2013 recalled a day of giffa when he was a student in the city of Assab: *"They would even ask you seventeen times a day for the menkesakesi. They ask you for this document anytime and anywhere. It does not have to be a checkpoint. If you forget to carry the document, you would be arrested."*

384. Individuals who do not have the required papers can avoid identity control in the streets or being arrested by using someone else's papers, forged papers or by hiding, especially when they know that round-ups are to take place. A witness told the Commission that he had been able to move around in his city without appropriate papers for several years because he was forewarned of scheduled round-ups by acquaintances in the military. Therefore, he hid on the days *giffas* were carried out. He left the country when those

[423] TCDP076, TNR086.
[424] RDV005.
[425] TLA025, TNR086.
[426] See chapter VI, C, 1, National service.
[427] TNR077, TBA045, TBA078, TLA025, TAM051.

acquaintances had been relocated to other duty stations.[428] Forged documents are easily available to persons with financial means in Asmara. However reportedly there have been recent crackdowns on the production and use of such documents.[429]

385. Freedom of movement can also be limited for holders of identity papers when their issuance is delayed. A student spoke of such instance: *"When I was in Eritrea, it was not easy to move around. There was a time that the permit from the school was withheld and we could not move around because we were afraid of giffas. Students have to show this permit in order to be allowed to move freely."*[430]

386. The Commission repeatedly heard that it was difficult to move around in Eritrea.[431] Testimony referred to checkpoints at the entrance of cities, such as Asmara, Assab, Keren, Massawa and Tessenei. It is difficult however to estimate the current number of checkpoints in Eritrea and, in view of the number of people fleeing the country, if nowadays checkpoints are widespread in the country.

387. Checkpoints serve to control movement of goods and persons. Cars and buses are stopped and searched. Travellers are required to show their identity documents and travel permits. Individuals who are found not in the possession of the required authorisation to enter a town or a city are not just denied entry, they are arrested. Draftees arrested at checkpoints are returned to their national service units. They are often held in places of detention during the transfer. [432]

> A former recruit assigned to a checkpoint explained: *"The main job at a checkpoint is to verify whether people have a permit. We also control the movement of weapons from one unit to another unit, whether there is excess of guns. The people without permission are sent back to their military unit. If the unit is far, for example from Keren to Assab, we would bring them to Adi Abeito and they transfer them to Assab."*

388. Though, the information collected by the Commission suggests a relaxed approach to control undertaken at most checkpoints coupled with bribery.[433]

> A conscript explained that controllers often verified only the papers of those sitting in the front seats of a bus: "*[In 2010] I went to Sanafe in a bus, even though I did not have a leave permit for that trip. The one who was checking the paper used to check the people in the front. I sat in the back of bus. They just asked to show the paper: we hold it up but they did not check them one by one. My menkasakasi was valid only from Asmara to Keren not to Sanafe. In Dekemhare I did the same. The soldier did the same, fortunately. When I came to Sanafe checkpoint, I got out of the bus before arriving. I entered Sanafe on foot."*
>
> Controllers at checkpoints rarely verify the photo identification of a permit holder. Therefore, one can use another person's pass to travel. "*I got a pass to go to the border. Movement is restricted in the country, so I borrowed a friend's pass*", recalled an escapee.
>
> A traveller recounted that his group went through checkpoints by corrupting the officers: "*There were two checkpoints between Asmara and Mendefera, but the driver had paid money."*

[428] TNR029.
[429] TAM026, TBA069, TAM075, TBA057.
[430] TAM036.
[431] TAM062, TAM015.
[432] TNR079.
[433] TNR039, TNR046, TNR067, TAM011, TBA078.

389. Nevertheless, the possibility that one may get arrested deters most people from travelling through checkpoints without a permit or forces them to find alternative ways to travel. [434]

> A young man who deserted national service in 2013 travelled at night: *"During the six months I was on the run, I was selling things in Asmara. I crossed checkpoints at night to avoid detection."*
>
> An individual who needed to travel to Massawa from Asmara avoided main roads: *"I went to Massawa to look for a job … I travelled through rural area to Massawa on foot to avoid checkpoints. It took me three days."*

(iii) Restriction on specific groups

390. The system of controlling movement is designed to detect persons evading national service obligations and those who have left the national service without permission. However, the system disproportionately affects those who are not required to be in the national service but do not have the required documents to enable travel, namely children not in school and women excused from the national service.

391. While not having papers does not prevent them from seeking employment in the private sector or the informal economy, their ability to find one is limited.[435] Moreover, this restriction on movement also affect their enjoyment of other rights, such as the right to education, the right to health, the right to an adequate standard of living and cultural rights.

a. Children not in school

392. Children who are not in school face difficulty to move around as they do not have the requisite student card, which is the photo identification issued to children and is the only guarantee to protect them from *giffas*. The Commission spoke to several victims who had dropped out of school[436] and struggled to live in hiding. [437]

> A former herder who spoke to the Commission had dropped out of school after the 1st grade. He recounted: *"I was not free to move around in my town because we were afraid. I had no papers to move around. This is why I was in hiding."* He left Eritrea in 2013 when he turned 18 to avoid being enlisted to national service.
>
> A former fisher who dropped out of school after the third grade to help his family explained to the Commission that he had to hide to avoid being arrested: "*I was in the 3rd grade. I left school because I had to work at sea. We were not allowed to move around. We were always hiding. We stayed at sea. Life was hard."* He left Eritrea when at the age of 24 when avoiding arrests became difficult as the authorities also started conducting round-ups at sea.
>
> An individual who left school at the age of 12 and who was not allowed to enrol in school after being forcibly returned from a foreign country explained: "*My family's house was a little distance from the village, and I learned to hide from place to place, shepherding animals … After living this way for three years, I decided to escape back into [a foreign country] for the second time."*

[434] TAM024, TNR046.
[435] TSH022, TSH024, TSH074, TSH102.
[436] TNR051, TSH102, TSH087.
[437] TAM060, TAM061, S136.

393. The Commission finds that the restrictions on the right to freedom of movement in Eritrea affect a large number of children given the low enrolment rate in middle-school.[438] Girls are disproportionally affected by this as according to Government statistics, 73 per cent of primary school age girls were in school in 2012 and just 20 per cent of secondary school age girls were in school.[439]

394. The current system whereby identity documentation and travel permits are both required to enable movement negatively impacts upon children who are out of school who do not have access to these documents. Lack of identity document and the current practices of identity checks render these children vulnerable to additional violations of their human rights, including their right to liberty and not to be forcibly enrolled in the army.

b. Women not in the national service

395. Information collected by the Commission suggests a practice of tolerance with regard to women's national service obligation when they are married or have children. However, very few women in this situation have been formally released or discharged[440] and therefore do not have identity cards or travel permits which can authorise them to travel. Travel anywhere, including locally, is particularly difficult for those women who do not have an identification document in addition to lack of a travel permit as they also become vulnerable to being rounded-up during *giffas*. [441]

396. Women have described the situation as a *"vicious circle"* that leaves them *"chained to the kitchen sink"*. As women can leave the national service for legitimate reasons, they often so. However, this renders them ineligible for identification and travel documents which in turn restricts their movement and ability to engage in state approved employment.[442]

397. Reportedly, married women may be able to use their marriage certificate to prove their identity and negotiate with officers, explaining their need to travel to a specific location, typically their husband's duty station. [443] A witness explained that travel permits can be issued at an officer's discretion: *"When you apply for a travel permit, you can report the reasons why you did not do the national service. They will discuss with you and decide if they think that it is genuine. A woman can get a travel permit if she gives a reason, for example, if she is a housewife. They could however say no."*[444]

398. A witness explained how women not formally discharged from national service have few options; many are compelled into low-skilled jobs while some may be forced into transactional sex in order to survive and hence become vulnerable to punishment: *"If they are not released "with honour" from the national service, they have no access to government work. They cannot get a job, they are forced to work in bars, be working girls engaging in transactional sex or living on remittances. Working girls are then additionally persecuted."*[445]

[438] According to UNDP, as of 2010 net enrolment ratio in primary education was 66.2 per cent. Yet, the proportion of pupils starting grade one who reach last grade of primary education was 58.6 per cent (http://www.er.undp.org/).
[439] CEDAW/C/ERI/5.
[440] See chapter VI, C, 1, National service
[441] TSH005, TSH088, TLA012, TSH036, TSH074, TSH022, TSH024, TSH102, TNR039.
[442] TSH022, TSH024, TSH074, TSH102.
[443] TNR039.
[444] TNR086.
[445] TSH088.

399. The Commission finds that the system of controlling movement within Eritrea disproportionately affects women who have not been formally discharged from the national service and consequently do not have identification and travel permits. Without the requisite documents, women can neither move around freely nor obtain state approved work.

(b) Right to leave one's country

400. Eritrea is one of the few countries which impose severe restrictions on citizens' departure from the country. Taking cognisance of the regulations in force and analysis of practices suggest that the intended objectives of the Government's immigration policies are to control the population and enforce compliance with the obligatory national service. The authorities operate a strict system for the issuance of travel documents and border control, in parallel with other arrangements in place for the general control and monitoring of conscripts and civilians.

(i) Issuance of international travel documents

401. Proclamation No. 24/1992 regulates the issuing of travel documents, entry and exit visa from Eritrea, and residence permits of foreigners in Eritrea. It is completed by Proclamation No. 4/1992 relating to travel documents and immigration. Exit visas are required for any Eritrean national who wishes to leave Eritrea and for foreigners in possession of a residence permit who intend to leave Eritrea definitely. The visa, stamped on the passport, indicates the number of exits permitted and the dates of validity during which period the person can leave Eritrea legally.[446]

402. The criteria and conditions to be granted an exit visa are not provided by law and are left to the determination of the Government.[447] However, the law lists specific grounds for the denial of an exit visa, i.e. if a competent court has ruled that the person cannot leave Eritrea; if a competent court has summoned the person to appear within a month before it; and if the Government "believes on valid grounds that the departure of the person might affect the security or the interests of the country."[448]

403. Testimony collected by the Commission reveals that exit visas are issued to certain individuals without difficulty. Older women may be granted exit visas readily; even older family members of Government opponents have been permitted to travel outside Eritrea. Male relatives of Government opponents seem not to be accorded similar treatment.[449]

404. An exit visa is also issued to individuals who have completed national service when the nature of their occupation requires regular travel. A witness employed by a foreign-

[446] TBA038.

[447] While the proclamation refers to the Ministry of Internal Affairs as the Governmental entity in charge of the question of entry and exit of the country and control of foreigners, this Ministry does not seem to exist anymore. The competence seems to be exercised by the immigration authorities, as indicated in Proclamation No. 4/1992, which are under the control of the National Security Office. Anyhow, in light of the tight control exercised by the President on the Government, it is still correct to refer to the Government instead of a particular entity within.

[448] Art. 13 of Proclamation No. 24/1992. Under article 153 of the Transitional Penal Code, a court of law may order the temporary retention or withdrawal of the official papers or passport of the convicted person "where special reasons, relating to supervision or safety, require". The reasons for such a measure and its duration shall be stated in the judgment."

[449] TBA047, TLA022, TCDP079.

owned shipping company indicated that due to his work, the authorities would not refuse him an exit visa. Individuals have obtained visas as well for medical reasons.[450]

405. On the other hand, the Commission collected testimony reporting difficulties to obtain exit visas. Some witnesses indicated that it took them almost one year to obtain a passport and an exit visa. In such cases, obtaining the documents often required bribing immigration officials or the intervention of acquaintances at high-level positions within the Government. The Commission also heard cases of Eritreans carrying foreign passports or residents who had been denied exit visas.[451]

406. Proclamation No. 82/1995 regulating national service prohibits Eritrean citizens of military age to go abroad unless they can prove that they have fulfilled their national service duty or that they are permanently exempted. They might also show their registration card and leave a bond of 60,000 Nakfa as security that they will return to Eritrea to perform their national service when they will be called for conscription.[452] However, the system that was supposed to deliver registration cards to citizens ahead of their national service has never been put in place.[453] Proclamation No. 82/1995 also obliges applicants for a visa to identify another person as "guarantor". The "guarantor" commits to pay a specified amount should the visa holder not come back to the country.

407. It appears however that the system described in the Proclamation has been made available only to conscripts travelling for official businesses for the Government. Moreover, it is applied arbitrarily. Some individuals are required to sign a bail bond, others are not. Moreover, the amount of the bail varies. The Commission heard figures between 100,000 and 300,000 Nakfa being required as security. [454]

> A victim recounted that, after departing from the country with an exit visa, his guarantor was nevertheless arrested: *"A month after my departure, my surety was detained and asked about my whereabouts. He told them that I had an exit visa and that I left the country. Then they asked him to choose between prison or to pay the amount charged against my bail … My surety told me about it. I sent copies of the passport and the visa to show that I left legally. The authorities never accepted these documents. I therefore raised 100,000 Nakfa and sent it to my surety."*

408. The Commission documented other ways the system of guarantor has been implemented by the authorities. For instance, a student wanting to travel back by boat to his university in a foreign country was asked to designate the boat owner as guarantor. [455] He recounted:

> *"I asked if I could go back to [a foreign country]. They said I should get permission if I wanted to leave for [a foreign country] … One of the boats belonging to fishers was going to Yemen and I informed the security intelligence that I wanted to leave for Yemen. They asked me to give them the name of the boat owner. I did. There is always an intelligence person from the departure point. They told the boat owners that it would be over for them if they did not bring me and the other people back."*

409. The Commission collected information revealing that even applicants eligible for an exit visa have been denied one without the reasons for the refusal being given.[456] For

[450] TAM075, TNR077, TBA042, TSH077.
[451] TLA035, TFM039, TAM075, TAM004, TAM072.
[452] Arts. 6 and 17 of Proclamation No. 82/1995.
[453] See art. 11 of Proclamation No.82/1995.
[454] TNR077, TAM003, TAM005, TBA091, TLA041.
[455] TAM050.
[456] TAM004, TFM039, TNR072, TAM068.

instance, the Commission heard that young individuals awarded scholarships to pursue their studies abroad had been denied permission to leave.[457]

410. Generally, individuals who have a history of fall-out with the Government have little chance of being granted an exit visa. The ban often applies equally to their family members and irrespective of whether these individuals have completed the national service. For example, a retired politician's application for medical reasons was rejected by the authorities. He was in his eighties when he solicited the visa. Another victim was denied a visa because of a disagreement between her spouse and the Government. A high-ranking official who had been 'frozen' was also not given permission to travel to visit relatives abroad.[458] Testimony collected suggests the existence of a list of individuals who are not allowed to depart the country and that individuals could be placed under such travel ban for several years.[459]

411. The Commission gathered information revealing policies that have impacted on family unity. There appears to be a general travel ban enforced on children. Spouses are also required to co-sign a visa application. Therefore, any individual whose spouse is outside the country cannot lodge a visa request.[460] The Commission suspects that these measures are designed to dissuade parents from fleeing but they have an adverse impact on opportunities for family reunification.[461]

> An interviewee who wished to travel with his son explained: *"I also tried to bring my son, but he was not allowed to travel, he did not receive a passport. He was nine years old at the time."*
>
> A victim described why she could not be reunited with her daughter: "*My daughter is in Eritrea. She is 11 years old… I cannot get an exit visa for my daughter because they will not issue a visa to her. I need to find a smuggler for her. You cannot leave the country legally after six years old. The age changes between five and seven but basically there is no way for her to be able to leave the country 'legally.' I have met a lot of other women in the same situation here*."
>
> A witness recounted that his mother and his young son, who had been raised by her after his flight, had applied for a visa to visit him together. While his mother's application was approved, his son's was rejected.

412. Testimony collected by the Commission shows that procedures in place seem to prevent aspiring applicants from lodging an exit visa request if another member of the household has left the country or has not fulfilled the compulsory national service and militia duties. This is verified including through the coupon system.[462]

> A witness recalled that when his mother had approached the local administration to initiate a visa application, the latter had begun by verifying the household's records. When it was discovered that the witness had fled the country, his mother was incarcerated.
>
> A witness explained: "*If you do not go to the militia training, your coupons are cut. Businessmen doing business with other countries cannot leave anymore. The record*

[457] TAM069, TBA078.
[458] TNR011, TFM039, TSH078.
[459] TAM005, TFM039.
[460] TFM039.
[461] TNR022¨, TBA042, TSH081, TNR072.
[462] TBA034, TCDP028, TLA019. See chapter VI, A, 1, Surveillance of the population in violation of the right to privacy.

of those doing the training is in the administration office, if you don't do it they don't approve your exit visa."

A witness explained that the coupon was needed to apply for an exit visa. It is withdrawn when someone in the house leaves the country illegally.

413. Under national law, the National Security Office, in charge of the immigration matters, has the power to stop for investigation purposes any person suspected of attempting to leave Eritrea illegally.[463] Witnesses confirmed that national security agents are present at official points of exit, such as the country's international airport or ports. The Commission also heard cases of individuals who were given exit visas but were arrested at the airport of Asmara. [464]

A witness spoke of a civil servant friend who had been stopped at the airport and asked to return home. He was further "frozen" from his position.

A victim recounted: "*When I left the country, I went at the airport at 3 am. They waited for me at the door. They asked for my passport outside the airport. They took my luggage and took me away*."

(ii) Border control

a. Access to border towns

414. Tight control of access to border towns or towns known to be on an escape route is one of the measures taken by the Eritrean authorities to limit cross-border flight. Information received indicates that travellers approaching checkpoints around these localities are always suspected of attempting to flee the country and that control was strengthened around 2004. Many people were arrested thereafter.[465] Until now, permits to travel to border towns or those on escape routes remain difficult to obtain. Though the restrictions have also been by-passed by purchasing permits.[466]

A witness explained the procedural challenges to obtain a permit to travel to a border town: "*Without permission it is not possible to travel within the country. It is forbidden to go to villages close to the border. Even me who has some relatives in border villages, it is difficult to get the required permit to go. It is a very lengthy procedure that involves too many persons*."

A former student recalled: "*When I wanted to go to Keren to visit my parents during the weekend, I had to request a special permit to be allowed to go there. The personnel delivering the permits said to me that I was a special case as Keren is considered to be on the way to the border and an escape road. So it was difficult to get a permit.*"

A witness stated: "*I paid 2,000 USD to leave the country. For 10,000 Nakfa, I bought a travel pass permit to travel to Tessenei. It was organised by a middle man. I left to [a foreign country]*."

[463] Art. 27 (c) of Proclamation No. 24/1992.
[464] TBA042, TBA038.
[465] See chapter VI, B, 2 Violations of the right to liberty and security of persons.
[466] S075, TLA010, TLA041, TBA093.

b. Border patrol and crossing

415. In conjunction with strict access to border towns, authorities patrol along the border. It also involves a practice of shooting at those trying to cross.[467] Border guards are mainly conscripts who are dispatched to border posts as part of a system of rotational assignment. Information gathered by the Commission indicates that in some towns members of the People's Army have been asked to monitor the presence of non-residents in border towns.[468] Hence, those assigned at the frontiers are not specialised in border control. Patrolling appears basic and geographically confined, as illustrated by the words of a border guard: *"In this unit, we were a group of sub-units of each 10 people. We go to different areas to protect the border. We were always 10 people together. Wherever we were, the 10 of us were together. Eight of us stay in one place, and we take turn two by two to go out to check the area. The two do not go far away. We worked in shift."*[469] The Commission received reports indicating that border guards also give monetary rewards to herders signalling people trying to cross the frontier.[470]

416. It emerges however from testimony collected by the Commission that the border is relatively porous. Crossing into neighbouring countries appears easy for residents of certain border towns. They often know the safe paths, where the border guards are posted, and whether they shoot at crossers.[471] Indeed, the Commissioner heard testimony of individuals who travelled back and forth to neighbouring countries regularly.[472] In the absence of fences, Eritreans cross the border walking through hills and forests in short distances of villages or towns. Similarly, conscripts often flee when they are assigned to camps along the frontier.[473] Those two groups do not usually hire smugglers as they know the routes.

417. Escapees usually cross the border on foot but the Commission also heard of individuals having travelled by trucks transporting products or by boat to neighbouring countries. The Commission also heard of individuals who had travelled on foot from a city as far as Massawa to the border to avoid checkpoints. One witness recollected that the journey from Massawa to Sudan took his group nine days.[474]

418. Those leaving from Asmara often hire smugglers who take them by car to a town near the border from where they walk. Amount disbursed to hire the services of smugglers, as relayed to the Commission by witnesses, has increased significantly. Border crossers could pay as much as 1,000 Nakfa to be escorted to the frontier before 2010. Nowadays, according to information collected, witnesses who have fled during the past five years had to raise large amounts of money varying between 10,000 Nakfa to 120,000 Nakfa, depending on the location of departure and the area of crossing. Such journeys may take several days.[475] Witnesses interviewed indicated that smugglers knew where border guards were stationed.[476] Border crossers do not know the smugglers and are thus vulnerable to trafficking.[477]

[467] See chapter VI, B, 5, Arbitrary deprivation of life.
[468] For more details on the People's Army, see chapter VI, C, 2, Forced labour
[469] TNR082.
[470] TLA038.
[471] TLA009.
[472] TSH054.
[473] TAM028.
[474] TBA029.
[475] TBA090, TBA078.
[476] TBA090.
[477] TNR052, TCDP031.

i. Treatment of those who are caught fleeing

419. Individuals are usually captured by border patrol units, who later hand them over to the National Security Office. Eritrean citizens are also obliged to denounce to the authorities any person that they see or suspect to attempt to leave the country illegally.[478]

420. Depending on where the capture took place, people caught trying to flee Eritrea may be held at a military camp for a few days before being handed over to National Security officers. Information collected by the Commission indicates that even before they are brought to military camps, captives are systematically abused by border guards.[479]

> Under Proclamation No. 24/1992, the penalty for attempting or helping someone to leave Eritrea illegally is up to five year of prison and/or fine of 10,000 Nakfa. A former interrogator interviewed by the Commission explained a rule reportedly received from the Ministry of Defence: '*When the prisoners were accused of crossing the border, if the person is a military he will be imprisoned for three to five years; if he is civilian he will be imprisoned one year and then he will be sent to Sawa for military training.*'[480] However, according the same source, the actual length of the sentence is at the discretion of the zonal commander.

421. Individuals interviewed by the Commission who were caught crossing the border before 2010 were detained on average between two and seven years. After 2010, the length of detention appears to have decreased to between six months and two years for conscripts or men at draft age caught crossing the border. Upon release, detainees are usually made to sign that they would be executed if they attempt another escape. However, the Commission did not document execution of escapees other than one case of an individual caught fleeing to Sudan in 2004.[481] Rather, repeat offenders reportedly receive longer 'sentences.' After his first attempt, for instance, a witness was detained for five months before escaping prison. His 'sentence' increased three years after being caught a second time.[482]

422. This flexibility in the sentencing may be explained by the reportedly general shortage of conscripts at camps which often prompts the release of detainees when manpower is needed.[483]

ii. Treatment of smugglers

423. Notwithstanding more recent promulgations, the sanctions imposed to those found helping others to leave the country illegally, under Proclamation No. 24/1992, are the same as for those caught fleeing: a fine and prison sentence of up to five years. The Commission however received information about harsher treatment, including beating to death and execution.

424. A policy announced in 2004 reportedly introduced capital punishment for those convicted of facilitating the escape of others. Several testimonies of executions following the introduction of the policy, during the period from 2004 to 2006, were received by the Commission. The authorities carried out public execution of border town residents, reportedly to set examples to deter local populations. The Commission did not collect any

[478] Art. 10 (2) of Proclamation No. 24/1992.
[479] TNR078. See also chapter VI, B, 4, Torture, ill treatments and punishments .
[480] TCDP036.
[481] TCDP076.
[482] TLA025.
[483] See chapter VI, B, 3, Detention.

evidence indicating that those executed had access to justice nor whether they were able to contest their *"conviction."*[484]

425. The Commission was informed of only one execution case in 2007 of Eritrean army members, including a military unit leader and a captain, suspected of being involved in smuggling activities.[485] Except that case, the Commission did not document recent cases of execution of individuals accused of smuggling. Moreover, they do not appear to get longer sentence than those caught crossing the border. However, information collected indicates that they are detained in worse conditions.[486]

(c) Right to freely return to one's country

426. The Commission received information revealing several cases of forced repatriation of Eritreans from four foreign countries. The Commission also received information on abductions from two third countries.

(i) Forced repatriations

427. The Commission received information on forced repatriation of about 200 Eritreans from [country A] in 2002. They included women and under-age children.[487]

428. The Commission also documented two cases of repatriation from [country B]. In the first case, the repatriation decision was reportedly made by the [country B] court. The witness was handed over to the Eritrean authorities with other deportees.[488] In the other case, the victim was transferred to the Eritrean authorities by the [country B] security officers.[489]

429. The cases of deportation from [country C] brought to the attention of the Commission took place in 2004[490] and 2008. Several hundreds of individuals, including pregnant women, were *refouled* in 2008, after being arrested while trying to enter into [country D]. They were flown to Massawa.[491]

430. More recently, the forced repatriation in 2014 of Eritreans from [country D] was reported by a witness. The latter had been held in prison for several years before his deportation.[492] Another 40 Eritreans were also allegedly forced to return from [country E] in 2014.[493]

431. Individuals forcefully repatriated are inevitably considered as having left the country unlawfully, and are consequently regarded as serious offenders, but also as "traitors." A common pattern of treatment of returnees is their arrest upon arrival in Eritrea. They are questioned about the circumstances of their escape, whether they received help to leave the country, how the flight was funded, whether they contact with opposition groups based abroad, etc. Returnees are systematically ill-treated to the point of torture during the interrogation phase.[494]

[484] TAM054, TSH004, S143n, S075. See also chapter VI, B, 5, Arbitrary deprivation of life.
[485] TSH083.
[486] TBA085, TLA038. See also chapter VI, B, 3, Detention.
[487] TNR024, TSH077.
[488] TBA054.
[489] TAM012.
[490] TNR032.
[491] TCDP076, TSH082, TSH083.
[492] TLA024.
[493] TLA028.
[494] TAM012, TSH077, S077e. For further details, see chapter VI, B, 3, Detention.

432. After interrogation, they are detained in particularly harsh conditions, often to ensure that they will not escape again. Returnees who spoke to the Commission were held in prison between eight months to three years. Male returnees from [country A] were held on Dhalak Island after a few months of detention at Adi Abeito. Deportees from other countries were held in prisons such as Prima Country and Wi'a.

433. Witnesses who spoke to the Commission noted the severe conditions during their detention. They were made to undertake forced labour and were frequently punished by prison guards for inconsequential matters.[495] [Country A] returnees recounted that, on one occasion, they had been reportedly even denied drinking water where they were detained at Dhalak Island where temperatures often soared to 50 degrees Celsius. As a consequence, many fell sick after drinking unsafe water.[496]

434. Women and accompanied children are also held in detention centres, though they are reportedly treated less harshly. However, the Commission found that unaccompanied children are subjected to treatment and conditions of detention comparable to those of adults. For instance, under-age male returnees from [country A] were detained with the other adults at Adi Abeito and on Dhalak Island. [497]

> A 16 years old girl was forcefully repatriated from [country B]. After her return, she was transferred to several prisons during an eight-month long detention. During her time in the Eritrean authorities' custody, "*she was subjected to physical and psychological tortures, starvation and poor prison conditions*."
>
> A witness who was 17 years old at the time of his deportation recounted: "*I was beaten twice to speak the truth. They believed me in the end. They wanted information: What did you say in [country A]? Why you betray your Government? Did you speak about the Government when you were in [country A]. The second time, I was handcuffed. It was a special handcuff which they twist so that a metal goes inside the flesh. [The interrogator] came back after more than two hours. When he opened the twist, I could not lift my hands. They bled. Too much pain, I felt numbness in the hands. He slapped me in the face during the interrogation*."

435. At no point are returnees given opportunity to contact their families, nor are they informed of the length of their detention.[498] Relatives find out about individuals who have been forcefully repatriated only when the latter manage to escape from the prison or the national service, or flee the country another time. After their release, women and accompanied children are usually allowed to go home. Male unaccompanied minors and those of draft age are sent to military training.

436. The Commission found however two exceptions to the rule that returnees are arrested, detained and forced to enlist in the national service upon their arrival in Eritrea. A group of Eritreans was returned from [country D] with a letter certifying that they had paid the 2 per cent Rehabilitation Tax[499] and had already been detained several years in [country D]. The witness had himself been imprisoned for three years in [country D]. He was given a permit to return to his hometown, but which had to be renewed every two months. He left Eritrea again shortly after being deported. [500] The other case concerned forced repatriations

[495] TBA017.
[496] S077e.
[497] S075, TNR024.
[498] TAM012, TNR024.
[499] See *infra* and chapter VI, A, 1, Surveillance of the population in violation of the right to privacy.
[500] TLA024.

to Eritrea in 2014, where seven older men were reportedly freed while the younger men who were returned in Eritrea at the same time were not released.[501]

(ii) Abductions

437. The Commission received information about abductions of Eritreans based abroad reportedly conducted by Eritrean officials. One witness was reportedly kidnapped with other Eritrean residents of a refugee camp in [country B].[502] The Commission did not find information on the whereabouts of the other returnees as the witness had escaped during their transportation to Tessenei and had fled back to [country B]. He also indicated that other rounds of abductions had reportedly taken place in 2009.[503] Another witness reported the abduction of her husband from a refugee camp in [country B].[504] Eritreans refugees reportedly demanded better protection at the camp in a demonstration that took place in 2012.[505] Regarding the case of abduction from [country G], the individual was reportedly rescued before arriving in Eritrea.[506]

(iii) Voluntary repatriation

438. A witness reported to the Commission his and other children's repatriation to Eritrea which was facilitated by an international organization. Allegedly, some of them were forced to enrol in the military service upon return, as explained in a submission[507] by one of them, who was 13 years old at the time:

> "*My own military experience began when I was almost 13 years old. I was sent with some of the other younger members of the group who had returned from [country F] … to fill out paperwork as a guarantee of our freedom. However, when we arrived [in Eritrea] our permit of freedom and supporting letter … were taken from us. We were thrown into prison for three days. When we were released we were sent to [another] place, [where] we were accused of spying for [country F] soldiers. The guards tortured us, beat us, and punished us for five days. Afterwards, they moved us to several different prisons that were famous for holding faith-based and border-crossing prisoners. Though we were promised freedom, they took us instead to … a military training centre."*

(iii) Opportunities to return to Eritrea for members of the diaspora

439. Most witnesses who spoke to the Commission had left Eritrea illegally. Those who departed with an exit visa and remained abroad are considered as defectors. Some witnesses have also been involved in activist activities abroad denouncing wrongdoings by the Government. Therefore, almost all witnesses who spoke with the Commission believed that they would not be able to return to Eritrea, or that they would be punished if they do. Others fear that they might not be able to leave again, should they be arrested. [508]

> *"If I went back to Eritrea, I will either be executed or jailed. I can only return if the Government changes."*

[501] TLA028.
[502] S040.
[503] TBA082.
[504] S04d.
[505] S040.
[506] TAM030.
[507] S136.
[508] TAM006, TAM009, S067.

"I cannot return to Eritrea because I have been a critic of the Government's policies and I have been talking about the human rights violations in Eritrea since 2005."

"*If I return to Eritrea, I will be killed. Because my offense was political in nature as I questioned the army's systematic forced labor, and because I escaped prison, I know that I would not be given a second chance*."

440. Many Eritreans no longer have an Eritrean passport which is delivered only after payment of the 2 per cent Rehabilitation Tax, collected through Eritrea's diplomatic representations abroad. The Government has established the Tax levied on the revenues earned abroad by its citizens, arguing that it falls under its sovereign right to levy taxes on its citizens. However, in order to ensure the payment of the Tax, the Eritrean Government uses methods which have been considered illicit by the United Nations Security Council. The Security Council decided that *"*Eritrea shall cease using extortion, threats of violence, fraud and other illicit means to collect taxes outside of Eritrea from its nationals or other individuals of Eritrean descen*. "*[509]

441. The Commission obtained information that one of the methods of coercion that is used by the Eritrean Government to force members of the diaspora to pay the 2 per tax Percentage Tax is the denial of access to basic consular services which largely impacts their enjoyment of the right to freedom of movement.[510] While Eritreans living abroad are required to provide proof of payment of the 2 per cent Rehabilitation Tax to have their passports and travel documents renewed, the non-payment of the Tax presents a risk for arrest and detention for those who travel back to Eritrea.[511]

A person who was resident in a country of the Middle East told the Commission that: "*I have never paid the 2 per cent Rehabilitation Tax before. Living in [a foreign country]- you cannot live there if your passport has expired. So you have to pay the 2 per cent Rehabiliation Tax. I used to lower my salary in order to pay less money. But now they are asking people to bring their company papers.*"

Another person told the Commission that: "*I know people who pay the 2 per cent rehabilitation Tax. They have no choice, if they want to visit their family in Eritrea, they have to pay it… My sister in [a foreign country] pays the 2 per cent tax. Eritreans living in the Middle-East have no choice but to pay it. They have a work permit and they need to pay the tax for it to be renewed under their passports. The embassy is there and is controlling you…When you go the Embassy, you have to show your pay slips or other proof of income for the entire period you have lived there*".

442. Moreover, in addition to paying the Tax, Eritreans who have left the country unlawfully have to sign an "Immigration and Citizenship Services Request Form" to regularise their situation before they can request consular services. By signing the Form, individuals admit that they "regret having committed an offence by not completing the national service" and are "ready to accept appropriate punishment in due course."[512] Such procedure seems to provide a blank cheque to the Government to punish persons outside of

[509] Resolution 2023 (2011), para. 11.

[510] The Commission received also testimony showing that te payment of the 2 per cent Rehabilitation Tax by Eritreans abroad is also required for the renewal of business licenses and access to land in Eritrea. The payment of the 2 per cent Rehabilitation Tax is, therefore, a prerequisite for the enjoyment of the right to property and to engage in economic activity for members of the diaspora (TAM021, TAM071).

[511] TNR084, TSH002, TNR082, TAM021, TAM07, TSH002.

[512] See Annex VII.

judicial proceedings and safeguards. For all those reasons, many who are in the diaspora do not take the risk to travel to Eritrea.

(c) Principal findings

443. The Commission finds that the Government of Eritrea strictly aims to control any displacement inside and from the country, in particular to ensure that individuals fulfil their national service obligations. To do so, it has established a complex system of travel permits and ID cards, which are required at checkpoints and during identity checks to verify individuals' status with regard to the compulsory national service and that they are duly authorised to travel. This system disproportionately affects the movement of underage children and women who have not been officially discharged from the national service since they are not provided necessary documentation to travel.

444. The Government officially controls who can leave Eritrea through the granting or denial of exit visas. To prevent those who want to avoid national service from leaving the country unlawfully, the Government has also restricted movements towards the border areas and severely punishes anyone found crossing the border. The Commission finds that, with a few exceptions, those who have been forced to return to the country have been arrested, detained and subjected to ill-treatment and torture. Other Eritreans voluntarily returning to their country may face arbitrary arrest, in particular if they are perceived as having associated with opposition movements abroad. Eritreans in the diaspora can access consular services by paying a 2 per cent Rehabilitation Tax, which is a disproportionate cost for obtaining a travel document. Moreover, in addition to the payment of the Tax, Eritreans who have left the country unlawfully can regularise their situation only by signing a "regret form."

445. Commission finds that the restrictions of movement in place are not proportional and strictly necessary in the interests of the national defence and that they constitute a violation of the right to freedom of movement, including the right to leave one's country. Moreover, the Commission finds that smugglers or other persons crossing the border unlawfully are treated in a manner that often amounts to torture, cruel, inhumane or degrading punishment, outside of any judicial proceedings. Furthermore, the Commission finds that many Eritreans in the diaspora are deprived of their right to freely return to their own country.

3. Freedoms of opinion, expression, assembly and association

446. Freedom of opinion and expression is one of the main public freedoms that is enjoyed individually and collectively and which is essential for the existence of a democratic society respectful of the rule of law and human rights. It is enshrined, among others, in article 19 of the International Covenant on Civil and Political Rights and article 9 (2) of the African Charter on Human and Peoples' Rights.[513] The dissemination of opinions is part of freedom of expression, which covers ideas and opinions conveyed during political discourse, discussions on human rights, commentaries on public affairs, journalist activities, cultural and artistic exhibitions, teaching sessions and religious discourse. It applies to all means of expression, such as books, newspapers, pamphlets, posters, banners and legal submissions, audio-visual and electronic means of communications.[514]

447. However, freedom of expression is not absolute in a democratic society and it can be limited to protect the rights or reputation of others against slander, defamation,

[513] Right also enshrined in art. 13 of CRC and art. 5(d) (viii) of ICERD.
[514] Human Rights Committee, General Comment no. 34, para. 11 and 12.

dissemination of false information, national security or public order, public health or morals.[515] The propaganda for war and advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence should be excluded from the scope of the right to freedom of expression.[516] Thus, any limitation to freedom of expression should be provided for by national law, which should be detailed enough and accessible to the public to comply with the general principle of legal certainty and predictability.

448. The right to freedom of opinion is also guaranteed under article 14 of the Eritrean Transitional Civil Code, which provides that all persons are free to think and to express their ideas.[517] The only restrictions authorized are those imposed by the respect for the rights of others, morality and the law.[518] In its fourth report to the Committee on the Rights of the Child, the Government of Eritrea further clarified that "full exercise of free thought and expression may be restricted by the need to defend the sovereign interest of the country or other restrictions spelled out by law, such as public order, morality, etc."[519]

(a) Repression of expression and independent opinion

(i) The period before the 2001 crackdown

449. Since the early years of independence of the country, the Government of Eritrea showed little tolerance of critical and divergent opinions. This is often linked to EPLF practices during the armed struggle to violently suppress critics and to resolve disagreements through the use of force, detention and disappearances.[520] The Commission observed a pattern of persecution of those who disapprove of the Government's actions, whether opinions are expressed in public or in private. During this period, criticisms were expressed primarily against the conduct of the last stages of the country's liberation, the Government's approaches to State-building, and the handling of the 1998-2000 border war with Ethiopia. Opinions criticizing the approach of the EPLF, the Government or the President on any of these issues were regarded as an affront.

450. Officials, including war veterans, who raised questions on these issues, were punished. Some were 'frozen' – a practice whereby public officials are removed from their duties, while remaining on the State payroll and therefore not formally dismissed[521] – while others were arrested, detained incommunicado or disappeared. Those who were arrested once and happened to be released, had to either leave the country or risk arrest again and detained indefinitely, or worse, killed.

451. The Commission was unable to find systematic documentation of cases of "freezing" of Government officials before the 2001 crackdown. However, it is a practice documented to have been employed by EPLF before and after independence; the authors of

[515] Art. 19(3) of ICCPR.
[516] Art. 20 of ICCPR.
[517] The Transitional Civil Code was replaced by a new Civil Code promulgated by the Governement of Eritrea on 11 May 2015.
[518] CRC/C/41/Add.12, par. 129.
[519] CRC/C/ERI/4, par. 136.
[520] Andebrhan Welde Giorgis, *Eritrea at a Crossroads* (Houston, Texas, Strategic Publishing and Rights Co., 2014), p. 199: '*There is an aspect of the history of the war of national liberation often glossed over in most of the works [on the Eritrea's people's armed struggle for liberation]: the constant use of force as a means to settle internal disputes*."
[521] See chapter VI, A, 1, Surveillance of the population in violation of the right to privacy.

the Berlin Manifesto decried its use by the Government as a measure to side-line those who disagreed with its line of action.[522]

a. Arrest and killing of critics

452. Information received by the Commission reveals a large number of critics who have been imprisoned through extra-judicial decisions or were sentenced by the Special Court. The Commission also documented cases of detention and extra-judicial killings of civil servants and community leaders who were presumably perceived to threaten the Government.[523]

> The Commission heard the case of the assassination of a civil servant who challenged the dismissal of several Muslims employed in the administration.
>
> Another official who enquired about the circumstances of the arrest of scores of Muslims in early 1990s was detained for several years. He left the country thereafter.
>
> Another high-ranking official suffered years of intimidation and harassment by the Government, including episodes of arrest and detention, for enquiring about the disappearance of a family member and openly challenging the authorities on the use of Arabic in education. He was subsequently found dead, reportedly killed.
>
> In another example, a local leader was arrested and detained for three years after criticizing strategies adopted by EPLF during the last stages of liberation. He was eventually released but then re-arrested a few years later and never heard from again.

453. The Commission also heard cases of repression of members of minority ethnic groups for claiming rights during that period.[524]

> The Commission documented reports from victims and witnesses about the arrests and detention of Afar clan leaders who spoke against abuses by soldiers stationed in the vicinity of their villages. A witness spoke about the detention for several months of a leader who opposed the cutting of palm trees in his area.
>
> The Commission also received reports of killings of members of the Bilen ethnic group for reportedly demanding that their language be used in education and in local administration. Similarly, the Commission also heard reports relating to the killings of members of the Kunama community who objected to the authorities' policies on land rights.

454. During the course of the investigation, the Commission recorded hundreds of cases of individuals who were arrested, detained, forcibly disappeared or killed on the ground of political expression before the 2001 crackdown.[525]

b. Arrests for criticism related to the 1998 border conflict

455. In addition to well-known cases and those concerning high-profile politicians and local leaders, the Commission heard about the arrests of soldiers and civil servants at all levels for challenging the government's policy and actions, during the 1998-2000 border

[522] For more on the Berlin Manifesto, please see *infra.*
[523] TFM034, S017, TAM068, S017, TBA097, S088, TSH003, TBA040, TNR046.
[524] TAM050, TLA007, see chapter VI, B, 5, Arbitrary deprivation of life.
[525] See chapter VI, B, 2 Violations of the right to liberty and security, and 5 Arbitrary deprivation of life.

war with Ethiopia. It appears that the lower a person's position in the military or administration's ladder, the harsher the sanctions imposed.

> The Commission heard about a teacher who had spent 13 years in prison for objecting the forced conscription of high school students at the outset of the border war: [526] *"In 1998, before the war, all students were taken to Sawa, but I did not accept this policy of the Government, so I was taken to a military prison. Students were taken by the militia commanded by the local administration directly from the school – I confronted the local administrator and asked the soldiers to leave the school. They left the school but the day after I was called to the local administrator office and I was arrested. I was sent to one prison for more than 4 years, then I went to [another] prison for 9 years. I was never told how long I would be in prison."*

456. Those in the military were arrested for criticising tactics adopted during the war,[527] as in the case of soldiers who were detained for more than ten years for criticising their unit commanders' decision to send them to areas where there were no trenches.[528] Arrests that took place up to the end of the war were reportedly never revealed to the public.[529]

c. 2001 political crackdown

457. The conduct of the war and the continuous postponement of the implementation of decisions relating to State-building triggered the critics of President Afwerki's governance of the country.[530] The response was a crackdown in 2001, which was a turning point not only from a political point of view, but also with respect to the exercise of fundamental freedoms in Eritrea. While the crackdown culminated in the August and September 2001 arrests of students, members of the G-15 and journalists, events that preceded them were telling of the Government's stand on freedom of expression.

d. 2000 Berlin Manifesto

458. The 2000 Berlin Manifesto,[531] authored by 13 leading Eritrean scholars primarily based abroad, also known as the G-13, called for an assessment of the conduct of the 1998-2000 border war with Ethiopia and of public affairs in general. The private letter raised concerns, among others, at the concentration of powers in the hand of one person and the setting up of institutions parallel to those established by the Constitution. The official response was to reject the criticism and dismiss the group's invitation to reflect on the country's governance.[532]

e. G-15 demand for reforms and early reactions

459. The concerns of the G-15 were comparable to those of drafters of the "Berlin Manifesto."[533] However, as members of the Government and the Parliament, they initially used internal channels to exress their concerns. It was only in the absence of a response from President Afwerki that the group decided to publish the letter in the local private

[526] TLA034.
[527] TBA002, TSH003.
[528] TBA081.
[529] TNR077, TNR087.
[530] TBA096.
[531] The text of the letter can be found at: http://asmarino.com/time-machine/349-nine-years-later-oct-7-2001-the-berlin-manmifesto, accessed 7 May 2015.
[532] TBA096, TSH103.
[533] See chapter III, C, Post-independence.

newspapers. The President took retaliatory steps, starting from the 'freezing' of the signatories.[534]

460. Some officers working with members of the G-15 were also frozen as early as January 2001 and some were arrested later. [535]

> A victim, who was a colleague of a G-15 member, recalled that he and other co-workers were arrested at the same time. He was detained for a short period, during which he was interrogated. He remarked that the purpose of the arrests had been to identify those who had shared the views of the G-15. Upon their release, they were still required to report regularly to the authorities.
>
> Another witness explained that his brother had been among those arrested months before the G-15. He had been a high-ranking civil servant. He has not been released to date and the Eritrean Government has never provided information on his whereabouts to his family.

f. Mediation efforts

461. A group of elders convened to mediate between the members of the G-15 and the President. A witness explained that, in Eritrean culture, it is a practice that elders interpose between two parties in order to help settle a disagreement. Members of this group were arrested. Some elders were in their 80s at the time of their arrest. They were detained for two years – some of them longer – and remained under house arrest long after their release from jail.[536] None of the mediators was formally charged or tried. Information received by the Commission further indicates that at least one member of the mediation group was arrested a few years later and was never seen thereafter.[537]

g. Arrests of the members of the G-15

462. On 18 and 19 September 2001, eleven members of the G-15 were arrested.[538] A witness recalled:

> "*It was house raids that were conducted at the same time. All who signed the open letter were taken that morning, with the exception of two who were caught the next day because they were in Barentu. Three were out of the country. We think that the arrest was from the President directly, because seven of those arrested from there were ministers. [x] was very popular; the President could not send somebody [x] knew. Those who came to arrest [x] were young, possibly national security agents*."

463. They have been detained *incommunicado* without any formal charges and their whereabouts remain unknown today. Mesfin Hagos, Adhanom Gebremariam and Haile Menkerios were abroad on the day of the arrests and escaped the crackdown but their diplomatic passports were revoked.[539]

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534 TNR003, TBA096, TSH078, S113, S104. See also chapter VI, A, 1, Surveillance of the population in violation of the right to privacy.
535 TAM072, TNR096.
536 TNR011, S118.
537 TNR011.
538 TNR103, TAM072, TSH033, TCDP028, TNR010, S024, S023.
539 TSH023.

(ii) Purges and propaganda

464. Efforts to silence dissenting elements did not stop with the arrest of the reformers. It emerges from testimony the Commission collected that the Government pursued at least three paths to suppress any remnants of the call for reform movement: (a) harassment and arrest of those associated with or supporting the G-15; (b) public campaigns through State-owned media; (c) campaigns and arrests within the Eritrean Defence Forces.

a. Persecution of those associated with or supporting the G-15

465. During the months following the arrest of the reformers, individuals who were directly or indirectly associated with the G-15 as well as their supporters were harassed, "frozen" – if they held positions within the Government – and/or arrested.

466. Some relatives of the G-15 were among those arrested including Ms Aster Yohannes, the wife of Mr Petros Solomon. Ms Roma Gebremichael, the spouse of Mr Haile Woldense, was also arrested, as was Mr Tesfadet Seyoum, brother of Mr Estifanos Seyoum.[540]

467. Close colleagues of members of the G-15, many of them occupying high-level posts, were "frozen", arrested or disappeared.[541] One of them was Mr Weldu Asmaha, an official of the Gash Barka region, who died in custody in 2003. Not only was he a relative of a G-15 member, but he also challenged the legality of their arrests.[542] Those who were "frozen" remained under surveillance for two to three years.[543] According to witnesses, in addition to high-level officials, hundreds of low-ranking civil servants were apprehended following the arrest of the G-15.[544]

468. When supporters of the G-15 organized meetings outside the country, these were disrupted by pro-Government elements.[545] Inside the country, civilians suspected of supporting the G-15 or sharing their views were arrested.[546]

> A victim reported that his brother and other colleagues, all teachers, had been taken into custody shortly after the arrest of the G-15, as they had been *"suspected to have a different political point of view [from the Government]."*
>
> Another victim spoke about the arrest in November 2001of his father and 70 other people from his village who had criticized the arrest of the G-15 members: *"The Government started conducting propaganda meetings in villages, asking what they would do against the people who were causing problems. My father said: 'You fought together, they are your neighbours, you should resolve it amongst you.' He said this openly in the meeting. My father was arrested with other people around the same time."*
>
> A witness told the Commission about his supervisor who, while intoxicated, had ranted about the arrest of the members of the G-15 with his tablemates. He was arrested the following day and is still in prison today.

469. The very few individuals released were warned not to disclose information about the arrests at the risk of being re-arrested. None of those detained has had access to justice.

[540] TSH024, TSH033, S024, S015.
[541] TAM072, TCDP007, TSH032, TNR013.
[542] TFM007.
[543] TSH023.
[544] TSH023, TCDP024, TBA040, TSH098, TSH076, S144a.
[545] TNR008, TSH023.
[546] TCDP013, TNR023, TBA008, TNR088.

Moreover, up to the time of drafting of this report, the Eritrean Government has not provided information on their whereabouts.[547]

b. Campaigns in the media

470. The Government had started a campaign against the G-15 before their arrest, portraying them as "un-nationalists" and "traitors," also using *bado seleste*,[548] which embarked on a disinformation mission to spread rumours about them.[549] The Government also used *Hadas Ertra*, the State-owned daily paper, and the newspaper of the National Union of Eritrean Youth and Students to formally rebut statements that the reformers made in private newspapers.[550] A witness who spoke to the Commission reflected that, through the campaign, the Government had been preparing the population for what was to come.

471. The campaign intensified after the arrest of the members of the G-15. With the closure of the private newspapers in September 2001,[551] all claims by the Government were no longer challenged. A journalist noted that the message of treason by the G-15 had been fed to the population who had had no other source of information, as at that time, access to Internet was limited.[552]

472. Family members of the G-15 recounted to the Commission the devastating impact of the propaganda on their life in Eritrea. In addition to suffering from the arrest of their relatives, they endured exclusion and accusations of treason.[553] Family members of the detained recounted:

> *"The families were treated as lepers. People don't want to speak to you. They are scared to be associated with you. The open letter was about legitimate and genuine demands. People don't read and don't see… The worst punishment, especially at school, was no one would come near you, behind and in front of you. That is how you grow up."*
>
> *"Petros was a popular guy. He had a lot of friends who knew his mother. Yet, after he was taken, they were scared to see his mother."*

473. The son of one of the reformers echoed the same distress of growing up as a member of the families of the G-15:

> *"When I was in high school, my classmates thought I was a traitor. People from EPLF were coming to me and scaring me … When I went to Sawa, some people came to me and told me that I was not allowed to talk."*

474. The Government was successful at maintaining the population's acquiescence to its actions against the reformists demanding the implementation of the Constitution and an accountable Government. [554] As a witness concluded: "*A lot of people believed [the Government]. The regime is very good at manipulating people*." Reliable and historically correct information about the demands of the G-15 is not easily accessible in Eritrea, and

[547] See chapters VI, B, 2 , Violations of the right to liberty and security, and VI, B, 3, Detention
[548] The *bado seleste* (lit zero three) is an informal mechanism that functions as a "rumour machine".
[549] TSH023.
[550] TNR086, TNR084. See also Welde Giorgis (2014), p. 202.
[551] See infra.
[552] TNR008
[553] TCDP028, TNR003, TNR113.
[554] TSH023

up to now many young Eritreans believe that the group had tried to sell the country to its enemies.[555]

c. Campaign and arrests in the Eritrean Defence Forces

475. The authorities launched comparable propaganda within the Eritrean Defence Forces. Meetings were convened in military camps to debate the case of the G-15.[556] A former conscript noted: "*In those seminars and meetings, the Government used to claim that the G-15 are collaborators of 'our enemies [foreign countries]' and accused them of treason*." These meetings and seminars were presented as an opportunity for discussions and to listen to the conscripts' views. However, many soldiers were subsequently arrested for having intervened and having been perceived as criticizing the Government's actions. Witnesses understood in retrospect that the meetings were intended to identify and eradicate opinions that differed from the official line.[557]

A person who intervened at one of those meetings recalled: "*We were asked about our thoughts. I said, as a soldier I was not in a position to answer this question. I suggested that those journalists should be brought before a court and tried. They said it was a good question which would be answered later*." The victim was arrested the same evening and was incarcerated.

Another former recruit recalled a meeting at his military camp where a government official had read a letter which described the members of the G-15 as "traitors" and "selling the country". As in the previous case, those in attendance were asked for their opinions. The victim noted the immediate reaction of his supervisor when he suggested that those arrested should be given access to justice: *"Before I finished my opinion, he gave me an order to stop and sit down. Then he told the other members that I was agitating them to be on the other side of the Government. There were people of the same opinion as me. … He brought out his gun and said: 'if you say that opinion, I can even kill you. You are destabilising other people to be on the other side of the Government.'"* He was incarcerated for six months and released only after being forced to confess he had made a mistake and that he was guilty for what he had said about the G-15. After the release, he was not permitted to mingle with other soldiers and was allowed to leave the camp only occasionally, and always supervised.

A former conscript stationed at another camp described the meeting and his arrest in these terms: *"The military officers called for a meeting and explained about the arrest of the G-15. They said that they had conspired to disintegrate, dismember our country by cooperating with the enemy and outside governments. They have committed a crime. I was not convinced when I heard that because I was reading private press at that time and we did not think it was the case. Twelve of us then asked similar questions. I asked about what evidence they had that these G-15 had committed a crime. 'We read private newspapers and we read what the G-15 are saying and they are not talking about selling the country but are calling for the implementation of the Constitution, rule of law and justice. This is not a crime, so what evidence do you have for this?' The officers noted this and I and others were detained."* During the detention, he was asked to sign a paper indicating that he had made a mistake in defending the G-15 and that he deserved to be punished. He was imprisoned for two years and left the country immediately after being released.

[555] TSH032, TCDP028
[556] TFM024
[557] S075d, TBA023, TNR022, TFM007.

476. Testimonies collected by the Commission confirmed that those who asked questions or requested that the G-15 be brought to court were construed as supporting them and regarded as "contaminated", "dangerous", "causing instability" inside the camps, and were interrogated about the source of their thoughts.[558] The Commission also received reports that soldiers who were seen gathering during that period were arrested as they were immediately suspected of conspiring against the Government.[559]

477. The importance of undertaking such propaganda within the Eritrean Defence Forces was crucial as conscripts, in view of their large number, could be a source of trouble. Bearing in mind that interactions outside the camps were limited, the campaign essentially imposed the Government's point of view about the G-15 on those therein. Moreover, the detention of those who actually opposed the Government's actions effectively prevented any propagation of their ideas. Further precautions were taken by isolating those who had been imprisoned after their release.

478. Through these actions, the Government effectively removed any trace of the call for reform in Eritrea. "*The Government has successfully managed to not say, to not remember, trying to erase [the G-15] from memories of all, to make them forget these people. Young people will not know them*," commented a relative of a G-15 member.[560]

(iii) After the political purges of the 2000s

479. The 2001 crackdown ended any opportunity for overt political debates on state-building in Eritrea. All voices susceptible to challenge the Government had been silenced, either directly through arrests and disappearances or indirectly through fear. No other open protest against the Government has been documented by the Commission until the 2013 Forto incident.[561]

> Reflecting on freedom of political expression in Eritrea after the 2000s purges, a formerdiplomat in exile noted that "*there is no one left to criticize the Government directly. If someone speaks out, the Government, through the intelligence network, will find out who talks and people are arrested*."

480. At the same time, it appears that the 2001 crackdown sowed the seed of systematic and general repression of expression, whether critical of the Government or not. From then onwards, officials at all levels have arrested and detained people without judicial process or any kind of oversight, for expressing their opinion. The Commission documented a striking pattern of arrests for as mundane a reason as asking any kind of questions. A victim interviewed by the Commission reported: "*The first reaction to asking something or giving an opinion contrary to what they believe is punishment by detention*".[562]

481. 502. It also appears that the 2001 crackdown and the succeeding purges gradually established a situation tantamount to subordination whereby the population is expected to unquestioningly accept and obey. A former conscript reflected: *"It is a regime of fear, and everybody has come to think this is normal. A culture of complete obedience in the face of terrible things has developed*."[563]

[558] TCDP023, TFM024, TNR022.
[559] TFM024.
[560] TNR003
[561] TBA042, See chapter IV, B, 1, Political context
[562] TFM021
[563] TSH020

a. Repression of expression in civilian life

482. Testimonies collected by the Commission show that ordinary citizens as well as conscripts enrolled in the civil service are punished for expressing their opinion, even when it does not target the Government. While occasionally such punishment may consist 'only' in threats of arrest, most of the time citizens are actually imprisoned or forcibly enlisted in military training as punishment. Repression of expression occurs in a wide array of circumstances, from professional settings to the claiming of social entitlements. This has incidental consequences on the enjoyment and exercise of other human rights.

483. The Commission received testimony of repression of expression in the professional and academic context. [564]

> A medical professional told the Commission of his arrest following a comment made during a seminar on youth health: *"While I was walking in the streets, security forces came towards me in civilian clothes. They showed me their ID cards and asked me to come with them. I followed them. I was detained in a small house. It was a small place, very dark, I did not know where I was. They started asking me why I had made the comments during the seminar. I said this is what I thought. One person came to interrogate me. At a later moment, another person came and asked the same questions. They interrogated me during the night. I was there for one month until they released me. They said: you don't have to speak like this. I had to sign that I would not speak like this again; I had to sign a warning not to tell anyone.*"
>
> A former civil servant narrated to the Commission that he had been put in prison after writing a letter detailing the adverse impact of the Government's monetary policy on bank account owners.
>
> The Commission heard from a former student who was held for several days at an unofficial place of detention for asking questions on the closure of the University of Asmara at a meeting held at his school. He recalled the interrogation: *"He asked me a lot about why I had asked the question. I said I had asked because everybody has a dream to become something from childhood. He told me that I had no right to ask such a question and I had to be penalised for this. I was told to sign something saying that I would not do this again."* The victim was subsequently dismissed from his school and was forcibly sent to military training.
>
> A former college student reported being imprisoned and tortured for writing about the lack of economic opportunities in the country. On academic freedom, a former PhD researcher recalled: *"[The President of the University of Asmara] became obsessed with the research of the academics; I was constantly interrogated about my PhD research because it was about policy – the policy of languages in a newly formed multi-lingual state. He never asked people to present on their research, he just interrogated us about what we were doing and what the conclusions were. He led the staff by fear and intimidation."*

484. Another pattern of repression of expression in Eritrea is the punishment of individuals for claiming what they regard as legitimate rights. [565]

> A former employee of one of the national unions described receiving threats from a colleague after disputing the use of the Tigrinya language in the workplace: *"My colleague responded: "If you do not use Tigrinya you should not be working here.'*

[564] TBA093, S004i, TAM067, TFM009.
[565] TNR051, TCDP016.

He became angry when I said that it is my right. He said 'this lady has to go to Sawa.'" A few days later, she received a letter notifying her to report to Sawa for military training. She explained that, in spite of her attempt to expose to the municipality office her situation as an employee of a public organization and the sole care-giver of two boys and a girl whose parents were absent, she was refused deferral of the national service.

An orphan reported that he had been detained after asking that his social benefits be paid to his siblings: *I asked the Government if my siblings could receive my war compensation since I was an orphan. Due to this request, I was sent to prison for 3 months. The conditions at this prison are bad and I was treated worse than prisoners of war. They pointed a gun to my head and I was told never to ask for anything from the authorities. I lost 3 months of wages."*

A former conscript assigned in civil service reported that he had been arrested for asking to be transferred to a more meaningful assignment during a meeting in 2007: *"At the end [of the meeting] we could ask questions… I said "I would prefer to go somewhere else, to a place where I could contribute". He asked me to stop and sit down. Then my Lieutenant-Colonel called me to his office and asked me why I asked questions in front of 2,000-3,000 persons. This was a simple question. Then he made reference to the 2001 event and said 'You are doing the same thing now.' I explained there is no relation between 2001 and now. Then I was sent back to the place where I was doing nothing. Two days later he decided to send me to prison."* He added that he had been detained for one year, three months of which in solitary confinement. He was also subjected to beatings.

485. Finally, the Commission collected evidence of punishment for reporting wrongdoings in certain practices of the Government. [566]

A former staff member of a Government-run project told the Commission that he had been "frozen" from his position and later arrested for several weeks after querying the utilization of contributions received from donors: "*They stopped me for one week and asked me to stay at home. Then they brought me to a small room and interrogated me. You don't know who interrogates you; they are from the President's office, the intelligence. They took me in an underground custody near the airport of Asmara. I stayed there three weeks and they would come to interrogate me… They were interrogating whether I had contact with foreigners*."
A former teacher explained that he had been punished for objecting to the practice of forced enlistment into the military of pupils who dropped out of school: "*In Eritrea if a high school student quits one academic year, the next academic year he/she is not allowed to be back to school and instead he/she is forced to go for military training. As a high school principal I did not accept that policy because my students had acceptable reasons to drop their studies and that is why I readmitted them to pursue their studies*." The victim was imprisoned for a year and half without any trial, during which period he was subjected to ill-treatment and detained in solitary confinement. He was asked to plead guilty to working against government's policy.

486. The Commission also collected testimony of individuals who have been arrested for asking information on the whereabouts of family members.[567]

[566] TCDP007, S077f.
[567] See chapter VI, B, 2, Violations of the right to liberty and security.

b. Repression of expression during national service in the army

487. Freedom of expression is flouted in the military service[568] as it is in civil life. However, the Commission finds that the coercive setting of military camps has led to more severe repression. Conscripts are sent to prison for requesting leave to visit their families. Questions about conduct of public affairs or on perceived wrongdoings are immediately reprimanded with imprisonment, and often torture. Denial of family leave for several years has also been employed as punishment for asking questions. Decisions on the nature of the punishment or the length of detention are made at the discretion of military leaders.[569]

488. A former conscript's experience of being in prison three out of the ten years of his enlistment for speaking out reflects the nature of repression of expression in the national service: "*I went to prison because I spoke the truth all the time, I told them that they were not right."* Any criticism of the Government is punished with detention or torture. A witness told the Commission of an instance where a colleague had been disciplined after making an impromptu comment in reaction to a speech by President Afwerki during a television news programme. When the President referred to a region as fertile on the occasion of the inauguration of a water reservoir, the recruit retorted*: 'This is a lie! We are here, we know this is not a green area. This is a desert*." He was consequently taken away from group and punished in the otto position.

489. Just as outside military service, expressions of thought or demands unrelated to the Government's policies is equally punished. The Commission documented an important body of testimonies relating to punishment of conscripts for asking questions about their living conditions and demanding what they perceive as legitimate rights and expectations.[570]

> A former conscript assigned to a construction project narrated how he was arrested and detained for a month in an underground prison (time at which he escaped) for asking a question about safety at work.
>
> Several individuals testified to the Commission that they were punished for asking for family leave during the military service. One conscript recounted that he had been detained after asking leave to visit his ailing father: "*In June 2013, after a general meeting of [our Brigade], I approached [our Commander] to request for leave to see my family. I did not get a response. However, later the leader of my Battalion was asked to search for me. I was brought to the Brigade leader who indicated to him that at next meetings I should not speak or ask, otherwise I would be killed. I was asked to sign a paper, was arrested and detained for 25 days.*"

490. A witness further informed the Commission that the response to complaints by conscripts was often political brainwashing: "*Each time people were protesting, there was a big, excessive training, political teaching on the history of Eritrea and literature on Eritrea was distributed*."[571] The Commission was informed that at some point, conscripts who were considered as "under-nationalists" were reportedly enrolled in a programme of political education in Nakfa.[572]

[568] For more details about national service, see chapter VI, C, 1, National service
[569] TFM021, TFM035, TCDP006.
[570] TBA003, TSH001, TNR002, TFM023.
[571] TCDP006.
[572] TCDP013.

491. The Commission also collected testimonies on punishment of those who questioned practices inside camps. [573]

> A witness described that in 2011 a senior war veteran had been arrested after questioning the execution of a conscript: "*He stood up for the boy. He asked why they killed him. He was upset and tried to find out why they killed him. He was threatened and the superiors were against him*." He was ultimately imprisoned; by the time the witness left the camp, two years after the incident, he had not been released.
>
> A former conscript assigned to a unit controlling an area at the border with Ethiopia explained that he had been detained after commenting on the shoot-to-kill policy at his unit and on the arrest of fellow conscripts on religious grounds: "*At the meeting [with our commander], we were told [again] that we must shoot to kill anyone who tried to cross the border. I asked if there was not anything else we could do, instead of shooting the people. I also objected to the recent arrest of national service members because of their religion. I asked if we could find another way to deal with both the issues. That night my division slept in the open near the meeting location. While we were sleeping, some officers came and woke me and took me to detention*." He further described the interrogation: "*I was interrogated 'this idea is not yours, where did you get this idea from?' One person was writing what I said, and the other was beating me with the butt of his gun, a third person was beating me with a stick. I was in prison there for 5 months. I was interrogated and beaten for 3 months. Hit, kicked, items smashed on me almost every day. Sometimes I would be left for a day if my body was very swollen or bleeding a lot, but then when it healed [the next day] the beatings would continue*." He was in prison until escaping a year later; he fled the country immediately afterwards.
>
> Another victim who spoke to the Commission was also punished for criticizing several practices within the army: "*In 2010, when I was released, I returned to my unit. I criticised them because they did not pay my salary while I was in detention. We had meetings with the leaders and the soldiers… During the meetings, I always criticised them. For example, one day the leader was speaking about international military law. I said: 'We have been taught this law, but I don't know what the Eritrean military looks like, is there any law that allows the soldiers to beat the children in their villages? Children get beaten during the giffas. If parents come to look for their children, they get beaten.' I also criticised [the] beating of another soldier. This is what I was criticising. I said there was no need to beat the people. When I asked these questions, the leader beat me. They said I was disrespectful. They transmitted my name to the higher authorities*." The victim indicated that he was released after seven months; he was told he was being released only because his unit needed manpower.

492. The Commission documented a trend of intimidation and harassment after asking to be released from national service. While some requests were made formally, through letters sent to the Ministry of Defence, most of the time they were formulated informally by conscripts to their supervisors. Repeated demands were made after the border war with Ethiopia ended in 2000, when conscripts presumed that there was no longer a need to maintain them in the army. Occasionally, demands were also prompted by opportunities in conscripts' lives. [574]

> One victim reported about regular harassment and punishment after demanding to be released from the military service to pursue his studies abroad: "*I wrote a letter to*

[573] TAM001, TBA083, TSH015, see Section VI, B, 5, Arbitrary deprivation of life.
[574] S096, TLA022, TCDP009.

the Ministry of Defence for release so that I can start my private life and pursue my studies, but the Ministry of Defence forwarded the letter to the immediate boss and this upset him and he threatened me more, started punishing me by creating cases saying like you came late from the toilet place, or you raised your voice when you answer to me, or why you didn't respond immediately. The punishments were from 'normal' military punishments up to tying up my hand behind me and throwing me in to the logistics store for days. This went on and on for so many times, until I got a call to work in another department within our division."

Another former recruit who was imprisoned for asking to be released told the Commission: "*I was also detained in 2011 for three months in … prison because I had asked to be released and this was refused – so the chief had me arrested to punish me for asking. I also had to do heavy work, except on Sundays*."

A witness told the Commission that he had been arrested and imprisoned several times during the seven years of national service for asking questions. He recalled that when he and other fellow recruits had asked why they had not been released after the end of the war with Ethiopia, they had been held in detention as a disciplinary measure. They were freed from prison only when there was shortage of manpower for work.

493. Speaking during meetings seems to warrant harsher punishment. A former recruit explained to the Commission that he was put in the *otto* torture position for 24 hours many times because of intervening in meetings.[575] During the interrogation, suspects are always asked about the origin of their idea. This aims at identifying other individuals who may have the same opinion but also suggests that individuals are expected not to have independent thoughts. When detained, individuals were also reminded to never speak or ask questions again.

c. Denial of right to speak without fear

494. The majority of witnesses who spoke to the Commission mentioned their fear of speaking out. While people used to avoid speaking out in public, they are now afraid of doing so even in the private sphere. [576] Reflecting on freedom of speech in Eritrea, a victim declared: *"It is almost a crime to have an independent thought. Everything is tightly controlled by PFDJ. Should you not like what they are doing, wherever you are they have means of getting you."*

495. In the Commission's view, fear of speaking out is driven by several factors: (a) the country's history of punishing critics of the Government; (b) the fact that ordinary citizens have been arrested for having expressed their views; (c) the fact that speaking about any issue can land oneself in prison; (d) repeated messages not to speak or ask about any arrests or incidents; and (e) surveillance by the Government and PFDJ, including through networks of spies.

496. Witnesses remarked that the general public was not necessarily aware of the instances of repression of divergent opinions during the 1990s, as they had not been relayed through the media and had been internal to the ruling party.[577]

A witness stated: "*Until 2000, Eritrean people had no clear idea of what was going on there; this was because the people had strong belief in the political party from the past. The people had no idea about the situation in the country, about what was*

[575] TLA009.
[576] TSH023.
[577] TNR077, S035, TNR086.

happening to the people. What bad things happened to people were done at night and all in hiding. However, who wanted to know knew. After 2000, the people had a clearer idea."

497. The arrest of the G-15 members and the publicity surrounding it were a defining moment. Relative self-censorship, which had existed before the 2001 crackdown, became generalized. Moreover, while before the 2001 crackdowns only politicians were targeted, it appears to the Commission that arrest of ordinary citizens intensified following the 2001 crackdown.

498. Arbitrariness of arrests related to freedom of speech also rendered Eritreans cautious regarding what they said: innocuous question or statement could be perceived as criticizing the Government. A freedom fighter who left Eritrea in 2014 reported: *"People don't talk freely, they only joke, they are too afraid to say anything serious*." In addition, individuals are threatened that they would be arrested again should they speak about their experiences during arrest and detention.[578]

499. Eritreans are also afraid to speak because of government surveillance. They are aware of the omnipresence of spies and especially the fact that even their family members or friends could be agents of the National Security Office. The level of distrust that the Government's use of spies has engendered among Eritreans is remarkable: [579]

"*You cannot trust a member of your family; they terrorized the population. They put spies everywhere*."

"*You cannot freely talk with your friends because there are security officers everywhere*."

"*You can't talk, you can't trust each other, not even your relatives, not in cafés, bars, too dangerous to talk openly; they can take you to prison. I talked with my family, but not with the friends*."

"*The distrust between people is very high. You do not even trust your own brother; he could be even part of the national security.*"

500. Even if family members were not spies, people feared that their conversations inside the home may be overheard outside. Therefore, children did not inform their parents about their plan to escape the country; husbands hid from their wives episodes of participation in activism; former friends stop speaking to each other after a period of incarceration.[580] The fear to speak out affected every aspect of life: religion, family life, employment. An older person told the Commission, for example, that it had been impossible to speak about religious affairs in the country: *"[P]eople inside the country cannot express their opinions about Patriarch Antonius; they could not show support for him after his disappearance. Only people in the diaspora can speak about it. Those afraid of the government only talk of the fourth patriarch; they are too scared to mention anything about the third."*

501. The Commission finds that Eritreans have been deprived of the most basic level of their right to freedom of expression.[581] A former high-level official interviewed gave another explanation as to how Eritrea reached this situation:

"People can't express their ideas, not only political ideas. A hungry family is not allowed to say that they are hungry. People from the Government say in meetings:

[578] TNR067, TLA014, TNR023, TBA095.

[579] S035, TBA077, TCDP024, TAM031. See chapter V, A, 2, Security sector and chapter VI, A, 1, Surveillance of the population in violation of the right to privacy.

[580] TLA014, TNR077, TNR050, TSH008, TSH009.

[581] TBA096.

'Don't say you are hungry, also during WW1 people were hungry, we are not the first ones to be hungry.' People don't talk about their experiences and ideas. Their lives are not safe. Family members don't trust each other. Even spouses don't trust each other, which was intentionally created by Government. They can't administer their own family, their own house."

502. The fear to speak out persists among Eritreans after they have left the country.[582]

(iv) Persecution of critics in the diaspora

503. The Commission documented reprisals against Eritreans in the diaspora who criticized the Government. Members of the diaspora who travel to Eritrea, including for family reasons, face the risk of being arrested. Some individuals who spoke to the Commission were detained for a few days, while others were incarcerated for as long as a year. In some cases, their release was secured only through an intervention of the authorities of their country of residence or through informal channels. None of them was ever brought to court. Arrest of critics of the Government during their stay in Eritrea started in the early 1990s and was ongoing.[583]

In a submission to the Commission, an Eritrean resident of a European country described being arrested three times during a month-long vacation in Eritrea. The victim had criticized the Government's actions against the G-15: "*One week after my arrival in Asmara, two unknown people came to my parents' home in Asmara. ... Then they took [me] to the Second Police Station in Asmara. Until I reached there, they didn't even tell me where they were taking me and for what reason I was being taken. Then another person came and he began asking me (interrogation style). The first question he asked me was: why I was brought there. I told him I didn't know. Then he told me I didn't believe in the Government. He then told me I am a regionalist, because allegedly I was sympathising with the G-15 on the ground of regional affiliation with them. ... I told him I love my country but I know there are some unpleasant developments taking place in the country that I do not like. I told him that I cannot hide this. Finally, I asked him to tell me who my accuser is. He said it was the [G]overnment. Later in the day I was sent back after spending the entire day in the police station. Then I was asked to report again the next morning. I did this for three consecutive days and I felt I was in prison*."

A member of an opposition party in exile described his arrest in 2011 during a stay in Eritrea to visit his mother: "*I went back to Eritrea because my mother was sick and I wanted to take her out for treatment. Three people from the security forces who were in civilian clothes came to my house. They told me that they needed me for some business. They forced me into their car and pointed a gun at me. Then I was taken to the police. I was interrogated three times. During the first interrogation, they told me that I was in the opposition party, which I was. ... I was a secret member of the party. The security people found out about this membership. I did not admit that I was a member of the party. ... I was beaten during second and third interrogations They would make me lie down and they would beat me on the feet with a plastic rod. This would last for about 30 minutes*." The victim was imprisoned for several weeks and got released only thanks to the intervention of an acquaintance in the Government.

Another victim, whose family openly opposes the Government, was arrested during a visit to his ailing family member in Eritrea in 2014. He narrated the interrogation and detention to the Commission in these terms: "*The interrogation started in the*

[582] TCDP078, TFM004.

[583] S143d, TAM065, TAM071.

afternoon around 12 p.m. They asked me who took me from the airport upon my arrival. I told them that my uncle picked me up. They also asked me who was in the house when I arrived. I told them my family, friends and my grandmother. … After that they asked me about the documents that I brought from [my country of residence]. I told them I did not bring any documents and I only came to see my grandmother. Then they said that they had information that I had brought information for the opposition group. I told them that they probably had a wrong person. The second interrogator then took his gun and put it on the table and he said that this is a serious issue by the government. They asked me the number of opposition meetings I attended. They said that they know that I and my family were part of the opposition. Then someone knocked at the door and one of them went to talk to the person at the door. Then the interrogators started to leave and I asked if I could go home. Afterwards, the guard took me to a cell. The interrogation lasted for about one hour. When I was arrested at home, my grandmother was there together with my other relatives. They did not tell my relatives where they were taking me to. I was also interrogated on the second day. On this day they beat me. They stated that if I was ready to say the truth. I told them I had said everything I needed to say. They started to beat me all over my body (shows a scar on the scalp of about three centimetres). He used a stick. I was beaten for about 15 to 20 minutes." The victim was released after three days through informal channels.

504. None of the interviewees has returned to Eritrea thereafter. Arrests of Eritreans for speaking freely outside the country violate their right to freedom of expression, and constitute arbitrary arrests. In addition, the fact that they do not return to Eritrea out of fear infringes upon their right to freely return to their country.[584]

(v) Principal findings

505. The Commission finds that the Government of Eritrea systematically silences anyone who dares to protest, question or express criticisms about the Government and its policy, even when such statements are genuine and legitimate in the context of a democratic public debate. The most visible of such repression of perceived critics was the 2001 purge of the G-15 and their perceived supporters. Since that time, the Government has consistently labelled perceived critics as traitors and repressed any signs of protest or disapproval. Perceived critics are either killed or buried forever in the sprawling detention system of Eritrea.

506. Following the 2001 crackdown, the silencing of the population went a step further as persons started being punished for claiming the enjoyment of fundamental rights and legitimate benefits, for asking questions, for enquiring about the fate of persons perceived as critics by the Government or for discussing about governmental policies. In the military service, any attempt to question or express an opinion is also repressed without mercy. As a result, Eritreans are living in fear of saying something that the prolific network of governmental spies may perceive as indirectly criticising the Government and are effectively censoring themselves, including within the family setting.

507. The Commission recalls that merely invoking general grounds such as national security or public order cannot be considered as legitimate to justify restrictions of the freedom of expression.[585] The Commission finds that in contravention of international standards, the Government of Eritrea is silencing its population, including through the use of arbitrary deprivation of life and liberty, torture and ill-treatment. Forms of expression on public issues are particularly targeted.

[584] See chapter VI, A, 2, Freedom of movement.

[585] Human Rights Committee, General Comment no. 34, para. 30.

(a) Violations of the right to seek, receive and impart information

508. The right to seek, receive and impart information and ideas of all kind, either orally or in writing or in print, regardless of frontiers is included within the freedom of expression.[586] Accordingly, journalists should be able to exercise their functions freely, without threat of severe penalties against them or the press organs, without harassment from public officials and without undue censorship of their work. A general system of registration or licensing of journalists is incompatible with international human rights law.[587] A permanent ban of a publication or media outlet, including electronic ones, is not compatible with the right to the freedom of expression,[588] as citizens have the right to get access to the press and receive information and media output, including access to electronic information and communication technologies.[589] The Commission mainly based its assessment of the restrictions of the freedom to seek, receive and impart information enforced in the State of Eritrea vis-à-vis those permitted under international human rights law to protect and respect the rights or reputation of others and the protection of national security, public order, public health or morals.[590]

509. Press Proclamation No. 90/1996 regulates, among others, journalism as a profession, censorship and the licensing and operation of media outlets. The Commission has major concerns with regard to the Proclamation as it places freedom of the press on very fragile foundations. Above all, in article 1(c) it permits the Government to 'censor all publications and mass media' "where the country, or part of it, is faced with a danger threatening public order, security and general peace caused by war, armed rebellion or public disorder or where a natural disaster ensures". Such a stipulation does not provide enough details to comply with the general principle of legal certainty and predictability required to limit the right to freedom of information.

510. Under the Proclamation, only journalists who are registered as such and duly authorised by the Ministry of Information are permitted to engage in professional press activities. Any persons presenting themselves as journalists but not registered are punished with imprisonment from six months to one year or a fine from 1,000 to 2,000 USD.[591] Foreign journalists may only work in Eritrea with the permission of the Minister of Information and after having obtained a press card issued to foreign correspondents issued by the Ministry of Information. The permit of the Minister is valid for one year and the Minister can refuse to issue such it without having to provide reasons. Foreign journalists remain accountable to the Minister of Information for their actions, in addition to being legally liable if they break the law.[592]

511. The Eritrean Government has the exclusive ownership of the audio-visual media: radio and television.[593] Newspapers can be privately owned but only by Eritreans. The transfer of partial or full ownership of newspapers requires the authorization of the Minister of Information.[594]

512. Newspapers can only be published with the permission of the Ministry of Information and the subsequent issuance of a licence by the Business Licence Office. The

[586] Art. 19 (2) of ICCPR and art. 9 of ACHPR.
[587] Human Rights Committee, General Comment no. 34, para. 44 and 45.
[588] Human Rights Committee, General Comment no. 34, para. 39 and 43.
[589] Human Rights Committee, General Comment no. 34, para. 13-17.
[590] See Art. 19 (3) (a) and (b) of ICCPR.
[591] Art. 3 and 15 (1) of Proclamation.
[592] Art. 10 (1) and (2).
[593] Art. 1 (d).
[594] Art. 6 (1) and (3).

Ministry's decision to refuse a permit can be appealed to the High Court.[595] The permit of a newspaper and its business licence are cancelled if the newspaper fails to publish four successive issues without good cause.[596] Eritrean citizens who are prohibited from establishing political associations, who have been deprived of their political rights, who oppose the principles of national unity or advocate for division and disintegration of the country, who have been convicted of immoral crimes or corruption and misappropriation are prohibited from publishing newspapers and participating in the publication of any of them. The publication of newspapers is tightly controlled by the Ministry of Information, including through the control of the financial accounts of newspapers on an annual basis.[597]

513. The Proclamation also lists matters which should not be published and disseminated by the press and other media.[598] This list completes the general obligation imposed on the press and journalists to respect the private life, dignity and prestige of all families and individuals and to ensure that their work does not infringe upon national safety, security and supreme national interests, promote division and dissension or ideas inciting violence and terrorism.[599]

514. According to the Proclamation, the journalist and the editor in chief of the newspaper publishing articles on prohibited matters and disrupting the general peace shall be prosecuted before the High Court for having committed the following criminal offences: injury to constitutional authorities, insults to national emblems, attacks on the independence of the State, impairment of the defensive power of the State, high treason, economic treason, collaboration with the enemy or for the provocation and participation to these offences.[600] Most of these offences are punishable with several years of imprisonment or even life imprisonment. The owners of newspapers can be prosecuted for high treason and collaboration with the enemy before the High Court if they illegally obtained revenue from a non-Eritrean source and if this revenue is used to serve external or internal interests that contradict the national interest.[601]

515. Finally, the Proclamation aims to regulate and strictly control the dissemination of foreign information and media in Eritrea, including artistic products. Permits for their import and distribution should be obtained from the Minister of Information and subsequently a business licence from the Business Licence Office.[602]

595 Art. 14 (1).
596 Art. 7.
597 Art. 7 (6) (7) and (9).
598 Among others, are prohibited (art. 12 of the Proclamation): (a) any matters that vilify or belittle humanitarian and religious beliefs; (b) any documents or secret information on the supreme interest of the nation and people or related to national security and defence secrets; (c) any matters that incite religious and sub-national differences, promote a spirit of division and dissension, vilify the Eritrean people's tradition of struggle and incite violence and terrorism; (d) any matters that undermine the territorial integrity, sovereignty and independence of the nation; (e) information on in-camera meetings of high officials and organs of the State; and information on judicial cases about which courts, prosecutors and investigators decided to suspend the publication and dissemination of information; inaccurate information and news that intend to influence economic conditions, create commotion and confusion and disturb general peace; and information, pictures, maps and shapes of the Eritrean territory without the prior permission of the concerned government agency. Other prohibited matters that are falling under the objectives recognized for the limitation of the freedom of expression are: defamation and blackmail; information prejudicial to ongoing judicial proceedings; matters that contravene general morality and encroaches dignity of minors or private lives of citizens.
599 Art. 5 (2)(c) and (g).
600 Art. 15 (10).
601 Art. 15 (14).
602 Art. 8 and 9.

516. On the basis of this analysis, the Commission determines that the system of regulation of the press and journalists in Eritrea is not compatible with the international human rights law related to freedom of expression and information. The substantive restrictions imposed on the press and on journalists by the Proclamation are too general and too vaguely defined to be compatible with the respect of press freedom. The outcome of these restrictions is that provisions may easily be invoked to prevent any publications that criticise or question the past and present actions and policies of the Eritrean Government.

(i) Short-lived press freedom

517. Private newspapers were founded after the promulgation of the 1996 Press Proclamation and in line with its provisions. Most newspapers sprung from initiatives of young graduates of the University of Asmara who had an idealistic vision of the role of media in a democratic state.[603] Setit was Eritrea's first independent newspaper; seven other newspapers operated in the country until their closure in 2001: Admas, Keste Debena, Mana, Meqaleh, Tsigenay, Wintana and Zemen.

518. At the outset, private newspapers were confronted with heavy censorship that the Ministry of Information imposed.[604]

> A journalist explained that each issue of the newspaper was thoroughly screened and had to be cleared by the Ministry of Information before its printing and circulation. Very often, they were requested to amend or remove articles from the ready-to-print version.
>
> Another journalist explained the process: "*They ask you to bring two copies of each newspaper before its circulation. They tell you to delete and omit some parts. Sometimes, they tell you if there is anything that is not under the law after the circulation has started. If the man in the censorship office misunderstands what you write about, you have a problem*." He remarked that, for some time there appeared to be little difference between the content of private and State-owned newspapers as a result of such censorship.

519. One newspaper reportedly took legal action against the Government on the illegality of the screening procedure. Since under the 1996 Press Proclamation, decisions to censor must be taken by a Court, the tribunal ruled in favour of the appellant and ordered the Government to cease the practice.[605] Thanks to this intervention by a then independent judiciary, private press enjoyed relative freedom henceforth.

520. A former journalist recalled how during that period articles critical of the Government were published by independent media. As a result, private newspapers became popular. Copies left the city every morning to be distributed in towns outside Asmara.[606] The reach of these private newspapers was still relatively limited. They usually printed between 5,000 and 15,000 copies and it was only when Setit published the interview with President Afwerki that more copies were distributed.[607] Their readership was restricted to the literate fraction of the population that spoke Tigrinya. To give an idea of the size of this population, according to figures supplied in the first report of the State of Eritrea to the

603 TNR087
604 TNR087, TNR008, TNR086.
605 TNR087.
606 TNR086.
607 S146.

Committee on the Rights of the Child in 1998-2000, the literacy rate in Eritrea was approximately 30 per cent.[608]

521. A journalist in exile noted that a request to establish a newspaper publishing in Arabic was not favourably considered by the Ministry of Information, when it was indicated that it would be a private initiative. Instead, a representative of the Ministry viewed the proposal as 'a waste of skills and time.'[609]

522. This period of press freedom coincided with the end of the 1998-2000 border war with Ethiopia. Critical analyses of the government's policies, including its handling of the war, became commonplace in independent newspapers. They also published the G-15 open letter and interviews with its signatories. A journalist in exile explained to the Commission that the Government had often exercised its right of reply in reaction to articles which were not to its liking. [610] He described the Government's reaction to an article he authored:

> *"One person responded. I wanted to respond back, but the editor said that we should not. We received a call from the Minister of Information that said this must not continue. It was a kind of warning, but not directly to me. We published their response. We were not allowed to respond further or otherwise we would be in problem. Some people still remember it now."*

523. The incident shows that in spite of the relative freedom, there still was a certain level of distrust vis-à-vis the Government and therefore of self-restraint in publishing articles on certain matters on the part of private press. In fact, there were instances of reprisal and intimidation. For example, in reaction to the legal action the Government reportedly summoned the editor-in-chief of the newspaper and ordered him to report for national service.[611] Numerous journalists were reportedly requested to enlist in the national service in reprisal for their work.[612] Another illustration was that the National Union of Eritrean Women threatened legal action following the publication by a newspaper of an article on women's situation during the revolution.[613]

524. Persecution of journalists writing for the private press grew after the end of the war. The closure of independent media houses and the mass arrests of independent journalists in 2001 represented the culmination of the clampdown on the private press. On 18 September 2001, at the same time that the authorities proceeded with the G-15 arrests, the Ministry of Information declared it would suspend the operations of private newspapers, which were regarded as threatening the unity of the nation. The suspension was announced as a temporary measure. The decision could also be understood as implicitly withdrawing the licenses of private newspapers since it indicated that from then onwards, licenses would be issued to law-abiding media houses. [614]

525. A few days after the announcement, the authorities started arresting journalists. From testimonies collected, the Commission established a list of 15 independent newspapers' employees, journalists and free-lance contributors arrested following the closure of the media outlets. There are reports that three of those detained may have been

608 CRC/C/41/Add.12, para. 30.
609 TBA040.
610 TNR086.
611 TNR087.
612 See https://www.ifex.org/.
613 TNR086.
614 Text of announcement: http://www.wefightcensorship.org/ , accessed 25 April 2015.

released a few months after the arrest. However, the Commission was not able to verify this information.[615]

526. President Afwerki set up a special committee, composed of high-level officials[616] and mandated to review the case, reportedly determined that those detained had not violated the 1996 Press Proclamation. However, the President did not act upon its recommendation to free the journalists and lift the temporary suspension of private newspapers,[617] and authorities did not re-issue licenses to private media outlets, as announced in the September 2001 decision.

527. The detained journalists were never formally charged and were never brought to justice. Moreover, up to now the Eritrean Government has refused to provide information on their whereabouts and state of health. Attempts to seek justice in the country, as well as internationally through the African Commission on Human and Peoples' Rights, have been ignored by the Eritrean Government.[618] It should be recalled that the African Commission concluded that the arrest and detention of these journalists constitute violations of the right to freedom of expression and called for their immediate release.

528. Correspondents of foreign media, whose activities are also regulated by the 1996 Press Proclamation, were subject to the same level of scrutiny as journalists of local media.[619] Witnesses spoke of a correspondent of a foreign media outlet who had been detained for a couple of years reportedly in reprisal of the diffusion of materials he had produced.[620] Other cases are well documented by open source materials.

(ii) Control of information

529. Control of information is crucial for the Government to retain power, maintain public's support on its legacy as liberator of the country and project an image that it continues to work for the good of the population. With the closure of independent newspapers, the Government effectively imposed a stranglehold on information in the country as it controls the media, the messenger, the content and the access to information and to means of communication.

530. The Government also seeks to control the dissemination of information about the country's predicament outside Eritrea. Journalists have been persecuted for this reason. Access to means of communication is also controlled for this purpose. Information from outside the country with any discernible risk that it may affect the image of the Government is censored.

a. Control of the media

531. Eritrea's media landscape comprises two television channels (Eri-TV and Channel II), three radio stations (Voice of the Masses, Radio Numa and Radio Zara) and several newspapers: Hadas Ertra published in Tigrinya, Eritrea al-Haditha in Arabic, Eritrea Hadas in Tigray and Eritrea Profile in English. The publishing of print media and the broadcasting of programmes in the Tigrinya, Arabic, Tigray, Kunama, Afar, Saho, Bilen, Hedareb, Nara

615 TAM005, TBA004, TBA038, TAM075, TNR087, S059, S076, S146, S07h, S108.
616 Welde Giorgis (2014), p.232: "The committee comprised Mr. Yemane Gebreab, Mr. Tesfai Gebreselassie, Mr. Mahmud Ali Jabra, Mr. Mohamed Mr. Ali Omaru, Mr. Naizgi Kiflu and [Mr. Andebrhan Welde Giorgis]."
617 Welde Giorgis (2014), p. 310.
618 S077h, S044.
619 TFM034.
620 TBA088, S108.

and Amharic languages are noted by the Commission.[621] In addition to these, the National Union of Eritrean Youth and Students publishes its own newspaper and PFDJ also has its own magazine, Hidri. Finally, an interviewee informed the Commission of a Government-controlled weekly magazine for former fighters allegedly summarizing news and *"secret information."*[622]

532. All media outlets currently operating in the country are owned or controlled by the Government. Ownership of television channels and radio stations, the two media with the broadest reach, is reserved to the Government. Moreover, the law envisages the possibility for the Government to revoke private newspapers' licenses without a court decision. The closure of Radio Bana is the latest illustration of the executive branch's control over media in the country.

b. Control of the content

533. State-owned media is used to enhance the image of the Government. Witnesses interviewed by the Commission confirm that State-owned media mostly relay information on the Government's own achievements and the liberation of the country. Witnesses remark that programmes showing the liberation of the country are constantly aired on Eri-TV. On the other hand, social issues are not debated; problems affecting the population are not reported.[623]

> A journalist explained to the Commission that he had been instructed to write only positive information about the Government: "*I was given guidance in my journalism career to write about development and nothing else. You had to say only good things about the country. You have to say positive things all the time*."
> Another journalist commented on his work: "*We had to publicise information about the achievements of the Government, for instance, the construction of a new dam, but never about problems or issues faced by the people*."

534. State-owned media is utilised to communicate the effectiveness of policies implemented by the Government. For instance, to support the Government's efforts to eradicate crimes and corruption Eri-TV aired a programme called Kaysaerere, showing inmates admitting their crimes. The Commission heard disturbing information on the programme and the making thereof.[624]

> A former inmate recounted to the Commission that journalists came to the prison to interview people who had been brought from other prisons. "*They ask them to tell the story and then people think the Government is working hard*."
>
> A journalist explained that reporters had visited detention centres to film the programme. He described a colleague beating an inmate when the latter denied that he had done what he had been accused of. The witness further added that those who confessed were not criminals and that they had admitted crimes because they were tortured.

535. When the show was discontinued, the concept was taken up by a magazine published by the police, called *Hizbin Polisn*.[625] A witness explained: *"It is about crimes, showing the connections between people and the police. There are persons who committed crimes featured in the magazine, thieves, killers, etc. but there are also love stories and*

[621] Dan Connell and Tom Killion (2011), p. 436.
[622] TCDP024.
[623] TAM004, TSH020, TNR077, TFM017.
[624] TCDP023, TCDP024.
[625] S139, TCDP033.

jokes. They testify in the magazine and their picture is shown. The persons featured in the magazine are interviewed in Sembel prison."

536. The Commission gathered testimonies also suggesting misinformation by the Government. [626] For instance, a journalist recalled that when a photograph about the killing of a young man, supposedly while escaping from a round-up in Asmara, had surfaced, the Ministry of Information reportedly attempted a cover up by announcing that it had spoken to residents of the neighbourhood who confirmed that the incident did not happened.[627] Similarly, the Minister of Information initially denied that the killings at Adi Abeito during an attempted escape in 2004 had occurred and insisted that the incident had been a "*smear campaign by [a foreign country]*." Another example is the concealment of information on the 2009-2010 droughts, which, inter alia, caused the closure of many schools as residents were forced to leave their region.

537. To achieve this degree of control, the Ministry of Information is obliged to impose rigorous censorship. Journalists who spoke to the Commission indicated that the Ministry employed a group of editors, primarily composed of former fighters, tasked with reviewing information to be relayed by the media. Every piece of news is examined by the body. Reference to screening by the Office of the President itself was also made by an interviewee.[628]

> A journalist explains the organization and the process of review: "*When the news arrives, a journalist edits it and sends it to the editing group. Then the leader of a programme reviews it before it is aired. There is a difference between ex-fighters and the others … If you are not an ex-fighter you can be an editor but your work will always be supervised by ex-fighters who are the leaders. You always have to be accompanied by a leader who is an ex-fighter*."

538. Journalists who spoke with the Commission indicated that very often their work was substantially edited and sometimes censored altogether.[629] The Commission heard illustrations of the outcome of such review:

> A reporter explained how an investigative piece on the socially disadvantaged the situation of children of former fighters, who did not have access to education, had been censored.
>
> One reporter spoke about an assignment to report on the building of a new school: "*When we got there, the school had no teacher because there was no salary to pay them. The school had become a cowshed. We were sad and worried about what to say. We were asked to say only positive things about the new school and report that teachers were about to be recruited. I wrote exactly what I saw; I said there was a problem because there was no teacher. I gave my article to the editor but when it was published, the article was actually about farming in this area."*
>
> Another journalist interviewed a villager who had expressed appreciation for an NGO. He recounted: "*When the article was published, it said thanks to the Government which has helped us to build the school and bring water to the village."*

539. According to the 1996 Press Proclamation, censorship decisions are to be made by the court. The Government's practices, therefore, violate not only international standards but also Eritrea's own legislation.

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626 TNR008, TCDP074, TCDP070. Also BBC, "Eritrean Jail Deaths 'Overblown'", 8 November 2004. More information on the incident is found in chapter VI, B, 3, Detention.

627 TNR008.

628 TBA040, TCDP033

629 TBA040, TNR086, TFM017.

c. Control of the messenger

540. The Government exerts control on journalists through excessive interference in the exercise of their profession and through intimidation, harassment and persecution. This control of the profession starts at the training stage. The higher education programme for journalism is designed to serve the Government's agenda.[630] A witness described journalism training in Eritrea in these words:

> *"[After the closure of the University of Asmara], the curriculum for journalism was reduced to one year. The curriculum for the college had been prepared and was very different from the programme at Asmara University. After graduation, students are assigned to the Ministry of Information to work. They would be trained again about propaganda ... There is always someone in the class from the military or the national security. There are no books or facilities that a university should have."*

541. The training programme does not, therefore, educate students about the role of the press in a democracy. After graduation, in line with the country's regulations and practice on national service, students do not have the possibility to choose their employment. Instead, they are either recruited by the Ministry of Information or serve in another posting chosen on their behalf. Once graduates work for one of the State-owned outlets, they are under the control of the Ministry of Information. Testimonies collected by the Commission show how the practices of the Government, aimed to control the production and diffusion of information, have eroded the profession of journalism in Eritrea.

542. Journalists are monitored and directed in the performance of their work. Several interviewees informed the Commission that they were given questions to ask or texts to read.[631]

> An exiled journalist described an interview of former fighters he had conducted with other colleagues: "*We had a list of questions to ask to ex-fighters. They were the ones in power, like administrators, police officers, etc. They had received the same paper and they had no answers written but they knew what to answer*. *The questions were not neutral … Journalists were dictated what to write down*."
>
> Another former journalist equally deplored the lack of freedom to perform one's work: "*There was no access to information. There were restrictions on who can say what and when … We did not do investigations, no interviews. You get the text and are told what to say. We read the news that they gave us*."
>
> An interviewee explained to the Commission that the close supervision of their work extends to the monitoring of sources of information: "*Before, we used to have Internet in all offices, but now they put an Internet café in the office of the Ministry of Information where accessibility is controlled."*

543. Many interviewees commented on their inability to perform their profession altogether.[632] A journalist refers to professional dissatisfactions as one of the reasons that led him to leave the country: "*The main reason why I left was that my profession was damaged. I was not telling the truth, the real situation of my people but just what my supervisors wanted me to say.*" An exiled journalist uttered the same frustration about his profession: "*As a journalist, I could not work independently. I was used as propagandist*."

544. Journalists who spoke to the Commission deplored their supervision by officials, mostly former fighters, who were appointed for their political affiliation to PFDJ and not

630 TCDP074.
631 TFM017, TAM004, TBA040.
632 TAM004, TFM017.

for their competence in journalism. This change took place after the border war with Ethiopia and was intended to ensure close control of State-owned media.[633]

> A journalist described the change: "*The war changed many things, including the hierarchical and power system in Eritrea. People were making their presence felt. They were not even acting as journalists. They were filling out forms. We did not have much contact with them. There were some people I knew from before. They were of course part of PFDJ but they also had other tasks, for instance journalists or editors. After the war they became more powerful, had editing functions for instance*."
>
> Another journalist explained the incidental effect of the change on his work: "*In the Ministry of Information for instance there were many graduates but they were replaced by ex-fighters with no education. They put all the authority in their hands. … The person who was supervising me only reached grade 5 and was unable to correct any mistake*."

545. Many journalists work in the Ministry of Information as conscripts. As such, they are employed under the conditions reserved to those in the national service, which is assessed to constitute a form of forced labour. Some conscripts were compelled to seek additional sources of income to make ends meet, a practice which is prohibited and can lead to punishment.[634]

> A journalist recalled: "*The amount of work you are requested to do is very different from your wage. You work a lot, sometimes 10 hours a day, sometimes from 8 in the morning until 10 at night, and you are paid very little, 500 Nakfa per month. It was considered part of the national service. The money is only sufficient for 3 days*."
>
> Another journalist added that, as an employee of the Ministry of Information, he was required to work seven days a week.
>
> Another journalist explained that he eked out a living by taking on temporary informal jobs, a survival strategy employed by many conscripts in the civil service: "*I was paid 500 Nakfa per month. Basically it was enough credit for my mobile phone. I got an extra job editing and shooting films to support myself. Having a private job was not allowed. I used to use a pen name to work undetected but was often discovered. I was given extra work at the Ministry and threatened with imprisonment*."

546. The most serious attack on journalists working in State-owned media remains the constant persecution that they suffer in Eritrea. Journalists are arrested, detained in dismal conditions without charges and sometimes subjected to ill-treatment and torture. Through its investigation, the Commission documented numerous cases of arrests of journalists. Before the war, journalists were arrested for the content of their work. As media censorship increased after the war, arrests occurred primarily on suspicion of collaboration with entities outside Eritrea.

547. The earliest case documented by the Commission was the arrest in 2000 of at least two journalists in relation to a news item which was viewed by the Ministry of Information as 'provoking Islamic tendencies.'[635] The Commission was not able to ascertain the situation of one of these journalists. His colleagues believe that he is still in State's custody.[636] Another case reported to the Commission was that of an employee of the

633 TCDP024, TFM017, TCDP064.
634 TCDP031, TCDP033, TSH037.
635 TAM005.
636 TFM017, S154.

Ministry of Information who was dismissed from media functions for commenting on the Government's response to the border war with Ethiopia.[637]

548. One journalist from State-owned media is believed to have been arrested during the 2001 crackdown and he was released two years later. However, the Commission was not able to determine the reason of the arrest.[638]

549. Subsequently, there were several episodes of arrests. Most of them were linked to suspicions of supplying information to foreign countries or to media outlets or organizations based abroad. Suspects were arrested on the presumption that they collaborated with members of foreign diplomatic missions in Eritrea and foreigners in general. This practice falls in line with the State's policy of controlling information about the country and its dissemination beyond the frontiers.

550. The Commission received testimony relating to three journalists arrested in early 2002. A journalist in exile reported on the arrest of a colleague possibly because of his connection with a foreign representation in Eritrea. A witness interviewed by the Commission spoke about another journalist who appeared to have been taken into custody for similar reasons. Two of these journalists are believed to still be in detention.[639]

551. In the fall of 2006, authorities proceeded with a first mass arrest of journalists working for State-controlled media houses. Evidence collected by the Commission enabled it to identify 17 journalists arrested that year. They were held on suspicion of giving out information to organizations outside Eritrea or in reaction to the flight of other journalists.[640]

> A witness told the Commission details of an arrest: "*In 2006, many journalists left the Ministry of Information, especially at the end of October 2006. From that time, many journalists were arrested. When I was going to the club to have a tea at 10-11 am one day, a security mini-bus came in front of the Ministry building and arrested journalists. I was not arrested at that time, I was lucky … These journalists were tortured, they were suspected of cooperation with Reporters without Borders, the Committee for the Protection of Journalists or other international human rights organizations. They were asked to give the password of their private email account*."
>
> Another journalist who had fled recounted: *"After I had left, they imprisoned 10 journalists, those who were very close to me, within the circle of colleagues. They were threatened to give their email password so that they could see their communications, to find out whether they had known about my plan."*

552. Most of those arrested were released a few weeks later. However, several journalists were caught or shot-down while attempting to flee. Mr. Paulos Kidane, whose death was officially announced by the Ministry of Information in August 2007, was reportedly one of those killed during flight.[641] There are reports that those caught alive were sent to prison where they were subjected to harsh conditions, torture and forced labour. Moreover, the Commission understands that at least one of those detained reportedly died shortly after his release due to effects sustained therefrom.[642]

[637] TBA040.
[638] S108.
[639] TNR008, S108, TBA040.
[640] TNR008, TCDP024, TNR086, S073, S108.
[641] S108, S073, TCDP024.
[642] TCDP024, S044. See also http://en.rsf.org.

553. Another mass arrest took place in 2009 during a raid at Radio Bana, an educational radio station. The Commission identified 24 journalists from testimony collected. They were accused of collaborating with media outlets based outside the country.[643]

> A victim who spoke with the Commission understood that he had been accused of providing information to Radio Weghata only at the time of interrogation, six months after the arrest. The journalist described the interrogation to the Commission: "*They started the interrogation and told us the following fabricated accusation that all journalists and poets were connected with a radio broadcasting outside of Eritrea named Radio Weghata. We were accused of being a contributor of Radio Weghata.*"
>
> A journalist recalled that, before the arrest, they had also been asked to give access to their email accounts, without a search warrant. The witness was forced to leave the country to evade arrest: "*We were collaborating with Eritrean news outlets abroad such as Assena and Awate. We were giving out information to these websites about Eritrea. Our friends started interviewing people in [a foreign country]. We were accused of collaborating with diaspora news outlets. They asked for my email passwords … they did not find anything. When my friends told me that they were looking for me, I decided to leave*."

554. Irrespective of whether they had collaborated with foreign media outlets or not, journalists seemed to have been arrested just because of their profession. They were subjected to ill-treatment during their detention, including periods in solitary confinement.[644]

> One victim described his treatment in prison: "*They arrested me, handcuffed me and attached a rope in order to hang me like Jesus-Christ but without my arms outspread. My legs were taken to my abdomen. They told me I was critical about the Government and contributing to the radio. I stayed in this position for 10 minutes and they beat me with a whip. Then, they took me to my cell. For my friends, there were additional beatings on the sole of their feet. They haven't done it to me. There are no rules when torturing. They can beat you 5 minutes or an hour, as they wish … I was handcuffed almost from 5 in the morning to 10 at night. These were not normal handcuffs. They are screwed very tightly and prevent the blood from circulation. I was near to death. I was just an amateur artist and journalist. I was angry about what they were doing. I became unconscious. I repeated I was not a member of the radio. When they removed the handcuffs, my hands were paralyzed. This lasted for three months. I could not close my hands or move them anymore. The suffering lasted for six months. To date, I still have neurologic problems; I have pain in my arms.*"

555. Radio Bana was subsequently shut down. Testimony gathered by the Commission suggests that employees of the Ministry of Education were also arrested at the same time as the journalists.[645]

556. For the period between 2010 and 2012, the Commission recorded 10 names of journalists arrested from testimony collected. However, it has not been able to establish the reasons of these arrests. Five of them have reportedly been released. The whereabouts of the remaining ones could not be confirmed at the time of writing.[646]

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643 TBA070, TCDP066, TAM004, TAM009, TBA088, TNR077, TNR086, S044, S073, S108.
644 TCDP066.
645 TCDP066.
646 TAM004, S044, S073, S108.

557. From testimony collected, the Commission recorded seven arrests of journalists that took place in 2013. The arrests aimed to contain the dissemination of information relating to the Forto incident, especially photographs of the incidents. Arrested journalists were asked to provide access to their online accounts.[647] Some journalists decided to flee the country to evade arrest:

> *"After the coup attempt they monitored us a lot because they thought we had sent the photos about the event. Some photos were shared and I escaped the office because I was afraid. Then, I and my mother planned to leave the country."*

558. Furthermore, the Commission received reports of the arrest of the Director of the Minister's Affairs at the Ministry of Information, which is possibly connected with the defection of the then Minister, Mr Ali Abdu.[648] The recent release of a number of detained journalists may also be linked to his defection. Many journalists arrested during the 2006 and 2009 raids have been freed between 2013 and 2015. One freed journalist recounted that they were told after their release that they were innocent.

559. In spite of these positive steps, the situation of journalists in Eritrea remains bleak. Indeed, Eritrea has ranked last in Reporters without Borders' press freedom index for the past years. Many are still held *incommunicado*, including some of those arrested in 2000 and 2001.[649]

d. Control of access to information and means of communication

560. The Commission finds that access to information and means of communications is very much restricted in Eritrea. This is due to Government actions such as the prohibition of access to certain media, but also the lack of measures to ensure access to information, such as resolving the problem of frequent electricity cuts.

i. Radio

561. Government-operated radio stations are easily accessible in Eritrea. It is possible to tune in to international radio stations but people either refrain from or are forbidden to listen to Amharic music in public places.[650] On short waves, they can listen to diaspora and opposition radio stations.

562. Nevertheless, it has been reported that one of them in particular – Radio Erena – has been the target of repeated attacks, with its satellite signal jammed and its website hacked, for example in August 2012. Listening to some radio stations may lead to trouble. As an example, the Commission received reports of listeners of *Radio Weghata* – an Ethiopian Tigrinya station – stating that being caught listening to this radio can lead to arrest.[651]

ii. Television

563. In addition to the Government-controlled television channels visible in Eritrea, access to foreign television via satellite is possible but not widespread. Electricity cuts often make television inaccessible. Access to international news is known to have been blocked at least once. In 2013, the authorities censored the *Al-Jazeera* news channel through a decree issued on 1 February by the Ministry of Information, forbidding anyone in Eritrea to

647 TSH037, TCDP033, S108.
648 S108, TCDP066.
649 See chapters VI, B, 2, Violations of the rights to liberty and security of the person, and VI, B, 4, Detention.
650 TAM034.
651 TNR052, TCDP066.

provide access to it. This happened after *Al-Jazeera* had shown images of demonstrations outside Eritrean diplomatic missions carried out after the Forto incident of 21 January.[652]

iii. Phones (mobile and fixed lines)

564. In 2014, the 'Eritrea - Telecoms, Mobile and Broadband - Market Insights and Statistics' report stated that "Under a state-owned monopoly on fixed and mobile services, Eritrea is the least developed telecommunications market in Africa with a mobile penetration of only around 6 per cent in early 2014." By comparison, "mobile phones represent more than 90 per cent of all telephone lines in Africa. Market penetration passed the 65 per cent mark in early 2012." [653]

565. Fixed lines are reportedly available for only one per cent of the population. [654] With the words of one conscript: "*When I was at Mai Duma, if you wanted to call home, you would have to go to town. However, you would have to ask for permission.*"

566. The Commission collected information to the effect that, at least up to 2011, buying SIM cards for mobile phone was a major undertaking, subject to restrictions.[655]

> *"For students and soldiers, it is not allowed legally to have a phone. My father and mother and older people can buy but you cannot have two SIM cards."*
>
> *"No member of the national service is allowed to have a mobile phone. To buy the SIM card, you must go to the Government office. If you are exempted from the national service you can buy a SIM card. Most people use their father or their mother, above 50, to get a SIM card."*
>
> *"I had no SIM card when I was in Asmara. I was not able to get a card, as I had escaped from the national service."*

567. Telephone lines are widely believed to be under control, with arrests reported to happen on the basis of recorded telephone exchanges. As a consequence, Eritreans exercise utmost caution during their conversation – an equivalent of self-censorship. Reportedly, a Communication Unit exists within the President's Office, in charge of sifting through the information collected by a "highly advanced system".[656]

> *"My wife lives in fear because after two months [abroad] when I called her, they came to her. They said, your husband has been calling you. It is easy for them to control. Now it has been one year and a half that I have stopped calling her."*
>
> *"In September, when I was trying to leave, I received a call advising me to attend to the terminal in Asmara and take my mobile phone. At the first roadblock, all the other buses were waved through but the one I was on was stopped. Guards with guns got on and pulled a few of us off, took our mobile phones and checked our calls. I was imprisoned*."

iv. Internet

568. It is estimated that by the end of 2014, 1 per cent of the Eritrean population had access to Internet, compared to an average of 26.6 per cent for Africa. If one considers the social network Facebook as a good indicator of social communication, users in Eritrea are

652 Reported by the Qatar-based newspaper Al-Sharq and Reporters without Borders.
653 Executive Summary, 'Eritrea - Telecoms, Mobile and Broadband - Market Insights and Statistics', available at budde.com.au.
654 TAM033.
655 TNR045, TCDP008, TBA027.
656 TBA040, TNR042, TSH032.

found to lag considerably behind the rest of Africa with a penetration rate of 0.3 per cent at the end of 2012 (compared to an African average of 4.8 per cent at the same date).[657]

569. Internet is accessed mainly through Internet cafés and mostly in Asmara and other major Eritrean cities. It is reported that access in rural areas is almost non-existent, allegedly in particular in the Southern Red Sea region.[658] Private access to Internet is possible but extremely reduced. The Internet infrastructure is state-controlled.

570. The Government monitors and controls access to Internet. Some websites are reported to be permanently blocked[659] and there is a general belief that the Government can see what pages are being visited by which computers.[660]

> *"There was a control done by the Ministry of Information. They can see the websites that they visit. They sometimes closed the webpages. They track the computer that is accessing the webpage."*
>
> *"I asked for a page to be printed. The owner asked me why I wanted to read such a political thing. He packed it in an envelope, stapled it and gave it to me saying to go home and not tell anyone where I got it from.*"

571. Access to Internet by educational institutions is also reported to be very limited.[661]

> *"In sub-department "Art 2" for political science, law and sociology… there was a small library, no Internet, only for the teachers to chat but not for academic research."*
>
> *"For Internet access, you had to follow what the teacher prescribed. We did not even have time to access other websites due to lack of computers at the university."*

572. The use of Internet can lead to serious problems for users, including harassment and arrest. The Commission gathered testimonies indicating that people had been arrested for several Internet-related reasons, including posting information on the net, using Internet at work for private purposes or communicating on issues or with people considered suspicious (for example, Church leaders or people abroad).[662] Some cases have also been reported of individuals arrested and forced to deliver the user names and passwords of their personal accounts.[663]

(iii) Principal findings

573. The Commission finds that following the 2001 crackdown, there has not been any press freedom in Eritrea. At that moment, the Eritrean Government suppressed the emerging free press by closing down independent newspapers and silenced journalists by arresting, detaining, torturing and having them disappeared.

574. Since this period, the Government, principally through its Ministry of Information, is tightly controlling the content of information and the access to information by the general public. It controls the journalists, the matters that may be reported about and what is said about them. It severely punishes any perceived divergences from the official line of the Government and regularly accuses journalists of treason and of threatening national security and unity by having suspected contacts with foreign media. The media and other

657 http://www.internetworldstats.com.
658 S108, S143, TBA091, TBA040, TNR071.
659 Websites such as YouTube and diaspora websites critical of the regime have reportedly been blocked.
660 S108, TAM004, TCDP033, TBA043, TSH032, TBA040, TSH103, TBA027, TSH032, TAM005.
661 TBA078, TBA043.
662 TCDP033, S143, TBA091, TBA043.
663 TAM004, TNR008.

means of communication available in Eritrea are tightly controlled, most of them directly belonging to the Government. Access to foreign media is sometimes restricted. As a result, the only available information in Eritrea is pro-government propaganda.

575. The Commission finds that the restrictions imposed by the Government of Eritrea on the press, the exercise of journalism as a profession and the access to information and means of communication are not proportional, not necessary for the interests of national security, public order or even national unity and constitute a violation of the right to seek, receive and impart information that is included in the right to freedom of expression.

(c) Violations of the freedom of assembly and association

(i) Legal framework

576. The right to freedom of assembly and association, which is considered to be a fundamental element of a democratic society along the other public freedoms, is protetected among others, by article 22 of the International Covenant on Civil and Political Rights and article 10 of the African Charter of Human and Peoples' Rights.[664] The peaceful holding of public meetings and demonstrations usually takes place to express an opinion about a policy or express a request to a government. Any restriction imposed on the organisation of such meetings or demonstration rules governing the holding or conduct of public assemblies should be strictly limited to what is necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others. A global ban on public demonstrations is not compatible with international human rights law.

577. The right to freedom of association includes the freedom to form and join political parties and trade unions and to establish non-governmental organisations (NGOs), including those aiming to work in the field of human rights. The registration procedures of such organisations and associations should not be so burdensome that they prevent the enjoyment of the right to freedom of association. Furthermore, the right also includes the free functioning of these organisations and associations without governmental interference.

578. However, organisations and associations, including political parties or non-governmental organisations, which promote propaganda for war or advocate for national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence are excluded from the protection of the right to freedom of association.[665]

579. The right of workers and employers to form and join organisations and trade unions of their own choosing is an integral part of the right to freedom of assembly and association is also protected by article 8 of the International Covenant on Economic, Social and Cultural Rights.[666] Accordingly, workers and employers should be authorised to establish and join organisations of their own choosing without previous authorisation, including trade unions aiming to defend and promote their economic and social interests. The restriction on the right to freedom of association should be prescribed by law, reasonable, and necessary in the interests of national security, public safety, public order, protection of public health or morals or the protection of the rights and freedoms of others.

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[664] This right is also protected by art. 5 (d) (ix) of CERD and art. 15 of CRC.

[665] Art. 20 of ICCPR.

[666] Right also enshrined in the 1948 ILO Convention on Freedom of association and protection of the right to organize and in the 1949 ILO Convention on the Right to organise and collective bargaining, both ratified by Eritrea.

580. The Eritrean Government decided to regulate the establishment and functioning of NGOs through Proclamation No. 145/2000 and the activities of religious institutions through Proclamation No. 73/1995. It also intended to regulate the establishment of political parties, but the draft Proclamation was not promulgated and is not part of the Eritrean law. *De facto* there is only one political party in Eritrea.

581. Labour Proclamation No. 118/2001 regulates employment relationships, except for those applying to members of military, police and security forces, members of the Eritrean civil services, judges and prosecutors, and persons holding managerial positions.[667] The right to establish a professional association is recognised for enterprises with at least 20 employees or among employees from different enterprises working in a similar field, provided that such associations have a minimum member of 15 persons[668] and be registered by the Ministry of Labour and Human Welfare.[669]

582. Under Proclamation No. 145/2005, activities of local and international NGOs are strictly limited to the provision of relief and rehabilitation.[670] Therefore, NGOs are only authorised to provide food, water, sanitary materials, medicines, shelter and other emergency supplies to the victims of natural or man-made disaster or displaced people[671] or to perform activities aiming to restore damage caused by natural or man-made disasters, including construction reparation and maintenance.[672] NGOs are considered to be entities that should only complement governmental activities in these fields and never substitute the Government.[673] Any NGO that engages in other kind of activities will have its registration revoked and its representatives or employees will be subject to criminal prosecution.[674]

583. NGOs can only operate in these assigned fields after having been registered with the Ministry of Labour and Human Welfare. The registration has to be renewed every year.[675] In order to be registered, NGOs should provide legal documents about their establishment (constitution and statutes) and information about their future operations, including details about the specific activities to be undertaken and they should explain their motivations. Applicants should also prove that they have secured upfront in Eritrea at least one million US dollars for local NGOs and two million US dollars for international NGOs. This amount may be in cash or be secured in equivalent of technical or other capacity.[676] On the basis of the documents and information submitted, the Ministry of Labour and Welfare decides to grant the registration and authorises the NGO to operate or not.[677] The Proclamation does not provide any criteria or possible grounds on which the registration may be denied. The decision is entirely at the discretion of the Ministry.

(ii) Peaceful assembly

584. There have been few recorded public demonstrations in Eritrea. The well-known protests to have taken place are the 1993 and 1995 demonstrations by war veterans and the

667 Article 3(I) of the Proclamation No. 118/2001.
668 Article 86 and 89 (1) and (2) of the Proclamation No. 118/2001.
669 Article 93 of the Proclamation No. 118/2001.
670 Article 7 (1) of Proclamation No. 145/2005.
671 Art. 2 (4) of Proclamation No. 145/2005.
672 Art. 2 (5) of Proclamation No. 145/2005.
673 Preamble of Proclamation No. 145/2005.
674 Article 7 (3) of Proclamation No. 145/2005. However, the criminal offences related to the engagement of NGOs in other fields than those prescribed by the Proclamation are not indicated.
675 Article 10 (2) of Proclamation No. 145/2005.
676 Art. 8 (1) (c), 9 (5) and 10 (1) of Proclamation No. 145/2005.
677 Art. 3 (1) of Proclamation No. 145/2005.

2001 student protest. They have all resulted in the detention of the leaders of the demonstrations and some participants.

585. The 1993 and 1995 demonstrations by fighters and war veterans were the first public protests since the liberation of Eritrea. Their demands concerned measures announced by the Government that affected their living conditions. On 20 May 1993, while the country prepared to officially celebrate its independence, demonstrators, many of whom were young individuals from the 1988 round of conscription, protested after President Afwerki declared that veterans would remain mobilised without pay for four additional years to rebuild the country. [678]

> An EPLF former fighter explained: "*They had promised to pay salaries to fighters after the independence. When we returned from the warfront, we needed money to settle, to marry. But the Government announced that it would not pay salaries for four years*."
>
> A submission received by the Commission clarified: "*By that time, the war veterans had already served two miserable years without pay and the Government announced that they would continue to serve without pay for the years to come. The revolt was in response to the announcement of the maintaining of the status quo*."

586. The demonstration began at the airport and reached the centre of Asmara, paralysing the city.[679] Mediation by high-ranking officials quelled the protest[680] and President Afwerki eventually met with the demonstrators. While defining the protest as "illegal" and "infantile",[681] he promised budget allocations for the disbursement of allowances to war veterans and their families. Protesters obtained the withdrawal of the impugned measures. However, the Government's retaliation against the participants, especially the leaders, was ruthless. Some participants were arrested within days of the protest and hundreds more were arrested over the following months.[682]

> One of those arrested testified to the Commission: *"Many were arrested, including myself. They arrested people whom they suspected to have been involved in the protest. We were arrested all together from my brigade. It was an underground prison. We were sleeping on the floor very close to each other. After two months, we were moved to [another prison] where I stayed for three months. From different places, people involved in the protests were brought there. There, they started to interrogate us. We were not allowed to speak to each other. A guard watched us. We were punished outside if we spoke to each other."*

587. A witness explained to the Commission that when some of the arrested veterans requested that they be brought to court, the Government reportedly dispatched officials to try the suspects at Adi Quala prison. Victims were reportedly told that they were being given "lenient" sentences of prison terms in lieu of execution because of their status as war veterans.[683] The arrested demonstrators were sentenced to hard labour in addition to imprisonment. While some were freed after two years and formally released, others were sent to the warfront in 2000 during the border conflict with Ethiopia.[684] Information

[678] TBA026, S075.
[679] TSH043.
[680] Dan Connell and Tom Killion (2011), p 376.
[681] Awet Tewelde Weldemichael, *Third World Colonialism and Strategies of Liberation: Eritrea and East Timor Compared*, (New York, New York, Cambridge University Press, 2013), p. 290
[682] TBA026, TFM040.
[683] TNR077.
[684] S075.

received by the Commission also indicates that some of those who were released from detention were denied demobilisation benefits and became dependent on their families' support for survival.[685]

588. In July 1994, members of the Eritrean War Disabled Fighters' Association rallied to protest against the inadequacy of their living conditions at the Mai Habar rehabilitation centre, where they lived in tents while waiting for the construction of adequate facilities. As the Government did not attend to their demands, they decided to march from Mai Habar centre to Asmara to make their concerns heard.[686] Mid-way they were halted by the 525 Regiment, which opened fire.[687] An interviewee recalled: *"These people were not armed; they did not even have a stick and they fired at them."* Three people reportedly died.[688] A witness stated that at a meeting of the Ministry of Defence held at Embatkala a few days after the incident, the protest was described by officials as 'wrong'.[689] Leaders of the movement were imprisoned, like those of the 1993 protest.

589. In addition to these events, the Commission received reports of similar protests by members of Brigade 74, the military de-mining unit, members of Unit 72 and the military academy. [690] A witness reported: *"Those who were involved faced isolation and were labelled as detractors and traitors*."

590. A few years later, in 2001, students of the University of Asmara protested against their enrolment in summer work programme aimed at collecting information on the damage sustained from the border conflict with Ethiopia.[691] The project was funded by donors, and information collected would have been used by the Government to seek compensation.[692]

591. A witness explained that students often worked during the summer break to earn money to fund their studies and to support their family. As such, their protest concerned the inadequacy of the remuneration proposed by the Government.[693] A former student explained*: "The Government wanted the money [from the donors], and so planned to pay the students a smaller amount."* Articles about students' discontent at the proposed conditions were published in the University of Asmara Students Union's newspaper;[694] the leader of the Union. Mr. Semere Kesete also spoke publicly thereon during the graduation ceremony.[695]

592. Mr. Kesete was arrested on 31 July 2001 and a writ of *habeas corpus* was submitted on his behalf.[696] Students came to the court in large number to attend his arraignment.[697] However, the authorities rounded them up and transferred them to the Asmara Stadium.[698] At the same time, those who were at the University were taken from dormitories. Those who were not rounded up were summoned to report under the threat to be dismissed from

685 S143k, S143f.
686 TFM040, TAM030.
687 TNR077, TBA042.
688 Ruth Eyob, *The Eritrean Cautious Experiment: A Cautious Pragmatism* (The Journal of Modern African Studies, Vol. 35, No. 4, Dec., 1997), pp. 649.
689 TFM033.
690 TBA005.
691 TBA027, TSH027.
692 TSH020, TSH006.
693 TCDP008, TSH020.
694 TBA027.
695 TBA055.
696 See chapter VI, B, 2, Violations of the right to liberty and security.
697 TBA027, TCDP016.
698 TBA055, TBA027.

the University.[699] Students spent a varying number of days at the stadium, some having been taken immediately, while others waited up to three days, before being forcefully transported to Wi'a. Those who resisted were beaten.[700]

593. Some students were later transferred from Wi'a to Gelalo. Witnesses described hard conditions of detention in these camps[701] where they were kept until the resumption of the academic year.[702]

> A former student held at Gelalo said: "*It was very hot in August. They were not prepared to receive us. There was no prison, not even water. We were taken to the river and had to drink the water. Yemane, a student, became sick and did not receive any medical treatment and died. Another person was taken to the hospital but he also died."*
>
> Another witness spoke of accommodation at Wi'a: "*In Wi'a, they kept us in a temporary cell. It was a temporary hangar of 10 by 30 meters, packed with people. For all the students, there were about three to four hangars. There was shortage of air, it was very hot. Some people with asthma or other health conditions passed away. In my cell three persons passed away. We stayed 45 days in these hangars, then they changed the programme. They brought the people out to collect very hot stones."*

594. The detained students were forced to undertake hard labour and were routinely ill-treated.[703] *"During three months, we were forced to collect stones and walk for hours*," said one former student. Another spoke of the beatings: *"They were constantly beating students. There were people with injured scalps, broken legs. Three of them were injured and passed away in the "depression". It's how we call Wi'a."*

595. Before being released, the students were asked to plead guilty of opposition to the Government, before allowed to return to the University.[704] The authorities reportedly held those students they thought to be leaders of the protest separately and detained them for an additional two to three months.[705]

596. The authorities also spread rumours, including through *bado seleste*[706] that the protest was an attempt to depose the Government. As consequence, university students were perceived as "sub-nationalists."[707] A witness explained:

> *"When we were arrested, a rumour was spread that the university students were conspiring with [a foreign] Government and were trying to overthrow the Government. This was really hard because our parents were convinced by the Government. Neighbours pointed us out when they saw us saying: 'oh you are one of those that tried to overthrow the Government.' The Government completely twisted the story. From then on we were treated differently by everyone. When someone looked at your student card, they knew you were involved in the incident. We all lived in fear since then."*

699 TNR046.
700 TCDP008, TCDP013, TCDP016, S077b.
701 TCDP016, TSH006.
702 TCDP013, TBA027.
703 TCDP013, TCDP008.
704 TBA027, TCDP013.
705 TCDP008.
706 See *supra.*
707 TCDP008, TSH020, S077b.

597. At the same time, Mr Kesete, the former leader of the Students Union was detained incommunicado at the sixth police station, without being charged of any offence.[708] He was subjected to ill-treatment and torture and was held in solitary confinement. He recounted his detention:

> *"I was tortured for the whole year following my arrest. I was handcuffed from behind day and night for more than two weeks. For more than five months, I was denied the right to leave my cell to get any fresh air, sunshine or any form of physical exercise.*
>
> *After five months of my arrest, I was allowed to go out for fresh air, which was only for 45 minutes per week - 15 minutes on Mondays, Wednesdays and Fridays. Even then, I was not allowed to have any physical movement - I was made to sit on a chair for 15 minutes then drag to me the solitary cell. This wasn't even regular; sometimes I had be locked five days in the cell.*
>
> *I was not allowed the opportunity to even properly stretch my limbs, which were hurting a lot. The situation was unbearable for me and psychologically dehumanizing. The food is very poor and not enough. It is the same type of food for almost whole week and if there is any change it is change of type but worst content. The room is too cold during rainy season and too hot during hot season, as it has no enough ventilation. The light in the room is 24 hours on. It disturbs your sleeping system."* He eventually escaped after one year with the help of a prison guard.

598. The Commission gathered additional testimony of arrest of peaceful protesters. The Commission heard of the reported arrest and detention in 2003 of university students who had assisted underage orphans to protest against their forced conscription.[709] More recently, the Commission was informed that some high school students who had opposed the demolition of houses in Adi Keih in 2015 were arrested.[710]

599. The Commission has not been able to access the relevant law or policy relating to assembly. However, testimony gathered indicates that non-governmental gatherings, whether in public or private places even in small groups are prohibited and could lead to arrest.[711]

> A witness explained "*Even three or four people cannot stand together because otherwise they say it is a group*". *They [the Government] do not want people to unite, if you stand together you might unite.*"
>
> A victim indicated that he was arrested after found playing with friends: "*We were around six people. I was 20 years old. I was detained for six days … When we were released, we were told to never again play together in a group. Today I think that they were afraid of groups*."
>
> Another witness spoke about the disappearance of individuals found gathering: "*Everything is secretive and people do not trust each other and I have seen people being gathered and disappearing just because they were in a group and were close to each other. There are people who I know by name … They disappeared in 1998. They were in the military*."

[708] TSH027.
[709] TAM003.
[710] See chapter VI, B, 6, Violations of the right to property.
[711] TCDP023, TBA029, TAM059, TSH002.

(iii) Political parties

600. There is no legal framework that would allow political parties in Eritrea. As such, the Commission has collected very little testimony in relation to the exercise of the right to freedom to form and join political parties. Anecdotal accounts collected referred to the refusal of the Eritrean Government to allow other political groups that had existed before the independence to join in the governance of the country,[712] the punishment of former fighters who refused to join the ruling party[713], the restriction in accessing the cadres schools to individuals chosen by the party, [714] and compulsory payment of membership fees.[715]

(iv) Trade unions

601. A few unions operated in a relatively independent manner in Eritrea until the authorities forced them to close down one by one, or removed or arrested their leaders. The teachers' union of the University of Asmara was among the first ones to be banned. The move followed the dismissal of several university teaching professionals in 1994.[716] Under its first president, the National Employers' Confederation, which grouped private as well as PFDJ-owned companies, was active in promoting free trade and also participated in international conferences, including in negotiations on the Global Compact. However, the authorities forced its president to step down for not "complying with the policy of the PFDJ" and subsequently arrested him in early 2004.[717]

602. The Asmara University Students Union was instrumental in voicing the students' objection to the Government's plan announced in 2000 for a one-year unremunerated service by university students, the introduction of a 150,000 Nakfa bond for students wishing to study abroad, and the summer work programme in 2001.[718] The Commission received reports that before the 2001 crackdown, the activities of the Union had been monitored by the National Union Eritrean Youth and Students [719] and that the authorities had attempted to replace its leadership.[720] The Union leadership was dismantled after the arrest of its leader in 2001 and it was placed under the umbrella of National Union of Eritrean Youth and Students. It was dissolved with the closure of the University in 2005 when the authorities also reportedly arrested its leader and several members.[721]

603. Information collected by the Commission reveals that the authorities stopped several attempts to form new unions, including through interference in the judiciary's work. In 2005, the Ministry of Labour and Human Welfare requested a court to overturn its decision in favour of the National Confederation of Eritrean Workers on the legality of the unionisation of the employees of the Maakel Region Public Transport.[722] An attempt to re-

[712] TBA040.
[713] TAM005, TNR077.
[714] TBA070, TBA055.
[715] TBA064.
[716] TSH007, TCDP074.
[717] TRDV002.
[718] TRDV003.
[719] TCDP008.
[720] TSH019.
[721] TCDP008, TCDP013.
[722] S033.

establish a university teachers union in 2001-2002 was rejected.[723] College students are reportedly not allowed to form unions.[724]

> A former student reported: "*We did not have a students' union at the college. Assembling was not allowed following what had happened at Asmara University when students protested. We could not form any groups or organisations that were considered to be political*."

(v) Non-governmental organizations

604. The Government views the "national associations"[725] – the National Confederation of Eritrean Workers (NCEW), the National Union of Eritrean Women (NUEW) and the National Union of Eritrean Youth and Students (NUEYS) – as civil society institutions.[726] According to the International Trade Union Confederation, the teachers' union, the general workers' union, the NUEW and the NUEYS are all affiliated to the NCEW.[727]

605. The first years following the independence of Eritrea saw the creation of a few non-governmental organisations such as the Regional Centre for Human Rights and Development created in 1992 and the Eritrean Women War Veteran's Association BANA created in 1994. The Commission also heard reports of the existence of an ex-prisoners association and an ex-fighter journalists association during those years.[728]

606. These organisations were closed down a few years later when the Government did not renew their yearly license.[729] The authorities reportedly ordered the closure of the Regional Centre after it convened a conference on "NGO Policy, Multilateral Policy and Rural Credit in Eritrea."[730] As mentioned earlier in the report, BANA and Tesfa were also disbanded and their assets absorbed by NUEW.[731]

607. The Commission received reports that subsequent applications to establish new NGOs were rejected by the Government[732] until the border war with Ethiopia when the Eritrean Development Foundation (EDF), Haben, the Hansenians Eritrean Welfare Organisation, the Red Cross Society of Eritrea (RCSE), and Vision Eritrea were reportedly allowed to carry out relief activities.[733]

608. While the 1995 Proclamation prohibits religious organisations from providing social services and implementing development projects,[734] the Commission has collected evidence that they continued doing so in collaboration with the Government until their closure in 2002.[735] The 2005 law which imposes onerous and annual registration procedures is not conducive to the establishment of NGOs. The Commission has not gathered evidence from witness testimony on the existence of independent local non-governmental organisations, since the entry into force of the law. However, open sources refer to activities being

[723] TCDP074.
[724] TAM042, TAM034.
[725] Terminology used by the Government. See http://www.eritrean-embassy.se/government-agencies/national-associations/.
[726] CRC/C/ERI/4, para. 61.
[727] http://survey.ituc-csi.org/Eritrea.html#tabs-3, accessed on 17 April 2015.
[728] TSH143.
[729] TSH103.
[730] See chapter III, C, Post independence.
[731] See chapter IV, E, The situation of women.
[732] TSH143.
[733] Dan Connell and Tom Killion (2011), p. 401.
[734] Proclamation 73/1995.
[735] TNR014, TBA044.

undertaken by the Red Cross Society of Eritrea and its pending recognition by the Government.[736]

609. The Commission received testimony that the authorities closely monitor the activities of international NGOs.[737] The latter have been regularly instructed by the Government to discontinue their operations in Eritrea. The last directive dates back from 2011.[738]

610. In spite of reports on the effectiveness of the activities undertaken by organizations controlled by the Government such as Militias, which coordinated the process of demobilisation and resettlement of veterans,[739] and NUEW which for instance has promoted the eradication of female genital mutilation in Eritrea,[740] these institutions cannot replace non-governmental organisations which would advocate for the interests and the rights of their constituents.

611. The NCEW reportedly focuses its activities on the training of workers.[741] On the occasion when the Union spoke against employers, its leaders were arrested and imprisoned for two years. ILO determined that their arrests were "*linked to their trade union activities*."[742]

612. Similarly, while one of the functions of NUEYS is to "stand for youth issues in all spheres and all levels …"[743] activities reported by witnesses referred primarily to trainings in areas such as music, dancing and computer skills.[744] Information from a NUEYS member with leadership role also confirmed that the association did not fulfil an advocacy role: *"I was charged with the task of promoting culture and checking if there were disciplinary matters among the youth."*

613. Testimony gathered about NUEYS also revealed information which was of concern to the Commission. Witnesses reported that NUEYS was engaged in spying activities.[745] Witnesses accounts also indicated that membership was not voluntary and that fees were automatically levied on students.[746]

> Describing the extent of freedom of association in Eritrea, a witness indicated that: "*There is no freedom of organization in Eritrea with the exception of those [the Government] organized: the women, the youth who are part and parcel of the party. Only those organizations are allowed. [The Government] also allowed the medical organization but we do not have a lawyers' organization nor any political organization, anything that can claim the rights of individuals*."[747]

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736 "In 2011, the Government of Eritrea issued a directive to all non-state development partners operating in Eritrea to cease operating by end 2012" (in http://adore.ifrc.org/).

737 TLA036, TNR018.

738 http://reliefweb.int/, accessed 18 May 2015.

739 Kees Koonings and Dirk Kruijt, ed., Political Armies: The Military and Nation-Building in the Age of Democracy (New York, New York, Zed Books, 2002), p. 255.

740 TSH022.

741 Dan Connell and Tom Killion (2011), p.342.

742 ILO, Case No 2449 (Eritrea), complaint dated 26 September 2005.

743 http://www.un.org/esa/socdev, accessed 18 May 2015.

744 TNR051, TAM034, TBA050, TAM057. For more information on the activities of NUEYS, see chapter VI, C, 1, National service.

745 TAM069, TSH032, TCDP008.

746 TSH103, TAM057.

747 TFM034.

(vi) Principal findings

614. The Commission's findings on the exercise of the right to freedom of assembly and association point to a lack of mechanisms for channelling grievances, the absence of representation of interest groups in the administration of the country, lack of consultation on decisions affecting them, absence of opportunities for open and genuine dialogue, and punishment of peaceful assembly and expression of demands.

615. The Commission finds that the few attempts to exercise the right to peacefully demonstrate to express legitimate claims were crushed by the government, who arrested and detained demonstrators, in violation of the right to freedom of assembly.

616. Moreover, with the prohibition of political parties and independent trade unions, individuals have no avenues for participating in the governance of the country, nor means to protect and improve their working conditions, short of joining the ruling party. Eritreans are deprived of not only of their right to form or join political parties and trade unions, but also their right to participate in the conduct of public affairs. The restrictions imposed by law on the establishment and activities that may be undertaken by NGOs are so abusive that they lead to the closure of almost all international and independent local NGOs with the sole government organized associations remaining.

617. The Commission finds that none of the legal or de facto restrictions imposed by the Eritrean government on the establishment and functioning of trade unions, political parties and NGOs are necessary in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others, and as such, they are breaching the right to freedom of association.

4. Freedom of religion or belief

(a) Legal framework

618. The right to freedom religion and belief[748] is protected under international law and, in particular, is enshrined in articles 18 and 27 of the International Covenant on Civil and Political Rights and article 8 of the African Charter on Human and Peoples' Rights. It covers theistic, non-theistic and atheistic beliefs as well as the right not to profess any religion or belief. The terms "belief" and "religion" are to be broadly construed. The right to freedom of religion is also not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions.

619. The freedom to manifest one's religion in worship, observance, practice and teaching is also protected. It covers the individual and collective exercise of religion in public or in private such as collective prayers, ritual and ceremonial acts, building of religious places of worship, use of ritual formulae and objects, display of symbols, observance of holidays and days of rest, dietary regulations and distinctive clothing or head covers. It also extends to the freedom of religious communities to choose their leaders, priests and teachers, to establish religious schools and seminaries, and to prepare and distribute religious texts and publications.[749]

620. The right to manifest one's religion is not absolute and may be restricted by law. The only permissible restrictions under international law are limited to the extent strictly necessary to protect public safety, order, health, or morals or the fundamental rights and

[748] This right is also protected under art. 14 of CRC and art. 5(d) (vii) of ICERD.
[749] Human Right Committee, General comment no. 22, para. 4.

freedoms of others. The freedom to manifest one's religion cannot be restricted on any other grounds, not even for the protection of national security. A system requiring religious organisations and associations to register before being allowed to manifest their religion and belief is incompatible with international human rights law.[750]

621. The right to have, adopt, change or repel a religion or belief is absolute and cannot be restricted by law or be derogated even during a state of emergency.[751] This includes the right to retain one's religion and the prohibition of any coercion of believers to recant their religion or belief or to reveal their thoughts or adherence to a religion, including when serving in the armed forces.[752]

622. International law also prohibits any discrimination *de jure* or *de facto* against any religion or belief, including on the basis that they are newly established, or represent religious minorities that may be the subject of hostility on the part of a predominant religious community. If a religion or several religions are recognised as official, it should not result in the restriction of rightsother religions not officially recognised nor lead to any kind of discrimination against these institutions or members.[753]

623. During the period covered by the investigation, article 15 of the Transitional Civil Code,[754] which was the applicable law that protected freedom of religion, stated that "there shall be no interference with the exercise, in accordance with the law, of the rites of any religion or creed by residents of the State of Eritrea, provided that such rites be not utilized for political purposes or be not pre-judicial to public order or morality." This includes the freedom to practice any religion and to manifest such practice.[755]

624. Activities of churches and religious institutions legally registered are regulated by Proclamation No. 73/1995 "to Legally Standardize and Articulate Religious Institutions and Activities."[756] Under this Proclamation, religious institutions have the right to undertake spiritual preaching, teaching and awareness raising campaigns, as long as they keep away from politics.

625. By law, religious institutions are prohibited from undertaking any activity that could be considered political. This includes preaching against government policies or issuing any publication or broadcast on political matters since religious publications are not regulated by the law of the press.[757] Religious institutions are officially prohibited from discussing or expressing an opinion on the policies and actions of the Government. Those that interfere, directly or indirectly, in politics through campaigns and mobilisation resulting in public unrest, hostility or offence among different religions or nationalities can be prosecuted.[758]

626. Furthermore, religious institutions are generally prohibited from having any relationship with foreign institutions, including foreign churches, unless the relationship is purely spiritual. They cannot receive funding from foreign sources, including foreign

[750] See CCPR/CO/71/UZB, para. 24.
[751] Art. 4 and 18 of ICCPR.
[752] Human Right Committee, General Comment no. 22, para. 3 and 5.
[753] Human Right Committee, General Comment no. 22, para. 2 and 8.
[754] This Code was replaced by a new Civil Code promulgated on 11May 2015 by the Government of Eritrea.
[755] CRC/C/41/Add.12, par. 129.
[756] The Commission is not in a position to ascertain whether this Proclamation was partially, totally or not at all repelled by the new Civil Code.
[757] Art. 2(1) and (2) and 3(2) of Proclamation No.73/1995.
[758] Art. 2(2) and art. 3(2) of Proclamation No. 73/1995.

religious institutions. Foreigners can be employed by religious institutions for non-spiritual activities only with the prior authorisation of the Government.[759]

627. The Proclamation further requires religious institutions to register their movable and immovable properties, bank accounts and other financial documentation with the Department of Religious Affairswithin the Ministry of Internal Affairs.[760] Under the law, sources of income and finance are scrutinised by the Government every year.[761]

628. The applicable law then provided that the Government "adheres to and recognises the principles of freedom of religion and expression of opinion without distinction of any kind. But activities such as infringing upon national safety, security and supreme national interests, instigating refusal to serve national service and stirring up acts of political or religious disturbances calculated to endanger the independence and territorial sovereignty of the country are illegal under Eritrean law and are not thus tolerated."[762]

629. The Eritrean government officially recognises only four religious groups: the Orthodox Church of Eritrea; Sunni Islam; the Roman Catholic Church; and the Evangelical Church of Eritrea, a Lutheran-affiliated denomination. In 2002, the Government imposed a registration system for all religious groups other than the four officially-recognised religions, requiring communities to provide detailed information on their finances, membership and activities.

630. The Commission documented that all churches and religious institutions were restricted in the conduct of all their activities, including those of a strictly religious nature.

(b) Violations of the right to freedom of religion or belief

(i) Persecution of Jehovah's Witnesses

631. Jehovah's Witnesses[763] have been persecuted from the outset for their stand on political neutrality and conscientious objection to military service. In line with the tenets of their faith, Eritrean Jehovah's Witnesses did not participate in the 1993 referendum on Eritrea's independence. A year later, Mr. Paulos Eyassu, Mr. Isaac Mogos, and Mr. Negede Teklemariam refused to enlist in the country's military service, and were consequently imprisoned. They are still in Government's custody. Following these two incidents, President Afwerki announced on 25 October 1994 the revocation of citizenship for Eritrean Jehovah's Witnesses:[764]

> *"*A group calling themselves 'Jehovah' [sic], who are Eritreans by birth, but who have revoked their Eritrean citizenship by their refusal to take part in the referendum, have now reconfirmed their position by refusing to take part in the National Service, thus deciding to revoke their citizenship.*"*

[759] Art. 4 of Proclamation No. 73/1995.
[760] Ibid, art. 10.
[761] Ibid, arts. 7 (2) and (3).
[762] Articles 253, 486 and 771 of the Transitional Penal Code which was replaced by a new Penal Code promulgated by the Government of Eritrea of 11 May 2015 - see C/CRC/ERI/3, par. 70 and /C/ERI/4, par. 142.
[763] Jehovah's Witnesses is a millenarian Christian denomination with non-Trinitarian beliefs distinct from mainstream Christianity.
[764] TFM035. See also : http://www.libertymagazine.org/article/aliens-for-their-faith, accessed 9 May 2015.

632. Under international human rights law, everyone has the right to have and retain a nationality.[765] While officially the Government of Eritrea does not make a distinction between citizenship and nationality,[766] *de facto*, citizenship is limited to Eritrean nationals who have fulfilled their military duties and have completed their national service.[767]

633. The revocation of citizenship of Jehovah's Witnesses implied the confiscation of their national identity documents. Furthermore, those who worked for the Government were dismissed from their positions,[768] while the licences of those who owned businesses were revoked.[769] Their public benefits were suspended as was their access to public goods and services, including the coupons, which permitted households to buy items at affordable prices at Government shops.[770] A former employee of the Ministry of Interior explained that the various measures taken against the group were intended to sever *"any link that they had with the Government."*[771] Witnesses spoke of the difficulties they faced following the decision, which affected entire families.[772]

> "*My family became a victim. We were evicted from our house. It was a Government house. My father had his own shop; they came and confiscated all his goods and closed his business. They first closed the shop and within a month we lost our house. We did not receive any warning before the eviction. The administrator's offices called us and told us to leave the house immediately. A friend of ours let us live in his house. We were living thanks to kind friends*."

> *"All Eritreans receive vouchers for food, except Jehovah's Witnesses because we do not have an ID. We are not considered as citizens … Each zoba administrator implements the policy regarding the ID differently. Up to now we do not have any coupon and we have to buy food at the market. It is four to five times the price at the Government shops*," explained another witness.

634. In the following years, a smear campaign was conducted by the Government admonishing Jehovah's Witnesses for not having participated in the liberation struggle and not enlisting in the re-building of the country. The Government refused to acknowledge the

765 Art. 24(3) of ICCPR and 9 (1) of CEDAW art. 5(d)(3) of CERD CEDAW, art. 7 (1) and 8 of CRC and art. 6 of the African Charter on Rights and Welfare of the Child.

766 Art 1 (10) of the Proclamation 58/1994 on the land tenure reform that provides that "Eritrean citizen means a person who has proved his Eritrean nationality in accordance with the relevant Eritrean laws". It is the Proclamation No. 21/1992 that regulates the acquisition and deprivation of Eritrean nationality, which is primarily obtained by descent of one Eritrean parents (*jus sanguinis*), even if it may also be acquired through naturalisation.

767 This is implied by article 6 of the Proclamation no. 82/1995 on National service, which provides that: "Any Eritrean citizens from 18 to 50 years of age has the obligation of carrying out national service." This is explicitly acknowledged in Muluberhan Berhe Hagos, Customary versus modern laws of Eritrea on Gender equality, p. 268. Only Eritreans who have completed their national service may enjoy certain rights as getting access to a piece of land for farming or for building a house, right to work for NGO as provided by aricle 6 (8)(d) of Proclamation No. 145/2000 on the administration of NGOs.

768 TFM036.

769 See chapter VI, B, 6, Violations of the right to property, for more details on how Jehovah Witnesses' right to property was affected.

770 TFM036.

771 TFM034, TFM035.

772 TCDP060, TFM038, TCDP059, TCDP061.

faith's precept of political neutrality, as illustrated by a 1995 statement by the Ministry of Interior broadcast on national radio: [773]

> *"There is no family that has not lost loved ones in the war. Those who are not affected are the Jehovah's Witnesses. They refused to take part in the struggle. As a result, the Eritrean people developed a strong hatred of them… In 1991, when the people of Eritrea were casting their votes during the referendum, those people refused to cast their votes, saying they did not recognize the so-called government of Eritrea, but only the heavenly bodies."*

635. As a result of the prejudicial image of Jehovah's Witnesses as not supporting the country and its Government, they endured further attacks from the population. Testimony collected indicated that children were also bullied and beaten in school.[774]

> A witness recalled the harassment of his family and the beating he endured in school: "*When I was ten years old, two entire sections, around 100 students, came and beat me. The teachers were supporting the students, except one, the assistant director… They beat me severely. One student especially was beating my lower back, and stepped on my ear. I was bleeding and my eardrum was damaged. My mother was stoned by neighbours and got lot of problems physically. My father was working as a carpenter and had a lot of machines that were looted and thrown in the river. The neighbours were very angry. Everybody was against us. They thought we should have supported the independence. They thought we were against the independence, against them."*
>
> Another witness explained the community's attitude toward Jehovah's Witnesses: "*A lot of people lost their children in the war and so they are emotional about the country. The Government sent such a wrong message about the Jehovah's Witnesses, that they are supported by [a foreign country] and betraying [our] country. So a lot of Eritreans are against us. What I remember was that people were angry with the Jehovah's Witnesses because they do not vote. They felt that we did this because we were against the Government. They threw stones against our houses. For many months my father locked us inside to protect us. If you go to school and the teachers and students know that you are a Jehovah's Witness they beat you or set you apart. My brothers and I did not want to go to school.*"

636. Jehovah's Witness children reportedly quit school to avoid being conscripted. As a consequence, after leaving school, these children have to live in hiding. Children who have left school face considerable restrictions in their movement,even in their area of residence.[775]

> A submission received by the Commission explains that children have to leave school after the 8th grade to avoid enlistment: "*Jehovah's Witnesses cannot receive a full secular education. When students register for high school in the 9th grade, they are also required to register for national military service. Upon completing the 11th grade, high school students are obliged to go to Sawa military camp to complete their 12th grade education while receiving the military training. Therefore, many Jehovah's Witnesses do not register for high school so as not to compromise their conscientious stand to refrain from military training and military service.*"

[773] BBC Summary of World Broadcasts, March 4, 1995, Source: Voice of the Broad Masses of Eritrea, Asmara, http://www.hartford-hwp.com/archives/33/003.html, accessed 9 May 2015.
[774] TCDP062, TFM038.
[775] S112, TFM038.

A victim spoke about the risks encountered by Jehovah's Witnesses after quitting school: "*When we leave the house, we do not know whether we can go back again or go to prison.*"

637. In spite of efforts to hide, several members of the community were rounded-up and forced to join the military service. They were subsequently arrested when they refused to perform military activities at army camps.[776]

638. Since Jehovah Witnesses are deprived of their civil rights as Eritreans, they have not been able to lawfully leave the country as their passports have been confiscated. *"In 2007 my father was very ill and went to the hospital. He had an opportunity to receive treatment abroad but because he is a Jehovah's Witness, he was not allowed to leave the country,"*[777] testified a witness. Nonetheless, many adherents felt that they had no choice but to flee.

(ii) 2002 ban and violations of the rights of members of unrecognised religions

639. Although the 2002 decision to ban unregistered churches officially marked the Government's hostility toward minority religions, the repression had started earlier. The Commission was informed that conscripted members of these religious communities were reportedly sent to the warfront to *"test their loyalty … and to eliminate them."*[778]

640. The Commission gathered information on arrests of members of "new religions" that had taken place before the 2002 ban. In 1998 and 1999, many churches in rural areas were closed down by the Government and members of the clergy were arrested.[779]

A witness and member of the Full Gospel Church, an Evangelical denomination, explained: "*There was a campaign in rural areas, starting in 1998-1999. There were incidents. In 1998 our sister church in Assab was closed by the Government. In Barentu, in 1999 pastors were jailed.*"

A member in exile of the Kale Hiwot Word of Life Church, an Evangelical denomination, reported: "*After independence, we were not allowed to build new churches. We were facing arrests, got beaten by members of the National Security Office. In 1999, the police raided our church and started beating all the members and arrested six members. I had to negotiate and after ten days they were released. Also in 1999, they closed the church. I wanted to talk to the Governor, but he said he would not allow to reopen it, nor to release the pastor. I went to his boss who said I should talk to the other guy. We went to the Ministry to complain, but they said they couldn't do anything about it. [We] were not able to get justice. Everyone said we cannot help, negotiate with the person who arrested your people.*"

641. Around the time of the 2002 announcement, the Government carried out more arrests of adherents of minority religions.[780]

A submission received by the Commission reported that in 2002 congregants were rounded-up while attending services. They were subsequently detained for a brief period. Those arrested were adherents of the Assab Full Gospel Church, the Rhema Church and the Word of Life Church. The submission further added that the draftees among the groups were re-arrested a fortnight thereafter and were subjected to "*severe torture and other forms of torture for months.*"

[776] See chapter VI, C, 1, National service.
[777] TCDP061.
[778] TNR015, S109.
[779] TNR014,TBA044
[780] TLA016, S071 TBA044, TFM037.

A witness informed the Commission that members of the Kale Hiwot Word of Life Church arrested in Assab in 2002 were held by the State for much longer because they had refused to sign a statement that they would no longer participate in religious gatherings.

A Jehovah's Witness recounted a mass arrest that took place in 2002. Congregants were surrounded by the police at their place of worship, where they were kept for a couple of days without being fed nor given warm clothes for the cold nights. There were children among them. They were also interrogated and taken to different places of detention where they were kept for nine more days before being released.

642. Information gathered by the Commission revealed that these attacks were not random acts of religious persecution but were rather part of a diligently planned policy of the Government. According to a submission received by the Commission and testimony collected, the plan was based on a document prepared by the National Union of Eritrean Youth and Students.[781] The plan, which aimed at eliminating unrecognised religious movement, was presented as premised on these groups being dangerous and part of an attempt by a foreign state to infiltrate Eritrean politics.

a. Registration and banning of unregistered religions

643. The 2002 violent attacks on members of the Medhane Alem community, a youth movement that sprung from the Eritrean Orthodox Church by members of the mother church, appeared to be the pretext for the Government's official announcement to exert tighter control on religious minorities.

644. A month after issuing a decree in April 2002, the Ministry of Information convoked a meeting with leaders of minority religious bodies to announce the suspension of the activities of those that had not conformed to the 1995 Proclamation, pending their official registration.[782] A witness recounted the meeting:

"*On 15 May 2002, all evangelical leaders were called to the office of the then Minister of Information, Mr. Naizghi Kiflu. Three of our pastors attended that day. The meeting was called urgently. They were told that they should close all services, and buildings should not be used. The Orthodox Church, the Catholic Church, and the Lutheran Church were not called to that meeting. The Muslims were exempted as well.*"

645. Religious minorities were reportedly reproached for rendering the youth *"passive and not productive"* and for *"discouraging them to fight,"*[783] possibly alluding to the popularity of the *"new churches"* among the youth.[784] Churches were asked to furnish in their registration applications supplementary information, such as lists of members, which was not required under the 1995 Proclamation. Several groups did submit comprehensive applications, in spite of the fear that individuals whose names appeared on their lists could be identified and arrested.[785]

A church leader in exile confided: "*We filed the form. In the form, we had to fill out a members list, with addresses etc. Some of the churches did provide the info on members, others refused … Some of the new movements refused to provide*

781 S109, TNR015.
782 TNR014.
783 Ibid.
784 S100, TBA044.
785 TBA044, S109.

members' lists. Some were not able to fill the form as they did not know their membership."

A submission received by the Commission explained: "*Some churches complied and handed over all the information requested. Others supplied half a membership list, or merely listed details of leaders and their salaries. However, the Rhema, Hallelujah, Charisma, Philadelphia Churches and several others refused to comply.*"

646. In 2005 and 2006, the Government made several statements suggesting that authorisations would be issued to some applicants. At the 61st session of the Commission on Human Rights in April 2005, the Eritrean delegation stated that four religious groups had been formally registered.[786] Later, Mr Ali Abdu, the then Minister of Information, reportedly told AFP that the 7th Day Adventist Church would be registered: *"The Seventh (Day) Adventist Church is about to be authorised, it is at the final stage of the procedure. … Other groups have asked for an authorisation and I am sure they will be given it when the administrative procedure is finished… We tolerate everything but intolerance."*[787] In 2006, Mr Amanuel Tesfahunei, spokesperson of the Department of Religious Affairs, also reportedly indicated that four religious organisations, including the Episcopals, the Seventh Day Adventist and Faith Mission, would be given authorisation as their applications conformed to the requirements.[788] However, none of the religious communities received official recognition, nor were they advised that their applications had been rejected. When confronted with the question of pending registrations of religious institutions, Government officials reportedly responded that it was not a priority.[789]

647. The Government enforced its decision to suspend unregistered churches immediately after the May 2002 meeting. The ban also later applied to reformist movements emerging from the authorised religions.[790] As this decision did not have a legal basis, the banned religious groups could not challenge its legality, and were *de facto* prohibited from practicing their faiths publicly in the country.[791] Their buildings were closed,[792] and some were later converted into military camps.[793] The decision meant that religious groups lost their places of worship and were forced to gather and worship in secret.[794]

"*Our Pentecostal Church was shut down in 2002. I was a little girl, but I remember hearing that we did not have a church anymore. My family only prayed inside the home. Fellowship is part of our religion, but because we did not have churches we were driven underground. Those who could offer their houses as places for the fellowship to meet and pray together*," recalled a witness.

A witness spoke of the period after the meeting: "*The next Sunday, we put a big sign that the church was closed indefinitely by decision of the Government. There was*

786 E/CN.4/2005/SR.34.

787 "Eritrea set to authorize Adventist church", AFP (Asmara), 12 April 2005, http://www.sudantribune.com/spip.php?article9021, accessed 10 May 2015.

788 "Eritrea Freedom of Religion and Belief," Open Doors International, 2006, http://unitedvoicesmedia.com/pdfs/freedomofreligionorbelief.pdf, accessed 5 May 2015.

789 S071.

790 TBA048, TNR015.

791 The mandatory registration requirement does not appear to have a legal basis or be based on a written policy.

792 See chapter VI, B, 6, Violations of the right to property.

793 TNR014.

794 TSH043, TNR014, TFM038, TAM013.

divided opinion as to whether they were trying to process the permit. In about three months, one of the military officers came and took over the building and it became a camp beginning in 2003."

"*We stopped [having] big gatherings in 2003. We made sure it was less than 10 people and we did not attract attention,"* said a follower of an unauthorised religion.

Another witness testified: "*When I was in Eritrea, we had to use secret tactics to gather for prayer. We always said we had visitors*."

648. The Commission heard that inter-faith relations between the authorised religions and religious minorities had not always been tense. A member of one of the smaller denominations recounted that they used to organise religious activities in buildings belonging to the Catholic Church.[795] However, a smear campaign by the Government and NUYES following the closure of the unregistered churches gave rise to social intolerance of their members.[796]

A submission received by the Commission reported: "*The repression has also been accompanied by hate speech from officials, with adherents equated with Islamist extremists and vilified as non-indigenous, sub-national, unpatriotic agents of foreign interests who seek to undermine public morality, cause a sectarian divide and destabilise the country. Muhyedin Shengeb, long-standing chair of the NUYES, until he was obliged to flee the country in 2004, assisted in stoking anti-Christian feeling.*"

A witness recalled that the family of a follower of a minority religion did not welcome her back after she had been released from prison.

Another witness explained that his wife was pressured by the clergy of her family's church, the Orthodox Church, to separate because of his affiliation to an unauthorized religion.

Another witness described the stigmatization of the Pentecostal churches in the country: "*Even the overall Eritrean society does not accept the Pentecostal churches as it does not want any change from the traditional church – even the Orthodox Church persecutes the Pentecostal churches*."

649. Indeed, the Commission received reports that sometimes members of unauthorised religious groups were arrested after having been denounced by their neighbours.[797]

b. Arrest and detention of clergy and adherents of unrecognised religions

650. After the announcement of the 2002 decree, the Eritrean Government arrested several leaders of the clergy of several unrecognised religious groups, including the Eritrean Evangelical Alliance, the Full Gospel Church, the Rhema Evangelical Church, the Medhane Alem Orthodox Church, the Kale Hiwot Church, the New Covenant Church, Jehovah's Witnesses, and the Presbyterian Church.[798] It was reported to the Commission that the Government allegedly used the lists from the registration applications to identify

[795] TNR014.
[796] S109, TFM038, TBA085, TLA019.
[797] TLA019, TLA016, TSH042
[798] TBA044, TCDP025, S100, S109, S071

and arrests these leaders.[799] In addition to prominent church leaders, several other members of the clergy were also arrested.[800]

> A witness recalled the detention of her father: "*My father stayed in this prison for a month. He was with two brothers and one sister. The sister was then separated. They were taken there because the sister was the owner of the house where we had gathered. My dad and the two other brothers were elders in the congregation and they thought they were our leaders. They are indeed pastors*."
>
> Another witness spoke of the arrest of his church's pastor: "*Before the church was closed, he used to serve the churchc. He was a Pastor of that church. He was arrested for the first time when he was 28-29 years old. He was the one preaching and the one organising the gathering even if it was taking place in another person's house.*"

651. The Commission heard from witnesses who inferred the reasons for religious persecution in Eritrea from questions and comments made to them during interrogations. Some witnesses reported that the prohibition of religious congregations outside the services of official religions is rooted in the Government's measures to prevent gatherings and inter-personal exchanges in general.[801] Others reported that during the interrogations they were accused of being agents of foreign states,[802] though a witness belonging to the Pentecostal community affirmed that it was an independent movement.[803]

652. Information gathered by the Commission also reveals that followers were arrested for merely manifesting their religion. Several accounts of adherents arrested after caught praying or in religious gatherings in private places were heard by the Commission.[804]

> A exiled member of a banned religious group spoke of the arrest of his prayer group in 2005: "*I joined the Kale Hiwot Church and became part of the deacon. The Government banned our religion. Every church was closed. We started small gatherings in homes. In 2005 I and my fiancé went to a house to have tea and pray with a friend. Suddenly, the house was surrounded by 10 police officers. They took us to the police station and detained the three of us for 15 days.*"
>
> A witness described the general persecution of unauthorised religious groups: "*From 2002 to 2007 persecution of Pentecostals was very intense. There were constant crackdowns. Groups praying in private homes were constantly taken and detained. Many of my cousins are still detained.*"

653. By early 2005, a dozen church leaders and hundreds of followers of unrecognised faiths were in the State's custody. Communications thereon were transmitted by the UN Special Rapporteur on freedom of religion or belief to the Eritrean Government. In its response, the latter denied that those arrested were detained for more than ten days. It also refuted all allegations of ill-treatment and torture:

> *"The Government replied that the Jehovah's Witnesses had not been arrested because of their religious beliefs but because they refused to participate in the National Service Programme, which is compulsory and universal*.

[799] TBA044.
[800] TFM037, TCDP038.
[801] TSH085, TSH086.
[802] TCDP025, TCDP038, TCDP027, TSH075.
[803] TLA019.
[804] TCDP062, TCDP027, TSH043.

Members of the Charismatic Rhema Church and other groups were detained briefly because they had deliberately, contemptuously and provocatively disobeyed the decision of the Government that no religious group could operate until after they had registered with, and acquired a permit from the Government in accordance with the existing law. These groups had refused to register with the Government and apply for permits.

It is a clear manifestation of the leniency and tolerance of the Government that those who had so contemptuously and wilfully broken the law of the country and challenged the authority of the Government were released with only a warning after a brief detention of 10 days. They were not "beaten" or "threatened with death" or attacked "by mobs, including priests."[805]

654. Of the body of testimony collected by the Commission, only some of the individuals detained following the wave of arrests in 2002 were held in custody for a period shorter than ten days. All other accounts from victims referred to much longer periods of detention,[806] more than ten years for some of them.[807]

A witness confirmed that some believers arrested in Assab in 2002 had been detained between seven and 12 years.

A victim related his arrest and several month long detention to the Commission: "*On 1 July 2004, I was coming from an activity of the group where I was preaching with another brother when a soldier arrested us. We were first detained at a police station and then we were sent to another police station and then to an undisclosed place. I was in solitary confinement and handcuffed. We were not able to see each other for seven months. There was lots of torture, it was hard*."

A witness recounted: "*In 2010, many of my neighbours were arrested because they were Pentecostals. I saw Mr. B. taken in 2007. He was detained until 2010. I used to take him food there. [Four other people, one of whom] is a relative of mine, were arrested and taken to prison sometime in 2010. I saw them in that [place of detention] in 2011 when I was taken there.*"

655. Persecution has continued unabated. Several witnesses reported more recent waves of arrest of leaders of unrecognised religious groups.[808] Individuals, including minors, have also been arrested or rounded-up at social events.[809]

A member of a banned church explained to the Commission: "*Initially, only open meetings like weddings, which involve singing and other demonstrations of faith, were targeted. Many were arrested during such occasions. The guests would be asked about their faith, the non-believers were released.*"

A witness informed the Commission of the arrest of his sister who was 15 at the time and who is still in prison: "*My sister was at a meeting in 2012, and they took the whole group to prison. … She was 15 years old when they took her. I am scared that she has a mental disease now. When my sister was arrested, she was with a small group. We stopped [having] big gatherings in 2003. We made sure it was less than 10 people and we did not attract attention*."

[805] E/CN.4/2005/61/Add.1, paras. 99-101
[806] TCDP004, TNR017, TCDP013, TBA044
[807] TBA044, TCDP063, TSH034.
[808] TFM036, TFM038, TCDP060.
[809] TFM038, TFM038. TCDP027. TBA044.

A witness who left in 2014 spoke of the recent arrest of more than 120 individuals, most of whom are still incarcerated.

Another witness informed the Commission of the arrest of hundreds of individuals attending a memorial service for those who had died in the Lampedusa incident: "*In November 2014, an individual invited 182 people in his courtyard. The security arrested them and released 92. The others are still in prison, including the leader … They are held in Asmara. It was after Lampedusa, many were mourning. They wanted to comfort the mourners. I do not know if they are still in prison*."

656. Arrested leaders and members of unrecognised religious groups are held in harsh conditions in detention facilities such as Me'eter, Aderser and Mai Serwa.[810] At the time of their arrest and throughout their detention, individuals who are arrested for religious reasons are systematically subjected to ill-treatment and torture. It is common practice to coerce renunciation of faith.[811]

A witness who was asked to renounce his faith under duress described the treatment: "*I was put in prison for six months… They whipped me and asked me to deny my faith and join one of the four accepted religions. They beat us during three or four days. We were seven. After a few days, some of us escaped the prison. They would never let you leave the prison, unless you accept to deny your faith*."

Another witness recalled that as those arrested started renouncing their faith one after the other, they were released and fewer remained in prison: "*You have to sign a paper stating that you recant your faith and you will not pray anymore, nor preach to any person. Many people would be taken to prison and released after signing the paper. At the beginning, there were almost two containers full of 40 females and 40 men and at the end there would only be 2-3 females and 8-10 men refusing to sign the paper left. When I left, the following people were still detained, but to date, they have all been released.*"

657. Upon release, followers of unrecognised religions are warned not to re-engage in religious activities and are forced to sign a statement that they will no longer gather to worship with others otherwise they would face harsher punishment.[812] Therefore, to practice their religions, many choose to leave the country. Religious persecution was cited by several individuals who spoke to the Commission as one of the main reasons for fleeing Eritrea.[813]

A exiled member of a banned church declared: "*I am a Pentecostal and I was not able to live freely because of my religion.*"

A witness spoke about the reason he fled: "*[W]e started congregating in houses to pray. When they discovered I was doing this, I had no choice but to run away … for fear of punishment. I know other Protestants who have been imprisoned because of their religion.*"

(iii) Persecution of authorised Christian churches

658. Authorised Christian churches have not endured the same degree of persecution as the banned religious groups. However, there has been interference by the Government in the internal affairs of the churches, as well as instances of arrest of clerics and members.

[810] See chapter VI, B, 3, Detention.
[811] TAM023, TCDP025, TCDP027
[812] S133, TNR031
[813] TAM074,TAM023

a. Appointment of the clergy and arrest of clerics

659. The Eritrean Orthodox Church, the predominant Christian church in Eritrea, was relatively free from any interference from the Government until the leaders and members of an emerging youth movement, Medhane Alem Church, were arrested. Abune Antonius, the then Patriarch of the Eritrean Orthodox Church,[814] denounced the State's actions and refused to excommunicate the members of the movement when pressured by the Government.[815] The Commission received information that rumours had been spread, allegedly by the Government, that the Patriarch was *"a Protestant and interested in converting the Church into a protestant religion" and had "neglected his people*."

660. The Government officially announced that it was taking over the administration of the Church in a 2005 circular. Abune Antonius was ultimately replaced by Abune Dioskoros, Bishop of Mendefera, in contravention of the procedures of the Church whereby a patriarch is only replaced upon his death and only by election.[816] The third Patriarch's secretary was also allegedly arrested following his deposition. Information received suggests that he has not been released.[817]

661. Clerics who addressed a letter to the Government on behalf of the Synod in protest of the deposition of Abune Antonius were also arrested.[818] as described to the Commission: *"Some three years after the Orthodox Patriarch was arrested and a new Patriarch was appointed, some of the monks started to question the authorities about this arrest. The Synod sent an open letter to the Government. The letter was signed by 18 persons. On May 2008, 18 persons were detained in [a detention facility]. The older accused persons spent two years and half in [a detention facility] [and] were released after that. Some of them were crippled when they were released."*

662. The Commission heard of several instances of harassment and arrest of clerics from recognised Christian churches. They were accused of supporting unrecognised religious groups or were arrested because they had criticized the Government.[819]

> Another witness spoke of Orthodox monks who had been detained with him on charges of "*blasphemy for bringing Pentecostalism to the Orthodox Church*."
>
> A witness reported the arrest of members of recognised churches: "*I now hear more about persecution of other groups, of Catholics and Orthodox particularly. Priests that criticise the Government are arrested. Most priests want to protect their followers, yet if they say anything they are arrested.*"
>
> A witness spoke of a Catholic priest who had been in prison for a long time.
>
> In another act of harassment of the clerics, the Government arrested in 2014 several Lutheran Church priests before their ordination. They were detained for six months.

[814] In 1993, the Eritrean Orthodox Church separated from the Ethiopian Orthodox church as Eritrea formally became independent. The third patriarch of the Eritrean Orthodox church is Abune Antonios. The Patriarch is the head of the church (like the Pope for Catholics), and each orthodox branch has its own patriarch. They are voted in after the death of the last.

[815] TSH008, TSH009.

[816] S100, TBA044, TSH075, TSH08-09.

[817] S100.

[818] TLA00, S071.

[819] TSH079, TSH043, SH034, S081, TBA044.

b. Persecution of members of Christian churches

663. While members of officially recognised churches have been allowed to congregate and worship in public, they have reportedly been under surveillance by the National Security Office.[820]

> A witness explained: "*In Eritrea, everybody practices in secret except for authorised religions. For these religions, the celebrations are organised in churches and are authorised, but the national security is checking what is said during the mass and other celebrations.*"
>
> Another witness spoke of the surveillance on the Eritrean Orthodox Church by the Government: "*There is complete distrust in the church. Deacons and priests in Eritrea are under surveillance, and arrested and detained if they say anything in public.*"

664. The Commission documented cases of arrest of followers of recognised churches on account of religion. They were arrested either on suspicion of being a member of unrecognised religious communities or because they were found praying or engaging in religious activities – the same behaviour that the Government reproached among members of the banned communities.[821]

> A witness explained that he was arrested on suspicion of membership of the unrecognised religious communities. He recounted his interrogation: "*Someone asked me: What is your religion? I said Orthodox. He said: you are a liar. He was in civilian clothes. He hit me with a rubber stick, a thin police stick, short, lying on the table. He hit me on the head. I fell down on the floor, my tooth broke on the edge of a metal desk. I cried for a few seconds, I felt like I was flying, he hit me on the right hand side of my right temple. I was afraid, I started crying. I asked why. He asked: Why are you lying, you joined the Pente? I said: no only for a moment, they pray to God. He said: it is not allowed in this country. I said: who can choose my religion? He said: we have four known religions, without them, you are not Eritrean. He said: if you start lying, I will hit you again. You have to tell us where they live. At that time, I did not know them. I only saw them in the programmes. They wanted to know where they live. He called another guy and asked him to take me away. He called me seven times, over a period of five months.*"
>
> Another witness was arrested for manifesting his faith: "*My family is Orthodox. While some people are religious, others follow more strictly the text of the Bible, which is something the Government does not accept. I like to read the Bible and talk about [it]. My freedom of speech was violated. I was in prison for over seven months.*"
>
> A witness also spoke of another arrest of several members of the Eritrean Orthodox Church in 2013: "*Twenty people I know and who were not Pentecostals, but members of the Coptic Church, were arrested just because they were practicing their religion in Asmara. They were released after one month and having signed a paper in which they promised not to practice again."*

(iv) Persecution of Muslims

665. At the outset of independence, key Muslim figures, including political leaders, businessmen, teachers and former fighters from the Eritrean Liberation Front (ELF), were

[820] TLA016, TSH08, TSH09.
[821] TBA064, TBA023, TLA016.

perceived by the Government as potential critics and opponents. They suffered arbitrary arrest, enforced disappearances and killings conducted on a massive scale. The peak of this crackdown against the Muslim intellectual elite occurred around 1994, although it is reported to have continued for some time after that, including when they opposed the Government's policy of mandatory enrolment of Muslim women into national service.[822]

666. The Commission heard that the Government of Eritrea regularly interferes in the religious activities of Muslim communities and has directly appointed some muftis and revoked others. Some of these appointments led to mass and open protests by followers who were then arrested and detained while others disappeared.[823] It was also reported to the Commission that the Government tried to interfere in the substance of religious teaching and doctrine, and that it tightly controls what is said and done in mosques.[824]

> A witness reported: *"Another form of interference and control by the Government was that it ordered the muezzin not to teach the doctrine of Tawhid. Tawhid is a doctrine referring to the uniqueness of God. The Government was afraid of anything that would help to unite the Sunni, Sufi and Shi'ite Muslims into one community."*
>
> Another witness testified*: "Muslims have a difficult time in my country. I went to Koranic school as a child. I wanted to know more about my religion, but the mufti is banned by the Government and they do not allow you to practice all the time. Where there were group prayers or lectures about the Koran, sometimes the national security came and interrupted the event and arrested people. There were even people inside the mosque who were working for the national security. These people would tell security about what was going on inside of the mosque, and when our events were supposed to take place."*

(c) Religion in the national service in the army[825]

667. Due to the supervised environment of the national service in the army, religious freedom appears to be more restricted than it is for conscripts assigned to civil service. Tolerance of religious practice during military training and service has varied over time. The Commission was informed that in 1993, camp leaders at Sawa confiscated draftees' religious materials. However, recruits who were on military training in the late 1990s recalled that they were allowed to pray.[826] The current policy includes an absolute ban on religious activities during military training and service.

668. Freedom of religion is severely restricted during military training in Sawa and in military camps in general. Upon arrival, new conscripts have to indicate their faith during the registration process and are told that it is prohibited to practice any religion in the camp. Those who are caught praying or reading religious materials are severely punished.[827] Nevertheless, conscripts performed religious acts and activities individually or in groups, but in hiding.[828]

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[822] S036. See chapter VI, A, B, 2, Violations of the right to liberty and security of the person, and 5, Arbitrary deprivation of life.

[823] S040, S070.

[824] S120, TAM043, S052.

[825] During the investigation, the Commission noted that witnesses did not differentiate between military service and national service. Therefore, this report uses the term 'military service' only where it was necessary for the analysis to distinguish the 'military service' from civil service.

[826] TFM035.

[827] TNR074, TBA050, TCDP011, S114.

[828] S052,TSH069, TSH064, TFM030.

A Muslim in exile gave details of how he practiced his religion while in the national service: "*They would tell us that religion is not allowed at camp, even on Eid. When all the Muslims were praying together, security disrupted us, divided us, and stopped us from praying. If they saw you praying, they would punish you. I would sometimes hide and find places to pray. Very often I wanted to pray but could not because there was nowhere for me to hide. I was always careful about not being seen.*"

Another Muslim who was punished for practicing his religion told the Commission: "*We were not permitted to pray or read the Koran. I was caught praying outside. My hands and feet were tied behind my back. I was left like that for almost six hours inside a locked room. I still have rope marks. Some of my colleagues lost their hands after they were tied like this after having been caught praying*."

A former conscript explained that around 2004 a Muslim conscript was arbitrarily killed for continuing to pray during military training despite warnings to stop: "*On one occasion, a Muslim was killed in front of us for praying. After we were all gathered, the leader read a page of information to us. Basically it said this man has been caught praying against our orders three times and is being sentenced to death. Anyone who does not obey military orders will also be killed. The Muslim man was then shot twice and killed.*"

A Christian believer in exile told the Commission: "*I was a Pentecostal [when I did my military training in Sawa]. I was mistreated because of this (…) My Bible was taken away from me. Being a Pentecostal was one of the main reasons why I and my superior did not get along. I was not allowed to read religious books. I had to hide it.*"

669. The Commission documented several cases of arrests and imprisonment of conscripts who had been found practicing their religion, including praying, or possessing or reading religious materials. A former military clerk in charge of recording punishments at a military camp indicated that a draftee would be incarcerated for a period between five to seven months if found practicing religion. The detention would be reduced if the person committed not to engage in further religious activities. He also reported that 11 cases of imprisonment on account of religious practice were recorded at the camp during the year 2014.[829]

670. There seems to have been some level of tolerance of exemption of clerics from enrolment in the national service until 2005, when the Government requested the four recognised religions to provide a list of clerics 30 years old or younger for their enrolment in the national service. Only the Catholic Church did not provide the requested information. Those who did not voluntarily report were arrested and were forced to join the national service.[830] The Commission documented a case of such arrest at a monastery, as described by a witness: *"In 2005, the monks at Gedab Debremerkoryos (monastery) between Mendefera and Adi Quala near Areza city, one of the biggest monasteries in Eritrea, were attacked by the military. Many young deacons and monks were forced to go to Sawa. They were taken to Sawa to serve the country rather than devote their lives to God only."*

671. Members of the Catholic Church who protested against the forced conscription of clerics were reportedly arrested.[831]

[829] TBA068. For further details on the punishment in the national service, see chapter VI, C, 4, Torture, ill-treatment and punishments.

[830] S071,TSH008&009.

[831] S071.

(d) Principal findings

672. The Commission finds that the limitations imposed by law and through unwritten policies on churches and religious institutions in the conduct of their activities and indirectly restricting the right to manifest one's religion or belief, are not compatible with international human rights law. The restrictions have affected the right of adherents to practice and manifest their religion, to conduct legitimate religious activities such as preaching, and the functioning of religious institutions, in a manner that is not proportional and necessary for the protection of public safety or order.

673. All religious communities and their members were, to varying degrees, targeted by restrictions and attacks by the Eritrean government. Religious gatherings were prohibited; religious materials were confiscated; adherents were arrested, ill-treated or subjected to torture during their detention; prisoners were coerced to recant their faith; many religious followers disappeared and were killed. The Commission finds that all this constitutes a violation of the right to freedom of religion, thought and belief.

674. Moreover, the Commission finds that the members of various faiths are regularly victims of arbitrary arrest and are detained without any judicial proceedings to ensure respect of the right to liberty and a fair trial. In addition, those arrested and detained are usually treated in a manner that amounts to torture, cruel, inhumane or degrading treatment or punishment.

675. The Commission finds that Jehovah's Witnesses have been arbitrarily deprived of their citizenship, which also constitutes discriminatory treatment on the basis of faith. The Commission finds that Jehovah's Witnesses have been victims of violations of their right to take part in the conduct of public affairs and to have access to public service positions. In addition, the loss of citizenship entailed curtailment in the enjoyment of their fundamental rights, which are not considered to be specific to citizenship. These include the right to work when their business licences were arbitrarily revoked, and the right to be recognized everywhere as a person before the law when their national identification documents were confiscated.

676. Irrespective of the root causes of religious persecution in Eritrea, the Commission finds that it is closely linked to the violation of the right to freedom of expression and may be seen as another facet of the Government's attempt to control and isolate its nationals.

B. Rule by Fear

1. The administration of justice

677. Eritrea has the obligation to respect and ensure the effective enjoyment throughout its territory of all human rights contained in the core human rights treaties to which it is a party. The Eritrean Government should prevent, investigate, prosecute and punish human rights violations committed by public officials and restore rights or provide a remedy to the victims through its judicial system. It should also prevent any violation by private entities or individuals and provide an effective remedy to the victims, including through independent investigation, prosecution and punishment of the perpetrators. The administration of justice is a cornerstone of the rule of law as it guarantees the effective protection of individuals' rights by keeping the government and public officials accountable. According to its international obligations, Eritrea should ensure that justice is administered in compliance with the international standards regulating the due process of law and respect for the rights of the accused in criminal proceedings provided in article 14

of the International Covenant on Civil and Political Rights, and article 7 of the African Charter on Human and Peoples' Rights. Such proceedings should be conducted in an independent and impartial manner.[832] The right to a fair trial and other rights related to the administration of justice are the procedural means to safeguard the rule of law[833] and they apply to all courts and tribunals, including military ones and special jurisdictions.[834]

(a) Violations of the rights to a fair trial

678. The main safeguard for a person charged with any criminal offence is to have a fair and public hearing by an independent and impartial court as provided under articles 14 (1) of the International Covenant on Civil and Political Rights and 7 (1) (b) of the African Charter on Human and Peoples' Rights.[835] The Eritrean Government has an obligation to ensure that the right to a fair trial and all its components are guaranteed for every person charged with a criminal offence at each stage of the proceedings, including before military courts.

(i) Right to be presumed innocent and other rights during the pre-trial procedure

679. Ahead of the trial and in the early stages of the investigation, a person accused of a crime should be promptly informed of the nature and causes of the charges against him or her in a language that they understand.[836] This should occur as soon as the prosecuting authority decides to take procedural steps against the person suspected of a crime. The information should include the legal grounds of the alleged crime or offence and the alleged facts.[837] Until the end of the trial, the person accused of having committed a crime has the right to be presumed innocent.[838] This means, among other things, that it is for the prosecuting authorities to prove beyond reasonable doubt that the accused person is guilty of the alleged crime or offence. There cannot be a presumption of guilt against the accused.[839]

680. The right to be presumed innocent and all the other rights related to the legal safeguards during pre-trial proceedings are systematically violated in Eritrea. The majority of the testimonies collected by the Commission show that people are arrested and detained without knowing the charges against them. In most cases, suspected members of the National Security Office, dressed in civilian clothes, come to their home and ask them to follow them to answer questions.[840] As a pattern, during detention for investigative purpose, individuals are not informed of the accusations against them. The Commission has heard testimonies of people who, while subjected to torture, were ordered to confess what they knew they had done wrong.[841] The presumption of guilt is further evidenced by people

832 Enshrined in Art. 14 of ICCPR.
833 Human Rights, General Comment no. 32, para. 2.
834 Human Rights Committee, General Comment no. 32, para. 22.
835 Only the judicial safeguards enshrined in the right to fair trial that are relevant in the Eritrean context are mentioned.
836 Art. 14(3)(a) of ICCPR.
837 See Human Rights Committee, General Comment No. 32, para. 31. This requirement complements but does not overlap the requirement under art. 9 (2) of ICCPR, according to which a person arrested should be promptly informed of the reasons of arrest and charges against him or her. Under Article 9 (2), the information upon arrest of the charges against the person arrested does not have to be as detailed as the notification of the nature and causes of the charges at the beginning of the preliminary investigation or preliminary hearing.
838 Art. 14(2) of ICCPR and 7(1) (b) of ACHPR.
839 Art. 9 (3) of ICCPR.
840 See chapter VI, B, 4, Torture, ill treatments and punishments and VI. C, 1, National service.
841 See chapter VI, B, 4, Torture, ill treatments and punishments.

being charged and prosecuted on the basis of mere suspicions and without compelling evidence. [842]

A former head of a sub-zonal office of the National Security Office in Asmara told the Commission: *"We could do anything we wanted to do. I could take a person and put him in prison for 10 days without any reason. I did not need to go to a judge at all."*

A fisher, who was shot in the leg during the conflict between Eritrea and Yemen over the Hanish Islands in 1996, recounted: *"My case was heard by a military court. There was no evidence brought against me to prove the charges of smuggling contraband goods and people from Yemen to Eritrea. I argued that I should be paid compensation for the damage I suffered. Despite having no evidence, the judge told me that I did not get more than I deserved, and I should be imprisoned for six months. I was given a suspended sentence of six months."*

(ii) The right not to be compelled to testify against oneself or to confess guilt

681. During investigation and trial, Eritrea should guarantee the right of the accused not to be forced to testify against him or herself or to confess guilt, in accordance with article 14 (3) (g) of International Covenant on Civil and Political Rights. This means that records of interrogations, indicating the identity of all the persons present during the interrogation as well as its time and place, should be kept and remain accessible to the prosecution and the defence.[843] The Eritrean Government should ensure that interrogation rules, methods and practices are in accordance with human rights standards and are free from any form of torture and ill-treatment or undue pressure and intimidation. Further, the Government should ensure that confessions or information extracted under torture are not invoked as evidence in any judicial proceedings.[844]

682. Testimonies gathered by the Commission show that in most cases, interrogations are conducted with violence and coercion that amount to torture or inhuman and degrading treatment.[845] In addition to the violation of the right not to be subjected to torture and ill-treatment, the right not to be compelled to testify against oneself or to confess guilt is also breached.[846]

> A submission received by the Commission from a former judge who sat on the civil and criminal benches of a regional court in the early 2000s reported: *"In pursuance of Article 35 of the Transitional Criminal Procedure of Eritrea, after the police finish interrogation, the suspects may give their statements before a judge. The court may record any statement or confession made to it at any time before the opening of a preliminary inquiry or trial. This is done to ascertain that suspects voluntarily make such statement or confession. Most of the suspects confessed under duress and/or torture and since they did not know the difference between courts and the police, judges had to convince them to tell the truth, if they were tortured or not. I used to meet detainees with bruises and trauma. I could see the brutality of the police in the eyes of the suspects. Some came tortured and beaten and others came with a tremendous fear that looked eternal. When some judges challenged that the police members who employed torture should be convicted, the Minister of Justice instructed in writing that the Police Force should be immune from prosecution for their acts. This instruction was given to the Prosecutor's Office."*

[842] TFM025, TSH068.
[843] Human Rights Committee, General comment No. 20, para. 11.
[844] Arts. 11 and 15 of CAT. This should be prescribed in national law but it does not seem to be the case.
[845] See chapter VI, B, 4, Torture, ill treatments and punishments.
[846] S033.

(iii) The right to a fair and public hearing by a competent, independent and impartial tribunal established by law without undue delay

683. The Eritrean Government has the obligation to ensure that all accused persons are tried without undue delay as required under articles 14 (3) (c) of the International Covenant on Civil and Political Rights and 7 (1) (d) of the African Charter on Human and Peoples' Rights. This requirement does not end at the beginning of a trial, but applies to the trial itself. The dire economic situation in a country cannot be an excuse for delaying trials of persons, especially when they are deprived of their liberty.[847] Trials and hearings should be open to the public, except in special circumstances where publicity would prejudice the interests of justice or for reasons of moral, public order, national security, or in the interest of the private parties, including, for example, during trials involving children.

684. The majority of persons interviewed by the Commission who had been arrested and detained in Eritrea reported that they were never brought before a court. *"There is no court in Eritrea"* and *"I have never been taken to a court"* are assertions that the Commission heard repeatedly in the course of its investigation.[848] Some cases though, do reach courts. Official statistics are not available, but it is the understanding of the Commission that bringing detainees before a court is not done systematically, and that in particular, some categories of people in detention, especially those arrested and detained for political reasons, never see a judge.[849]

> A former spokesperson of a zonal administrator in the 2000s noted: *"I have seen people taken to court for disputes such as domestic violence cases and when they fight. There are hearings for some civil disputes, but there are also other disputes, for instance when someone bribes a government's employee. The latter goes to a military court. If a person is arrested for his political activities, they never appear before a court. The land disputes are the government's domain. But petty crimes and other things may go to court."*

685. The Commission collected testimonies showing that in Eritrea the right to a fair and public hearing by a competent, independent and impartial tribunal is systematically violated, particularly in cases involving governmental officials and cases related to political matters.[850]

> For instance, it is known that Mr. Semere Kesete, the leader of the University of Asmara Student Union, who was arrested in 2001 after criticising the attempt of the Government to impose a compulsory "summer work programme" on students[851], was brought before the High Court in Asmara after the latter accepted to examine a *habeas corpus* petition. Instead of ordering the release of Mr. Kesete as he had not been charged with any offence, the court asked the police to bring him back the following day with a formal indictment. A witness noted: *"It was the first time in the history of Eritrea that a person opposing the Government was brought to court. The judges did not know what to do."* Mr. Kesete never appeared again before the High Court. He was detained *incommunicado* for two years before he was able to escape and flee Eritrea.

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847 Human Rights Committee, communication No. 390/1990, B. Lubuto v. Zambia, views adopted on 31 October 1995, para. 7.3.

848 For instance: TAM039, TAM042, TAM049, TAM051, TAM069, TAM071, TSH002, S037.

849 TAM070.

850 TSH027, TCDP013.

851 See chapter III, C, Post-independence and chapter VI, A. 3, Freedoms of opinion, expression, assembly and association.

> Similarly, in a criminal matter, the son of a person who died in detention after being arrested for attempting to flee the country reported to the Commission that he petitioned the High Court in Asmara to shed light on the circumstances of his father's death. In the words of the witness, though: *"The judges tried to gather information but after three or four days they gave me an answer: 'We cannot do this because the case connects with the Government. The file is closed,' they said. Such a story is a normal scenario in our country."*

686. Most of the testimonies of people arrested and detained in Eritrea that the Commission documented are related to military offences which, by law, fall under the jurisdiction of military courts. Military courts are not outside of the scope of the law but "are an integral part of the general judicial system and [should] function with competence, independence and impartiality, guaranteeing the exercise and enjoyment of human rights, in particular the right to a fair trial."[852] According to Proclamation No. 4/1991, Eritrean military courts have exclusive jurisdiction to prosecute military personnel accused of military offences such as absence without leave, assault of superior officers, insubordination, and evasion and desertion of the military service. The latter two offences also include attempting to leave the country or helping people to cross the border.

687. However, testimonies collected by the Commission show that the majority of persons who had spent significant time in detention were detained at the whim of a State official or were not informed that they had been tried. They were not involved in the legal proceedings and were not informed of the length of their detention.[853] The Commission cannot conclude why some detainees' cases are brought before a military court or a similar body and some never are. [854]

> A former combatant who returned to Eritrea after spending three years as prisoner of war in Ethiopia explained: *"After one month with my family, I went back to my military unit in Gash-Barka, where the officers treated me as a traitor, as somebody who had surrendered to the enemy. Thus, I was almost immediately sent to prison for four years. There was no military judgment or court decision about this sentence. I did not know for how long I would be in jail."*
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> A former judge arrested in 2007 recounted: *"I was neither convicted nor tried and I still have no idea how they decided any prison terms imposed. Except during interrogation, from the time I arrived at the prison till I was released, I never met any prison official except the guards and was never made aware of my rights." And he added: "Prisons terms were unknown. A prisoner would only know the prison terms when he gets out of prison."*
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> A person who was caught while attempting to leave Eritrea explained: *"I stayed almost one year in Adi Abeito prison and was locked all the time in my cell. In Mai Serwa prison, I spent almost two years. I did not know for how long I would be in jail and my family did not know where I was."*

688. In light of the information gathered, the Commission is not in a position to fully understand what entity sentences persons falling under the jurisdiction of military courts and the related procedures. Interviewees talked indistinctively of military courts, military officers, or groups of individuals, possibly judges, deciding about their sentences in their

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[852] See the Report of the Special Rapporteur on the independence of judges and lawyers, A/68/285, para. 15 and the Draft Principles Governing the Administration of Justice through Military Tribunals, E/CN.4/2006/58.

[853] See *infra*.

[854] S033, TLA023, TLA025.

absence. They were not able to provide details. It was reported to the Commission that in the context of the war with Ethiopia, a ministerial circular empowered any military officer at the rank of colonel or above to establish their own *ad hoc* "military court" which could be composed of only one officer as "judge" or include a few officers. It seems that ever since the circular, military courts established by Proclamation No. 4/1991 have been replaced by these ad hoc military courts.[855] The Commission believes that such informal or *ad hoc* settings do not constitute competent, independent and impartial tribunals. [856]

A witness whose brother had been arrested for allegedly helping two young men to flee Eritrea reported: *"Military courts existed in Eritrea until I left in 2005. At least then there was some sort of court; although you could not be properly represented in them, they did give judgments. Now there is not even a court, nobody dares to ask why they have been put in prison. My brother remains in Ala prison and we do not know when he will be released."*

A former conscript caught after trying to flee Eritrea explained: *"After a month in Adi Abeito prison, I was sent to Barentu prison. There I was given the sentence of two years by the special military court for trying to leave the country. It is not a court. It is a military intelligence office."*

In 2000, a prison guard was imprisoned for two years as punishment because some detainees escaped from the prison during his service. He explained: *"The person who sentenced me used to be a military court judge for that region/front. He was not officially a judge, but his position allowed him to sentence people. He was a security guard. If you are punished because of misconduct related to your job as prison guard, the head of the prison security will judge you and decide on your punishment."*

A former national service conscript working in a governmental factory who had taken leave without permission explained that during his arrest the security officer whispered in his ear that he had been sentenced for three years and six months by the lieutenant-colonel, who was also the manager of the factory.

A person detained in January 2010 in the Afabet detention centre noted: *"There were no courts to sentence the prisoners or release them. The detention period was decided by the officers in charge."*

689. According to reports received by the Commission, in the few cases tried before military courts or assimilated bodies, the proceedings are in breach of all the basic procedural safeguards to be afforded to accused persons, and result in arbitrary sentences. [857]

The former spokesperson of a zonal administrator reported: *"In military courts, there is no due process, no appeal. There is no right to legal representation."*

A victim reported:*"I was taken to various prisons. Each time, the officer who received me had a file on me. From the file, he could decide the punishment. He is the judge and he decides my fate. Sometimes they would receive a phone call and they would punish me based on what they were told. They did not tell me what I had done."*

A witness told the Commission: *"Smugglers are not brought before a judge. It is just a military court decision. Sentences are not pre-defined. They are arbitrary.*

[855] TRDV005.
[856] S006, TSH002, TSH033, TBA069, TBA071.
[857] TAM003,TAM070, TLA014.

Seven to eight years is just the average length in practice. Sometimes, they may be released when the family pays."

690. The Commission also heard testimony related to cases judged by the Special Court set up in 1996 by Proclamation No. 85/1996. They confirmed information available from open sources indicating that the Special Court lacks procedural safeguards and is cloaked in secrecy and operates arbitrarily. [858]

A witness whose uncle, a former fighter and member of the intelligence service before his arrest, was brought before by the Special Court in 2003, emphasized the arbitrariness of sentences rendered. Without due process, the Court sentenced the witness's uncle to death for having tried to flee Eritrea. *"The Court told me 'your uncle is not needed; he is not a national of our country.' They put him in jail for three days. Then, the military court gave his judgment. They brought him to "Betegaygish". It is a park in Asmara but also one of the places where they shoot people. They called my uncle's wife – his wife was also an ex-fighter - and many other ex-fighters. The military soldiers put a panel on his chest with the verdict so that everybody can see it and then they shot him dead. They shot him down in front of them … After his death … they cancelled his status of hero and said he was against the people and not a nationalist."*

A victim, who was brought before the Special Court, recollected the lack of transparency of the procedure: *"There were around eight people, some were judges and others were taking notes. I am not sure who these persons were. They asked me to confirm the publication of the letter and if I regretted it. That was all. I did not have to sign any document and no paper was given to me … I did not receive any explanation on the procedure."*

(iv) Right to defence

691. Eritrea is obliged to ensure that an accused person is tried in his or her presence and has the right to be heard as provided in article 14 (3) (d) of International Covenant on Civil and Political Rights. This requirement is closely linked to the right to defend oneself or be represented by a legal counsel guaranteed by articles 14 (3) (d) of International Covenant on Civil and Political Rights and 7 (1) (c) of African Charter on Human and Peoples' Rights. The accused should be provided the opportunity to answer charges and challenge evidence. If the accused person does not have the resources to afford a legal counsel, one should be assigned free of charge where it is required by the interest of justice. This is usually determined on the basis of the complexity of the case, the severity of the crime and the potential sentence. Usually a potential sentence of several years of imprisonment in a criminal case will be considered as requiring access to free legal aid. In accordance with the principle of equality of arms, the defence should be able to present pleas and evidence on the same footing as the prosecution.[859]

692. The right to defence is quasi non-existent in Eritrea. As the persons arrested are usually not brought before a court, they do not have the possibility to present a defence or explain themselves. Similarly, when they are brought to a court they do not have a chance to get legal representation. Among the few cases it heard in which individuals arrested were brought before a court, the Commission collected only two testimonies reporting access to a lawyer. [860]

858 TLA005, TCDP013.
859 Art. 14 (3) (e) of ICCPR.
860 S061, TSH027, TBA063, TAM003.

A witness reported to the Commission that in a criminal case, his father, who was tried for the murder of his second spouse, was represented by a lawyer before the High Court of Barentu (Gash-Barka region).

In the case of Mr. Semere Kesete, the Commission heard that, at the request of his sister and classmates, a lawyer was assigned to him.[861] Yet, he only met him the same day he was brought before the High Court in Asmara. The lawyer was, therefore, not familiar with the case; could not intervene in his defence during the first day of trial; and was not able to do any follow-up since Mr. Kesete never appeared again before any jurisdiction.

A person who was detained explained to the Commission that, generally speaking, if people try to defend themselves, the consequences are worse for them: *"It is better to accept wrongdoing and to go to prison for a short while than to deny accusations. We often accepted that we were wrong even when we were not. And we would get on with our lives."*

(v) Communication of sentences

693. Pursuant to article 14 (5) and article 14 (3) (c) of International Covenant on Civil and Political Rights, Eritrea should ensure that the sentence is communicated to the accused persons immediately and that a reasoned judgment is also transmitted to them without undue delay as this is an indispensable condition for the exercise of the right to lodge an appeal against one's conviction and sentence to a higher tribunal.[862]

694. Most of the former detainees interviewed by the Commission were not informed at the beginning of their detention of the length of their imprisonment.[863] Only in a minority of cases did prisoners know their sentence. They learned about it in the course of their detention, sometimes after months or years, through a punishment letter read to the prisoner, either directly from an investigator or by accident from the prison guards.[864] The Commission heard several cases in which prison officials "read the letter" informing detainees of their sentence before asking them to sign a form accepting the punishment.[865]

A victim reported: *"In Hashferay, they question you and they judge you, but they don't tell you the sentence. Those who try to flee and have not yet done the military training are sent to Nakfa for military training. Those in military training are sentenced, but without being informed. I only had overstayed my leave. I received a paper saying I would be sentenced to five months in prison. I signed and was sent to Aderser."*

A former conscript was arrested and detained in Prima Country prison. He told the Commission that despite many requests made to the prison officials, he only learned that he had been sentenced to five years imprisonment after having already spent three years in detention. *"After three years in jail, the military committee – the organ that checks the military prisoners in different prisons -- came to check the Prima Country prison. Around 20 prisoners asked to know their penalties to the Committee members during the visit. After that, I was told that I had to spend five years and few months in jail."*

[861] See Chapter VI, A. 3, Freedom of opinion, expression, assembly and association.
[862] See *infra.*
[863] TBA049.
[864] S033, TLA018, TLA040, TNR032, TCDP036, TLA020.
[865] TLA018, TLA020, TLA026, TLA036, TBA063.

Another former conscript who was caught trying to flee the country confirmed: *"I was not informed that I would stay four years in prison, but I could guess from other people. As I had a medical problem and I was sent to hospital for an operation. I was told at this moment that I had only eight months left in detention. So I knew at this moment that I would be released in 2009."*

Another former conscript who was suspected of attempting to leave Eritrea reported that after almost three years in prison, he asked to be released as part of the batch of prisoners that is usually freed for the Eritrean National Day (21 May). On this occasion, the guards told him that it was impossible because he had not yet done half of his sentence of seven years of imprisonment. This is how he learned his penalty.

(vi) The right to have a conviction and sentence reviewed by a higher tribunal according to law

695. The Eritrean Government is bound to guarantee that individuals convicted of a crime shall have the right of having their conviction and sentence reviewed by a higher tribunal as prescribed in article 14 (5) of International Covenant on Civil and Political Rights. However, out of all the testimonies collected by the Commission, only two mentioned an appeal of the decision of judges in first instance. Both were criminal cases and the appeals took place before the High Court in Asmara.[866] As most of prisoners are not sentenced following a fair judicial procedure and do not receive a copy of a reasoned judgment, any possibility of appeal to a higher court is impossible.

(vii) Right to reparation

696. The Commission is not aware of any law or procedure in place to provide reparations to persons arrested and detained by mistake. Information gathered suggests that compensation, if any, is given at the discretion of the Government. [867]

A group of journalists was recently released after they were detained for four years. They were reportedly brought to a big hall where Major General X told them that they were innocent: "*He asked the journalists to go to the militia and continue with work and normal life. He said that the journalists would be paid four years of salary in compensation*."

But in another case, the Commission interviewed a witness whose brother had been arrested and detained for four months following an allegation of theft that turned out to be ill-founded. Instead of compensating his brother when he was released, "*they asked him for bail money, and the family asked me to send money*."

(b) Lack of independence of the Judiciary

697. The right to a fair trial "before an independent and impartial court" can only be guaranteed when justice is independent. [868] Accordingly, the Eritrean Government should ensure that judges remain independent from the executive in the discharge of their duty to apply the law in an impartial manner without personal bias or preconceived ideas on the matter and persons involved. From an institutional point of view, the principle of independence of judges and prosecutors requires that the Judiciary be independent from the other branches of the Government. This means that the Judiciary should be able to control the internal matters of judicial administration, including the assignment of cases to judges within a court. The Judiciary should be financially independent and have the competence to

[866] S098, TBA063,.
[867] TNR017, TCDP066.
[868] Art. 14 (1) of ICCPR and 7 (1) of ACHPR.

decide whether a matter falls into its jurisdiction. Its decisions should be respected and abided by everyone, including the other branches of the Government, which cannot review a judicial decision. Both the judiciary as an institution and its personnel should ensure that proceedings are conducted fairly and the rights of all parties are fully respected.[869] A lack of independence and impartiality of the judiciary paves the way to a culture of impunity as the Government and public officials no longer become accountable for their actions.

698. At the individual level, judges must be able to perform their duties free from outside interference, in particular threats and intimidation. To guarantee their independence, judges should be appointed or elected on the basis of their qualifications and personal integrity.Their selection and appointment should not be left to the discretion of the executive. The appointment of serving military officers with little or no knowledge of law as members of a Special Military Tribunal is not in accordance with the principle of independence of judges.[870] Judges should enjoy long-term security of tenure and receive an adequate remuneration to decrease the risk of corruption or other influence. Judges should only be held accountable to independent disciplinary mechanisms and not directly to the executive branch of Government.[871]

699. The Eritrean Government should further ensure that prosecutors are independent from both the Executive and the Judiciary. This is to guarantee that they are able to prosecute public officials who committed crimes and human rights violations without undue interference.[872] Similarly, the Eritrean Government should ensure that lawyers are able to work independently and without pressure or intimidation. Lawyers should be able to consult freely with their clients.[873] These requirements are essential for the guarantee of the right to defence. In order to guarantee the independence of lawyers, they should not be required to obtain a clearance or permission from the Government to carry out their work. In Eritrea, in the absence of a professional association of lawyers, it is the Government that decides who is admitted to the legal profession, which undermines their independence. Disciplinary proceedings against lawyers should take place only before an independent mechanism, and its decision should be subject to independent judicial review.

700. The Commission received several submissions from former judges and jurists who fled Eritrea. Each reported a lack of independence of the Judiciary. The most flagrant manifestation of this was the removal and freezing of Chief Justice Teame Beyene in 2001. Mr. Beyene had been the president of the High Court since 1994 and as such the highest judge in the country. In July 2001, he participated in a conference of the International Eritrean Studies Association, during which he called for the dissolution of the Special Court and complained about interference by the Executive Branch in judicial proceedings. One month later, he accepted the *habeas corpus* petition regarding Mr. Semere Kesete,[874] all of which prompted his removal from office. [875]

> A group of Eritrean legal professionals noted in their joint submission to the Commission: *"With the arbitrary dismissal of Judge Teame Beyene in August 2001, the Eritrean judicial system has sustained irreparable damage, particularly as*

[869] Principles 1, 3, 4, 6, 7, 14 of the Basic Principles on the Independence of the Judiciary.

[870] See: African Commission on Human and Peoples' Rights, Media Rights v. Nigeria, Communication No. 224/98, decision adopted during the 28th session, 28 October -6 November 2000, para. 60.

[871] Principles 10, 11, 12, 17, 18, 19 and 20 of the Basic Principles on the Independence of the Judiciary.

[872] See Guidelines on the Role of Prosecutors adopted by the Eighth United Nations Congress on the Prevention of Crime and Treatment of Offenders, 1990.

[873] See Basic principles on the Role of Lawyers adopted by the Eighth United Nations Congress on the Prevention of Crime and Treatment of Offenders, 1990.

[874] See *supra*.

[875] S110.

regards to major function of safeguarding fundamental rights and freedoms, as well as restraining Government's authority."

701. Under the Eritrean system, with the exception of the judges of the community courts who are elected, the procedure for the appointment of judges is not known and the appointments are not transparent. Public sources only report that they are all appointed at the discretion of the Government. Some of the judges are conscripts who are assigned as judges as part of their national service.[876] They are under the scrutiny of the Ministry of Justice, which in turn is controlled by the Office of the President. As they are conscripts, their careers are managed by the Ministry of Defence, which may decide to reassign them elsewhere. Any initiative that they take which could be considered contrary to Government's policies may therefore impact their assignment. [877]

A former judge who served in district and regional courts in Eritrea pointed out in his submission: *"The Eritrean judiciary is not independent. It is fully administered by the Ministry of Justice. As such, appointments, suspensions and terminations of judges are often made by the same Ministry. If the same is done by the President of the High Court in Asmara (the chief justice) it could only be upon instruction or approval given to him by the office of the Ministry of Justice (the Minister herself), which in turn is fully controlled by the Office of the President of the country. There is nothing that the Ministry of Justice does to the ruling party's disadvantage. The Ministry always operates to enforce the Government's (which in reality is the President of the country) will. Like all judges, I was also not independent. In fact, I and many other judges were being subjected to direct and indirect threats for not becoming members of PFDJ, the ruling party, and for being unfavourable to the arbitrary arrests and detentions by the Government. Similarly, I noted that I was 'subjected to series of questions and threats in connection with an initiative I and many other young law graduates took to organize meetings to form an association of lawyers in the country'."*

The same submission decribed how judges who were conscripts do not receive any consideration from and have no power against security officers: *"Even as a judge I always had to carry a mobility paper to move from any place to another within the city or to other cities, and have been subjected to threats and intimidation by patrolling military police on many occasions. There was even a time I was severely beaten up by plain clothes soldiers (military police) when I asked to know their identities/department they represent before handing out my mobility ID. Following the beating, I had attempted to report the incident to their military station, which was located in Asmara, but was met with further threats and intimidation. I never felt safe in Eritrea."*

A former prosecutor employed in the Ministry of Justice, who in the early 2000s drafted a legal paper aimed at increasing the protection of judicial safeguards in Eritrea which did not pleased his hierarchy, recounted: "*Just after that, the Ministry of Defence wrote a letter to the Ministry of Justice to move me from my post in the Minsitry of Justice to a judge in a criminal court in central Asmara. This was a huge demotion for me because I should have gone to become a judge in the High Court."*

[876] For further details, see chapter VI, C, 1 on National service.
[877] S119, TSH012.

702. The Commission also collected several testimonies showing that the Executive and high-ranking military officers interfered in the administration of justice. Such interference can occur when either Government's or officials' personal interests are at stake. [878]

> In 2004, a Major General in command of a region put pressure on the president of a regional court after a judge within the jurisdiction ordered the eviction of people illegally occupying a piece of land. These people, former fighters, were close to the major general who "*contrary to established practice of Eritrean courts, wrote a flagrant letter addressed to the president of the court. The effect of the letter was that the judgment later confirmed by the High Court of Eritrea was to be reversed*." They eventually obtained the removal of the president of the court, who had not complied immediately to his orders, after reporting the matter to the Eritrean Minister of Justice.
>
> In another land dispute that took place in 2011, a prominent military officer summoned to his office and threatened three judges of a community court that had ordered the defendant in a case to demolish part of a building that he had unlawfully built and that was trespassing on the plaintiffs' land. Since "*a member of the defendant's family was a veteran fighter who is a close friend of the officer*", the latter ordered the judges to change their verdict. He threatened to jail them and exerted pressure on the family of the plaintiff by imprisoning one of his relatives. Eventually, "*after days of talk with the judges, the plaintiffs agreed to withdraw the case. A written agreement was filed in court and the case was closed according to the law. After the settlement, all of us were hoping for an immediate release of the detained family member. However, when the plaintiffs submitted copy of the agreement and the latest decision of the court to the officer, he refused to release him and insisted on a new order forcing plaintiffs to file a letter of apology*."
>
> In a labour-related case, a former judge in a regional court reported that in 2005 the National Confederation of Eritrean Workers (NCEW) tried to unionise employees of the regional public transport company. "*However, the management of the company refused the request and NCEW filed a case at the Labour Court. The Labour Court ruled that the employees could not be unionised without providing any legal reasons. The NCEW appealed the case in the regional court appellate division. After a thorough and careful legal proceeding, the appellate court decided that the public transport company was a public entity that is governed by the Labour Proclamation so that the employees had the right to unionise. This created huge apprehension in the region and by the then Minister of Labour and Human Welfare. The Minister requested the decision be reversed, which was done*."

(c) Failure of due diligence obligations to promote, protect and fulfil women's human rights

703. Eritrea has an obligation to exercise due diligence to promote, protect and fulfil human rights. This obligates Eritrea to take reasonable measures to prevent human rights abuses before they occur, through the implementation of laws and policies, and effectively investigate, prosecute and punish perpetrators if they occur. A State's due diligence obligation includes prevention, protection, punishment and reparations for acts of violence against women.[879] The obligation is not restricted to actions by or on behalf of

[878] S033, S092, S098.

[879] Articles 2, 5, 11, 12 and 16, Convention on the Elimination of Discrimination against Women; article 2 (3) of the International Covenant on Civil and Political Rights ; CEDAW General Recommendation No. 12 (1989) para 1; CEDAW General Recommendation No. 19 (1992) para 6; Article 4, the

governments. The Convention on the Elimination of all Forms of Discrimination against Women general recommendation 19 (1992) makes clear that "States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation".[880]

(i) Violence against women in Eritrea

704. In 1977, at its first congress, the EPLF publicaly declared that the liberation of women was an important goal of the Front. The EPLF pursued its goal to liberate women from the inferior status conferred on them by traditional laws and customs by enacting legislation to promote gender equality in its occupied areas.[881] At independence, the EPLF's stated programme for women was translated into the State's programme, and it, too, began to adopt legislation aimed at improving the status of women.[882] The early reforms aimed at ensuring formal legal equality, however, they have not resulted in gender equality. Discrimination against women remains pervasive in all aspects of society causing women to be vulnerable to violence.

705. Cultural and social norms in Eritrea continue to affect women's general enjoyment of human rights. Women victims of violence, particularly sexual violence, face stigma and shame. They are silenced by fear of stigmatisation and by the difficulty to access or the total lack of avenues to report and seek justice for violations from which they suffer. The legal protections provided by the laws are not upheld in practice, affecting women's access to justice.

a. Rape and sexual violence by military officers

706. Violence against women can be perpetrated by both State and non-State actors. In addition to reports received of violence against women within the State institutions of military training camps,[883] the army and in detention,[884] the Commission has received reports of sexual violence by military officers against civilian women in non-custodial or national service settings.[885] Rape and other forms of sexual violence against women in the community by members of the military are flagrant breaches of their duty to protect the country and its population, as well as the State's duty to protect women and girls from violence. As an extreme form of violence against women, it is perpetrated by opportunistic military personnel without fear of prosecution. Military officers are generally armed and perceived to be dangerous by their victims, who are therefore easily overpowered and

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Declaration on the Elimination of Violence against Women (1993). The Special Rapporteur on violence against women, its causes and consequences has proposed the due diligence obligations on States fall into two categories: system due diligence and individual due diligence. At the system level, the State is obliged to create good and effective systems and structures that address the root causes of violence. At the individual level, the State is responsible for providing each victim with effective measures of prevention, protection, punishment and reparations. The Commission finds that the Eritrean state is failing both these levels of responsibility: Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, UN Doc A/HRC/23/49, 14 May 2013, para. 20.

880 CEDAW General Recommendation No. 19 (1992), para. 9.

881 See chapter III, C, Post-independence.

882 See chapter IV, E- The situation of women.

883 See chapter VI, C, 1, National service.

884 See chapter VI, B, 4, Detention.

885 TAM041, TAM042, TAM044, TAM047, TAM058,TBA062, TBA065, TCDP040, TCDP041, TCDP047, TCDP050, TCDP051, TCDP057, TNR057, TNR071, TSH022, TSH024, TSH050, TSH053, TSH056, TSH068, TSH072, TSH074, TSH075, TSH088, TSH094, TSH102.

unable to escape once caught. Girls and young women travelling alone or in groups of only women appear to be the most targeted.[886]

707. Eritrean society has become militarised through the mandatory national service programme placing men in the armed forces for indefinite lengths of time. Such militarization and use of violence to control the population is an underlying structural cause of the acceptance of violence in society. An apparent lack of respect for women and the reported low morale within the military, due inter alia to assignments far from their families and difficulties in obtaining leave, are further structural causes of the perpetration of violence against women.[887]

708. The Commission has received a large amount of testimony relating to the sexual abuse of Afar women and girls, in particular by members of the military.[888] A predominantly Muslim community, the Afar people live in the lowlands and border regions of Ethiopia and Djibouti and are traditionally nomadic people. They contend that rape and sexual abuse of Afar women and girls by members of the military is a deliberate attack on their community by the State and a tactic to force them from their traditional lands.[889] Reports of Afar women killed after being raped were also received.[890] Gender–related killings are not isolated incidents, but rather represent the ultimate act experienced in a continuum of violence by women living under conditions of gender-based discrimination.[891]

709. The Commission received reports of the military being unwilling to render assistance to victims and to investigate allegations of violence against women perpetrated by members of the military. [892]

> A young woman, raped by a member of the military and forced to leave her community due to the shame associated with discovering the rape had resulted in pregnancy, explained that in her community the police are no longer present and the military are unhelpful: "*There is no Government person you can tell. They are all mafia. Police were there before but they have since left. Now it is only military. I was too afraid to tell my family. And also I was afraid for my family members if they said something to the military."*
>
> A victim of an attempted rape explained the difficulty in trying to pursue recourse to justice by informing military officers of the incident since it involved a military member: "*When we tried to complain we were told, 'how dare you say such things, our soldiers would not do such things. You just hate us.' Asking the names of the people who did this is impossible*."
>
> An Afar man witnessed the aftermath of several rapes of Afar women and the attempts of the community to have the military investigate and prosecute the offending military officers. *"When we report this to the big brigades in the area, they do not tell us [who was responsible], they hide their soldiers. … I do not know if the soldiers did this on their own or if they received orders … When we report incidents, they say 'we punished him, we imprisoned him, we arrested him' But then*

886 TSH075, TSH050, TSH088, TSH087, TBA062, TBA065.
887 TSH022, TSH075, TSH086, TSH087, TSH088.
888 TSH050, TSH056, TSH072, TSH068, TSH053, TCDP071, TCDP051, TCDP050, TCDP057, TCDP040, TCDP0047, TCDP041, TAM058, TAM047, TAM044, TAM042, TAM041, TNR071.
889 TSH056, TCDP051, TCDP040.
890 TSH072, TNR057, TCDP047, TAM058, TAM047, TAM041, TCDP050.
891 UN doc A/HRC/20/16, 23 May 2012, para 15.
892 TNR057, TSH050, TSH056.

the same crime happens again another time. We know that nobody was punished for what happened."

b. Violence against women by non-State actors

710. The Commission has also received reports of sexual violence perpetrated against women by non-State actors in the community.[893] The reports indicate that women are most vulnerable to violence when seeking to leave the country as they are at the mercy of persons who may take advantage of the clandestine nature of such departures.

711. Inside the home, women are vulnerable to domestic violence, which is reported to be pervasive in Eritrea.[894] The underlying traditional views of women's place and role in society, the militarisation of the population, the resulting pressures on the family and the abundance of weapons in society give rise to violence against women in the home. Eritrean families face considerable hardship, including the stress and dangers of national service, financial pressure due to their inability to earn even a subsistence income; financial demands from officials, smugglers and traffickers; and the constant threat of detention and disappearance. Many Eritreans face frustration and despair at the lack of control over their own lives.[895] Alcohol abuse and mental health problems have also been reported.[896] Customary deference to the privacy of the home and the family facilitates the perpetration of domestic violence with impunity.

712. The Commission received testimony suggesting the police are unwilling to act on reports of domestic violence or to provide assistance to victims.[897]

> The Commission heard: *"You cannot go to the police and tell them that your husband has abused you unless it is very severe; the police will not do anything."*
>
> A victim of domestic violence was refused police assistance several times. She told the Commission: *"I went to the police many times when my husband attacked me, but the police told me I needed to tolerate it because this is how a marriage works. … When I realised this was to be my life, I decided to escape to Sudan."*

713. The Commission is aware the National Union of Eritrean Women (NUEW) disseminates information aimed at deterring violence against women, particularly FGM/C and domestic violence.[898] The NUEW reportedly also provides some services to women victims of domestic violence. But, according to witnesses, services "*are basically non-existent*".[899] The Committee on the Elimination of Discrimination against Women, in its 2015 consideration of the fifth report submitted by Eritrea, noted that safe houses, rehabilitation services, redress and compensation for victims of domestic violence appear not to exist.[900]

(i) Lack of effective systems and services for victims

714. The Commission has received testimonies pointing to the limited and ineffective legal systems to protect, prevent, punish and remedy acts of violence against women.[901]

[893] TBA088, TLA012, TCDP030.
[894] TSH022, TSH024, TSH042, TSH043, TSH086, TSH087, TSH095.
[895] TSH022, TSH043, TSH086, TSH095.
[896] TSH022, TSH075, TSH087.
[897] TSH043, TSH042, TSH022.
[898] The NUEW website (http://www.nuew.org/about-nuew); TSH022.
[899] TSH042, TSH024.
[900] CEDAW/C/ERI/CO/5, para 20.
[901] TSH022, TSH042, TSH043, TSH050, TSH056

Adequate policing, prosecution and punishment are required not only to investigate and punish offenders, but also to provide general deterrence. The general lack of rule of law and the non-impartial nature of the judicial system disproportionately affect women. It is extremely difficult for women victims of violence to report complaints and have them adequately investigated or prosecuted. This difficulty is more pronounced when the perpetrator of violence is a member of the armed forces. As noted above, the Commission has received testimony of attempts to report violence suffered by women to both the army and the police, only to be refused. Reportedly, family members of female victims have been subjected to violence when they attempted to report the sexual abuse.[902] The deficiencies in the legal system lead to impunity for acts of violence against women. Such impunity leads to further acts of violence against women. When the State fails to hold perpetrators accountable, it intensifies the subordination and powerlessness of women, and sends a message to society that male violence against women is both acceptable and inevitable.[903]

> The victim of an attempted rape by a military officer told the Commission of making a contemporaneous complaint to two military officers. The officers told her to report the incident at the police station the following day. When she went there, the officer who had attempted the rape and the two officers to whom she had reported the incident were waiting. "*They told me if I want to live peacefully, [to] go home and never talk to anyone about it*."
>
> The father of a young woman raped by a military officer was detained and tortured for one month after reporting the incident to the military camp leader.

715. Due diligence obligations also require procedures to take into account the needs and preferences of the individuals harmed.[904] Services such as health care, counselling centres, legal assistance, shelters, restraining orders and financial aid are methods of meeting this obligation.[905] None of the witnesses the Commission spoke with reported being able to access such services; the Commission can only conclude that they either do not exist or are insufficient.

716. The Commission further finds that there is a complete denial by the State of the extent of violence against women within its borders. A review of State reports to international bodies, witness testimony and a lack of data on violence against women all point to a lack of willingness to acknowledge the existence of violence against women, particularly violence perpetrated by the State through members of the military, and in the home.[906]

717. Women continue to face a hostile environment after suffering an act of violence. The lack of impartial and effective legal services prevents them from reporting acts of violence; and the shame and stigma associated with social and cultural norms contribute to their silence.[907] For example, the Commission heard from one witness: "*Women are still exposed. We still live under a lot of oppression. The honour system causes additional*

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902 TCDP041.

903 TSH056, TCDP041; See Report of the Secretary General, In-depth study on all forms of violence against women (A761/122/add.1) 6 July 2006, para. 76.

904 Rashida Manjoo, UN Doc A/HRC/23/49, 14 May 2013, para. 70.

905 Ibid.

906 CEDAW reports, reports on the implementation of the Beijing Platform for Action, TSH043, TSH022. For example, In the Government of Eritrea's June 2014 report on the Implementation of the Beijing Declaration and Platform for Action (1995) and the Outcomes of the Twenty-third Special Session of the General Assembly, the only occurrence of violence against women reported was FGM/C: p 12-14.

907 TSH088, TSH095, TSH050, TSH043, TSH056, TSH022.

shame to what women suffer. We are taught to keep quiet." Impartial services that victims of violence can access confidentially, without fear of stigma or shame, are needed to enable women to comfortably report acts of violence and seek recourse to justice and other services.

(ii) Wider consequences for girls, women and the community

718. The State's failure of due diligence to address violence against women not only leads to individual acts of violence against women, but also results in longer-term consequences both for the victim of an attack, and for the community as a whole. As a direct result of the Government's failure to prevent, prosecute and punish acts of violence against women, there is a widespread fear of sexual abuse of women and girls in the community. In response, families reportedly take steps to prevent their daughters from being sexually attacked on their way to school or while at school.[908] This includes stopping girls from going to school and keeping them close to their homes until they are married. In some communities, the prevailing view appears to be that the harm to a girl or woman is greater if she is sexually abused prior to marriage as opposed to after, because it ruins her marriage possibilities.[909] Such views perpetuate early and under-age marriage, which further places girls and young women in positions of vulnerability to violence and abuse because of their age and sex.

719. Rape and sexual violence against women also have health consequences, including HIV/AIDS, other sexually transmitted diseases and unwanted or unplanned pregnancies.[910] With limited financial resources, victims are often unable to receive the care and services they need. The social stigma that attaches to victims of sexual violence compounds these problems. The victims are often ostracised and alienated from their families and communities.

720. Reports of young women electing to leave the country when discovering they were pregnant after being raped were also documented. The women described the shame associated with being known as having been violated as the reason for their departure.[911] Others leave because they simply no longer feel safe. When the State fails in its obligations to protect women from discrimination and violence, and permits such acts to be perpetrated (particularly by State agents) with impunity, victims are left with no option but to leave in order to be safe.

The lack of effective policing, security and judicial systems and the general human rights situation in the country create a vulnerability to trafficking both within Eritrea and in neighbouring countries. In the course of its interviews, the Commission heard from victims horrific accounts of ill-treatment amounting to torture by traffickers outside Eritrea as the women tried to reach Europe and other places of asylum. The Commission did not investigate these allegations as they fell outside its mandate, but their seriousness and the profound human rights implications they carry prompt the Commission to recommend they be brought to the attention of the international community.

(d) Principal findings

721. The Commission finds that in Eritrea, violations of the right to fair trial and due process of law are particularly blatant, as criminal proceedings disregard the most basic principles universally recognised in the administration of justice. It seems that investigators,

[908] TSH072, TSH022, TSH024, TSH074, TSH102, TCDP057, TSH086.
[909] TSH087, TSH088.
[910] TSH030, TSH024, TSH050, TBA062, TBA088, TLA012.
[911] TBA062, TSH095.

security officers and military leaders also act as *de facto* magistrates. But as these proceedings are not public, there is scarce information about them, and the extent of the violations committed can therefore only be partially assessed. Several testimonies collected by the Commission, referenced throughout the text, indicate that they act arbitrarily, serving the interests of the Government. Most judgments are rendered on the sole basis of investigation reports that oftentimes includes statements obtained under torture.[912] Judgments are rarely made public or even communicated to the accused, who is not always aware that he or she has even been tried, nor of the length of imprisonment. In the few documented cases where the sentence was communicated to the person, it occurred after several months or years of imprisonment. What is described above makes it impossible for persons sentenced to have their sentence reviewed by a higher court.

722. The Commission concludes that in Eritrea, the judicial system, both civil and military, is not independent and the Government frequently interferes in the administration of justice. The judiciary is not in a position to protect the fundamental rights of Eritrean citizens, in particular when they are infringed or violated by public officials. Some judges are conscripts whose "careers" depend of the Ministry of Defence. They are paid less than 2 per USD day, the same as any other conscript.[913] Such dependence is in clear violation of the principle of independence of judges and their security of tenure. Similarly, the lack of independence of the Judiciary and prosecution contributes to the widespread impunity enjoyed by public officials in Eritrea, including in cases of gross human rights abuses. The Commission has not been able to document or been informed of any cases where a public official was prosecuted for involvement in a human rights violation.

723. The Commission finds Eritrea is failing in its due diligence obligations to protect, prevent, punish, and remedy acts of violence against women. Despite being disproportionately vulnerable to violence in the community and home, systems to report and investigate acts of violence, prosecute and punish perpetrators, and provide assistance and remedies to individual victims are inadequate. State denial of the widespread nature of discrimination and violence against women and the cultural and social norms stigmatizing victims of violence further silence victims and hinders their ability to seek recourse to justice. The Commission finds that the State's failure of due diligence to address violence against women creates an environment in which it is perpetrated by State and non-State actors with impunity, and such impunity in turn leads to further acts of violence against women.

2 Violations of the right to liberty and security of the person

(a) Arbitrary arrests and detention

724. The right to liberty and security of person implies that individuals should be free from arbitrary arrest and detention as guaranteed by article 9 of the International Covenant on Civil and Political Rights and article 6 of the African Charter on Human and Peoples' Rights. Since deprivation of liberty often begins with an arrest, the notions of arbitrary arrest and detention are interrelated and are usually regulated together under international human rights law.

725. The right to liberty is not absolute and individuals may be arrested and deprived of their liberty in certain circumstances and under certain conditions. International human

[912] Torture is a quasi-systematically used as a method of interrogation. See chapter VI, B, 5, Torture, ill-treatment and punishment.

[913] See chapter VI, C, 1 - National service.

rights law prohibits arbitrary or unlawful deprivation of liberty.[914] Thus, arrests and the deprivation of liberty should not be inappropriate, unjust, unreasonable and unnecessary, or lack predictability or due process, failing which they are arbitrary. For example, arrests or detention are arbitrary if they are conducted as a form of punishment for the legitimate and peaceful exercise of fundamental rights, such as freedom of opinion and expression, freedom of assembly, freedom of association, freedom of religion and the right to privacy. Similarly, an arrest or detention of a person as a form of pressure or reprisal for the action of a third person is arbitrary. A decision to arrest someone is lawful if it has a legal basis. The arrest ought to be conducted in accordance with procedures established by law.[915] Any substantive grounds for arrest or detention, therefore, need to be prescribed by national law, which needs to be defined with sufficient precision to avoid overly broad or arbitrary interpretation or application.[916]

726. Virtually everyone in Eritrea runs the risk of being arbitrarily arrested and detained: men and women, children and elders, political opponents and supporters of the regime, religious believers and atheists, high-ranking officials and ordinary citizens. Given the existence of a widespread network of spies in Eritrea,[917] a word during a private conversation with friends or even within the family can be sufficient for somebody to be subject to arbitrary arrest, detention, torture and disappearance.[918] Individuals are often detained because they are believed to have the intention to commit an offence or a 'wrong'.[919] The vast majority of individuals interviewed by the Commission had been incarcerated at one point in life. The few who had not, had relatives or friends held in detention.

727. Based on the body of testimonies collected by the Commission and the confidential submissions received, it appears that the offences or wrongs that are considered the most serious by the regime are those that may be construed as constituting a threat to the country's security or that are perceived as treason. Examples of this are challenging or questioning the regime (political opponents, journalists, conscientious objectors, religious leaders and congregations, ethnic minorities) or engaging in 'cross-border crimes' (black market money exchange, smuggling and trafficking, fleeing the country and terrorism).[920] People suspected of such offences are generally arrested and detained by Military or National Security Intelligence and held indefinitely, *incommunicado* and in the harshest possible conditions.[921]

[914] Unlawful arrest and arbitrary arrest are interrelated even though the notions are not exactly overlapping. An unlawful arrest is conducted without complying with the judicial procedures established by law, which should incorporate the judicial safeguards enshrined in this regard under international human rights law. Arbitrary arrest *stricto sensus* is an arrest that is not reasonable, not necessary, not proportional or lack predictability. Thus, an arrest (and detention) may be 1) unlawful and arbitrary or 2) lawful and arbitrary or 3) unlawful but not arbitrary. However, usually "arbitrary arrest" is used broadly to describe the three situations. See Human Rights Committee, General comment No. 31, para. 11.

[915] With regard to the right to liberty, the notion of deprivation of liberty goes beyond arrest and detention in the context of criminal proceedings. It also includes, for example, forced hospitalisation, internment on medical grounds, or administrative retention.

[916] Human Rights Committee, General comment No. 31, para. 22.

[917] See chapter VI, A, 1, Surveillance of the population in violation of the right to privacy.

[918] TCDP034, TSH018, TAM074.

[919] See *infra.*

[920] TLA004.

[921] S035, TBA063, TBA071, TBA085.

(i) The conduct of arrests

728. Under international standards, the decision to arrest someone should have a legal basis and the arrest should be conducted in accordance with the procedures established by law, which should also identify the officials authorised to make arrest[922] or the private individuals who may be delegated such competency, and the circumstances.

a. Persons responsible for conducting arrests

729. Testimonies indicate that the police, the military and agents of the National Security Office – which constitute the multiple layers of authority in Eritrea and report directly to the Office of the President – have the authority to arrest, detain and release both military conscripts and civilians.[923] The legal foundation of this authority is, however, unclear. Anyone with authority can conduct an arrest. [924]

> A former national security officer in Asmara explained that they could do anything they wanted: *"I was working inside the main office of security... My duty was to collect information from everywhere, Eritreans, Ethiopians, other countries, all information that was anti-government I had to collect… I could take a person and put him in prison for 10 days without any reason. I do not need to go to a judge at all … or for instance, if I suspected the person is a military and has fake documents, I can decide what to do, detain him, interrogate him, release him or keep him in detention. The National Security Office is the only office we report to. We just need to inform them."*
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> Another witness confirmed: *"In Eritrea, when people are arrested for political reasons, they are gone and you will never see them again. Any commander or any person in power can take you to the police or military prison. They ask the guards to hold the person, there is no charge. If the person forgets that he put him in prison, he can stay in prison for a long time as the guards cannot release him because they do not know the crime he might have committed. There is no formal process. No one can tell the detainee why he is in prison because most people do now know unless the person who arrested him tells them the reasons. Every other person who has some power or authority in the civil service or the military can arrest anyone. There is no chain of command. I myself in my position in the military and in the civil administration, I had the power to arrest and imprison any person. I could only release people if they were arrested and imprisoned by juniors under my command. I could not release anyone who was arrested by my superiors."*

730. While the Commission heard that in certain instances security agents produce identity cards before conducting an arrest, in the majority of cases people do not know the arresting officers' identities or the authority under which they operate. Some testimonies indicated that individuals can work or carry out arrests for different agencies (police, military or national security) at the same time. To do this, individuals sometimes use multiple identification cards. Such officials may wear civilian or military clothes and drive marked security vehicles or unmarked vehicles without registration numbers, and they are usually armed with either pistols or automatic weapons.[925]

> A witness told the Commission he had a national security card, a police card and a military police card: "*I used one of my cards depending on who would be arrested.*"

[922] Human Rights Committee, General comment No. 31, para. 23.
[923] TAM070, TCDP034, TBA101, TBA001, TSH012, S034, S036, S034b.
[924] TCDP065, TAM070, TNR019.
[925] TNR019, TNR081, S016, TAM005, TAM065, TCDP034, TSH027.

A former student, who was arrested in July 2001, told the Commission: "*The following morning I was arrested. They came early morning (6 a.m. something) when I was sleeping. They asked my sister if I was home and my sister said yes. She then came to me and said people were looking for me. I asked her: 'At this early in the morning?' She said yes, so I told her to let them in. Two men came in and greeted me. I asked: 'Who are you?'. They were dressed in civilian clothes. They said they were police. I said: 'If you are a police why do not have a uniform?' I asked if they had a warrant, they showed me their Police ID. I believe however they worked for the National Security Office.*"

A person who was arrested and detained in Karshele prison told the Commission that: "*I was arrested in 2001 I was picked from my home and taken to Karshele prison in Asmara. I was taken from my house by members of the National Security Office who were in civilian clothes. The arresting officers … were three of them and they were carrying pistols.*"

Another person told the Commission that: "*In 2014, three people who were in civilian clothes came to our house in Asmara. This was around 8 a.m. They had guns. They took me from our home. I asked them why they were taking me. They did not tell me why they were taking me. They put me in a civilian car… They took me to the Fifth Police Station.*"

Sometimes arrests are jointly conducted by military personnel and police officers. A person who was arrested in 2006 informed the Commission that: "*I was arrested at 5 a.m. It was a school day. I was at home with my mother. They were soldiers, one in police uniform, the other ones in military uniform. They were four. They did not present anything to me.*"

b. The procedure to conduct arrests

731. International human rights law provides that in order for a decision to arrest a person to be lawful, it should have a legal basis and it should be conducted in accordance with the procedures established by law.[926] Usually, in the context of judicial proceedings, arrests may be conducted in case of flagrant offences or when sufficient evidence has been gathered by law enforcement about the identity of the author(s) of an offence (or alleged ones) so that the competent authority delivers a warrant of arrest.[927] The Commission heard that while some people were arrested when they attempted to cross the border, many of them were arrested without any arrest warrant because they were suspected to have committed an offence or planned to commit one. In all cases, there is no specific procedure to carry out the arrests. When cases are deemed 'serious', an arrest order may be communicated verbally to intelligence officers by their superiors. [928]

A former national security officer explained to the Commission: "*There is no law, no trial, no lawyers, etc. National security officers decide on torture, detention or killings. If the case is important for the region then the highest ranking person responsible for the region decides if it is a national concern, and then the persons in*

[926] With regard to the right to liberty, the notion of deprivation of liberty goes beyond arrest and detention in the context of criminal proceedings. It also includes for example forced hospitalisation or internment on medical grounds, administrative retention, etc.

[927] This was provided in the Transitional Procedural Penal Code, which provided however that suspected deserters from the Armed Forces could be arrested without warrant. Articles 49 to 58 of the Transitional Penal Procedure Code that was replaced on 11 May 2015 by the new Procedural Penal Code promulgated by the Eritrean Government.

[928] TCDP065.

charge of the country in general decides … The order is not communicated in written form, if they know the person is under my 'responsibility', they give me a phone call to ask me to arrest him or her."

732. This *modus operandi* has been confirmed by other publicly available sources, including by the former Minister of Information. In January 2013, during an interview with a Swedish newspaper,[929] he explained that arrests of suspected dissidents are carried out without a court order and are transmitted orally using codes in order to avoid interception by Western intelligence services.[930]

A witness referring to the mass arrests of Muslims in 1994[931] told the Commission that: "*As far as I know, most arrests were made on their way to work or to mosque. The vehicles looked like police vehicles but people were dressed in civilian clothes. There was no arrest warrant. They took them randomly from street or work.*"

Most arrests are based on orders and on the exercise of discretion by arresting officers. A person who was arrested and detained in several detention facilities informed the Commission that: "*There are different levels of arrests. For the arrest of high-level people, there is a direct order of the President. These never get released and they are in high security areas.*"

733. The Commission also heard testimony that arresting officers conduct arrests in an intimidating manner. Some people who are arrested are sometimes blind-folded by arresting officers. [932]

A person who was arrested and detained on several occasions between 2004 and 2005 told the Commission: "*I had just returned from Sawa. I finished my military training. We were ordered to go back home… I went to the place where I worked for 20 years to return documents. Then some people from a security company called me saying that there were men who were looking for me. As soon as I went outside, I saw two men I did not know. They called me by name and informed me that my cousin [x] was in the police station ... Far behind them there was a civilian car with plate number code one which was waiting for us. As soon as I approached the car the two jumped at me. One was pulling me by my hair and the other grabbed my arm and pushed me inside the car. The driver started the car quickly and we were off. They sat me between them and put a hood on my head.*"

One of the victims of mass arrests told the Commission: "*They took 32 of us at night. They blindfolded us. We were taken from different houses. Up to now we do not know where 15 of us are. I was detained for four months and 25 days in the prison*".

A former detainee told the Commission: "*They came the next day in 2012. They knocked at my door. They said they were from the intelligence unit. They did not tell me where they were taking me. We went into a car. They covered my head and handcuffed me… Later they put me in prison.*"

c. Respect of judicial safeguards in the context of arrest

734. In accordance with international standards, persons deprived of their liberty shall be informed, at the time of arrest, of the reasons for the arrest and of any charges against them

929 Expressen Sweden, 30 January 2013, http://www.expressen.se/, accessed on 07 May 2015.
930 S036, TCDP009, TBA044.
931 See *infra*.
932 S014, TNR057, TNR029.

as provided, among others, by article 9 (2) and (3) of the International Covenant on Civil and Political Rights. The family should be informed of the arrest and place of detention. Where the person is held in pre-trial detention in the context of criminal proceedings, the trial should take place within a reasonable time or the person has the right to be released.[933] Pre-trial detention should remain an exception rather than a general rule and it should be decided by a judge after an individual assessment of the circumstances of the case during which it is considered that it is necessary to prevent flight, interference with evidence or the recurrence of crime.[934]

735. The Commission obtained information that people are hardly informed of the reasons of their arrest at the time of the arrest and often until the end of their detention. People can only speculate about the possible reasons for their arrest based on interrogations at police stations and detention facilities.[935]

> A person, who was arrested in 2001 and was told by the arresting officers that he would return home after a few minutes, told the Commission how he ended up being detained for four years. He said: "*I was taken from my house by members of the national security agency who were in civilian clothes. They told me that they wanted to ask me questions and that I would be back home after a few minutes… I was in Karshele prison for four years ... After four years in prison, Colonel [x] came to me and told me that he got orders for a 100,000 Nakfa bail and that I should not leave the country without permission, and that I had to write a paper as to why I was put in jail. I maintained my innocence and I told the Colonel to state why I was in prison. The Colonel said he received orders and he was just passing the message to me and that if I wanted I could ask the bosses myself. I was given a paper and I wrote that I did not know why I was imprisoned.*"
>
> A member of the diaspora, who had been visiting Eritrea every year for a period of 10 years, was suddenly arrested in 2004 during a police patrol in Asmara, in spite of showing his foreign passport. He was kept in isolation in a secret prison house for six months and then transferred to Karshele, a high-security prison. During his stay, he was interrogated about the reason for his frequent stays in Eritrea. The witness recounted: "*I repeated 'why don't you tell me what I have done, I don't know what to talk about'.*" He was threatened by the interrogator who told him "*'If you don't tell me, you will not leave this prison alive'.*" After one and a half year of detention, he was asked to collect his belongings, taken outside and told "*'You are going home'.*" The witness remembered: "*They didn't give me a reason to imprison me, and no reason to release me.*" When he was released, he was warned not to make contact with any foreign Embassy or any white men.
>
> Another person who was arrested and tortured during detention only deduced the reasons for his arrest from the interrogation. He told the Commission: "*I was arrested in 2003. I did not know the reason for my arrest. They took me from my military unit. First they tied me and put me in a pick-up car. They took me to the brigade headquarters … then to Adi Abeito prison… I did not know why I was arrested at the time. But later on when they were interrogating me, they said that I have a link with the opposition and that I lied about my level of education level ... They told me that I was a member of ELF during the struggle liberation … then got*

[933] Arts. 9 (3) and 14 (3) (a) and (c) of ICCPR, art. 37 (b) and 40 (2) (b) (ii) and (iii) of CRC, art. 6 and 7 of ACPHR. For further details on the international standards related to judicial proceedings, see chapter VI, B, 1, Administration of justice.

[934] Art. 9 (3) of ICCPR.

[935] TAM067, TAM005, TNR081, TAM053, S016, TBA032, TNR042.

involved with the opposition in Ethiopia. They said that I was held prisoner of war and I did not want to come back to Eritrea. I told them that I was of course held prisoner of war by the Ethiopians but nobody asked me or forced me not come back to Eritrea."

736. Family members are not officially informed when a person is arrested and detained. It is usually "by chance" that they become aware of the fact that a family member is incarcerated.[936] Families learn through other detainees or witnesses of the arrest including through bribery or personal contacts.[937] Often, they are forced to inquire directly at different places about their missing relative.[938]

A former detainee, who was arrested and detained in Asmara in 2004, told the Commission that: "*Later, I learned that my family had come to ask for me. If someone disappears, first they check the hospital, then the five police stations, then local residential areas, prisons ... Someone from my family tried Mai Temenay. They knocked at the gate. The guards opened and asked who told them that I was in that prison ... They were afraid and they left.*"

Another person said: "*In 1999, I was hijacked by the Eritrean Government en route to Massawa from Asmara. I was kidnapped by the national security forces. I was with my cousin at the time. He was not taken. The police did not inform my family, but my cousin did. I was taken from my car by the forces. They did not say anything. I was taken to the sixth Police Station and held in the police section*."

A former detainee testified that his family only learned about his detention in Adi Abeito prison when he met a neighbour, who was also a barber and as such could move in the military compound to cut peoples' hair. He said: "*If you don't know anyone, you can't inform your family*."

Another witness explained that it was only after four or five months that he saw someone he knew at the visitors' place and was able to ask him to inform his family.

737. However, authorities do not always entertain inquiries by family members about the arrest and detention of their loved ones. Family members have been threatened of arrest and other forms of retaliation and warned not to ask again.[939]

A witness told the Commission: "*In Eritrea, if a family member goes to jail, you can't ask. Asking is a crime*."

A witness who was maintained in prison in spite of having been officially released after 25 days of detention: "*My family and the chief of my village asked the national security officers why I was being held in prison when I had been officially released. The soldiers told my family they did not have a right to ask for me, that they could kill me in front of them if they wanted*."

A man testified that he had never been informed of the reasons for his arrest during the 11 months when he was in detention. When he was released on bond, his relative who was the surety said she was willing to guarantee but wanted to know why he was in jail. The witness recounted: "*They said if you ask why, we will put you in jail.*"

936 S071.
937 S149, S022, TBA072.
938 TBA032, TSH079, TBA076, TNR038.
939 TBA038, S127, TBA042, TSH066, TAM067.

d. Right to challenge ones' arrest and detention

738. In compliance with the *habeas corpus* principle proclaimed under international human rights law, all persons deprived of their liberty, including for other grounds than criminal proceedings, should be able to request to be heard by an independent and impartial court of law that will review without delay the lawfulness of their deprivation of liberty and may order their immediate release.[940] This right also applies in cases where conscripts are detained as a form of disciplinary penalty and this deprivation of liberty goes "over and above the exigencies of normal military service and deviate from the normal conditions of life within the armed forces of the State party".[941] These elements have to be assessed on the basis of "the nature, duration, effects and manner of execution of the penalty".[942] Within the domestic framework, the law provided for the right to submit a writ of *habeas corpus* to the High Court in Asmara.[943]

739. However, the Commission is only aware of one case where a writ of *habeas corpus* was examined by the High Court in Asmara. This case involved Mr. Semere Kesete, the leader of the University of Asmara Student Union (UASU) who was arrested on 31 July 2001 after criticising the attempt of the Government to impose a compulsory "summer work programme" on students.[944] The then President of the High Court, Mr. Teame Beyene, agreed to examine Mr. Kesete's writ of *habeas corpus* before being dismissed from his position. Mr. Kesete was nevertheless brought before the High Court on 9 August 2001. The judges, not accustomed to deal with such a case and under pressure after Mr. Beyene's removal from his post, did not take a decision on the writ of *habeas corpus*. Instead of ordering Mr. Kesete's immediate release, they asked the police to bring him back the next day with proper charges against him. Yet, Mr. Kesete never appeared again before a court. After two years of *incommunicado* detention, he managed to escape and flee from Eritrea.[945] From the information gathered by the Commission, it seems that the High Court has never examined a writ of *habeas corpus* since then.

740. On 26 November 2001 and on 9 April 2002, Dr. Liesbeth Zegveld, an international lawyer at the Netherlands-based firm *Böhler Franken Koppe De Feijter*, and Mr. Mussie Ephrem, an Eritrean living in Sweden, submitted a *habeas corpus* request through the Eritrean Minister of Justice requesting the Eritrean authorities to disclose where 11 members of the G-15[946] arrested in September 2001 were detained and on which grounds. Having not received any response, the two complainants referred the case to the African Commission on Human and Peoples' Rights, which rendered a decision in November 2003, ordering the immediate release of the 11 detainees.[947] During the proceedings, the Eritrean

940 Art. 9 (4) of ICCPR.

941 Human Rights Committee, communication No. 265/1987, A. Vuolanne v. Finland, views adopted in April 1989, para. 9.4

942 Ibid.

943 Articles 177 and 178 of the Transitional Penal Code of Eritrea, which was replaced by a new Penal Code promulgated by the Governement of Eritrea on 11 May 2015. Article 17 (5) of the 1997 Constitution, never implemented, also provides: "Every person shall have the right to petition a court of law for a Writ of *Habeas Corpus*. Where the arresting officer fails to bring the person arrested before the court and provide the reason for his arrest, the court shall accept the petition and order the release of the prisoner."

944 See chapters III, C, Post-independence, and VI A, 3, Freedoms of opinion, expression, assembly and association.

945 S061, TRDV003.

946 See chapters III, C, Post-independence, and VI A, 3, Freedoms of opinion, expression, assembly and association.

947 African Commission on Human and Peoples' Rights, communication no. 250/02, *Liesbeth Zegveld and Mussie Ephrem* v. *Eritrea*.

Government argued that the referral to the African Commission on Human and Peoples' Rights was not justified because the two complainants had not exhausted local remedies. In particular, the Government noted that the complainants addressed their *habeas corpus* request to the Minister of Justice, who is a member of the executive branch, instead of the judiciary that has exclusive authority on that matter.[948] This argument was not followed by the African Commission.

741. In 2011, a group of lawyers[949] sent a request for *habeas corpus* to the High Court in Asmara regarding Mr. Dawit Isaak, an Eritrean-Swedish journalist arrested in September 2001 and detained *incommunicado* since then.[950]

> A submission received by the Commission reported: "*The High Court in Asmara has received two copies of the writ for Dawit Isaak. One through courier in July 2011 and a second copy was handed over in February 2012 by the European Union Commissions Representation in Asmara through their regular channels. As the Court has never since admitted to having received the documents the three jurists turned to African Commission on Human and Peoples' Rights. In July 2014 the Commission rejected Eritrea's arguments that local remedies had not been exhausted and decided to admit the case. It will now be treated on its merits*."

(ii) Main reasons for arrest and detention

a. Arbitrary reasons

742. While it is impossible to draw an exhaustive list of reasons for arrest and detention, the Commission heard that in many instances, reasons for arrest are in themselves arbitrary, such as inquiring about the whereabouts of a disappeared person;[951] asking questions, including in the context of national service; requesting leave or benefit; expressing a political or policy opinion or preference or arrested in connection with the action of a third person.[952]

i. Asking the whereabouts of a disappeared person or the reason of arrest of a person

743. Family members of persons, who have been arrested, have been intimidated for asking authorities about their whereabouts or the reasons of these arrests, in particular when the Government denies having arrested or detained these persons. One witness, whose father was arrested and disappeared in 1994, told the Commission that his mother kept on asking for the whereabouts of his father and "*they arrested her*".[953] In other circumstances, family members have been told to keep silent and to "*stop asking questions otherwise they will be in trouble"*.[954]

> In one submission, the Commission learnt about how a family was arrested for asking questions about the reasons of their father who has since disappeared. The son of the disappeared person told the Commission that: "*My father was arrested at 5 p.m. ... in June 1995 ... He was arrested without any legal trial or any charge. He has been in prison for 20 years, without any charge. We don't know where is he since 1995 or even if he is alive or dead. When we asked about the reason, we did*

948 Ibid, paragraph 30.
949 Mr. Jesús Alcalá, Mr. Percy Bratt and Ms. Prisca Orsonneau.
950 See chapter VI, A, 3, Freedoms of opinion, expression, assembly and association, S076
951 See *infra*
952 See *infra.*
953 TBA007, S004a.
954 TCDP002, S101, S004a, TNR011.

not find any answer. When my uncle (my father's brother) asked, they arrested him. When my other uncle (my mother's brother) asked for my father from the authorities, they arrested him as well."

A wife of a disappeared person informed the Commission that: "*My husband was drafted into the Eritrean military, but then he disappeared. When I went to the military base to inquire about him, they accused me of hiding him. So they jailed me, interrogated me, beat me on the legs and back, creating a kidney infection that continues to today.*"

A son of a person who was arrested and detained for asking questions told the Commission how he could not ask about the arrest of his father. He said: "*You cannot ask because if you do you will also be imprisoned.*"

ii. Asking questions or requesting benefits in the context of national service

744. Numerous arrests and detentions for asking questions also take place in the context of the conduct of national service.[955] In this context, arrests and detention are often ordered by trainers in military camps or leaders of military units. Conscripts are arrested and detained for asking questions, expressing an opinion or making requests to superiors on various things including discharge from national service, remuneration and leave.[956]

A former conscript informed the Commission: "*I went to Sawa in 2004 to do the usual training and expected to study. The situation I found was quite different from what I expected. We were supposed to study and complete the 12th grade and do three months military training. When we were in Sawa, we would do military training early in the morning and there was no time to study. The soldiers always escorted us everywhere we went. One day the commanding officer called for a meeting, that is when I said 'we came here to study and you switch off the lights early, could we have candles?' … Our commanding officer … ordered that I be arrested and put in the 6th Brigade Prison. I was beaten and got ill.*"

The Commission also heard from a former conscript who, during national service in 2013, requested to be discharged from national service because of an eye problem. He was imprisoned for six months for making the request.

Similarly, two other former conscripts who requested to be discharged from national service in 2005 and 2011, were put in a prison in Assab and Forto respectively as punishment for their request.

A former conscript informed the Commission that: "*In 2006, I complained to my army commanders that I could not survive on the meagre salary and demanded higher wages. For this, I was sent to prison. I was sent to prison many times before in Eritrea for several weeks or a month at a time for minor offenses. But this was my longest and harshest sentence. I was sent to [x] prison in Asmara, and consistent with my previous sentences, there was no trial… After nine months in these conditions, I convinced a friend who held a high-ranking position in the army to pay off the prison director to allow me to work outdoors… I was able to escape with the help of a smuggler.*"

Another former conscript informed the Commission: "*In June 2013, after a general meeting with the Head of the Brigade [x], I approached him to demand leave to see*

[955] See chapter VI, C, 1, National service.

[956] S144q, S144h, TBA028, TCDP007, TCDP009, TLA011, TLA022, TLA009, TNR002, TBA024, TAM003.

my family. I did not get a response. However, later the leader of my unit was asked to search for me. I was brought to [x] who indicated to me that at next meetings, I should not speak or ask for anything otherwise I would be killed … Later I was arrested and detained for 25 days."

A former fighter said: "*In 2000, since UNMEE [United Nations Mission in Ethiopia and Eritrea] arrived in the country and there was peace, we thought we would be allowed to return home. Two of us asked if we would be allowed to go home. Two months later, we were sent to Track B prison in Asmara. I was in Track B for three months.*"

A former military officer, who was detained after requesting that if he died during the war between Eritrea and Ethiopia, his benefits be paid to his brother, told the Commission that: "*I was shot in the arm on the battlefield. I was then sent for medical care. When I was still in the hospital, I was told that if I die the compensation for national service would be given to my parents. I said I am an orphan and I requested that the money be given to my brother and I was put in prison … for three months.*"

iii. Asking questions about or discussing government policies

745. The Commission heard testimonies that numerous people have been arrested and detained merely for asking questions or discussing government policies, including enquiring about the fate of members of the G-15 as it was considered to be an indirect criticism of the government.[957] Such arrests also took place in the context of national service.[958]

In one submission, a person informed the Commission how he and others were arrested and detained for asking questions regarding the members of the G-15. He told the Commission: "*We used to tell them let also those whom you are accusing of treason speak for themselves and be presented to a court of law and have legal assistance. Especially me, I repeatedly raised and asked such questions and people used to applaud me in support of my views. I was naïve to ask such questions at that time. In August 2004, my friend … together with four other officers were arrested and taken to a prison*."

In 2001, Mr. Semere Kesete, the President of the Students' Union in Asmara requested the Government that students should be paid for their work during the summer programme. He was later arrested and detained together with some of his supporters.

A person told the Commission: "*Our company used to hold meetings every month with PFDJ cadres, where they speak about political, social, economic issues, etc. One day in 2012, I asked: 'If you really talk about our country's economic growth, why doesn't Eritrea have agricultural and manufacturing businesses as well as exports?'… They came the next day … They knocked at my door, they said were intelligence people … They put me in prison*".

A witness told the Commission that: "*The Government was cutting trees in Dankalia… They cut the trees and took the wood to the highlands. There was a person who was the leader of a tribe in … He asked them why they were cutting the trees. He was imprisoned in Massawa for seven months*".

[957] S077y. See also chapter VI, A, 3, Freedoms of opinon, expression, assembly and association.

[958] TSH001, S075d, TCDP016, S061, TSH027, TNR029, TAM050, TCDP007, TFM009, S143q, S144l, TSH015, TBA023.

A former government official who asked about the whereabouts of donor money that the Government had received told the Commission that he was arrested and detained for three weeks in an underground prison because of asking this question.

A former student who was arrested for asking a question during a conference in college informed the Commission that: "*In 2005, there was something like a conference in college. All students had to choose their departments for the following year. At that time, instead of lecturers, one military officer informed us about how we could choose our departments. He told us that some departments, such as political science and law, were closed by the Government. I and other four or five students asked publicly why they were closed. Two days later I was arrested at the college. Colonel [x], who was the administrator of the college, told me that I had no right to ask such a question and I had to be punished*".

A former conscript informed the Commission that: "*In 2004, people in the village near the border were being told that if their children were seen trying to cross the border they would be shot… At the end of 2005, we had a meeting with our commander ... At the meeting, we were told that we must shoot to kill anyone who tried to cross the border. I asked if there was anything else we could do instead of shooting the people. I also objected the then recent arrests of national service members because of their religion. I asked if we could find another way to deal with both issues. That night my division slept in the open near the meeting location. While we were sleeping, some officers came and woke me and took me to detention. I was taken to Haddis Ma'askar (near Sawa)… I was in prison for five months. I was interrogated and beaten*".

A former military officer who was arrested and detained for seven months for expressing his opinion about the arrest of journalists in 2001, which was solicited by his superiors, told the Commission that: "*I want to specify that in 2001, journalists were imprisoned. We were asked about our thoughts. I said as a soldier, I was not in a position to answer this question. I suggested that the journalists should be brought before a court and tried ... In the evening, they came and arrested me and sent me to Aderser prison*".

(iii) Arrests and detention for the conduct of a third person ("guilt by association")

746. The Commission obtained information that family members are often arrested and detained as a form of reprisal for the conduct of another member of the family, in particular in case of draft evasion, desertion from national service, criticism of the regime and escape from the country.[959] Arrest and detention of family members is also used as a means to coerce draft evaders and deserters to surrender.[960]

a. Arrests for actual conduct of a third person

i. Draft evasion and desertion of a third person

747. Due to hardship and indefinite length of national service in Eritrea, many young people who are of military age try to avoid national service conscript and some who are already conscripted desert after a few months or years. Subsequently, one member of their family is usually arrested and detained as a reprisal and as a deterrent for other conscripts. The Commission found that any member of the family can be arrested, irrespective of their

959 TBA095, TSH053, TBA060, TSH004, TBA050, TFM028, TSH046.

960 TAM026, TAM029, TNR012.

age since 80 and 90 year olds were arrested or their relationships, ranging from parents to siblings.[961] Due to a large number of female headed households, women face the brunt of these reprisals.[962] This practice has been carried out for several years and continues until today.[963]

> A person who evaded conscription told the Commission that: "*I left Eritrea in 2007 when I was 19. When I finished the 11th grade, I was told to go to Sawa training camp… When I left, they imprisoned my mother … for two years. When she fell sick, they released her.*"
>
> Another person who evaded conscription informed the Commission that: "*I knew I would be in the national service for an unlimited period. So in April 2009, I left the country to Ethiopia ... When I left, my father was arrested. He was released after a few months.*"
>
> A deserter of the national service whose mother and sister were arrested and detained told the Commission that: "*I escaped 10 days after completing our military training. My sister was taken as a guarantee. She was arrested and put in Garage Fenkel for one day. My mother fought with the police to have her released. I got caught after three weeks and I was put in Garage Fenkel prison … I then escaped from prison. I was caught again after six months on the run. I was beaten and taken back to Garage Fenkel.*"
>
> A woman whose husband escaped from national service told the Commission that: "*My husband escaped from the military ... My mother-in-law and I were imprisoned in Afimbo for three days. I was 8 months pregnant at the time.*"
>
> A person who escaped from military training in 2014 told the Commission that: "*In January 2014, after starting the training, they took us to a place to fetch firewood and then I and six others escaped. I escaped after a week's training… In February 2014, they arrested my mother. They took her to prison for one month. They took her to Adi Keih police station.*"

748. In some cases, the arrest and detention of a family member is conducted with the objective of compelling the relative who has deserted the national service to surrender to the authorities and resume national service. It was reported that parents may be asked to take the place of their children who deserted the armyand failed to come back.[964]

> A person who deserted from national service on several occasions told the Commission that each time he escaped, his father would be arrested. He said that his father did not pay anything to the authorities because he would surrender himself.
>
> A former conscript who in 2011 deserted from the national service and relocated told the Commission that: "*When I escaped … They came to my house. They arrested my wife and took her to a temporary prison in Asmara... Our baby was with her. The idea was that they hoped I would give up. I gave up... They released her and took me to Adi Abeito prison.*"
>
> Another former conscript who deserted told the Commission that: "*I was sick with malaria and I tried to escape to Asmara. When I got to Asmara, I took my medication and I started to do piece work ... During this time, they came to my*

961 TFM013, TAM001, TNR019, TBA022

962 TSH022, TSH017, TSH024, TSH074, TSH102, TCDP071, TAM025, TNR038, TNR039, TNR045, TSH051, TNR056, TAM029.

963 TNR075, TBA016, TAM025, TSH051, TNR056.

964 TAM014, TAM026, TBA068, TAM029.

house and they asked my mother to turn me in. Instead they took her to a prison called Adi Abeito. She was in prison for one week ... When I heard that my mother was in prison, I surrendered. I asked them to release her… They imprisoned me for three months."

749. When it is suspected that the person fled the country, security agents demand the payment of 50,000 Nakfa to the family for each person who deserts national service.[965] It is when the family fails to do so that one member is detained until the "fine" of 50,000 Nakfa is paid in full or a guaranty to pay is signed. In some exceptional circumstances, families have been compelled to pay less or increased sums of money. [966]

A woman told the Commission that: "*When my husband deserted his unit, they came to my home and asked me to pay 50,000 Nakfa … The unit sent a letter to the administrator. I was unable to pay. They asked me to find the money. No one wanted to serve as a guarantor. I did not have any information about my husband. I was crying at night. I begged the administrator to help me. Kind neighbours helped me survive.*"

Another person who was performing his national service at a company told the Commission how the administration demanded 50,000 Nakfa after he had stopped reporting for duties: "*I decided to leave in … 2012… My parents … had to pay 50,000 Nakfa ... When I stopped going to [company x] for duties, the boss informed the zoba. The zoba got my card and called my family. They said they did not know my whereabouts but they had to pay the money.*"

A brother of a former marine officer who deserted from the national service in 2008 told the Commission that: "*In 2008 my mother was arrested after my brother left Eritrea. He was a marine in the national service. After he left, a group from his unit came to my house and asked where my brother was. They said: 'If you do not tell us, you have to pay 50,000 Nakfa'. My mother was arrested and taken to a prison c and my brother had to pay 50,000 Nakfa for her release. She was there for one month until my brother could pay the money.*"

Another person told the Commission how his family had to pay 100,000 Nakfa when two brothers deserted the national service. He said "*I was not yet a soldier, I was a trainee … I had not yet finished my training. Afterwards I run away… My dad was arrested by the municipality of Dekemhare... They asked him to pay 50,000 Nakfa. My father refused to pay. He was detained for two weeks. When he was in prison, my second brother left the country. So he had to pay 100,000 Nakfa. My father was released after several months when his godfather paid the amount.*"

750. The Commission heard that, in few cases, authorities demand that parents and relatives of those who have escaped convince the escapees to return to the country.[967] However, in most cases people do not return and the authorities demand the payment of the 50,000 Nakfa fine.[968]

[965] TNR074, TCDP071, TBA090, TNR039, TBA050, TSH017, TBA035.

[966] TBA099, TBA095, TBA025, TNR019, TBA025, TNR044, TSH046, TFM011, TNR074, TBA090, TBA050, TFM028, TFM012, TBA035, TFM035, S086, TBA099,TCDP068, TAM027, TAM033, TAM038, TLA006, TSH005, TNR022, TSH029, TSH021, TBA034, TCDP005, TSH015, TFM023, TFM019, TBA024, TFM016, TBA023, TBA022, TBA015, TFM009, TBA014, TAM003, TAM002, TBA006, TFM003, TAM001, TSH017, TCDP073, TBA056, TSH016, TBA035.

[967] TSH053.

[968] S051, TAM027, TSH034.

> In one submission, a person who escaped in 2010 told the Commission that: "*I learnt that my father was detained. I called my mother after I got to Cairo. She told me that my father was detained because I escaped from Wi'a and left Eritrea illegally ... My father was told he had to make me return or else remain in detention.*"
>
> A person who evaded conscription and escaped in 2012 told the Commission that: "*I was told to go to Sawa for military training. But I ran away and came to [a foreign country]. When I left, they detained my mother for one month. She was detained in Assab. They asked her to bring me back. Since I was a civilian, they told her to pay 50,000 Nakfa. My relatives raised the money and paid. She was sick in the prison and she passed away after her release.*"
>
> Another person whose sister was arrested and detained after he escaped in 2014 told the Commission that: "*Since I left, my sister has been detained and asked to encourage me to come back. They are desperate to catch me.*"

751. The Commission heard testimonies that alternatively to the payment of the 50,000 Nakfa fine, the Government can confiscate property[969] , business licences[970] or withdraw certain entitlements such as coupons.[971] Families, which fail to pay the 50,000 Nakfa, sometimes deposit business licences in order to secure the release of the detainee.[972]

ii. Criticism made by a third person

752. Family members are subjected to arrests and detention as a reprisal for criticism by their relative against the Government. The Commission obtained information indicating that the Government of Eritrea arrests and imprisons relatives of its critics to punish them for the conduct of their relative or to compel them to disclose information that they might possess about their relative. While in certain cases, such as those involving members of the G-15, arrested and detained family members know that they are being persecuted for the conduct of their relative, in other cases people only speculate the reasons of their arrest and detention based on the line of questioning by arresting officers during interrogation.[973]

> A political activist in the diaspora who spoke about how his father was arrested and detained because of his political activities in the diaspora said: "*My father ... was imprisoned for 20 months when he returned from [country x]. He was told by friends that he might not face any punishment if he were to return because of his age. But he was arrested upon his return. He was in a prison in Mendefera. He was never taken to a court. We did not know why he was arrested and he was not told the reasons either ... He was arrested by intelligence people who asked him about my political activities. He was told to ask me to leave the political organisation that I was affiliated to.*"

753. The Commission also heard from a son whose father was arrested and detained mainly due to the fact that he was a relative of one of the G-15 members.[974]

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969 TNR033, TNR039, TNR042, TSH051, TBA090, TAM069, TLA006, TLA028, TBA047, TFM019, TBA025, TAM001.

970 TAM015, TFM030, TAM069, TBA024.

971 TAM073, TAM017, TSH082. See chapter VI, A, 1, Surveillance of the population in violation of the right to privacy.

972 TBA060, S077x.

973 TFM007, TAM053.

974 TFM007.

b. Arrests for presumed intent to commit an offence

754. People are also arrested and detained because of their alleged breaches of existing laws and regulations such as avoiding or deserting from national service, including through fleeing the country. However, many of them were arrested and detained on the basis of mere suspicions or intention to commit an offence.

i. Presumed attempt to leave national service or flee the country

755. The Commission finds that Eritrea subjects people to arrests and detention in order to punish them solely on suspicion that they intend to flee the country. The information obtained by the Commission indicates that people are arrested and detained for periods spanning months and years merely for suspecting that they intend or plan to flee the country.[975] The arrests and detentions target everyone including people undertaking training in military camps. [976]

> A person told the Commission how his brother was arrested and detained for four months on suspicion that he was attempting to flee the country. He said: "*In 2010, my brother had to accompany my father on a short trip to Tessenei… He was arrested. They took him to Adi Abeito prison … They thought he was trying to escape but he stated that he was only helping my father. He was in prison for four months. He was interrogated and beaten badly such that he was limping.*"
>
> A person, who was arrested and detained for 16 months for being suspected of planning to flee the country, told the Commission that: "*In 2006, two guys from the Eritrean national security … came to my workplace … They asked my department head about me and I was called to the office. They were dressed in civilian clothes. After showing their identity cards, they told me that they had come to take me because they had few questions to ask me. They took me to their offices… in Asmara. They asked me about my background and if I had friends in the diaspora. They then took me to the Fifth Police Station. I stayed there for one month without any interrogation. Later, one man called me from my cell and asked me if I had any plan to flee the country. I replied that I did not have such a plan. The next day two guys … took me in a white pickup car to a prison facility in Asmara. I remained there for 16 months.*"
>
> Another person informed the Commission how he was tortured after being accused of trying to escape: "*I was in prison. The military accused me of trying to flee to Ethiopia. I said it was not true. Still they put me in jail. They tortured me there. At night, they beat me with a wooden stick. In addition, at three o'clock they would come and throw cold water at me. For two weeks this kept on going. When they were not able to get anything more from me… they decided to let me go on a bail. The bail was a business license. It was not over. They forced my family to pay 50,000 Nakfa.*"
>
> Another person who was arrested and detained for two years on suspicion that he wanted to escape told the Commission: "*I was accused of thinking and planning to desert national service by escaping. I was arrested between 2003 and 2005. I was in prison for two years. I was in Halhal prison. I was arrested with two other people. We were arrested from our houses.*"

[975] S077x, S077t, TAM066, S143q, S144l, S077j.
[976] TAM066, S075c, S077x, TAM064.

756. The Commission collected testimonies indicating that many people are also arrested on suspicion that they plan to escape merely because their friends had either escaped or attempted to escape. Furthermore, people are arrested on suspicion of smuggling or helping others to flee.[977] The Commission observes that individuals who are resident in border towns are more vulnerable to arrest and detention on suspicion that they intend or plan to escape.[978]

> A person who was arrested and detained for two years and six months on suspicion that he was considering fleeing the country and had knowledge of the escape of his friends but did not report it to the authorities, told the Commission that: "*In 2003, I went to Sawa as a student to do my last high school year and to train as a military soldier. In that period, some of my classmates and friends had fled Eritrea to Sudan to avoid national service. I was then arrested and accused of knowing about it and not reporting the fact. I was also accused of considering fleeing myself too to Sudan. They put me in jail in the Sixth Brigade prison. I was in jail for two years and six months. They beat me and tortured me, asking me to confess about my knowledge of my friends' plan to escape*".
>
> A former high school student told the Commission that: "*I was first detained in 2006 for three months. They suspected that I would escape just because my high school friends escaped. I was arrested just because of that. I was arrested in Adi Keih. I was in the 11th grade. They came to arrest me almost one month after my friends had escaped. It was in 2006 at five in the morning ... I was at home with my mother. They were four security agents. One was in a police uniform and the other ones in military uniform …When they took me, nobody knew the reasons. They just came and told me that I was needed … They did not tell my mother where they were taking me to... I was in the same high school with those friends of mine who escaped*".
>
> A person who was arrested on suspicion that he was helping others to escape told the Commission that: "*I spent one year in a prison on Dahlak Island in a warehouse meant for storing commodities. Later on, I was imprisoned for one year and three months in Ala in an over-crowded prison cell. Ten months after my release from this prison, I was again arrested and detained for another four years in Assab. In most cases, I was imprisoned for alleged planning to escape to Sudan or helping other to do so… I have a document, signed by the arresting officers. The document says that I was imprisoned for trying to cross the border.*"
>
> A person who was suspected of smuggling people told the Commission: "*In 2002, I was caught in Asmara by four colleagues from my division. They took me to a police station. I was kept there for five days. Later, they took us to Aderser prison... The first time I was there I was kept there for one year after which I was released and I returned to my military division. After two months, I ran away to work in Asmara. I was caught again and sent back to Aderser prison. This happened repeatedly. The second time I was in Aderser for three months; I was released on a mercy and returned to the military. I ran away again. I was caught and sent back to Aderser. This third time I was there for eight months. Each time I was in Aderser, the treatment was more or less the same. I have never been taken before a court or see a lawyer. Each time I was told I was sentenced for either having fled my unit, or in the last instance for suspected smuggling.*"

[977] S144m, TSH054.
[978] TAM001, TAM050, S077k, S077j, S077t, S143a, TNR081, TSH036.

757. The Commission also found that numerous serving national conscripts and those undergoing military training at various camps are often subjected to arbitrary arrests and detention on the sole suspicion that they plan to escape.[979]

> A person who was arrested in Sawa military camp told the Commission that: "*In 2009, the army took me from home to Sawa like everyone else to complete my studies. One day, I was taking a walk with a friend inside the military base. The security agents just walked up to us and arrested me. They took me to the Sixth Brigade prison. They accused me of trying to run away to Sudan with my friend. I was very surprised. I was transferred to Me'eter prison. I was there for five months.*"
>
> Another person, who was doing his national service at Segen Construction company and was arrested in 2014 on suspicion that he was attempting to flee after taking a coffee break from work, told the Commission that: "*After working for two years under Segen Construction, one day I went out for a coffee with my best friend and my colleague in Asmara. When we were in the middle of a chat, six soldiers in civilian clothes asked us to leave the coffee house... We did not have a choice. We did as they demanded. When we got out of the coffee house, we were handcuffed and put in a car ... They did not give us chance to talk. They said: 'We will question you and if you tell us the truth we will send you home' ... We ended up in Mai Temenay prison… I was in deep stress because I did not know the reason why I was put in prison. I was waiting every day for someone to call my name for an interrogation. Unfortunately, days went by without anything... After one month, I was called for interrogation and they accused me that I was thinking of escaping and that I had enough of the national service. I told them that it was not true… I asked them to contact my company to find out how hardworking I was. After 30 minutes of interrogation, the officer sent me back to my cell ... Three days after the interrogation, my two friends (who were taken with me in the coffee shop) and myself as well as other prisoners, were transferred to Adi Abeito prison... Finally after 11 months of stress, torture and ill treatment at Adi Abeito prison, they set me free.*"
>
> Another witness informed the Commission that: "*When I was going to visit my sister and a friend in Agordat, they thought I was trying to escape. I did not need permission for that travel because it was in our area within the same zoba. You need a special permission only if you go home ... I was put in prison for six months. I got tortured and abused... After one month in Agordat, they transferred me to Hadas, where I stayed for one week. After that, I was detained for one month in Keren, and then another month in Adi Abeito. After this they give me back to the police division.*"

ii. Suspected collaboration with the enemy or opposition parties

758. The testimony collected by the Commission indicates that arrests and detentions are conducted on suspicion that a person is collaborating with an opposition group or working for an enemy country. However, it appears that the simple fact that one is employed by a foreign entity, including international organizations such as the United Nations, may be considered by the Eritrean Government as an act of espionage.[980]

[979] TSH035, TCDP031, S144o, S144p, S140, S090, TNR079.
[980] S143d, TBA060, S135, S077k, TBA072, TBA101, TCDP058.

A victim of an arbitrary arrest and detention on suspicion that he was collaborating with the enemy told the Commission that: "*At the age of 12, I decided to cross the Ethiopian border to look for my father. He had moved to an Ethiopian refugee camp sometime earlier. I met my father and wanted to stay with him in the refugee camp. He urged me, however, to return to my mother. [Organization x] arranged for 18 of us … to be sent back to Eritrea … Once I returned home, I was prohibited from completing my third year of schooling… All of the older children who were in this group and who had returned to Eritrea from Ethiopia were sent to a prison in Senafe. Later, when I was almost 13 years old, I was sent with some of the other younger members of the group who had returned from Ethiopia to Eritrea to Senafe to fill out paperwork as a guarantee of our freedom. However, when we arrived in Senafe, our permit of freedom and supporting letter from the [organization x] was taken from us. We were thrown into prison for three days. We were later sent to a place called Ala. In this place, we were accused of spying for Ethiopian soldiers. The guards tortured us for five days. Afterwards, they moved us to several different prisons.*"

The Commission also heard from another person that: "*I was imprisoned in Ethiopia for five years. I was eventually released thanks to the assistance of [organisation y]. They helped me to go back to Eritrea in 2002. Shortly after I returned to Eritrea, I was called back by the military. I worked under the office of the PFDJ in different sectors, wherever they sent me. I had to share information about Ethiopia. They asked me questions. They were looking for information about my experience in Ethiopia. They asked questions like: 'How are the living conditions of prisoner in Ethiopia? etc…' They asked me these things because I had worked in Ethiopia and I had been detained there. The information I provided later led to my arrest in December 2003. By then, I was considered to be a spy for Ethiopia… Four men came with a big dark car and I was taken to the Fourth Police Station. The interrogator started to beat me and accused me of giving information to Ethiopia when I was their prisoner. He said that I had said that Badme did not belong to Eritrea… I was beaten and tortured for more than seven months… After that, they transferred me and moved me to a cell.*"

A person, who was arrested and detained in the course of doing his import business between Yemen and Eritrea, told the Commission that: "*When I was bringing goods from Yemen to sell them in Assab, they were confiscating everything and saying that they know that I sell things to collect money to help the Ethiopian Government to buy arms. I have been imprisoned about four times between 1991 and 1992 in Assab. They were asking for money in order to release me.*"

Another person whose brother was arrested and detained for "being close to the Ethiopians" and was later arrested and detained himself told the Commission: "*In June 1999, my brother was arrested ... by soldiers. They told my family that we had always been close to the Ethiopians, and that we wanted to join them. They took him to Forto Mendefera, an underground military police station. I asked in the police station about my brother and why he had been arrested. They told me to shut my mouth. But they said he was a spy. They warned me that I was also a suspect. After a week, they came and arrested me at my home… I was interrogated. I was asked why I had worked for the Ethiopian Government. I was detained for three months*."

A former detainee told the Commission about how his friend was arrested and detained on suspicion that he was working for a foreign intelligence organisation when he was recruited to work for the United Nations. He said: *"I was part of a military unit assigned to provide security protection to the regional office of United Nations Peacekeeping Mission in Ethiopia and Eritrea (UNMEE) in Tessenei. I*

came to know [x] when he was working as a driver for UNMEE. He was deported from Ethiopia during the border conflict. Like all others who were deported from Ethiopia, he was given a certain amount of time "free from national service" in order to start new life in Eritrea. That is how he started working with UNMEE … After a while, my military unit was relocated to another area and after that I was imprisoned in Aderser… [x] was already in the detention centre when I came in. … He explained to me that officers from the Code Five Intelligence Unit wanted to recruit him to spy for them on UNMEE ... He refused .... Then they tried to enlist him in the national service by forcing him to go to Sawa. Due to UNMEE's objection, this did not happen. After continued requests to enlist him as a spy and [x's] obstinate refusal, they made him "disappear" by detaining him in their secret prison. UNMEE did not have any clue of what happened to him. He was investigated for four months under brutal circumstances of torture and inhumane investigation techniques... He was blamed for working as a CIA agent via recruitment of UNMEE for that purpose… Then they took him and he was never to be seen again."

759. The Commission also obtained information regarding the arrest and *incommunicado* detention of United States Embassy employees who were accused of translating documents belonging to Eritrean opposition groups for the United States Embassy.[981] It also obtained information about the arrest and detention of former USAID employees on allegations that they were involved in human trafficking when the Government of Eritrea ordered USAID to leave the country in 2005.[982]

760. The Commission documented information that some members of the diaspora visiting the country are subjected to arbitrary arrests and detentions.[983] Usually, members of the diaspora are arrested and detained on suspicion that they belong to opposition groups or participating in anti-government events. Security officers often subject them to torture during interrogations with a view to extracting confessions. [984]

The Commission heard from a person who returned to Eritrea and was arrested, detained and subjected to torture: "*I went back to Eritrea in 2012 … I was detained for three weeks in Asmara at the Fith Police Station. I was arrested and my family had to pay a bribe of 50,000 Nakfa to have me released. On the day that I was arrested, three people from the security forces in civilian clothes came to my house. They told me that they needed me for some business. They forced me into their car and pointed a gun at me. Then I was taken to the police station. I was interrogated three times. During the first interrogation, they told me that I was in the opposition party*."

A person who returned to Eritrea and was detained told the Commission: "*I went back in 2014. My grandmother was sick and I had to visit her. My family is in the opposition… I thought it would be easy to go and come back. … When I got there, immigration officials asked for my details. They took my address of residence in Eritrea. … Two days afterwards, three people in civilian clothes came to our house in Asmara. This was around 8 a.m. They had guns. They took me from our home. I asked them why they were taking me. They did not tell me the reason. They put me in a car. I was not handcuffed. It was a civilian car. Then they took me to the Fifth Police Station… I was interrogated by two government officials…They asked me who took me from the airport upon my arrival… They also asked me if I knew two*

[981] S147.
[982] S147.
[983] TSH098, TAM071, TAM065, S015, TBA020.
[984] TAM071, TAM065, TBA038.

guys called [x and y]. I told them I do not know these people... After that, they asked me about the documents that I brought from [a foreign country]. I told them that I did not bring any documents and I only came to see my grandmother. Then they said that they had information that I had brought information for the opposition group… They started to beat me."

Another person, who visited Eritrea in 2003, told the Commission how he was arrested and detained for eight months on the day he was supposed to fly back to his country of residence: "*In January 2003, I wanted to leave Eritrea to return to [a foreign country]. I had to be at the airport at three o'clock in the morning. Security officers waited for me at the door. They asked for my passport outside of the airport. They took my luggage and took me away. They were four security officers but only three accompanied me to the prison in … Karshele. They told the guard to put me in jail. I was put in solitary confinement …The interrogators asked me questions consecutively for five days. At the end, they told me that I was against the Eritrean Government because I had participated in a meeting [abroad in city x] against the Government. I told them I was not a politician, but I was allowed to speak. They wrote to the Eritrean embassy in [country x] to inquire about me. They asked why I had not paid the 2 per cent tax.*"

(iv) Specific groups targeted

a. Political dissidents[985]

761. Political dissidents who expressed their opinions deemed to oppose the Government have been subjected to arrests and detention. Most of them have often ended up being subjected to enforced disappearance.[986] As early as 1992, the Government of Eritrea engaged in mass arrests of Muslim scholars and businessmen who were accused of various infractions including having links to the largely Muslim opposition Eritrean Liberation Front (ELF). These Muslims scholars and businessmen disappeared and are feared dead.[987] The Commission also obtained information about tens of former Eritrean Liberation Front freedom fighters who have disappeared between 1992 and 2002 after being arrested by Eritrea security agents either from their homes or the streets.[988]

762. In 2001, the Government of Eritrea arrested and detained 11 high-level political and military critics of the Government. These people were part of a dissident group known as the G-15, within the ruling Eritrean People's Front for Demcracy and Justice (PFDJ), which read and published a letter demanding various reforms. Authorities of the Government of Eritrea allege that this group had committed an act of treason but so far none has been charged for any offence since their arrest and detention in 2001.

b. Journalists[989]

763. Journalists have also been a target of arrests and detention by the Eritrean Government.[990] Reports abound that journalists were targeted during the 2001 crackdown when members of the G-15 were arrested. Specifically, ten journalists were arrested for publishing and writing articles and editorials of support to the letter demanding reforms.

985 See chapter VI, A, 3, Freedoms of opinion, expression, assembly and association.
986 See *infra* and chapter VI, B, 3, Detention.
987 See *infra.*
988 Ibid.
989 See chapter VI, A, 3, Freedoms of opinion, expression, assembly and association.
990 S073.

Since then, journalists who are seen as critical of the Government have been targeted with arrests and detention.[991] Although the Government of Eritrea has recently released some journalists, reports indicate that scores of them continue to be held in detention.

c. Religious groups (authorised and unauthorised)[992]

764. The Eritrean Government has four authorised religious groups and churches, namely the Eritrean Orthodox Church, the Catholic Church, the Evangelical Church of Eritrea and Islam of the Sunni rite. In addition to these four religions, there are other 12 smaller religious groups which are mostly Pentecostal and Evangelical in their orientation. The Commission obtained information that both authorised and unauthorised religious groups have suffered government interference and control through arrests and detention.[993] In particular, the Commission collected a number of testimonies showing that members of unauthorised religious groups have systematically been arrested during religious gatherings both in public and private places for a myriad of reasons including refusal to recant their faith.[994]

765. Finally, individuals who are arbitrarily deprived of their liberty , usually remain detained for lengthy periods of time outside of any judicial control and without being tried.[995]

> As explained by a former national security officer "*When we arrest someone, we tell the police station that it is for the national security service. After that, nobody asks you, even if you were wrong to arrest him. The person might be there for years … In the police station there are thieves and criminals who are arrested by police. If any kind of leader from the military puts someone in prison, he can put him wherever he likes, and after the prisoner is there he can stay for months without trial or anything. The leader can make up any story about the prisoner and send him to another prison. … If there is a political or religious reason there is never a trial.*"

(v) Mass arrests

766. Eritrean authorities regularly organise mass arrests, or *giffas*, aimed at searching for citizens who have failed to respond to a call to report for national service, have been absent from the army without leave, or have otherwise attempted to evade conscription.[996] Additionally, the Commission heard of rounds up conducted in the lead up to public holidays, such as the yearly Independence Day celebrations on 24 May, apparently to ensure that potential "troublemakers" do not roam around the streets freely.[997] The Commission did not obtain information regarding whether such people are detained and for how long. [998]

> A witness was released from detention because he was needed in the pre-Independence Day checks, required to round-up people during daytime before being detained during the night over a period of 40 days. He said: "*I was told to search everybody I saw, even military but not white people. If you see that people do not look Eritreans, show them respect. We do not want to give a bad impression.' Our*

[991] S073.
[992] See chapter VI, A, 4, Freedom of religion and belief.
[993] S081, S071.
[994] See chapter VI, A, 4, Freedom of religion and belief.
[995] TCDP034. See chapter VI, B, 1, Administration of justice.
[996] See chapter VI, C, 1, National service.
[997] TAM013 TSH026.
[998] TSH082.

main targets were women, we were told to bring in any groups of women, I think they just did not want people gathering together."

(vi) Right to compensation

767. International human rights law provides that victims of arbitrary or unlawful arrest and detention have an enforceable right to compensation.[999] The Commission neither interviewed nor received a submission from anyone who reported to have been compensated following their arbitrary or unlawful arrest and detention. Individuals who have been subjected to arbitrary arrests and unlawful detention in Eritrea are left without a remedy. Since the judicial system is non-functional, individuals can hardly challenge the lawfulness of their arrest and detention. As such, no financial compensation can be claimed and paid to victims for the pecuniary and non-pecuniary harm resulting from their unlawful arrest or detention.

(vii) Principal findings

768. The body of information collected by the Commission indicates that arrests and detention are conducted and ordered by any person with some *de facto* authority including local administrators. This is in breach of the requirement that officials authorized to make arrest should be clearly identified.[1000] Furthermore, those who are arrested are neither informed of the reasons of their arrest at the time of arrest nor informed, promptly, of the charges against them in case of judicial proceedings.[1001] In most cases, where people are arrested from their homes or streets, they are deceived by arresting officers that they are only needed at police stations for a short time after which they would return home. Often, they never return.

769. Most people are arrested by armed military or national security officers either in uniform or civilian clothes who may come in vehicles without licence places. The arresting officers sometimes present their identity cards but they hardly inform the person under arrest the place where they will take them to where they are eventually detained. People often end up at unofficial places of deprivation of liberty such as offices and private homes. The Commission also observes that the principle of habeas corpus is rarely respected. As a result, individuals cannot request to be heard by an independent and impartial court of law in order to review the lawfulness of their deprivation of liberty and possibly order their release.[1002] In other words, the lawfulness of the deprivation of liberty is never reviewed and detainees are often released at the whim of the arresting or detaining officer. Detention in Eritrea cannot possibly be referred to as pre-trial as individuals are never tried for most cases. Ordinarily, they are kept beyond the acceptable 48 hours, which is meant to reduce the risks of ill-treatment during the detention.[1003] In Eritrea, pre-trial detention is the norm rather than the exception but often people never enter a dock.[1004] The Commission finds that these practices violate the right to liberty of the persons arrested and detained.

[999] See article 9(5) of the ICCPR. See also Human Rights Committee, General comment No. 35, article 9 (Liberty and security of person).

[1000] Human Rights Committee, General comment No. 31, para. 23.

[1001] Art. 9 (1) and (2) of ICCPR.

[1002] Art. 9 (4) of ICCPR. Articles 177 and 178 of the Transitional Penal Code of Eritrea provide for the right to *habeas corpus* and detail the procedure. However, no additional public information could be obtained by the Commission about its effective implementation in practice by Eritrean courts or about the other legal dispositions protecting the right to liberty at the national level.

[1003] Human Rights Committee, General comment No. 31, para. 33.

[1004] Art. 9 (3) of ICCPR.

770. The common reasons that trigger an arrest and detention are numerous. However, in the majority of cases, people are arrested and detained for reasons that are capricious such that no one can possibly identify a law that might have been violated. The main reasons that the Commission found relate to asking questions, presumed attempt to flee the country, suspected collaboration with the enemy, including working for foreign entities in Eritrea and presumed desertion of national service and for the conduct of a family member. Since people are arrested and detained without any formal charges; people speculate the reasons for their arrest and detention based on the line of interrogation or their conduct before their arrest. Specific groups of people have also been targeted with arrests and detention particularly, political opponents, journalists and members of religious groups. The Commission finds that arrests are often unjust, unpredictable, unreasonable and disproportionate. The Commission finds that the Eritrean Government systematically uses arbitrary arrests and detention in violation of the right to liberty of the person.

(b) Enforced disappearances

(i) Legal framework

771. Enforced disappearance is an aggravated form of arbitrary detention during which a person is deprived of liberty by State agents, or with their support or acquiescence, and those responsible refuse to acknowledge the detention, or conceal the concerned person's fate or whereabouts. Therefore, the person is placed outside the protection of the law.[1005]

772. An enforced disappearance is distinct from the abduction or kidnapping of a person by non-State actors. Enforced disappearance is a complex phenomenon during which numerous fundamental rights are violated in addition to the violations of the right to liberty occurring during an arbitrary detention. The right to life of persons detained in these conditions is usually at risk as well as their right not to be subjected to torture or other inhuman treatment and their right to be treated with dignity, which are guaranteed among others, by articles 6, 7 and 10 (1) of the International Covenant on Civil and Political Rights, respectively.[1006] By placing the person outside of the protection of the law, they are stripped of their right to be recognised as a person before the law, provided by article 16 of International Covenant on Civil and Political Rights and article 5 of the African Charter on Human and Peoples' Rights.[1007] In addition, the anxiety and distress that enforced disappearances cause to family members of a disappeared person may amount to torture or cruel and inhuman treatment.[1008] The Eritrean Government is under an obligation to ensure that all persons who are arrested and detained in Eritrea remain at all times within the protection of the law and that all the substantive and procedural safeguards established under international human rights law are effectively available and accessible to all these persons.

773. Secret detention violates the right to personal liberty and the prohibition of arbitrary arrest or detention. No jurisdiction should allow individuals to be deprived of their liberty in secret for potentially indefinite periods and held outside the reach of the law, without the

[1005] See definition provided by article 2 of the Convention on Elimination of Enforced Disappearances, to which Eritrea is not a Party.

[1006] See also art. 1 and 16 of CAT, art. 6 and 37 (a) of CRC; art. 4 and 5 of ACHPR.

[1007] Art. 16 of ICCPR; art. 5 of ACHPR.

[1008] Communications Nos. 107/1981, Almeida de *Quinteros v Uruguay*, Views adopted by the Human Rights Committee on 21 July 1983, para. 14; 950/2000, *Sarma v. Sri Lanka*, Views adopted on 31 July 2003, para. 9.5; 1327/2004, *Grioua v Algeria*, Views adopted by the Human Rights Committee on 10 July 2007, para. 7.7; and 1776/2008, *Bashasha v Libya*, Views adopted by the Human Rights Committee on 20 October 2010, paras. 3.4, 7.5.

possibility of resorting to legal procedures, including *habeas corpus*. Secret detainees are typically deprived of their right to a fair trial when State authorities do not intend to charge or try them. Even if detainees are charged, the secrecy and insecurity caused by the denial of contact to the outside world and the fact that family members have no knowledge of their whereabouts and fate violate the presumption of innocence. They also too often allow for confessions to be obtained under torture or other forms of ill-treatment. At the same time, secret detention amounts to an enforced disappearance.[1009]

(ii) Enforced disappearances in Eritrea: modus operandi and targeted groups

774. Since Eritrea's *de facto* independence in 1991, scores of people have been subjected to enforced disappearances for various known and unknown reasons. The Commission found that enforced disappearances have been systematically used at least against political dissidents, businessmen and leaders of ethnic minority groups. These practices have not been sporadic. Typically, people are whisked away from the streets, mosques, workplaces by masked Eritrean security agents either in uniform or civilian clothes driving military vehicles without licence plates.[1010] When families enquire about their missing family members, the Government denies knowledge about the whereabouts or fate of the person in question.

775. In some cases, victims of enforced disappearance reappear and disappear again.[1011] There are numerous cases of secret detentions amounting to enforced disappearance, particularly where people are allegedly detained in a specific known place and later disappear.[1012] In exceptional cases where the authorities in Eritrea acknowledge detention, they often refuse to provide information about the whereabouts of the individual.

(iii) Disappearances of political leaders, dissidents and journalists

a. Disappearances following the "Forto incident" in January 2013

776. Reports abound that Eritrean security agents engaged in a purge campaign that involved the conduct of numerous arrests following the Forto incident in January 2013.[1013] This arose when on 21 January 2013, approximately 100 soldiers took over control of the Ministry of Information building, which is also known as "Forto", where the Eritrean Television station (Eri-TV) is housed.[1014] It is reported that the soldiers sought to read a communiqué to the nation during live coverage.[1015] However, Eri-TV went off air before the reading of the communiqué was completed. In the communiqué, the soldiers allegedly demanded that the Government implement the 1997 Constitution, release political prisoners and all those who were arrested while attempting to flee the country.[1016]

[1009] See also art. 17(1) of the Convention on Elimination of Enforced Disappearances,; See also Joint study on global practices in relation to secret detention in the context of countering terrorism, A/HRC/13/42.

[1010] S063, TLA003, TBA007, TCDP002, TCDP009.

[1011] Report of the Special Rapporteur on the situation of human rights in Eritrea, A/HRC/23/53, para. 48.

[1012] TCDP011.

[1013] See International Crisis Group report, Eritrea: Scenarios for Future Transition (http://www.crisisgroup.org/).

[1014] The Ministry is in an old Italian military building, called "Forte Baldissera", on the Beit Georgis hill in the outskirts of Asmara.

[1015] International Crisis Group report, Eritrea: Scenarios for Future Transition (http://www.crisisgroup.org/).

[1016] Ibid.

777. It has been widely reported[1017] that a number of senior government officials in Eritrea were involved in the Forto incident. These arrests were followed by mass arrests of other people who were considered to be part of or sympathetic to their cause. To date, the whereabouts of most of the people who were arrested in the aftermath of the Forto incident remain unknown.

778. Family members of some of the people allegedly involved in the Forto incident have no knowledge about their whereabouts. [1018] A wife of one of the people arrested in the aftermath of the Forto incident told the Commission: "*I have no information about my husband since the night of 21 January 2013.*" Since the incident, no one has been charged with any offence or brought before a court. There is thus no information regarding the fate or whereabouts of the former senior government officials who led the mutiny and the dozens of mutineers who seized the premises of Eri-TV. No government official has acknowledged the arrests partly because the Government has refused to acknowledge that the military besieged the Forto building or indeed that there was an attempted *coup d'état*.

b. The disappearance of former freedom fighters of the Eritrean Liberation Front (1992-2002)

779. In May 1991, the forces of the Eritrean People's Liberation Front (EPLF), which was later renamed the Peoples' Front for Democracy and Justice (PFDJ), defeated the Ethiopian army. The EPLF, which was formed around 1970, had broken away from the Eritrean Liberation Front (ELF) after several years of internecine ethnic and religious in-fighting. After independence, a number of ELF former freedom fighters returned to Eritrea.[1019] However, scores of these freedom fighters have since 1992 disappeared at the hands of the security agents in Eritrea. It is understood that many of the freedom fighters were arrested without being proffered the reasons for their arrest. Testimonies abound that the Government led a campaign to purge members of the ELF for various reasons including refusal to support the Government or for allegedly engaging in anti-government propaganda.[1020]

780. The Commission obtained information about dozens of former ELF freedom fighters who have disappeared between 1992 and 2002 after being arrested by Eritrean security agents either from their homes or the streets. The Commission has compiled a list of former ELF members who have been subjected to enforced disappearance, which includes well known cases of ELF members who disappeared between May and October 1995 after being arrested either in Keren and Agordat. Family members are often inundated by rumours of former detainees having seen them in certain prisons but authorities provide no information about their fate or whereabouts.[1021]

(iv) Disappearances of Muslim scholars and businessmen

781. Members of recognised and non-recognised religious groups have also been targeted by state security agents for different reasons. Based on the information gathered by the Commission, adherents of the Islamic faith have more frequently been subjected to enforced disappearances than those of other recognised religious faiths. Since security agents who effect arrests do not provide reasons for the arrest and detention, family members speculate that most adherents of the Islamic faith are detained and subjected to enforced disappearance because of their teaching and alleged support of terrorism. A

[1017] Ibid.
[1018] TRDV004.
[1019] See chapter III, C, Post-independence.
[1020] S059.
[1021] Ibid.

second reason could be the settlement of political scores because some Muslim leaders reportedly resisted the policy that women should undertake national service.[1022]

782. The Commission has gathered information that since 1992, Muslim scholars and businessmen have been targeted for a myriad of reasons including for allegedly having links with the largely Muslim opposition Eritrean Liberation Front (ELF), supporting Islamist jihadi movements and human trafficking.[1023] Information gathered by the Commission shows that from 1992, the detention and disappearance of Muslim teachers and businessmen, particularly from Islamic schools in Keren and Ginda, had been widespread. Information also indicates that between 1992 and 1999, hundreds of Islamic teachers from different towns have disappeared after Eritrean security agents embarked on mass arrests and detentions.[1024]

> One of the people who witnessed the 1994 mass arrests of Muslim teachers in Keren told the Commission that "*In 1994 when I was in Keren, over 50 people in my village were taken. Most of them were Muslim- Arabic teachers. I remember some of the names of those who were taken- they were between 25 and 50 years of age… They were Arabic teachers and intellectuals. It was at a time when there was much discussion about the Constitution. They were involved in these discussions and targeted for their views. We still do know where they are.*"
>
> A son of a disappeared Muslim scholar who was arrested in Ginda town in 1994 told the Commission that: "*My father was arrested at night sometime in 1994 ... My father was an Arabic teacher… During the same night, over 20 more people were arrested- they were all teachers at an Islamic school…The police officers said that they had no information about the arrests. Several times the family asked the administration about his whereabouts but they did not provide any information. My mother kept on asking about him. They arrested her too.*"
>
> Another person who witnessed the arrest of Muslim scholars and businessmen in Agordat between 1994 and 1996 informed the Commission that: "*In 1994, my Quran teacher was arrested … In 1996, another of my teachers was also arrested. They all disappeared … Many more people also disappeared. The father of a friend of mine also disappeared in 1996 ... I am also aware of the disappearance of other members of my community in Agordat, mostly between 1994 and 1996, namely … There was no reason for the arrest. Most of them were running bakeries, shops. They were businessmen and were relatively wealthy.*"

783. The arrests and disappearance of Muslim scholars and businessmen reportedly continued after 1992. In December 1995, security agents arrested three persons in the town of Senafe.[1025] Masked men in a vehicle without licence plates stormed their houses and arrested them.[1026] They shot one of the victim's wife when she tried to follow her husband and the children began to scream. She later died at hospital.[1027] The whereabouts of these three men remain unknown since then.[1028]

784. In 2005, a prominent Muslim leader was arrested for protesting against interference by the Government in the religious affairs of the Muslim community. Information received

1022 S071, S081.
1023 S081, TCDP011.
1024 S063, S081, TSH017, TBA007, TCDP011.
1025 TNR046, S062, TCDP002.
1026 S002, TNR046, TAM030.
1027 TNR046.
1028 TNR046, TAM030.

by the Commission shows that in February 2008, the victim died and his family was summoned by authorities to collect his body without any information about the circumstances surrounding his death.[1029] Later in January 2007, Muslims expressed growing resistance against the Government's arbitrary appointment of a Sunni Mufti.[1030] When Muslims openly protested against this decision in the town of Keren, over 55 Muslims were arrested and detained on allegations that they were resisting conscription into the national service and helping their children to flee the country in order to avoid military service.[1031] Most of them have disappeared as their whereabouts remain unknown while others are feared to have been extra-judicially executed or died in custody.[1032] Later, between 13 and 14 August 2008, at least 40 Muslim clerics and scholars were arrested at night by soldiers in Asmara, Senafe, Adi Keih, Tsorona, Segeneiti, Dekemhare, Foro, Hadish, and Idafalo and taken away in unmarked cars. Like others, their whereabouts remain unknown.[1033]

(v) Disappearances of members of the Afar ethnic group

785. The Commission recorded specific incidents regarding the disappearance of members of the Afar ethnic group in the years 1999 and 2000. The alleged main reason for the arrest that led to their disappearance was their suspected collaboration with the Ethiopian government and rebel groups. The Commission received information that between 1998 and 1999, over 15 members of the Afar ethnic group, who were clan leaders and merchants, were arrested in Harsile by Eritrea security agents and taken to undisclosed locations. The arrest and disappearance of the Afar clan leaders and businessmen between 1998 and 1999 was followed by the arrest and disappearance of four Afar men in 2000 in Assab. Government officials have refused to provide answers and they have at times threatened them with arrests.[1034] As such, family members of victims have not heard about their whereabouts. [1035]

> A son of one of an Afar businessman who was arrested in Harsile told the Commission: "*My father was arrested in 1998 … I have never seen him, never heard about him since then. When I asked about his whereabouts, I did not have any answer. I do not know anything about my father … He had his own business when they arrested him. Up to now I have not seen him. We do not know why they arrested him … I have some friends who are in a similar situation.*"
>
> Another child of one of the Afars who were arrested and disappeared from Harsile said: "*My father has been arrested for over 16 years now. He was arrested around 1998. We do not know if he is dead or alive. We have not seen or heard anything about him … There is no information about why he was arrested. He was arrested at the same time as other people in Harsile. He was a businessman. Some people say that the Government thought that he helped the opposition ... No one has ever seen him since then.*"

[1029] S071.
[1030] S081, S071.
[1031] S071.
[1032] S081.
[1033] S081, TCDP022.
[1034] TCDP049.
[1035] TNR064, TNR065.

(vi) Other cases of enforced disappearances

786. The Commission obtained a body of information which suggests the systematic use of enforced disappearances to settle political scores. Most arrests and disappearances target people who are considered a threat to the regime. However, there have also been cases where individuals have been arrested for associating with political dissidents and for no known reasons since, in the majority of cases, arrests are conducted with any explanation or indeed any recourse to judicial remedies where individuals could seek an explanation for their continued detention. One of the cases that illustrate the arbitrariness of the arrests and detention which lead to enforced disappearances is that of Ms. Aster Yohannes, the wife of Mr. Petros Solomon, one of the members of the G-15 who was arrested as part of the crackdown in 2001. When her husband was arrested, Ms. Yohannes, who was not involved in politics, was studying in the University of Phoenix, Arizona in the United States of America.[1036] In December 2003, she flew back to Asmara, upon getting assurances from the Eritrean Government through its Ambassador in the USA, that there would not be any reprisals against her for the activities of her husband. However, when she arrived at the airport she was arrested. She was not able to see her four children whom she wanted to take care of after her husband's arrest. Ms. Yohannes has been subjected to secret detention since that time and her fate and whereabouts remain unknown. The Government has never explained the reasons for her arrest and detention and never brought her before a court of law. It would appear that her sole "crime" was to be the wife of a prominent critic of the government. Like other people who have been detained following politically motivated arrests, she has been subjected to forms of secret detention amounting to enforced disappearance.

787. The Commission also heard other cases of politically motivated arrests that ended up in the disappearance of those arrested targeting anyone with critical views. These target anyone including senior military officers and businessmen.[1037]

> A son of one of the people who spoke about political reform and disappeared in 2002 told the Commission that: "*My father used to work for the Government. He used to talk about political change in the city of Agordat. He used to participate in meetings, in which people talked about why so many Eritreans leave the country and why the schools are directly connected to the army ... One day in June 2002, when my father was working at night, agents from the National Security Office came and told him to come with them ... My father asked why he has to come with them. When he refused, they violently put him in their car and drove away. Their car had no registration plates. Since that day, I have never seen my father again. I do not know what happened to him. When he disappeared, my mother went to ask the police and his work place. But neither the police, nor the people from his workplace knew where he was. So, my mother went to the Security Service in Agordat two weeks later. She asked them if my father had done anything wrong ... My mother went three times to the Secret Service asking where my dad was. They always answered that they did not know. The third time they told her that she should stop asking and they detained her for four days. They told her that if she came again, the same thing that happened to my dad would happen to her.*"
>
> Another person told the Commission that: "*Major [x] disappeared in 2009 after being taken from his house in Asmara… He has never been seen since then. He was a former fighter*."

[1036] S024, S015, TSH024.

[1037] TCDP017, S066, TAM028, TCDP010.

> Another witness told the Commission that: "*In 2010 ... I was on the streets having a chat with my friends from the neighbourhood. There was one dentist [x]- some security officers took him. They were wearing beige uniforms different from those of the military but they had guns… They put him in a car which had no plate number. I … heard that they did it because he was talking about politics and government's programmes.*"

788. Most of the witnesses recounted stories to the Commission about how their relatives were arrested and disappeared. Most of them did not have any idea about why their relatives were arrested.[1038]

> A wife of a government employee who disappeared told the Commission that: "*My husband was a Government employee. He worked on a Government water generator. Almost 12 years ago, the Government said that they needed him to do something at work. He went with them and has never been seen again. Eleven others were taken in the same week. We do not know where they are. I think he is dead now.*"
>
> A woman whose husband disappeared said: "*In 2006, almost nine years ago, my husband [x] was taken. My husband was an educated person, he was a hard worker… He was taken in August 2006 from work. He was put on a truck with 20 others and taken to a prison.*"
>
> Another woman whose husband disappeared told the Commission that: "*About seven years ago, when I was pregnant … six soldiers came to our house. They were wearing uniforms and had guns. They came into our house and started to beat my husband while he was asleep. Two picked him up suddenly and a third beat him from behind. They did not say anything. I started to shout and tried to call for help but one of the soldiers hit me in my ribs with his gun. It still hurts sometimes. They took my husband on foot. I do not know where he was taken. From that day I have not heard any information about him. I did not ask anyone because there is no one to ask. Everybody fears asking questions. I had no option but to wait for my husband. I stayed for almost three years waiting for my husband before I decided to leave Eritrea. Other women in my village also lost their husbands this way.*"

(vii) Impunity and consequences on family members of victims

789. Enforced disappearance remains one of the widespread human rights violations perpetrated in Eritrea. Cases leading to enforce disappearance are diverse ranging from reprisals for political criticism to religion. However, there also numerous cases where individuals have disappeared and their family members cannot arrive at any possible explanation as to why they disappeared. The *modus operandi* of arresting people and threatening family members with detention if they seek to establish the whereabouts of the disappeared person means that cases of enforced disappearance are never investigated. The refusal to acknowledge any disappearance and the failure to investigate has bred indescribable impunity. Therefore, family members continue to suffer violations of their right to learn the truth about the whereabouts of disappeared persons. The uncertainty about the fate of their loved-ones is a source of continued anguish and anxiety. Furthermore, enforced disappearance has had a particular impact on wives, mothers and children of the disappeared since, they are threatened or subjected to actual detention if they continue to seek to establish from government authorities the whereabouts of their husbands and fathers. In the absence of any effort from the Government to investigate and provide information, the rumour mill in Eritrea is often rife with unverified reports that certain

[1038] TSH055, TSH056, TSH073.

disappeared persons might have been spotted by former detainees or died in different places of detention, which exacerbates their suffering.

(viii) Principal findings

790. The Commission finds that since Eritrea's *de facto* independence in 1991, scores of people have been subjected to enforced disappearances for various known and unknown reasons. Enforced disappearances have been widespread and have been systematically employed against political dissidents, businessmen and leaders of ethnic groups. While the exact number of people who have been subjected to enforced disappearance remains unknown, the Commission finds that former freedom fighters belonging to the ELF, Muslim scholars and businessmen, members of the Afar ethnic group, alleged participants of the Forto incident in January 2013, were particularly targeted by the Eritrean Government, who organised their arrests in the streets, mosques and workplaces by masked Eritrean security agents either in uniform or in civilian clothes.

791. The Commission finds that the distinction between enforced disappearances and *incommunicado* detention is sometimes blurred.[1039] The Commission, however, notes that whenever State authorities conceal the fate of persons or their whereabouts thereby placing them outside the protection of the law, it amounts to enforced disappearance. The Commission finds that all the persons who have been victims of enforced disappearances suffered violations of their right to life, right not to be subject to torture, cruel, inhuman or degrading treatment, right to be treated with humanity and with respect for dignity in the context of detention, right to be recognised as a person before the law and right to liberty. In addition, in light of the anguish, anxiety and suffering that enforced disappearances cause to family for extended period of time, the Commission finds that their family members' right not to be subject to torture, cruel, inhuman or degrading treatment has been violated.

3 Detention

(a) Arbitrary and unlawful detention

792. The Commission finds that it is impossible to have an exhaustive list of reasons for detention since there is utter arbitrariness in arrest and detention. Many individuals who have sometimes spent years in custody remain incognizant of the reasons of their detention.[1040]

793. Due to the opacity of the system, neither the approximate number of detainees nor the number of detention centres is known.[1041] There is no public record and the system is organised in such a way that even insiders get fragmented information that make it impossible for them to have a complete picture of the system. A former national security officer told the Commission that "*the information and the power works in such a way that I know about my own area only. The rest, I don't know, there is no information channel. There are only orders.*"[1042]

794. Based on information provided to the Commission by a former military clerk on the number of detainees in one military Division, one could estimate the number of detainees to have reached 14,000 in 2014, in military prisons alone.[1043] Nevertheless: "*What is today an*

[1039] See chapter VI, B, 3, Detention.
[1040] See Chapter VI, B, 2, Violations of the right to liberty and security of persons.
[1041] For more information on the different kinds of detention centres, see *infra*.
[1042] TFM025.
[1043] TBA068.

office can be turned tomorrow into a prison. There is no list of all prisons. The Ministry of Defence may know all the prisons which are run under the Ministry of Defence and the prisoners detained in those prisons. I am not sure if they are aware of all the prisons."[1044] Estimates of the number of persons held in detention, including incommunicado detention and enforced disappearances, mentioned in open sources vary considerably. Under these circumstances, the Commission cannot express an opinion on the number of detainees in the country but can only state that the fact that such number is officially unknown is a matter of serious concern. The Commission also re-states that detention in Eritrea appears to be an ordinary fact of life.

795. Several places of detention have a dual function: they are officially designated as prisons or police stations but are also at the disposal of national security officers. In this case, secret security sections or cells are kept at the disposal of national security or military intelligence officers for short and long term detention and for interrogation. The officer who detains someone is also the one who decides on the release.[1045]

> A former guard at the prison in Tessenei told the Commission: "*The system is difficult to understand, but the military intelligence just used the prison. We were given orders, such as to feed them. We did not understand if they were military or national security. It does not make a difference, they just use different names but they are all military. They all answer to the President, there are different systems created inside to make sure that they don't trust each other. They can be dressed in civilian or military uniform.*"
>
> A former national security officer in Asmara explained the arbitrary nature of detention as follows: "*Persons in police stations never take care of the detainees I arrested – they are not concerned about them. I put them in, I had to take them out. … The decision to get them out is for me. Nobody asks you for anything – if I forget him he remains there. … There are cases where the information is not collected by me but I receive orders from the national security headquarter to jail someone in a specific detention centre. … Then, they can take them away or interrogate them in the police station. There is nobody controlling the length of the detention. I am just asked to detain but I don't know for how long, it can be days, months… I don't follow-up. I just put people in prison but I don't follow-up. I don't know what happens to them.*"

(i) Notification of prison terms

796. In accordance with international standards, the trial of persons held in pre-trial detention should take place within a reasonable time or the person has the right to be released.[1046] Pre-trial detention should remain an exception rather than a general rule and it should be decided by a judge after an individual assessment of the circumstances of the case during which it is considered that it is necessary to prevent flight, interference with evidence or the recurrence of crime.[1047]

797. Testimonies and confidential submissions received by the Commission suggest that detainees, whether formally convicted by a court or not, are almost never aware of the

[1044] TBA068.
[1045] TBA001, TCDP065.
[1046] Arts. 9 (3) and 14 (3) (a) and (c) of ICCPR, art. 37 (b) and 40 (2) (b) (ii) and (iii) of CRC, art. 6 and 7 of ACPHR. For further details on the international standards related to judicial proceedings, see chapter VI, B, 1 on the Administration of justice.
[1047] Art. 9 (3) of ICCPR.

sentence.[1048] Detainees routinely remain for years in detention, are unaware how long they will be imprisoned for and often learn their prison term - if at all- in the course of their detention or even upon release.[1049] When prison officials "*read the letter"* informing detainees of their sentence, they are sometimes asked to sign a form in which there is an undertaking to accept the punishment.[1050]

> A victim testified: "*I was neither convicted nor tried and I still have no idea how they decided any prison terms imposed. Except during interrogation, from the time I arrived in the prison till I was released, I never met any prison official except the guards and was never made aware of my rights.*" And he added*:* "*Prisons terms were unknown. A prisoner would only know the term of imprisonment when he/she gets out of prison.*"
>
> A former investigator who worked for more than three years with the military intelligence confirmed that "*prisoners were never informed of the length of their detention*".

(ii) Mandatory registration of detainees and retention of prisoners' property

798. The proper recording of deprivation of liberty is one of the fundamental safeguards against ill-treatment, as well as a prerequisite for the effective exercise of the due process rights of the detainees. All detainees should be officially recorded in the official registry of the prison with an indication of their identities, reasons for detention and day and hour of admission and release.[1051] Upon request such records must be made available to the detainees, their legal representatives and their family members.

799. The Commission received testimonies from military personnel indicating that divisions keep records of persons detained in military prisons, indicating the detainees name, ID number, religion, reason of the arrest, number of times the detainee has escaped, time of admission and release, length of detention and deaths in custody.[1052] A member of the military in charge of record-keeping for his Division who left the country recently indicated that there is a computerised database where information about conscripts is uploaded and all records are centralized by the Ministry of Defence.[1053] On this basis, military prisons prepare three reports a year for their Division, one for the first trimester, one mid-year and a yearly report. A paper copy is sent to the Commander of the Front.[1054]

800. Several witnesses told the Commission, however, that deserters who are apprehended lie about their identity in order to avoid being accused of desertion and thus sent to prison for longer sentences rather than being sent to military training.[1055] Upon release, these detainees are often sent again for military training, some of them for multiple times. In disguising their identity, deserters also avoid being transferred to their unit after the term of their sentence, where they would possibility be jailed again and receive military punishment.[1056]

> A witness explained the following: "*I had to change my name, and therefore they were not able to figure out that I had escaped military training. Whenever someone*

[1048] TBA063, TCDP027, TNR032.
[1049] TNR031, TLA036, TNR078, TBA097, S143r, TBA038, TBA063,TBA049.
[1050] TLA018, TBA063, TLA020, S033, TCDP036.
[1051] Rule 7 (1) of the Standard Minimum Rules for the Treatment of Prisoners.
[1052] TAM075, TBA030, TFM030, TBA068.
[1053] TNR032.
[1054] TFM030.
[1055] TBA063, TNR052, TBA075, TNR031, TNR036, TNR038, TSH036, TCDP026, TSH082.
[1056] TBA075, TFM030, TAM018, TBA058, TBA075, TFM005.

is registered in prison, they cross check with the Ministry of Defence records. If you change your grandfather's name, they don't track you."

Another witness testified: "*When I was released, I had to do military training; I had not told them my previous position. There are too many people, they can't match the names.*"

A former conscript told the Commission that when he was caught trying to flee the country, he said he was a civilian, not a soldier because when he was detained for trying to flee the country on an earlier occasion his military unit gave him a form to sign saying that if he made another attempt, he would be killed.

801. The Commission documented that persons taken to places of detention operated by National Security or Military Intelligence Offices are kept off the records. Prison guards are asked to only write down the name of the detainees and not to register any other information about them.[1057]

A former judge testified: "*When we visited police stations, we used to find cells that the police did not allow us to visit. These cells harbour detainees called "Nay Hadera", which means persons entrusted to the police by a security staff or an officer from the military or regional administrations officers without disclosing or registering their names. Although judges and prosecutors as well as the public expressed outrage, the practice continued with little "improvement". Instead of avoiding the practice altogether, the Government allowed the security and the military to resort to this method on one condition, registration of their names and positions. Detainees in these cells are at the mercy of the persons who got them in. Neither judges nor prosecutors could have access to them.*"

A witness who used to work as a prison guard recounted: "*There were hundreds of detainees but only very few had been arrested by us. Most of them had been brought by national security agents, this was reflected in the files where only their names were registered, nothing else. Those detainees were not under our responsibility, they were only followed by the security agents.*"

A national security officer explained that after detaining someone at a police station, he asked the police officers not to fill out the form about the detainee but just to write down the name. "*If police officers are asked about the prisoner, they should respond that they were acting on instruction.*"

802. International standards provide that all the personal belongings that detainees cannot keep with them should be registered, stored in a safe place and returned to the detainee upon release.[1058]

803. At the beginning of detention, inmates are often asked to take off their shoes, belt and watch,[1059] which are registered together with other effects belonging to the detainee. Belongings of the witnesses interviewed by the Commission were usually moved from police stations to the various prisons where they were detained. On release, the shoes, belt and other belongings of the detainees were usually returned to the detainee.[1060]

A former inmate recounted: "*The prison officers at Adi Abeito checked our pockets and bags and allowed us to keep the money and ID cards and other documents but*

[1057] S033, TCDP065, TBA001, TSH012.
[1058] Rule 43 (2) of the Standard Minimum Rules for the Treatment of Prisoners.
[1059] TSH076
[1060] TBA019, TCDP026, TNR019.

made our shoes and belts lay on the ground of the compound in a heap in a disorderly manner."

Another one explained: "*When we were arrested, we had to leave all our belongings behind, but we were given back everything when we were released*."

(iii) Judicial control of detention, monitoring, and complaints procedures

a. Judicial control of detention and independent monitoring

804. In Eritrea, the Attorney General's Office is the organ of the State with the power to oversee the investigatory activities of the police and of law enforcement in prisons.[1061] This derives from Article 8 (2) of the Transitional Criminal Procedure Code, which was in force during the period covered by the investigation by the Commission.[1062] This provision states that: "*The public prosecution department may in the discharge of its duties … ensure that the police carry out their duties in accordance with law.*"

805. The Commission collected testimonies of former prosecutors and judges who, at least until early 2000s, reportedly conducted surprise visits in police stations to ensure that people in custody were arrested and detained according to the law.[1063]

One such person told the Commission: "*According to article 8 (2) of the Transitional Criminal Procedure Code a prosecutor has the responsibility to oversee the work of the police and ensure they are working in line with the law. Between 1997 and 2002, I visited approximately 12 police stations per month.*"

A former judge reported: "*Criminal procedures allow courts and prosecutors to visit police stations to check if the police hold detainees for longer periods than what the law allows, if there are detainees held without charge, if there are detainees granted bail but held by the police and other similar procedural aspects. Despite a very hostile attitude of the police, surprise visits used to be made*."

806. All testimonies show that judges and prosecutors were aware of the lawlessness of the arrests and the dire detention conditions at that time. Some of them refused to denounce them and those who did, hardly ever had sufficient leverage to ensure that people unlawfully held in custody were released. In any case, judges and prosecutors did not have access to people arrested by members of the National Security Office, military officers or regional administration officers, who were usually individuals detained on political grounds.[1064]

A man who was a police officer before fleeing Eritrea in the early 2000s recounted: "*The court and the judges knew about the detention conditions. I know that they knew, because they came to visit our prison. They came once a week to check if the people in detention had their basic rights respected, whether their case was processed and whether they were able to contact a lawyer. But the judge only spoke to those we had arrested because of robbery and other petty crimes. I asked one judge why he did not ask to see the other detainees. He responded: 'You are young and do not know, otherwise you would not ask such a question. The fact is that we are afraid.*' *He was only allowed to speak to those arrested by the police, not by the military intelligence*."

[1061] See Chapter V, C, Judicial system.
[1062] On 11 May 2015, the Government of Eritrea has promulgated a new Criminal Procedural Code.
[1063] S033, TSH012.
[1064] TSH012, S033, TBA001, S119.

A former prosecutor reported: "*During my visits, I found many defendants had not been taken to court. According to the law, defendants held without formal charges should be freed. I repeatedly and continually told the police these people needed to be charged or released. But the police station did not have any power, the National Security Office ordered the police to keep them*."

A former judge told the Commission: "*When we visited police stations, we used to find cells that the police did not allow us to visit. When I and other judges and prosecutors had challenged the police station officials, what followed was a warning from the Region's Governor and I was never allowed to visit the police stations again.*"

Similarly, another former judge reported: "*The Army has its own prisons and detentions all over the country not accessible to anyone, including judges. Similarly, the National Security Office also detains people for political reasons. I believe in much worst conditions than other departments of the Government. This is so because the detainees are often held at secret locations such as private houses repossessed by the Government. Detainees are brought to those detention places at night and often blindfolded and, upon release, threatened not to share anything with anyone. Also, they don't get a day in court. As a result there isn't so much information about the detention conditions of those prisons*."

807. The Commission is not aware of such visits in detention facilities having taken place after 2002. It seems that, since the crackdown in 2001, prosecutors and judges have not been able to exert their already limited power to monitor arrests and detentions by security agents.[1065]

In that regard, a former prosecutor reported: "*Pursuant to article 4 (1) of the Transitional Criminal Procedure Code, it is unlawful to detain someone without the knowledge of the court. Article 29 (1) stipulates that defendants must be brought before a court within 48 hours after the arrest. I tried to get the court to do something. In the first week October 2001, the National Security Office told the Ministry of Justice not to interfere in any cases under their responsibility. After a while there was little I could say. Similarly, Article 416 of the Transitional Penal Code provides that any public servant who unlawfully arrests or detains someone or disregards the safeguards prescribed by the law, is punishable with imprisonment not exceeding five years, and a fine. This was used up to 1999. As a prosecutor I prosecuted about seven to ten of these cases per year. After 2001, this provision was dead.*"

808. Regular visits of prisons by independent mechanisms of inspection are an effective means to prevent torture and ill-treatment in these places.[1066] Thus, prisons should be open to the scrutiny and monitoring of independent experts and inspected on a regular basis by independent mechanisms of inspection especially established for that purpose by the Government. The detainees should have the possibility to communicate freely and in total confidentiality with the members of the inspection mechanism.[1067]

809. The Commission found no evidence of regular and unimpeded monitoring visits to places of detention by national or international bodies.

[1065] TSH012.
[1066] Special Rapporteur on torture, Report, E/CN.4/1995/34, para. 926 (c).
[1067] Principle 29 of the Body of principles for the protection of all persons under any form of detention.

b. Complaint mechanisms

810. One of the basic safeguards against torture and other forms of ill-treatment is the right of detainees and their counsel to make a request or complaint regarding his treatment to the authorities responsible for the administration of the place of detention and to higher authorities.[1068]

811. Under its obligation to respect and ensure the enjoyment of fundamental rights by individuals placed under its jurisdiction and its obligation to provide alleged victims of violations with an effective remedy,[1069] Eritrea should have independent, impartial and expeditious complaints mechanisms which are accessible to all persons deprived of their liberty.

812. Witnesses told the Commission that there was "*no way to report abuse or ill-treatment*"; that "*you cannot report anything*"*;* or even that "*one could get punished for complaining.*" None of the witnesses interviewed reported the existence of a complaint procedure for unlawful and arbitrary detention or for abuse in custody. In any case, the rule of fear that is prevailing in Eritrea would have *de facto* prevented victims to lodge a complaint to anyone and to seek any sorts of remedies.[1070]

(iv) Transfer of detainees

813. International standards provide that every prisoner shall have the right to inform his family of his imprisonment or his transfer to another institution.[1071]

814. Testimonies received by the Commission describe the frequent transfer of detainees between places of deprivation of liberty and the absence of notification to their families. Some were detained in up to 10 different detention facilities in less than two years. Testimonies received suggest that detainees are transferred to other detention facilities when their current prisons are full, after interrogation to a place where conditions of detention are either harsher or 'softer', or even in transit to their final destination – prison or training camp - waiting in each place for the lorry used for transportation to fill up.[1072]

> A witness arrested for asking questions during a meeting explained that he was first jailed in an underground cell in total darkness in Aderser, where inmates were not only detained but also tortured and killed. After two months, he was sent to "Track B" prison in Asmara, where the treatment was no different. Shortly after, they moved him to Mai Edaga which "*was no better than the ones before*". The prison was made of zinc and the temperatures were extreme. After one year, he was moved to Dahlak Island, where he was told that he had to work before being released. The witness recounted that this place was the worst of all because of the treatment and the heat that could reach 45-46 degrees Celsius. Inmates were often sick with diarrhoea, malaria or kidney failure and two of them died. They could shower once every six weeks. He was finally released after more than one year. On this occasion, he was threatened not to tell anyone about what had happened to him or he would be killed.

[1068] Rules 35 and 36 of the Standard Minimum Rules for the Treatment of Prisoners.
[1069] Arts. 2(1) and 2(3) of ICCPR.
[1070] TCDP049, S021, TLA030, TCDP043, TNR081, TNR001.
[1071] Rule 44(3) of the Standard Minimum Rules for the Treatment of Prisoners and principle 16 (1) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.
[1072] S115, TSH026, TSH077, TSH042, TSH026, TSH056, TNR049, TCDP027, TNR056, TNR031, TNR039, S090.

A witness suspected of smuggling people out of the country recounted his multiple transfers during his 18 months in detention. He was first detained in 'Under Tessenei' prison, where he was tortured and then in an underground cell in 'Shela Tessenei' "*for worse treatment*". After a few months, he was sent to Aderser underground prison and was thereafter transferred to Hashferay and Massawa, where he was subjected to hard labour. Caught while trying to escape, he was then incarcerated in Ginda police station before being transferred to Gahteley prison, where he was tortured. From there, he was sent to Nakfa, and Afabet for hard labour, before being returned to his military unit.

815. Large groups of detainees are routinely moved in conditions violating their dignity and their right to be treated with humanity. Witnesses describe being packed in trucks, barefoot, restrained two by two with their hands and feet attached with metal handcuffs and chains, during very long journeys in scorching heat, without stops, food or water and being subject to intimidation and beatings if they moved or spoke. Testimonies describe detainees fainting in the course of the journey due to dehydration, thirst and hunger. Some witnesses reported being moved in secrecy, in covered vehicles or asked to bend their head when approaching cities in order not to disclose their presence or the place of detention to which they were being transferred. One witness suggested that this prevented his family from knowing his exact location, visiting him and supplying to his needs.[1073]

A witness described his transfer to Wi'a: "*We were 175 persons in one big truck, made to sit on the floor of the truck in an extremely harmful sitting arrangement. There were 12 armed soldiers guarding us during the trip, they were savage and brutal. They were instructed to torture the prisoners with maximum brutality. As the result of fast driving, almost everyone vomited. My head, shoulder and back were covered by the vomit of other persons. As any movement results in serious beating, I could not clean it. I could only wash my body after a week and my clothes after two months. We reached Wi'a at one o'clock pm and were made to sit in the burning ground for more than two hours during the hand-over process. During this time two people fell because of sunstroke.*"

A man transferred from Adi Abeito recounted: "*When we went from Adi Abeito to Assab we only had one handcuff for two persons; we were 300 in a lorry. It was terrible. We left early in the morning and reached Gelalo at 6 p.m. All day without food. After that they allowed us to urinate but only handcuffed with the other person. We stayed all night handcuffed and the next day we continued the trip. We were not wearing shoes during the trip*."

816. The Commission finds that while these transfers are not *per se* in violation of international human rights, the absence of notification[1074] of the family and the conditions in which they are conducted violate the right to be treated with humanity.[1075] It would appear that at times transfers may also be used as a form of punishment on a detainee.

[1073] TBA078, S048, TNR078, TCDP026, TSH026, TNR024, TNR032, TBA068, TCDP032, TNR056, S121, TLA004, TBA054, TNR067, TNR081, TNR082, TNR049, S103, S077e, S075.

[1074] Detainees should have the right to inform one member of their family or another person of their choice immediately of their detention and of their transfer to another place of detention, Principle 16 (1) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988),

[1075] The basic rule that should govern the whole detention system in Eritrea is that persons deprived of their liberty "shall be treated with humanity and with respect for their inherent dignity of the human person". Art. 10 (1) of ICCPR and see also art. 5 of ACHPR.

(v) Release from detention

817. Based on the body of testimonies collected by the Commission and the confidential submissions received, the Commission finds that the prison term and the circumstances of the release are often as arbitrary as the detention itself, occurring sometimes in the context of Independence days or in the form of 'mass' releases.[1076].

818. In what it hopes will be a positive trend, the Commission received information about recent releases of journalists, deserters and others, following high-level decisions. Information received indicates that more than a dozen journalists who had been arrested in 2009 were released between April 2013 and January 2015. No explanation was given for their release. They were released on bail or bond, which required their family to put up their house deeds or an amount of 450,000 Nakfa as collateral guarantee for their freedom.[1077]

> A conscript detained in Mai Edaga reported that in November 2014, "*all deserters at national level were released following a decision by the Chief of Staff.*" He added*:* "*I guess that was due to large scale desertion, the army had not enough soldiers, so they had to release all those in detention.*" An open source also reported the release from Hashferay prison of 450 detainees in November 2014.[1078]
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> Another conscript released in 2013 reported: "*Every six months leaders came and asked what crime you committed. When I was asked, I said I didn't know. My unit was contacted and the leader insisted I should be released.*"

819. In view of the open-ended nature of national service, a large number of prisoners are arrested while in the service. Upon 'release' therefore national conscription detainees are either sent back to their military unit[1079] or to their civil assignment. Many others are sent for military or militia training[1080] where they often face prison-like conditions. The transition between detention and the beginning of the training in military camps is sometimes so tenuous that in many cases the Commission finds it difficult to assess whether detainees have actually been released or not.[1081] This may constitute a *de facto* continuation of detention.

820. The Commission also heard testimonies of students arrested for reasons as futile as asking questions during an information meeting or trying to flee the country that were then dismissed from school upon release and sent to military service as a form of additional punishment and in violation to their right to education.

821. On the basis of a principle of 'guilt by association'[1082], family members are sometimes detained as hostages in order to pressure army deserters to surrender, relatives to enrol into the military training or religious believers to recant their faith or to coerce them to pay a fine of 50,000 Nakfa. In these cases, they are only released when the third person hands him or herself in or the fine is paid or is promised to be paid.[1083]

> A daughter told the Commission that her mother was arrested because she deserted the national service*:* "*They told her that she could only be released if she brought me*

[1076] TAM029, S077f, S077n, TAM016 TSH052, TCDP034.
[1077] S073, TCDP066, TBA057, TSH026.
[1078] http://www.tigrignamovies.com/news/7457-450-detainees-released-from-hashferay-jail.html
[1079] TSH004, TSH026, TSH033, TSH036, TCDP051, TCDP052, TBA068, TAM029, TAM026, TAM025, TLA025, TBA062, TBA075, TBA057, TLA040, TLA032, TLA026, TLA023, TLA020, TCDP036.
[1080] TNR068, TAM064, TAM027, TAM019, TAM018, TBA091, TBA058, TLA015, TLA004.
[1081] TCDP026, TBA100.
[1082] For more on this, see Chapter VI, B, 2, Violations of the right to liberty and security of the person.
[1083] TAM020, TAM027, TAM029, TBA076, TAM051, S133, TBA068, TBA086.

to them. She called me from the Police station. She was made to sign a document undertaking that I would go to Wi'a. She was then released. I surrendered and they sent me to Wi'a."

822. The Commission finds that the release is sometimes followed by a period of punishment during which the former detainee has its freedom of movement curtailed, is asked to work without remuneration and is ostracized at work.[1084]

A soldier working in the logistics department of his Division recalls: "*When I went back to my old military unit, I was deprived of my monthly pocket money, forbidden to meet with anyone or talk to any person in the military unit. I was excluded from every aspect of life in my military unit. Everyone was told not to speak to me or communicate with me. This was tormenting.*"

823. The Commission identified a wide range of practices with regard to the modalities of the release, which also depended on the original reason for arrest. These illustrate the arbitrariness of the granting of liberty from detention in Eritrea.

824. The Commission documented cases of release (a) after providing a proof of completion or exemption of national service; (b) on the basis of the employers' or leaders' needs; (c) after testifying against themselves or confessing guilt; (d) after being threatened with death in case religious practices were continued, the offence repeated or information about the detention disclosed; (e) after recanting religious faith or accepting not to pray, preach, organise or attend religious gathering, or declaring allegiance to the Eritrean Orthodox Church ; (f) after paying a fine or identifying a guarantor (in a sort of informal bail or bond system); (g) after paying a bribe or using personal connections; and (h) just before imminent death or due to very poor health.

825. In the context of *giffas*, individuals arrested are usually released if they can prove that they are minors, students, conscripts in possession of a valid travel permit, foreigners or working for foreign companies, or have already performed their national service or have been released.[1085]

A witness released in 2014, after three months in detention, explained: "*I was released because I was a minor. My mother brought a school certificate to prove my age. Then, I went back home and back to school.*"

Another witness told the Commission that after being raped and tortured by military personnel, she was asked where she was working. When she showed her *'Nevsun'* company identification card, they released her and apologised, saying it was a mistake.

826. Several witnesses explained that they were released because their manpower, skills or competencies were needed.[1086]

An artist recalled: "*I was sentenced first to a three-year term of imprisonment but they can revoke it anytime if they want. Finally, I was released earlier because the cultural department wanted to use my talent for a forthcoming national celebration.*"

After seven months of incarceration in horrendous conditions for a failed attempt to leave the country, the unit of a young conscript asked for his release so that he could

[1084] TCDP013, TSH032, S077k.
[1085] TAM055, TSH035.
[1086] TSH033, TSH082, TSH018, TBA091, S143r, TSH032.

help with a big computerisation program. The request was rejected but three months later the application was made again and he was finally released in 2012.

827. Numerous testimonies showed how detainees were released after admitting guilt, often after physical ill-treatment or torture or psychological pressure from investigating authorities with a view to obtaining a confession or admission of guilt. In many cases, the confession was a condition for the release.[1087]

A former soldier recalled that after having spent eight months in Aderser, in squalid conditions of detention, his relatives who had connections with some influential people 'rescued him'. He explained the circumstances of his release: "*Shortly before my release, the Captain, head of the prison, asked me if I knew my crime. I said 'Yes, I know', because that is the only way out. I 'admitted' that I was traveling from my unit without leave of absence and that I did this for drinking alcohol. I admitted this was an offence and promised to learn my lessons from my prison experience. Then the head of the prison took me to the Commander of the operational zone, who asked me the same question: whether I admit my crime or not. I repeated the answer, admitting a crime I never committed. From the way I spoke, I believe he was convinced that I was 'harmless' and he set me free. He gave me a letter that I opened tactfully. It was saying I had admitted my 'crime' and was being assigned to the frontline*."

A conscript who overstayed his leave was detained in Adi Abeito during a month, he recounted that at the time of his release he was asked the reasons for his detention: "*I said I overstayed to help my family, I was not doing anything wrong. They asked me to sign that I broke the law and deserved a punishment*."[1088]

828. Others were released after being threatened, sometimes even with death, if they repeated the "*mistakes*" or the offences that brought them to prison in the first place or if they disclosed information about the location of the detention facility or the treatment endured.[1089]

A man spent two months chained night and day in an isolation cell in Adi Abeito, before being transferred to a prison-container in Mai Serwa. He explained his release: "*One day, someone came to the cell, called my name. I was shocked. I thought that they would take me to a worse place. I was shaking. He loosened the chain and asked me to collect any belongings I had. He asked me to put my shoes on, I couldn't find them. I just took a pair. He took me to an office and asked me about my experience in the prison. You can't say it was bad. You have to say it was ok. If I said it was bad, then worse treatment would come.*" He finally added, "*now we are showing you mercy, you will go and resume your normal life but if for any reasons you mention or say anything about this prison, If you tell people about your experience, you judge yourself'. I told him there was no reason for me to do that. I signed a paper: it was full of pages. They released me and gave me a letter … saying that I was in custody because I had cooperated in my brother's escape to Ethiopia.*"

A soldier detained in Wi'a for having crossed the border illegally told the Commission that he received a warning when his unit came to bring him back. He had to sign a document indicating that if he tried to escape the country again he would be executed.

[1087] TSH076, TAM005, S077k, TNR043, TSH020, TBA093.
[1088] TNR043.
[1089] TLA014, S115, S144, TCDP076, TCDP032, TNR019.

A former prisoner recounted his release after several years in detention: "*They threatened me that if I told anyone about what happened there would be consequences and they would kill me*."

829. The Commission finds a clear pattern of release of religious prisoners, conditional to the recant of their faith or the expression of it, for instance by praying, preaching, organizing or attending religious gatherings. Pentecostals are sometimes asked to declare allegiance to the Eritrean Orthodox Church.[1090]

A Pentecostal believer was detained twice between 2005 and 2011 for a total period of three years in horrendous conditions in Mai Serwa and Me'eter prisons. The first time, after a period of extremely harsh treatment, he was informed by the guard that the content of the 'paper' had changed; it was now possible to keep one's faith but not to gather or preach. On his second detention, he explained that "*the interrogators were well informed about our religion, which was unusual. They started reasoning with us. They explained that the Evangelical church of Eritrea was the accepted Protestant Church and we could join this church. Almost seventy of us signed and accepted to join this Church, except one man and three women. After one month, half of the group was released and the rest was released one year later.*"

In 2011, a woman who had organised a prayer group in her home was incarcerated with her baby. She recounted: "*Four of the women in our cell were pregnant. They were eventually released because it was time for them to give birth. They were told the release was conditional on the premise that they would not participate in any more Christian meetings nor allow any such meetings to take place in their homes. If they were found to be in violation of this provision they would be forced to pay a fine of 10,000 Nakfa and be imprisoned again.*"

Another believer told the Commission: "*When released, they gave me a warning: 'If you gather with other people, if we find you praying with people, if you are preaching, we will take necessary measures and you will face the death penalty*."

830. A system of bail or bond is used, for instance to release mothers detained with their children or in cases of guilt by association. The Commission finds, however, that the system is paradoxical and arbitrary in the absence of rule of law in Eritrea and the little likelihood that the suspect will ever be brought to Court. Given the modalities of it and the arbitrariness of its implementation, the bail/bond system rather resembles a means of control and pressure on the population. The Commission finds that by using threats of worse punishments in case of repetition of the perceived deviant behaviours, freedoms are effectively curtailed.[1091]

A witness told the Commission that after eight months in jail following the allegations of a villager that he was a spy for the Ethiopian Government, his family was asked to pay 100,000 Nakfa for his release. Some neighbours, who wanted to help, pledged the licence for their shop. Once month later, he was sent to the militia training centre of the zone. He explains: "*I had to go, otherwise the licence from our neighbour would have been withdrawn. The person who gave the licence had to promise that I would join the national service.*"

In 2011, a woman caught while trying to cross the border with her four children was held in detention for about two months. She recalled: "*My parents found which centre I was in and came but the guards would not let them see me. They were told*

[1090] TBA068, TNR019, TSH042, TCDP027, TFM014, S135, TNR031, TBA051, S133, TBA064.
[1091] TBA061, TNR022, TFM012, TBA060, TBA051, TSH013, S077x, TBA087, TCDP059.

that I had been arrested for trying to cheat the Government. They were told I could be released with a guarantee of 100,000 Nakfa. After two months someone in my village put up a 100,000 Nakfa guarantee for me. The terms were that they would have to pay the money or give their land if I tried to escape again."

831. Based on testimonies received, the Commission was able to identify two means commonly used by the population for securing the release of a detainee or for avoiding its enrolment in the indefinite national service: bribery and corruption.[1092] A witness told the Commission that "*you can only be released through corruption or if you have someone or a family member who has a good position that you can corrupt.*"[1093]. Another one further explained: "*Some prisoners were freed after payment of money. Nobody knew how the amount was decided. Families used to pay a certain amount to a private shop in Asmara and after the prison got a call from the shop, the prisoner would leave the prison. No receipts were issued for the payment.*" This practice is allegedly known among prisoners under the code name of *entsa-sey*, meaning "*a delicious bite*" in Tigrinya.[1094]

A witness explained that he was arrested for having asked to talk to a Colonel to enquire about his brother. After having spent one month in an underground prison in Tessenei and Aderser, his parents were able to reach high-ranking officers – Majors and Generals – and bribe them. He explained: "*I am innocent. I was released from prison with no charges or without having being taken to a court. I was arrested without any reason. If I didn't have relatives in high places and people we could bribe I would probably still be in the prison or might have been able to leave prison only after signing a confession to crimes I have never committed. Alternatively, I might be still prisoner for life.*"

832. The Commission received several testimonies indicating that detainees on the brink of death are often handed over to their families or placed under house arrest in the expectation that their death is highly likely to occur quickly, and possibly as a way to avoid having to record the death or being blamed for it.[1095]

In 2010, a pastoralist detained in solitary confinement and tortured during 18 months tried to escape from prison. He recounted: "*While escaping I fell and broke my leg. They found me and threw me like an animal in my cell. I did not receive any treatment; I urinated on myself and I was in great pain. After several days, they thought I was going to die so I was useless. They took me to the city and left me there*."

One day, after five years of *incommunicado* detention of her husband, a woman was asked to bring a guarantee as bail for his medical treatment. She told the Commission that she brought her house title deed and they released him. They however told them that his case was not finished and she was responsible to bring him back anytime they wanted. She explained: "*My husband was only released because he was critically ill and they did not want him to die on their hands.*" They never knew why he had been arrested.

[1092] Corruption includes any illegitimate use of office, and may include a range of different types of crime. Bribery is limited to the giving or acceptance of payment of other illegitimate advantages.

[1093] TNR078.

[1094] S143r, TNR078, S103, TSH025, TCDP070, TFM004, TAM065, TCDP008, TAM072, S033.

[1095] S071, TFM011, TCDP053, TSH054, S129, TCDP013, TFM039, TFM007.

(vi) Standards related to prison personnel

833. Under international standards, "*personnel shall be appointed on a full-time basis as professional prison officers and have civil service status with security of tenure subject only to good conduct, efficiency and physical fitness. Salaries shall be adequate to attract and retain suitable men and women; employments benefits and conditions of work shall be favourable in view of the exacting nature of the work.*"[1096] Accordingly, prison staff and in particular the guards in direct contacts with detainees must be professionals who are specifically trained to ensure the safety of detainees at all times, while abiding to the international standards for the treatment of detainees. They must never use force against detainees except in case of self-defence or attempted escape and they shall be trained to restrain aggressive detainees.[1097]

834. Women detainees must be attended and supervised only by women officers.[1098] Children in detention must be under the care of professionals who have received systematic training, in particular training in child psychology, child welfare and international standards and norms of human rights and rights of the child.[1099]

835. Former prison guards or interrogators told the Commission that they had been appointed to perform these duties in the course of their national service and did not have any choice. If they had refused, they would have been jailed. A military conscript selected to be an interrogator in a prison renowned for its cruel interrogation technics explained: "*It is not a promotion, it is just that they trust you. Everything was made in secrecy. They brought a paper and asked me to leave. I did not know why or who decided. It was a big dungeon in an underground prison. When I refused, they sent me to a cell for military personnel.*" Guards and interrogators do not receive a specific training for interrogation or for the handling of detainees, they are just "taught" on the job by their peers.[1100]

836. With the exception of a guard reportedly arrested after the death of an inmate he had tortured, the Commission has not come across testimonies reporting investigations, penalties or disciplinary measures being taken against prison personnel violating the physical integrity of detainees. On the other hand, guards appear to be automatically "sentenced" to imprisonment following the escape of detainees under their responsibility. Former guards also reported being suspected of collusion for the escape and tortured to extract confessions. Detention can reportedly be avoided by paying the amount of 100,000 Nakfa.[1101]

> A former prison guard recalled: "*A detainee fainted so I tried to help him, opened the door and prisoners escaped. They judged me and I was imprisoned for two years.*"
>
> Another witness told the Commission: "*In 2014, I was guarding about 200 prisoners. One night, the prisoners broke out. Many of them were smugglers, Pentecostals, Jehovah's witnesses and people who had absconded. I knew if I stayed there I would be in trouble, so I too escaped*."

[1096] Rule 46 (3) of the Standard Minimum Rules for the Treatment of Prisoners.
[1097] Rule 54 (1) and (2) of the Standard Minimum Rules for the Treatment of Prisoners.
[1098] Rule 53 (3) of the Standard Minimum Rules for the Treatment of Prisoners.
[1099] United Nations Rules for the Protection of Juveniles Deprived of their Liberty, in General Assembly resolution 45/113 of 14 December 1990, paras 81-85.
[1100] TCDP071, S046, TCDP036.
[1101] TBA078, S046, TSH018, TNR032, TBA069, TCDP036.

(vii) Principal findings

837. The Commission finds that in Eritrea the detention of persons, which started arbitrarily at the time of arrest, continue unlawfully for long period of time as the detention is not subject to judicial review, detainees are not brought promptly before a court of law and frequently detention is perpetuated on the sole basis of the self-incrimination and confession of guilt obtained from detainees through torture. The Commission also finds that penitentiary system and its procedures of incarceration are not respecting the basic legal safeguards for the treatment of prisoners aiming at ensuring the legality of their detention and treatment therein.

838. The Commission finds that the whole system of arrest and detention established and controlled by the Eritrean Government is a pale shadow of the penal chain in which the judicial review element is completely missing. The Commission concludes that the Eritrean Government, when arresting and detaining persons, including for suspected criminal offences, systematically violates the right to liberty and security and not to be subject to torture.

(b) Places of detention

839. Persons deprived of their liberty must only be detained in official places of detention, where their names are officially registered. The names of the persons in charge of the place of detention shall be official, too. In addition, the information about the place where the persons are detained shall be made available to their relatives or persons of their choice. Such provisions are not directly proclaimed in the international treaties ratified by Eritrea, but they are nevertheless deemed to be the basic safeguard to protect the personal security of persons in detention and to guarantee their right not to be subject to torture.[1102]

840. According to international standards, the basic rule that governs the whole detention system in Eritrea is that persons deprived of their liberty "shall be treated with humanity and with respect for their inherent dignity of the human person", as provided by article 10 (1) of International Covenant Civil Political Rights and see also article 5 of African Charter Human and Peoples' Rights.

841. In the course of its investigation, the Commission collected information that corroborated the existence of 68 places of detention,[1103] official and non-official. Some of the detention centres are purpose-built, but many are makeshift and temporary, for example moving with 'their' military units or next to construction sites that house prisoners used for forced labour.

842. Several of these detention facilities are located in military training camps, sometimes in outdoor spaces marked off by large thorny branches from acacia trees where detainees are kept in the open, including in some of the most inhospitable places on earth where temperatures can reach 50 degrees Celsius. Many of the sites are underground, where detainees are kept hidden in spaces often described as 'dungeons'[1104] or simple containers working as a furnace during the day and a fridge at night.

843. In the course of its investigation the Commission documented a large variety of makeshift facilities used as detention centres, including shipping containers; holes dug in the ground and covered with corrugated iron or branches and leafs; hangars for storage; tents and zinc houses, or open spaces fenced with branches, among others.

[1102] Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment and Standard Minimum Rules for the Treatment of Prisoners.

[1103] See Annex V.

[1104] TSH083, S034B, S071.

(i) Various types of cells

844. Detention centres often have various types of cells in which detainees are placed based on the perceived gravity of their 'wrongs' or supposed offences or the stage of the detention.[1105] Mai Serwa, detailed below, is one of them.

Mai Serwa

845. The Commission received several testimonies of persons incarcerated in Mai Serwa for various reasons, including cases of political opponents and journalists, members of unauthorised religions, persons caught while attempting to flee the country, persons detained after having been forcibly repatriated or incarcerated for presumed or actual attempt to desert national service, individuals suspected of collaborating with the enemy or criticising the regime, conscripts accused of insubordination, unauthorised movement or absence during the national service. Some went through Mai Serwa while transiting to another detention facility, while others spent most of their detention in this prison.

846. Mai Serwa is located approximately 8 km northwest of the city of Asmara.[1106] The detention facility has various types of cells. Witnesses reported the existence of metal containers accommodating between eight and 22 detainees; two underground trucks containers; several zinc hangars of about 25 square meters accommodating 60 persons and isolation cells of about four square meters.[1107]

847. Prisoners placed in zinc hangars consider themselves as privileged compared to other inmates. Hangars are as overcrowded as containers, but inmates are sent to work in the fields, which gives them an opportunity to enter into contact with their family through other workers and smuggle food items to complement the food rations.[1108]

848. Witness testimonies indicate that containers accommodate various types of detainees, including religious prisoners, conscripts punished for insubordination or for unauthorized absence and persons who tried to escape the country. Detainees held in containers describe terrible conditions of detention, exacerbated by extreme variations of temperature. Some detainees are chained, they are generally not allowed to leave the container except during daily toilet breaks and are suffering from the lack of ventilation, high temperature during the day and cold temperature at night. Several of them also describe severe overcrowding and deplorable conditions of hygiene.[1109]

> A man detained in Mai Serwa during a month detailed his conditions of detention: "*I was in one of the containers, it was 5m x 1.50m and not high. If a person is tall, it cannot accommodate him. In that place they put around 19 people: there is free space just to put your foot. It was fully occupied. During my stay at this prison, there was no shower at all. During the day it is burning and during the night it is really very cold, especially after two in the morning. The breath accumulates on the ceiling and condensation falls like rain. When I went to the toilet they removed the chains, when I come back they put them on again. At some point, they removed the chains on my legs, because they started to bleed. The worst experience is that people are full of lice, the lice were big. You cannot count the number. I could not scratch, if they bit me. I was covered by lice, if I feel pain I could not help myself. I had to ask others even for that. I was bitten like an animal. I was thinking: am I a human*

[1105] See *infra*.
[1106] See Annex VI.
[1107] TCDP023, TLA013, TCDP027.
[1108] TLA025, TCDP027, TLA018.
[1109] TNR019, TCDP023, TCDP027, TCDP066, TFM037, TNR019, TLA013, TSH034.

being? We stayed all day and all night in the container. For toilet breaks we were barefoot. Our feet bled because of the sharp gravels. The toilet area was very limited, it was fixed. The place is full of faeces. You go barefoot, you accept in your mind to step on them. You don't mind."

Another witness recounted: "*I could not sleep. At day time it was very hot and at night time it was very cold. There was not enough air, you could not breath. At night, many people fainted due to the lack of oxygen. There were many insects. You have to sleep on the side. There were only cardboards or paper on the floor. We had no shoes. Many people were sick because of the food. The cans we were eating had expired. They only allowed us to wash after two months. We were extremely dirty."*

849. The underground containers are allegedly for smugglers. In addition to the temperature, inmates are subjected to total darkness, which increases their suffering. A torture chamber made of concrete is reportedly located at the back of the containers. The detainee, who reported about the underground containers, was interrogated and tortured four nights per week for two months.

(ii) Isolation cells

850. Two witnesses interviewed by the Commission described recent detention in solitary confinement. One of the cells described was made of stone walls with an iron roof, without any access to fresh air, and another one was made of concrete with one window and two small holes on the side of the cell for ventilation. Detainees in these cells are allegedly people who demonstrated against the Government or mentioned anything considered to be against the Government. These cells are reportedly located in an area behind the Mai Serwa military prison, built in a gorge in such a way that part of the building is partially underground. According to one prisoner, 200-300 prisoners were kept there. After some time, witnesses could read books and pro-Government newspapers in their cell.

A witness accused of being anti-Government and a traitor to his country was held for four years in solitary confinement in a square cell of 1.80 meter width. "*More than the physical torture, they tortured us psychologically. For almost two years we had nothing to read in the cell. It was almost like a grave. It is made up of concrete; there is a window through which they give us food. Twice a day they open the door so that we can go to the toilet. There are also two small holes on the side of the cell for ventilation because the window is closed at night time. We were alone in the cell. Some other prisoners, for instance human traffickers, were two-three in the cells. Basic rights in prison were explained by the guard at the very beginning of the detention: you can ask for health services, toilet (two-three times a day), food (three times a day) and water. You cannot talk to anyone, or give anything to other detainees. If you breach these rules you are interrogated and tortured. There was no light in the cell.*"

Another witness, incarcerated during the same period as the one above detailed his conditions of detention: "*I felt suffocated in the cell; there was no room to move around. There were no windows in the cell, no access to fresh air. A few of us were taken at the same time to go to the toilet, but we were not allowed to look at each other. Guards stood in front pointing guns at us and guards behind us had sticks when we went to the toilet. There was no bed or pillow in the cell, just a small piece of carpet and a small blanket that was filthy. We could read books but they were screened first. My family sent me some books to read via police officers. Visitors are not allowed*."

(iii) Transformation of old buildings

851. Some constructions from the colonial era or inherited from foreign countries have been transformed in the past twenty years into detention facilities. For instance, the Commission heard testimonies of detainees being held in abandoned water tanks or water reservoirs used as semi-buried underground cells, former cattle houses, warehouses or even unfinished slaughterhouses.[1110]

Wi'a

852. Several detention facilities have been described by witnesses in the Wi'a military training camp[1111]: a number of zinc hangars with three cells and a capacity of 30 detainees each; two large underground 'dungeons' - one for men and one for women about three kilometres from the military compounds, capable of holding up to 300 detainees; containers of about three by two meters; and a large water tank situated on the top of a hill near a small village called Foro. The water tank was allegedly built for irrigation purposes during the Italian colonisation. It is reportedly now used to detain mainly those caught while trying to flee the country. The tank has the capacity to hold 20 people comfortably but former detainees reported being detained in the water tank with 200 or even 300 other inmates.

> A man caught while trying to flee the country was taken to Wi'a detention centre in 2008. He described the conditions of detention: "*Those that had been caught trying to escape were put in the water tank prison at Wi'a. I was held with 71 other people in the water tank. It could feasibly hold 20 people comfortably. I was with two friends, we took turns to sleep and fan each other to ensure we did not suffocate. After three days we were let outside and some people escaped at that time. Before that some people were held in another prison and others in the tank "underground". As punishment for some trying to escape, they put all of us in the tank. There were then over 200 of us.*"

(iv) Different detention facilities for different purposes

853. As mentioned above, there is an extensive network of places of detention in Eritrea run by the military, security service and civilian authorities. Each town and administrative district has a jail, each police station has a cell and each military division and even unit[1112] have their own prison. Except for the kind and degree of torture or the inhumanity of the conditions of detention, there is no real distinction between detention facilities under the various authorities. Suspects often move from one place to the other in the course of their detention.

Detention facilities in Barentu city and its vicinity

854. In the course of its investigation, the Commission received testimonies, many of them very recent, referring to the following detention facilities in and around Barentu city: [1113]

[1110] TSH033, TNR049, TLA036.

[1111] TBA091, TNR081, TSH026, TCDP026, TBA091, TSH018, TBA058, TSH083, TNR081, TSH082, TAM018, TRDV003, TBA091, S144j, S128, TAM020, TFM003, TFM005, TSH021.

[1112] TSH076.

[1113] TSH035, TLA004, TLA018, TBA058, S143a, S077c, S130, TNR036, TBA091, S048, TSH076, TSH036, TLA038, TNR032, TNR078, S006, TLA004, TCDP009, TBA026, TBA028, TLA040, TBA058, TLA040.

(a) Military unit next to a mountain in the desert. Prisoners are reportedly detained in a tent and subjected to cavity searches, rape and torture by men dressed in black and covering their faces.

(b) Secret prison house for long-term detention and those accused of terrorism or corruption. The number of prisoners is reportedly around 35-40. Those suspected of terrorism are reportedly never released. After a few years in solitary confinement inmates may share a cell. The prison is underground, below a normal house. It is reportedly heavily guarded and only few guards can have contact with the inmates. A witness told the Commission that each year, he could see the release of three to four inmates accused of corruption and the arrival of 12 to 14 new inmates. Detainees are held *incommunicado.*

(c) Barentu Police Station in the city centre is reportedly used as a detention centre for the investigation of civil cases. An inmate reported being tied in the *otto* position during three days before the interrogation. He was then transferred to Prima Country prison.

(d) Military Intelligence Unit secret prison in Barentu town ('House of Wedi Zara'), where inmates are detained *incommunicado*. Witnesses describe a lot of suffering and cruelty in this secret prison, where they are interrogated and tortured and women reportedly raped. There is reportedly a women' section, where individuals suspected of cooperation with smugglers and political opponents are detained, and a political detainees' section with 16 rooms (one metre by 80 centimetres) called 'the oven' due to the high temperature that could reach 50 degrees Celsius and the lack of ventilation. Once the interrogation is over, confessions have been extracted and sometimes 'sentences' decided by the military judge, prisoners are generally sent to Prima Country prison to serve their 'sentence'. Conversely, some prisoners, including civilians detained in Prima Country are sometimes transferred to the Military Intelligence Unit for interrogation and torture. The prison has several windowless isolation cells made of concrete, and three rooms in which up to 30-35 persons are incarcerated. Detainees are barefoot as shoes are not allowed. Inmates from the Kunama ethnicity are reportedly detained in an underground cell.

(e) Prima Country Prison in Barentu is described as a 'normal prison' by many former inmates. Detainees are generally not subject to torture, even though they may receive cruel disciplinary punishment. There is reportedly a large area for those who escaped from their division, four big rooms of eight meters by eight where 300 prisoners are packed, a big hangar that is used to accommodate up to 500 inmates, as well as isolation cells. Allegedly, smugglers and those caught at the border are detained separately in an area of about 13 by eight meters for 27-28 detainees, which is only half-covered by a roof. Detainees held in the 'normal prison' can reportedly keep their shoes, leave their cell and stay outside, wash, and receive family visits. Some detainees reported that during the last stage of detention, they had the possibility to work in a brick factory, in construction, farming or shepherding. Those accused of smuggling or crossing the border are reported to receive a more severe treatment, as this is considered as treason. People suspected of smuggling are reportedly subjected to torture and severe punishments and they are not allowed to wear shoes or have contact with their family.

(v) Military vs. civilian detention facilities

855. Witnesses reported that military detention facilities are also used for incarcerating civilians and civilian prisons house both civilians and military conscripts. In addition, civilians considered as a threat to the regime are often sent to detention facilities located inside military training camps, for instance in Sawa, Wi'a, and Me'eter. [1114] As a witness

[1114] S034B, TCDP034, TBA001, TCDP026, TFM034.

put it, *"in Eritrea, everything is mixed up, you have civilians in military training centres and military prisons in which many civilians are detained."*

> A former Colonel and EPLF fighter explained that besides the official prisons, there are thousands of containers and underground prisons that are used as prisons by the military. "*Any battalion can have its own prison for escapees, those who don't come back after leave or on time*". In addition, "*there are some prisons under police administration that are used during investigation*". Then "*there are places for special cases like high profile or political prisoners, for instance Eiraeiro, Karshele and the Sixth Brigade. Who they are administered by, I can't tell. Probably by PFDJ members themselves – but they may also be at the same time military and therefore also under the Ministry of Defence. During the struggle, we were all living underground or camouflaging roofs for security against air strikes. Now they have prisons underground because they do not want people to know*."

Sawa

856. Witness testimonies indicate that there are several prison inside and in the vicinity of Sawa training camp.[1115] Each brigade has its own prison and there is a bigger prison facility inside the camp. In addition, there are two prisons located near the camp: the Sixth Brigade and 'Enda Safa' detention facilities where conscripts are detained for more serious breaches of the military rules, as well as draft evaders and deserters. In the Sixth Brigade, some conscripts are also detained pending the beginning of the training. The Sixth Brigade prison is made of several windowless houses/cells built in corrugated iron, which become very hot during the day. It has a total capacity of about 500 detainees and is fenced with branches. 'Enda Safa' has a total capacity for about 200 inmates. Long-term detention of religious believers and conscientious objectors has been reported in both the Sixth Brigade and 'Enda Safa', some of them since the first round of national service.[1116]

(vi) Unofficial detention facilities

857. Given the militarisation of the education system, students easily end up in secret or even official detention centres, for instance for suspected breaches of the school rules and regulations, for asking questions or for suspicions of wanting to leave the country.[1117]

'The House of Ezra'

858. Several students detailed their detention in 'the House of Ezra', called after a high-ranking military officer. It is reportedly a temporary prison situated five kilometres from the Mai Nefhi College.

> In 2005, a student was arrested at the college after having asked questions during an information meeting. He was taken for about seven days to 'the House of Ezra'. "*He asked me a lot about why I had asked this question. I said I asked because everybody has a dream to become something from childhood – he told me that I had no right to ask such a question and I had to be penalised for this. I was told to sign something saying that I would not do this again. He asked and slapped my face. There was nothing I could do, I had to accept.*" The student was then dismissed from the school and sent to the military. The same student also witnessed the arrest of others who had refused to dance on Independence Day.

[1115] See Chapter VI, C, 1, National service and Annex VI.
[1116] TCDP062, TNR001, TCDP010, TCDP011, TBA099, TNR005, TNR049, TCDP014, TSH018, TAM016, TBA050, TBA049, TBA027, S077t, S077dd.
[1117] TFM001, TFM016, TCDP074, TFM009.

A former professor at the college confirmed: *"When [students] do something considered as not correct, they would be tortured by the leader."*

(vii) Secret detention facilities

859. Secret detention occurs when a detainee is kept in a place that is not an official place of detention, such as a private home or apartment, a military camp, a secret prison or a hidden section of a larger facility, and the current whereabouts (and often the fate) of the individual are not revealed. In this context, detainees may be kept in solitary confinement or be held with other detainees. Under international human rights law, detainees should only be kept in official places of detention. Detention in a secret prison may in itself be a form of torture.[1118] In addition, secret detention constitutes enforced disappearance, when it lasts for more than one week as it places the detainee outside the protection of the law.[1119]

860. During secret detention, detainees are placed in a vulnerable position and they are at great risk to be subject to various abuses and violations of their rights, in particular violation of the right not to be subject to torture or other inhuman treatment, the right to liberty and security and not to be subject to arbitrary arrest and detention, the right of persons deprived of their liberty to be treated with humanity and dignity and the right to be recognized as a person before the law.

861. Military, Military Intelligence and National Security have their separate prisons. These prisons are independent of the police and entirely out of the Eritrean judicial system. Throughout the country, military intelligence operates secret prisons for short or long-term incommunicado detention and for interrogation of detainees believed to be traitors or a threat to the country's 'sovereignty' or security. Some appears to be located in remote or hidden locations, while others are villas in city centres converted into prisons, where bedrooms become cells and basements turn into underground detention facility.[1120]

A judge who was able to pay visits to police stations and prisons explained: *"The military also has its own prisons and detention centres all over the country, not accessible to anyone, including judges. Similarly, the National Security Department also detains people for political reasons. The detainees are often held in secret and unsuspected locations such as private houses repossessed by the Government. Detainees are brought to those detention houses at night and often blindfolded and, upon release, they are threatened not to share anything with anyone. As a result there isn't so much information about the detention conditions of those prisons."*

A former national security officer in Asmara explained that *"there are many house prisons. If they hear that it is known, they will immediately change the location."*

A witness, who was 18 at the time of the arrest, was taken to a secret underground detention centre in Tessaney. He detailed his incarceration: *"It is not an official detention centre, it is only known by people who have been there. It is not visible from the outside. Its roof was at ground level. As you approach it you cannot see it, you only see some stairs descending down into it. At the bottom on the stairs there is a door that leads into an area with about seven cells in it. Each cell is about one and a half by two metres. There were three people in my cell. The height of the cell was enough to stand up in, but the width and length did not permit three people to lay flat side by side. I was beaten every day. The leader of the security forces in the*

[1118] UN General Assembly, A/RES/60/148 of 16 December 2005, article 11.

[1119] See the definition provided in article 2 of the International Convention for the prevention of enforced disappearances, to which Eritrea is not a party.

[1120] S119, TCDP034, TSH004, TCDP032.

Southern district frequented the detention centre and appeared to be in control of everything and everyone."

Another witness testified about the detention of his best friend in a prison house: *"In Asmara, there is a prison that we call Zeineger. It is unknown, in the middle of the city. My friend used to do money exchange business and he was caught, so they put him in a car and blindfolded him. He stayed in Zeineger for three months. He was alone in a cell. He was tortured but he could not see who was torturing him."*

(viii) Secret cells for incommunicado detention in 'normal prisons'

862. National Security and Military Intelligence also operate secret and unofficial detention cells within several official police stations and prisons, where detainees are held *incommunicado* and interrogated in a special investigation unit, such as the infamous 'Karshele' in the Second Police Station of Asmara. Some detainees are then moved to other detention facilities, but witnesses told the Commission that during their detention they have seen others in these investigative units who had been detained there for years.[1121]

A former national security officer told the Commission that all the police stations were at his disposal. He used to go to some of them because they were the most convenient but when he was arresting someone close to another police station, he would put the suspect there. He added "*I asked the police not to register him and I would decide for how long he would be detained. If the person is arrested for political reasons, the main office decides. When there are specific cases, they can decide to detain them incommunicado, without name or information about their fate*."

863. The Commission received several testimonies indicating that several political prisoners had been held for many years in Sembel Prison and Rehabilitation Centre. [1122]

A man explained that his father, who was an ELF fighter, has been detained for the last 28 years in Sembel. He was detained by the Ethiopians in 1989 but his imprisonment continued after independence. He explained that his father "*is …. in a special cell with many other persons who didn't believe in the Government's ideology. After independence we tried hard to free him, but all ex-ELF were detained by the President. One day, I visited him but I could not see his face very clearly because he was far. My mother told me she once visited him. Also many people saw him when he went to the hospital. He is very old now; we received a picture of him from a guard.*"

Another interviewee told to the Commission that his cousin had been detained since 1991 for saying something against the Government. He was still in incarcerated in Sembel: "*Visitors were allowed, but they could only see him through a small hole in the door*".

A witness, detained during two years in Sembel in early 2000 told the Commission that there was a small room next to the health centre in which people connected to the Derg regime were held. He had the opportunity to speak to them five times and was told they had been imprisoned from 1991 but they have been in Sembel since 1999. "*There were about 150 of them when I was there. There had been about 360-370 arrested but about 170 were executed in 1994. Between 1991 and 1999, they were held in Adi Quala*."

[1121] TCDP065.
[1122] TCDP071, TSH079, TSH030.

(ix) Principal findings

864. The Commission finds that the detention network in Eritrea is sprawling as it is constituted of hundreds of places used for detaining people, some being official prisons while the majority are secret and unofficial places of detention. Detainees are kept in a variety of facilities: make-shift and open air camps, old buildings converted into prisons, metal containers, underground prisons, and in holes. Each type of cell or prison serve a specific purpose and detainees are usually not placed randomly in a cell or a place of detention[1123] and the use of *incommunicado* detention is systematic by the Eritrean Government. The Commission considers that detention in secret and unofficial places of detention constitutes a violation of the right to liberty and security and is conducive of violations of the right not to be subject to torture and to be treated with humanity and the inherent dignity of the human person.

(c) *Incommunicado* detention

865. *Incommunicado* detention occurs when a detainee is not permitted any contacts with the outside world, including his/her lawyer and family members. The detainee may be held in solitary confinement or with other detainees.

866. Unannounced detention is a situation where the authorities of the State have failed to be proactive in notifying the family or the legal counsel that the person was arrested.

867. *Incommunicado* and unannounced detentions for a short period of time *per se* are not prohibited by international human rights law and are authorized during a limited number of days if they are deemed essential for the success of a criminal investigation or to protect third persons.[1124] However, they become a violation of the right to liberty and security and of the right of persons deprived of liberty to be treated with humanity and dignity, if they are used as a means to deprive the person of his/her basic legal safeguards inherent to judicial proceedings.

868. If the family or legal counsel enquires about the fate of a person and the State authorities deny any knowledge about the arrest of the person, the detention turns into an unrecognised detention and possibly a enforced disappearance. *"Even if the initial detention is acknowledged, subsequent concealment of the fate or current whereabouts of the individual can of itself give rise to an enforced disappearance. The State is obliged to provide family members and other interested persons with all three items of information: whether the person is in custody, whether they are alive or dead, and their current location. A failure to reveal any one of these items of information is an element of an enforced disappearance."*[1125]

869. During *incommunicado* detention, detainees are placed in a vulnerable position and are at great risk to be subject to various abuses and violations of their rights, in particular violations of the right to liberty and security, the rights not to be subjected to torture or other inhuman treatment and not to be subjected to arbitrary arrest and detention, the right of persons deprived of their liberty to be treated with humanity and dignity and the right to be recognised as a person before the law.

870. The body of testimonies received by the Commission on the matter shows that *incommunicado* detention is almost the norm in Eritrea. Families of soldiers arrested during

[1123] See *infra*.

[1124] Principles 15 to 18 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988).

[1125] Association for the Prevention of Torture, *Incommunicado, Unacknowledged and Secrete Detention under International Law*, page 10.

their national service are never informed of the detention of their relatives, who can disappear without any knowledge by their families. Others just go missing because they have been arrested at work or on the street and their families do not know of their whereabouts unless an eye witness who knows the family informs them or a compassionate prison guard leaks the information. The Commission heard testimonies of family members following the car in which the suspect was forced in order to identify the place of detention.

871. Given that the Government of Eritrea rarely acknowledges arrests and detentions and almost never officially provides information on the whereabouts of detainees, the Commission finds that most of the cases of *incommunicado* and unrecognised detentions constitute enforced disappearances, as they place the detainee outside the protection of the law and increase their vulnerability.[1126]

(i) Political prisoners

872. The number of political prisoners held *incommunicado* in undisclosed locations, sometimes indefinitely, is unknown. The Commission received many testimonies of relatives who have not been formally informed of the arrest, the reason for the detention and the place of detention of their loved ones. In most cases, political prisoners are not charged with a crime, brought to a Court, or provided access to a lawyer.

873. High profile prisoners, such as the 11 members of the G-15 and the journalists arrested in 2001 are detained *incommunicado*, in full secrecy, in heavily guarded high security detention centres. The Commission was informed that the names of high-profile detainees are sometimes replaced by numbers in order to ensure that guards cannot share information on their whereabouts with their families. Despite repeated requests, families remain uninformed of their whereabouts and on the basis of the principle of guilt by association, some family members have also been detained *incommunicado* afterwards. The families of the journalists incarcerated since 2001 were allowed to visit the detainees and see them from a distance at the hospital in the immediate aftermath of their arrest and until their hunger strike in April 2001. But it was the last time the families ever saw them. Sources indicate that the individuals arrested in 2001 were first detained in Embatkala prison and then moved to Eiraeiro in 2003. They are reportedly chained and held in solitary confinement.[1127]

874. The Commission heard testimonies and received confidential submissions from relatives of some of the high profile prisoners. None of them had received information on the fate of their loved ones. Despite numerous appeals from international and regional bodies, the Government has refused to make any meaningful statements regarding their detention, health and wellbeing. There are reports that some may have died while in detention, but the Government has never given any official information yet.[1128]

875. Several relatives of high-profile detainees have shared their concern, frustration and sadness with the Commission. [1129]

> The daughter of a G-15 member told the Commission that she was bitter because she never had a chance to say goodbye to her father. "*He simply disappeared off the face of the earth.*"

[1126] See chapter VI, B, 2, Violations of the right to liberty and security of the person.
[1127] S015, TSH024, TCDP078-TCDP082.
[1128] See Chapter VI, B, 4, Torture, ill-treatment and punishment.
[1129] S149, TSH033, S023, TCDP028, TCDP078-TCDP082, TCDP078, S012.

Relatives of a journalist arrested in 2001 explained: "*The waiting is the worst. I hope that some will be freed in order to bring the story out. It is like the whole family was in custody*."

Another witness added: "*The most difficult thing for me is that we don't really know if he is alive. I live with a big hope and this is why we are still fighting. This situation has made me who I am today. I don't trust people, I always question things. It has affected my mum and my brother. It destroys people inside out. I feel like my rights as a human being are being taken away from me*."

Another one said: "*I missed my parents and they missed us.*"

A sister said: "*Seeing this unfair incarceration saps my strength. It is not fair to suffer silently as if the whole world, which is bustling with movements and activities, looks on. Yes, I feel the world I live in has suddenly gone quiet on me.*"

(ii) Religious prisoners

876. The Commission also received a great number of testimonies of religious prisoners of conscience, including Jehovah's Witnesses, and members of other religious communities detained, often *incommunicado*, in harsh conditions.

877. Interviews and confidential submissions received by the Commission show that members of un-recognised religious communities have been detained in various detention facilities, but those mentioned most often are the Second Police Station/Karshele prison in Asmara, Sawa (including the Sixth Brigade), the Fifth Police Station in Asmara, Me'eter, Wi'a, Mai Serwa and Adi Abeito. Religious prisoners have frequently been held in metal containers and underground cells.

878. Through testimonies and confidential submissions received, the Commission documented several cases of long-term detention of Jehovah's Witnesses and members of un-recognised religious groups. The Commission received reports of Jehovah's Witnesses detained in Sawa since 1994, because of their conscientious objection to military service. Sources indicate that as of April 2015 the number of Jehovah's Witnesses imprisoned for their religious belief or conscientious objection amounts to 58. The Commission received reports of Jehovah's Witnesses who were released after having signed a document in which they committed to *"leave Jehovah's Witness and return to [their] forefathers' religion"* while others refused to sign this undertaking but were ultimately released for health reasons or on the account of their old age. Some of those who had been released were subsequently rearrested and remain in detention to date. Most Jehovah's Witnesses are detained in military training camps, for instance in Sawa (for conscientious objectors) and Me'eter, and in the Fifth and Second Police Stations/Karshele in Asmara. [1130]

A man from a Jehovah's Witness's family testified about the impact of his religion on his and his family's life. *"Because it was against my conscience and religious belief, I refused to participate in the military training. As a result I was dismissed from school."* Caught during a *giffa*, he was later imprisoned but managed to escape before reaching the training camp. In the following years, he was arrested and sent to military training six times. He always escaped. He recounted one of his detentions: *"I was detained for three months. There, I was starved almost to death because I was only given sugar dissolved in water as food."* When he refused to do military training, he was tortured for a month, pressured physically and

[1130] TCDP060, TCDP062, TSH044, TSH045, S107, S071, S149, TBA027, TNR005, TSH044, TSH045, S112.

psychologically on a continual basis, to give up his beliefs. *"I remember one day I was placed face down, my hands tied with my feet (commonly known as the helicopter position) for several hours and I was beaten by 12 soldiers one after the other until they got exhausted. Finally I gave up on my refusal."* He added: *"My mother was arrested for four years leaving her little children behind. She was detained in a metal container. As her health was deteriorating very much, she was released from the prison. My brother was arrested while he was engaged in preaching. He is still in prison. Another brother was arrested while he was engaged in the streets witnessing the good news. He is still in the military prison due to his conscientious objection and religious beliefs."*

A daughter told the Commission about the detention of her father: *"My father has been in prison for seven years now. He was arrested because he is a Jehovah's Witness – they came at work and arrested him. We know where he is because he managed to send us a letter once. He mentioned that the prison is not for human beings. He was talking about the high temperature, [he said] it was terribly hot. He was the key person of the family. He was in charge of everything. Because of his imprisonment we lost a lot and we were not able to meet our daily needs."*

879. The Commission received many testimonies of members of un-authorised Christian Churches held *incommunicado*.[1131] None of them had been charged with a crime or taken to Court. The length of detention varies widely but some, including several leaders of un-recognised religious communities, have been held for more than ten years in undisclosed locations. Pastors from various Christian churches, including the Full Gospel Church, the protestant Rima Church and the Eritrean Protestant Alliance arrested between 2004 and 2007 remain in detention to date.

880. The Commission received numerous testimonies of members of un-authorised Christian Churches who had been subjected to mental and physical tortures during detention to force them recant their faith or join an officially recognized religious group.[1132]

A pastor of a Christian Church testified about his detention: *"I was in prison because I was a Pastor. Not only me but most of us were detained. They took us from our homes, after the closing of the churches. I was detained with my kids. I was interrogated by the investigator. They asked me for the names of the members of the church. They said I was an agent for the United States and Ethiopia's Governments. They said I had broken the hearts of the young people, instead of love for their countries; the young people fled their country. They said I was a spy. I was detained for four years. Two years I was in a small cell, in solitary confinement. I did not get anything from outside; I had no contact with my family. After two years, I was with the other detainees. The other pastors were detained in the area behind. There are almost for 10 years they have been detained."*[1133]

881. Members of religions authorised by the State have not been spared from religious persecution and several members have also been held in indefinite *incommunicado* detention, including members of the Orthodox Church and Islam.

882. Several Eritrean Orthodox priests, who were arrested in early 2005 for refusing to cooperate with the Government in closing down the Medhane Alem branch of the Orthodox Church, are still detained nowadays. In addition, the Patriarch of the Eritrean Orthodox

[1131] TBA048, TFM030, TAM018, TSH034, TBA058, TBA061, S129, S130, S128, S138, TFM014, TBA049, TBA051, TFM037, TNR019, TCDP034, TCDP038.

[1132] See Chapter VI, B, 4, Torture, ill-treatment and punishment.

[1133] TBA061.

Church, who was arrested after having spoken against their arrest, has been held *incommunicado* since the beginning of 2007. He is currently 88 years old and suffers from diabetes and high blood pressure, yet he does not have access to medication and medical care.[1134]

883. The above mentioned cases of *incommunicado* detention only represent illustrations of what is happening to many groups and ordinary citizens throughout the country. The Commission also received testimonies about persons arrested in the early years of independence who have been held indefinitely, incommunicado in unknown locations to date. Among these are persons perceived as being political opponents, predominantly Muslim members and supporters of the ELF, teachers from various Islamic institutes in Keren and Imams arrested between 1992 and 1994, as well as Muslims suspected of being linked to armed Islamic movements.

884. In situations in which the State has denied any knowledge about the arrest of the person, the Commission finds that unrecognised detentions may constitute enforced disappearances.

(iii) Principal findings

885. The Commission finds that the practice of *incommunicado* detention is widespread in Eritrea and persons detained on religious or political grounds are systematically kept *incommunicado*. The detainees are denied the right to communicate with their family and the outside world for prolonged periods of times, from several months up to several years. It constitutes a violation of the right to liberty and security and of the right of the persons deprived of their liberty to be treated with humanity and dignity. Furthermore, *incommunicado* detention increases the risk of the right not to be subject to torture, cruel, inhumane or degrading treatment. Solitary confinement during which *incommunicado* detainees are also denied contacts with the other detainees and even prison guards for prolonged periods of time amounts to torture.

(d) Inhumane and degrading conditions of detention

886. The International Covenant on Civil and Political Rights provides under its article 10, the right of all persons deprived of their liberty to be treated with humanity and with respect for the inherent dignity of the human person. Accordingly, detainees and prisoners should be detained in safe and humane conditions. "Treating all persons deprived of their liberty with humanity and with respect for their dignity is a fundamental and universally applicable rule" that should be applied without any discrimination.[1135] The lack of material resources available in a country cannot be an excuse for the violation of the dignity of detainees and for keeping them in inhuman conditions.[1136] Persons deprived of their liberty should not "be subjected to any hardship or constraint other than that resulting from the deprivation of liberty."[1137]

887. Conditions of detention in Eritrea should be in line with the recognized minimum international standards regarding accommodation, clothing, bedding, food, safe drinking water, medical services provided to detained persons, as well as the minimum ground rules

[1134] TSH008, TSH009.

[1135] See Human Rights Committee, General comment no. 21 on article 10 of ICCPR, para. 4. See also para. 4 of the Kampala Declaration on Prison Conditions in Africa.

[1136] Ibid.

[1137] See Human Rights Committee, General comment no. 21 on article 10 of ICCPR, para. 3.

for the contact of detainees with the outside world, access to personal hygiene and enjoyment of exercise and sport.[1138]

888. Furthermore, the regime of detention should be in line with international standards regarding the separation of categories of detainees[1139] and the maintenance of discipline and punishment of detainees.[1140]

889. The Commission gathered numerous testimonies on the conditions of detention in 95 detention facilities[1141] in Eritrea and on the regime of incarceration of detainees therein. As shown below, while there might be some slight differences between places of detention, general trends and systematic patterns can be clearly identified. The Commission also documented that detainees are compelled to work and this specific aspect of the detention regime is developed in a separate chapter on forced labour.[1142]

890. The conditions in all detention facilities in Eritrea can only be defined as extremely harsh. The Commission finds, however, that the level of horror in which inmates are incarcerated is often a function of the perceived gravity of the offences and wrongs as well as of the purpose of the detaining authority. Hence, those considered as a threat to national security (political opponents, critics of the regime, conscientious objectors, members of unregistered religious groups, etc.), 'traitors' and suspects of 'cross-border crimes' (i.e. fleeing the country, smuggling and trafficking, black market money exchange, corruption and terrorism) are more often than others detained *incommunicado* in inhumane conditions of detentions, for instance placed in solitary confinement in underground prisons or in containers located in some of the world's most inhospitable places.[1143] In addition, the conditions of detentions are generally particularly inhumane at the beginning of the period of detention, i.e. during the investigative phase, and improve slightly but incrementally up to the release.

891. During the investigative phase of the detention, inmates are often held in extremely overcrowded and filthy cells or, on the contrary, in solitary confinement and in complete darkness. During this first phase, inmates are rarely, if ever, allowed to leave the cell and food rations provided by prison authorities, that are insufficient and cause hunger and starvation, cannot be complemented by the family. In a second phase, detainees are generally moved to bigger cells with other inmates, families (if they are able to find out where their loved ones are held) are sometimes allowed to bring food and clothes, inmates can wash from time to time and they can leave the cell twice a day to relieve themselves. In some cases, before their release detainees may be moved to a fenced area in open air and/or they may be asked to work or start military training.[1144]

> A man caught while trying to cross the border was taken to Barentu prison and then sent to Assab through Adi Abeito prison. He provided the following details on detention in Assab: "*The conditions of detention are classified by A, B, and C. Cell A is for newcomers. One cell for one person only. Everything is inside the cell: toilet, food. The cell is almost two by two metres ... I was there for three months. I*

[1138] Rules 9 to 26 of the Standard Miminum Rules for the Treatment of Prisoners, and paragraph 34 of the Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (hereinafter "Robben Island Guidelines").

[1139] Rule 8 of the Standard Miminum Rules for the Treatment of Prisoners.

[1140] Rules 27 to 34 of the Standard Miminum Rules for the Treatment of Prisoners.

[1141] This figure includes the 68 places of detention documented by the Commission and reflected in Annex V as well as those that have not been corroborated.

[1142] See chapter VI, C, 2, Forced Labour.

[1143] TLA017, TLA004, S034B, S035, TBA063, TBA071, TBA085.

[1144] S046, TLA015, TNR032, TLA017, TBA075, TNR019, TLA036.

could not talk to anyone, except when I went to sign the sentence… I showered once a week, only Sunday. They brought me water inside. Cell B was a little bit bigger, about 12 square meters for eight inmates. You can go outside to eat and release your waste. It was a bit better. In cell C, there are two halls with facilities inside, toilet and food."

A former detainee detailed the incremental 'improvement' in the conditions of detention in Halhal prison, where he stayed until 2013. "*First, prisoners stay for six months up to one year in a first hall- without any shoes, no window and with 'ferro'*[1145] *day and night. They were only released once a week at the time of shower on Saturday. Then, prisoners are placed in the second hall with 400 persons. … Once they are in the big hall, detainees are allowed to have contacts with their family and they go to work in the field every day."*

A religious prisoner arrested during a wedding in Asmara recalled that during the first days, around ten of them were in a cell built for one or two people. After three-four days, they were moved to a bigger room of about 25 square metres with 20 detainees. At that time, their families were able to bring food and clothes.

An army deserter who tried to flee the country in 2013 explained his detention in Aderser: "*I was interrogated and beaten for a week, every day. During this period, I was in an underground cell, alone. If you confess, it takes one day and then they make you sign your confession. If you don't confess, you stay forever. The single cells are too small to stand up. It is only one by two metres and one metre high. There is no light. You only see light when they open the door. Those who are done with the questioning get send to the bigger hall, which is also underground.*"

(i) Solitary confinement

892. Solitary confinement, which is the physical isolation of individuals who are confined to their cells for 22 to 24 hours a day,[1146] is a frequent form of punishment in the prison context, which is not explicitly prohibited under international human rights law. However, the use of solitary confinement should be strictly limited in length[1147] and isolation cells should provide a source of light, adequate ventilation and reasonable hygienic conditions, otherwise their mere use amounts to cruel, inhuman and degrading punishment.[1148] Solitary confinement should be an exceptional measure that is strictly regulated by law and subject to judicial control and undertaken under medical supervision.[1149] Pregnant women, women with infants, breastfeeding mothers and children should never been placed in solitary

[1145] *Ferro* is a specific form of handcuffs that can be used as a torture instrument. For more information on this, see chapter VI, B, 4, Torture, ill-treatment and punishment.

[1146] Definition provided by the Special Rapporteur on Torture (A/66/268, para. 25).

[1147] The Special Rapporteur considers that solitary confinement should not exceed 15 days otherwise it amounts to cruel, inhuman or degrading punishment. He states "that 15 days is the limit between "solitary confinement" and "prolonged solitary confinement" because at that point, according to the literature surveyed, some of the harmful psychological effects of isolation can become irreversible". (A/66/268, para. 26).

[1148] Prohibited under art. 7 of ICCPR ; art. 16 of CAT ; art. 37 8 (a) CRC; and art. 5. of ACHPR.

[1149] Committee against torture, A/53/44 p.17, para. 156 and A/52/44. p.34, para. 225.

confinement as a form of punishment.[1150] No restraint should be put on women during labour, during birth or immediately after birth.[1151]

893. Information received by the Commission indicates that individuals are regularly placed in solitary confinement during the investigative phase of detention or as a form of punishment during extended period of time. An inmate reported for instance that he was placed in solitary confinement for four years in a dark underground cell. These cells are often so small that inmates can only stand or sit and the detention conditions are particularly inhumane. Some witnesses reported having their legs and hands chained and hands and feet tied together to limit their movement and increase their suffering. Inmates are often shrouded in darkness, with no access to fresh air and water. Witnesses testified that they could not wash their clothes and body for months, sometimes even for years. Witnesses also described torture during interrogations[1152] and deliberate starvation.[1153]

> A man suspected of being a traitor spent three months in solitary confinement in an underground cell in Karshele. His testimony clearly illustrates the feeling of utter confusion he experienced during this period: "*For three months, I was alone. I cannot describe how wide it was. It was very dark. Sometimes I used to check the room by hands, in darkness. Sometimes I used to step on people in that room. I was confused, I was about to become crazy because of the situation. I cannot say there were people, and I used to think that I heard people noise. But I did not talk to anyone, I suspect that there were some. Sometimes when they opened the door, I could see a bit of light. I was alone in the cell. First, I was not even hearing anything. Sometimes at night I used to hear screams and shouts*."
>
> A man suspected of smuggling was incarcerated for two years in Adi Nefas. He spent the first six months in solitary confinement: "*The cell was about one by two metres and it was very high .... I did not have a shower for six months and I was sleeping on the floor. I did not know why I was arrested. I was never told the reason. After six months, I was placed with four other people in a 14 square metres cell. We were never allowed to go out for fresh air. The light was off all the time and they would only switch it on when they came in. We could not see anything in this cell – even if there was a death, we could not see it. I only saw the sun when I came out. When I came out of the prison, I was shaking and my visibility was low.*"
>
> A witness explained that the third time he deserted the national service, in 2013, he was imprisoned during eight months in an isolation cell. In his cell, he could not move his body and his muscles became cramped. He had never seen any military judge or been brought before a Court. He never knew for how long he would remain in custody.

(ii) Metal containers

894. Metal containers are used throughout the country as disciplinary cells aiming at exerting additional pressure on detainees. They have also been used to increase the capacity of detention and as temporary cells that can be moved with their respective military unit. During the day, when temperature rises, the container becomes as hot as a furnace,

[1150] Rule 22 of the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) and rule 67 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty.

[1151] Rule 24 of the Bangkok Rules.

[1152] See chapter VI, B, 4, Torture, ill-treatment and punishment.

[1153] S075, S014, TBA061, TCDP063, TCDP049, TCDP036, S075, TAM049, TNR042, TLA017.

especially in the lowlands. A witness told the Commission it was so hot, he felt like he was going to melt inside the container.[1154]

895. The Commission documented the use of containers as detention facilities in Assab, Dengolo, Gelalo, Mai Serwa, Massawa, Mendefera, Dekemhare, Division 19 prison (Kudo Felasi), Sawa Sixth Brigade, Tsetser and Wi'a.[1155] Testimonies indicate that persons held in containers had been arrested for various reasons, but mainly for attempting to flee the country[1156] (in Dekemhare, Mai Serwa, Mendefera and Sawa), and for their religious faith (Dekemhare, Mai Serwa, Massawa, Sawa and Wi'a).

896. Shipping containers are about two metres wide by five metres long and less than two metres high. Witnesses testified that 15 persons could lay down flat in a container but then the space would be barely sufficient and would feel overcrowded. A witness told the Commission that most of the time thirty inmates were living in the container and people were forced to sleep in shifts while others stood and waited. Witnesses explained that it was burning hot during the day and freezing cold at night. This unbearable situation is made even worse by the fact that fresh air supply is limited to the strict minimum. Inmates are generally not provided with blankets and water is dripping in. *"The breath accumulates on the ceiling and condensation falls like rain",* said a witness. Former detainees explained that they were not allowed to go out during the day and that guards would only open the door a little for them to get some air. A witness described how *"each of them went back and forth to the door to breathe through the hole."* Witnesses also described the darkness of the room. Due probably to the sudden exposure to light when they were leaving the container for releasing their waste, several witnesses said that their eyesight had been affected by their incarceration in the container.[1157]

> A son described to the Commission the impact of the detention in a metal container on the health of his mother: "*She was staying in a container, it was hot and there was no food, she lost almost 50 per cent of her weight. When released, she had many health problems. She became almost blind. As a result of this extremely harsh situation and suffocation in the metal container she developed diabetes, hypertension, and respiratory problems*." She was released after four years because her health was deteriorating.
>
> A religious believer detained in Mai Serwa described how he was made to return to the container in particularly harsh conditions just before his release, in order to exert a last bout of pressure on him to recant his faith. "*I stayed two years and a half in Mai Serwa. As I am a doctor, I received a privileged treatment and was moved to a zinc house next to the container. During the day, we were farming for a company called Asmara flowers. After some time, we were told we were going to be released but we were brought back to the containers. The head of our '*haile' *wanted us to sign the paper. We were put in two containers. It was the harshest thing I have experienced. They denied us all access to food outside from what they were giving us. We were kept in isolation. I lost a lot of weight and became almost 35-40 kg.*" He was then informed that the conditions had changed. He was not obliged to recant his

[1154] S135.

[1155] S077j, TAM018, TSH020, TNR057, TSH025, TFM039, TCDP038, TLA015, S064, S064, TNR019 , TLA018, S077z, TCDP061, TCDP062, TCDP036, TAM055, TBA078, TNR068, TSH013, TBA099, S135, TBA066, TCDP010, TCDP059, TCDP011, TBA099, TLA004, TCDP005, TNR005.

[1156] TFM004, TAM055, TBA078, TNR068, TSH013&TSH014, S064, TBA099, S077z, TCDP010, S077j.

[1157] TNR019, TCDP038, TNR057, TFM037, S065, TCDP062, TCDP027, TNR068.

faith anymore but should commit not to gather or preach again in order to be released. He accepted and was freed shortly thereafter.

(iii) Underground 'dungeons'

897. The Commission collected about 63 testimonies mentioning underground cells or underground detention facilities, including in Track B, Aderser, Adi Abeito, Adi Nefas, Agordat, Assab, Barentu, Bodoho, Darsal, Gelalo, Go'igne, Haddis Ma'askar, Me'eter, Keren, the Second Police Station (Asmara), Senafe, Teio, Tessenei, Tokombo, Tuhul and Wi'a. Information received by the Commission indicates that persons held underground have been arrested for various reasons but most of them had been attempting to flee the country[1158] or had deserted.[1159]

898. While some underground facilities are purpose-built and have only underground cells (for instance Aderser), others only have a few underground cells for 'special cases' where detainees are generally kept in isolation (for instance in the Second Police station in Asmara). The Commission also received information about makeshift 'holes' dug into the ground. [1160]

A witness detained in Gergera during eight months in 2012 explained: "*There are eleven underground cells. They dig a hole, cover it with wood and leaves and that's it. There are around 80 detainees in one hole of about five by five metres*."

A man detailed his one-month detention in Keren, where he was tortured before being transferred to Darotay open-space prison for forced labour: "*There are two underground prisons in Keren. It is not a proper building, it is just a hole dug into the ground, underground. The opening is covered with a metal cover; it's like a pot with a lid. There are no walls of stone, just mud. Sometimes they leave the lid open so you can breathe fresh air. It is not even four square metres, with almost 20 detainees*."

A former detainee in Wi'a recalled: *"Women were held in big holes with a roof made of zinc and held by sticks. Most of them were religious prisoners from the Pentecostal faith. They were divided between men and women, each in one hole.*"

899. Underground cells may be used as secret and *incommunicado* detention but also as disciplinary cells to punish detainees for their offences and wrongs through isolation, overcrowding exacerbated by extreme temperatures, lack of fresh air and ventilation, deprivation of light and terrible hygiene conditions. Underground cells provide an ideal breeding ground for infectious diseases and several fatal epidemics have been reported to the Commission.[1161]

A witness who tried to escape Me'eter military training camp in 2010 was imprisoned for two months underground: "*It was about 12 square metres, with 29 people inside. There was shortage of air. No shoes were allowed, even outside, and we were receiving corporal punishment. For example, we had to walk in the sun bare foot from 12 o'clock until two o'clock pm. Sometimes we were fainting, it was too hot.*"

[1158] TSH019, S075, TCDP071 TBA057, TFM030, TBA075, TBA062, TBA100, S075, TNR049, TLA025, S077k, S144j, S144l, TSH021, TCDP075, TFM001, S077c, TAM074, S077j.

[1159] TLA004, TSH036, TSH036, TSH025, TSH036, TAM029, TAM026, TSH025, TBA066, TCDP015, TBA063, TNR081, TFM005.

[1160] TBA060, TBA100, TCDP075.

[1161] See chapter VI, B, 3, Detention. TCDP015.

Aderser prison

900. The Commission received information about Aderser prison from 26 different interlocutors, covering a period of 12 years (2001-2013). The Commission finds that the conditions in this underground prison are appalling and believes that this constitutes an illustrative example of the conditions of detentions in underground facilities in Eritrea. Based on the information received, the various aspects of the detention are described below, with the exception of torture and corporal punishments that are referred to in a separate chapter.[1162]

901. Aderser prison is located near Sawa, in the middle of the desert.[1163] Former inmates describe this underground prison as a *"hole dug in the ground"* with four large underground halls, big cells and about ten small ones where some prisoners are kept in solitary confinement, sometimes chained and for a number of years. Witnesses report that the entrance gate of the underground cells was very small – not more than 0.75 metres wide. The door remained closed nights and days and guards were made to sit on it. As there were no windows or ventilation devices - except the narrow entrance - as well as no artificial light the room remained in absolute darkness all the time. The underground cells are made of stone walls and the 'roof' is covered by rail bars, big wooden beams and soil. In addition, witnesses describe a small room used for interrogation and torture. Inmates are sent to the hall built in cement when their interrogation is over.[1164]

> "*The single cells are too small to stand up; one by two metres and only one metre high. There is no light, except when they open the door*." A former inmate detained in one of the solitary cell for four years told the Commission that his name was replaced by a code name. He was only getting out at night to dump his wastes.

902. Both civilians and national service recruits are detained in Aderser. The Commission also received information about the detention of women, including pregnant women, elders, and children. Former inmates describe the conditions of detention in this prison as 'unbearable', 'harrowing', 'terrible', or 'horrible' among others. [1165]

903. There are no beds, no mattresses and sheets are not provided. Prisoners sleep either on the bare ground or improvise by collecting some waste materials when they go out to work or relieve themselves or their wastes. Because of the extreme overcrowding, inmates are often forced to sleep on their side. Members of the security forces are sometimes placed among detainees to prevent any communication and information exchanges among them. The area is very hot and the temperatures reach up to 45 degrees Celsius. Witnesses reported having difficulties breathing. Detainees are always forced to walk barefoot and some of them are subjected to hard labour in construction and farming.[1166]

904. Most detainees reported being able to wash once a week but no soap is provided and the time allocated per individual is too short to wash satisfactorily. Due to the lack of hygiene, the cells and therefore the bodies of inmates are infested with lice, vermin and other insects. One former detainee described that in some cells rodents and mice nibbled on people's feet. Inmates are generally allowed to relieve themselves only twice a day, in less than ten minutes and in humiliating conditions. The rest of the time, inmates have to urinate in plastic bottles or containers placed inside the underground cell. People who had

[1162] See chapter VI, B, 4, Torture, ill-treatment and punishment.
[1163] TSH036.
[1164] TAM069, S077n , TBA057, S033, TCDP026, S143i, TBA075, TSH036, S075.
[1165] TCDP026, TAM069, S033, TNR056, S077g, S077k, S143i.
[1166] S143i, S103, TCDP026, TNR056.

diarrhoea are allowed to relieve their wastes in containers that are placed near the underground entrance gate.[1167]

905. There is no health facility and medications are lacking. Diseases due to lack of vitamins and hygiene are frequent and prisoners die of starvation and contagious diseases. Several reports of vision impairments as a consequence of prolonged periods spent in the underground facility and sudden sun exposure have been received by the Commission.[1168]

906. Food is served twice per day and it generally consists of a loaf of bread with lentil soup, one can of food or cereals. With the exception of detainees in isolation, meals are generally taken outside the cell, in the open air. Access to food from the market or from relatives is banned, which results in the deterioration of the nutritional situation of detainees and hence of their health condition.[1169]

> A member of the Pentecostal faith detailed his two-year detention in Aderser: "*I have gone through a lot of torture, abuse and pain. I was kept in solitary confinement in a dark underground hole for nine months. I was allowed to have a bathroom break once, during the night. The total darkness for 24 hours a day weakened my eyesight considerably. I was handcuffed with a metal chain. Small mice and cockroaches nibbled and bit my knuckles. After nine months, they put me in another underground cell with two or three other prisoners. When I was allowed to walk, I was barefoot and it was very painful. It took me years to recover. Even now, even with glasses, I can't see far away. Besides, my stomach has been affected because of many months of hunger.*"

(e) Conditions in Eritrean gaols

(i) Accommodation and overcrowding

907. Minimum international standards provide that detainees should be kept in adequate venues that meet all requirements of health, climatic conditions and adequate space for the cubic content of air, minimum floor space, lighting, heating and ventilation.[1170] While the United Nations Standards do not clarify what would be the minimum floor space, the International Committee of the Red Cross considers that such minimum should be between 3.4 to 5.4 square metres per person. It also provides that "Even in exceptional crisis situations, the floor space in cells and dormitories must never be less than two by two metres per person" and that to avoid a major health crisis in such extreme conditions, detainees should be kept in "well-ventilated quarters, get 10 to 15 litres of water each per day, get a balanced diet comprising food which is adequate in terms of quality and quantity, access to exercise yards or any other place in the open air during the day and access to medical care".[1171]

908. The Commission finds that prisons in Eritrea are generally severely overcrowded, damp and unhygienic. A military clerk explained that to calculate the number of detainees, they consider that each person requires 20 centimetres of space to sleep. Witnesses reported being incarcerated in Track B with more than 500 detainees in a 65 square metres cells, or 20 square metres underground cells in Aderser accommodating 150 inmates. Detainees often have to sleep on the side to save space, a practice named '*coltello'*.[1172] In some cells,

[1167] TNR056, TCDP026, S077g, TBA057, TSH036, S033, TAM069.
[1168] S077f, TSH036, S033.
[1169] S033TCDP026, S077n, S077g, TBA057.
[1170] Rule 9, Standard Minimum Rules for the Treatment of Prisoners.
[1171] ICRC, *Water, sanitation, hygiene and habitat in prisons* (ICRC publication, August 2005), p. 19-20.
[1172] This Italian expression equates to the English "spooning".

inmates cannot even lie down and have to crouch night and day. It is often impossible to sleep due to the lack of space and the extreme temperatures.[1173]

> A witness explained: "*The heat was unbearable. Imagine, this was in Asmara where the average temperature is not very hot, but in the prison room it felt like a melting pot. It was not possible to sleep properly due to the overcrowded space.*"
>
> A young boy incarcerated in Gergera in 2014 described its cell: "*Our room was very narrow but they put 130 people in it. It was not a big room, about five metres by six. Some people made makeshift hammocks in order to find space to sleep. Most people could not sleep, except those who could make hammocks with their garments*."
>
> Another witness described the overcrowding in Adi Abeito: "*It is sometimes so overcrowded that you cannot even lie down, you must stand up all night long*."

(ii) Temperature, lighting and ventilation

909. The Standard Minimum Rules for the Treatment of Prisoners provide that in all places where prisoners are required to live or work, windows shall be large enough to enable prisoners to read or work by natural light, and shall be so constructed that they can allow the entrance of fresh air whether or not there is artificial ventilation. Sufficient artificial light must be provided for the prisoners to read or work without injury to eyesight.[1174]

910. Many of the detention facilities are located in some of the most inhospitable places of the world, where temperatures can raise up to 50 degrees Celsius during the day and drop quickly at night. These conditions, almost unbearable for human beings, are even exacerbated when inmates are held in overcrowded metal containers or underground cells. The Commission received several reports of deaths by heat exhaustion and suffocation.[1175] Many detainees also reported health issues such as skin and parasite infections, diarrhoea, irregular heartbeats and collapse due to the extreme temperatures, combined with overcrowding, lack of hygiene and deprivation of food and daylight.

911. Access to fresh air seems to be limited to the bear minimum and no ventilation systems have ever been described to the Commission. On the contrary, witnesses described existing windows being condemned not to let air and light through.[1176] The size of holes drilled in cells or 'windows' sawed in metal containers seem to be designed to maintain detainees in a situation of suffering while permitting the survival of the fittest.

912. Access to natural light is often a privilege in detention and full darkness seems to be used as an additional means of psychological pressure or punishment. Some inmates use candles to break the blindness in which they are shrouded. Many former detainees reported long-term visual impairments as a consequence of prolonged incarceration in dark cells and sudden exposure to natural light.[1177]

> A witness recounted his incarceration in a prison near Mendefera in 2011:

[1173] TNR078, TCDP032, TCDP016, TBA068, TNR022, S143a, S077f, TAM055, TSH032, S033.
[1174] Rule 11, Standard Minimum Rules for the Treatment of Prisoners.
[1175] See *infra*.
[1176] S075.
[1177] TSH057, S033, TNR078. The Commission received the confirmation form a forensic expert that detainees kept in dark environments who are suddenly exposed to day light may get a tear in the retina that can be damaged. The vision may hence be affected which may ultimately result in blindness. If detainees remain in the dark for several days they should be exposed to daylight gradually. Expert testimony, 21 April 2015, Geneva.

"*I was in a three by three metres room with 63 people. There was no fan, just a small hole in the door. We were taken out in the morning and in the afternoon to go to the toilet. Prisoners would do anything to get sent to the hall where there was more space. There was one prisoner who had the job to tell everyone to be quiet because if we talked it got so hot people fainted. Our skin became yellow from the lack of circulation. My hair used to come out in clumps if I pulled at it because it was so hot. We sat in just our underwear, without any clothes*."

Another witness talking about his detention in Tessenei Police Station said: "*We were put in a very crowded cell. The temperature in that area reaches 48 degrees Celsius during the day and it drops to freezing levels at dawn. We were crammed in one small suffocating cell. I almost fainted and lost consciousness in the cell*."

A former inmate recounted his detention in Barentu in 2011: "*We used to light candles. It is very dark, only during the day there is a little bit of light. No fresh air comes into the cell, only when you go to the toilet outside*."

(iii) Material conditions

913. Recognized minimum international standards provide that all detainees shall be provided with a separate bed, in accordance with local standards, and clean bedding, with facilities for keeping bedding clean.[1178] Adequate clothing is a component of the right to be treated with human dignity.[1179] All inmates not allowed to wear their own clothing shall be provided with clothing suitable for the climate.[1180] There shall be facilities for keeping clothing clean and in proper condition.[1181] There must be facilities to wash and dry clothing and bedding regularly.[1182]

914. In Eritrea, detainees are asked to take off their shoes at the beginning of their detention. In the large majority of cases, they are not allowed to wear shoes throughout their deprivation of liberty, not even to go to the 'toilet' or when asked to walk, work on the burning soil or on sharp stones.[1183] Many detainees described their disgust and humiliation when going barefoot to relieve themselves. Several witnesses also told the Commission that they could not even wear shoes when forced to work, for instance for Government-own gardens. In addition to its punitive nature, this prohibition serves as a deterrent to possible escape from prison.[1184]

A military conscript detained in a temporary detention facility near Dogali recalled: "*The road there is hot and the sun is melting the asphalt. I remember without shoes, you can't walk on the road, not even at night time. During the daytime, they ask you to walk. That happened to me. I had to walk for hours. All of us had to walk, watched by a guard, with a Kalashnikov. My feet were burned*."

A former inmate in Ala prison recounted: "*In the first nine months at the prison, we were not allowed to wear our shoes at all, even when walking outside for urination in the open air."*

915. Inmates are not provided with any clothing by prison authorities. If contact with their family is prohibited or if the detention or place of detention remains unknown to their

[1178] Rule 19, Standard Minimum Rules for the Treatment of Prisoners.
[1179] Art. 10 of ICCPR.
[1180] Rule 17(1), Standard Minimum Rules for the Treatment of Prisoners.
[1181] Rule 17(1)(2) and 18, Standard Minimum Rules for the Treatment of Prisoners.
[1182] Rule 19, Standard Minimum Rules for the Treatment of Prisoners.
[1183] TCDP036, TLA040, TLA018, TLA032, S067, TBA085, TNR049, S037, TCDP026.
[1184] TLA032, TLA025, TBA047, S037.

loved ones, inmates are forced to keep the same change of clothes during the length of their detention. Given the limited possibilities to wash and the lack of hygiene in the cells, their body and clothing get quickly infested by lice, bugs and other vermin. [1185]

> A 15 years-old child remembered his detention: *"We stayed in metal shelters. I was detained with everyone else (there was no separation of people below and above 18). There were about 30 people in each cell. I was kept in the* 'zingo' *for three months. We had to walk barefoot; we had only underwear and a singlet. It was so hot we had water blisters; I was constantly peeling because it was so hot. There were no beds; we were packed like sardines when we slept."*

916. The vast majority of the witnesses interviewed by the Commission had not been provided with bedding or any other pieces of furniture in prison. In few instances, unwashed bed sheets were reportedly supplied in police stations. Inmates are made to sleep on the ground, which is sometimes covered with cartons or leaves collected by the detainees themselves. They suffer from the heat, the cold and the humidity, which cause long-term back and muscular ailments and pain.[1186] Families can sometimes bring blankets but this is limited by the restrictions to the freedom of movement of the population and the prevalence of *incommunicado* detention. [1187]

> A former inmate recalled: *"There was no supply in the prison – nothing is provided by the prison and people sleep on the bare floor with no bed sheet or blankets to cover themselves from the cold, people have to secure their own supply and thus those who come from distant places or who have no relatives in Asmara suffer the most."*

> A child recounted: *"The cell was about two by three metres. We were 15 people. You could not sleep. We could just sit. They did not give us beddings. Our parents brought bed sheets. They also brought other clothes."*

(iv) Sanitary facilities and personal hygiene

917. Recognized minimum international standards provide that detainees should have access to sanitary installations, when necessary and in a clean and decent manner; they should also be allowed to take a bath or shower at least once a week.[1188]

918. According to the testimonies received, detainees endure sordid hygienic conditions that facilitate the transmission of diseases. Access to water to wash is extremely limited. Inmates who have not yet been 'tried' or 'sentenced' are reportedly not allowed to wash at all.[1189] Testimonies reveal inmates are generally allowed to wash their body and clothes every week or every month. They are not provided with soap or detergent and the time allocated to each detainee is so short that it often does not allow them to wash properly and to wash both their body and clothes. The Committee also finds that access to such facilities is extremely limited, if available at all, for persons detained incommunicado and in solitary confinement. As a result of the lack of personal hygiene and the squalid conditions of detention, detainees are infested with lice and other parasites and suffer from various infections and other diseases that may lead to death.[1190]

[1185] TSH026.
[1186] TCDP036.
[1187] TCDP026, TAM055.
[1188] Rule14, Standard Minimum Rules for the Treatment of Prisoners.
[1189] TNR078.
[1190] S014, TNR019, TCDP026, TCDP063.

A witness detained in solitary confinement in Karshele and handcuffed 24 hours a day told the Commission that he was not able to wash his body for seven months.

Another reported to the Commission that during his one month detention at Mai Serwa, he was not allowed to shower at all.

A former inmate detailed his nine months detention in Mendefera: *"In this place rats and other small creatures, spiders and big ants infested me. They often bit us. Our hands tied with iron clenches, we could not defend ourselves. Every Saturday morning between five and seven o'clock, we were given each a bucket of water and five minutes to shower. The water is also to wash underwear. But this schedule was not constant. Sometimes three weeks or even a month passed without us showering. As for washing our clothes, the guards decided when and there was no fixed time. We have no change of clothes. Therefore, when they allow you to wash your only clothes you do it naked. Our nails, our hair and others parts are not allowed to be cured and cut and stay unhealthy, dirty and ugly. My beard was getting long, and was uncomfortable to eat, so I would use my saliva to roll it to the sides of my mouth, but during the night, as pieces of* 'injera' *are stuck in my beard, it attracts ants that climb on it to eat. For nine months, I was kept in a dark room; no sunlight time. I didn't see the sky, I had no interaction with people. I was allowed to use the bathroom once a day. If I got sick and needed to use the bathroom more, I was given a three-litre container, like the one for food oil."*

Another former detainee recounted: "*Once per week, in thousands, the prisoners are made to walk under a heavy guarding about four kilometres distance to the flowing stream to wash their body and clothes in a very congested manner and the time limit allowed for washing ranges from 10 to 15 minutes.*"

919. Testimonies reveal that inmates can generally go out for toilet breaks once or twice a day to urinate and defecate, often in open spaces while guarded, usually at gunpoint. Former detainees reported being forced to release themselves under extreme time pressure and in humiliating ways.[1191]

"We were allowed to relieve ourselves only once. If any person wanted to relieve himself, it was only in the can kept in the prison. Since the cell used to be opened once a day in the morning, the can overflew and created a stench odour in the cell. The detention place, surrounded by rocky mountains, was fenced with thorny and prickly dry bushes and was heavily guarded. … We never took showers nor were we allowed to wash our clothes. There was not toilet at all, we relieved ourselves in the open field where walking on the prickly land was extremely painful. We used to put a cigarette packet under our feet and tie it around. Twelve days of inhuman unspeakable treatment. We were taken outside to a field by guards to relieve ourselves twice per day (morning and night). There were guards on top of the stone walls with guns ready to shoot anyone who tried to escape while going to the toilet. The people in the small cells only go to the toilet at night, so they are not seen."

920. The Commission is concerned about the health and well-being of detainees being unduly impacted by their close proximity to defecation areas and their susceptibility to diseases that can spread from such sites. The Commission received many testimonies of witnesses about extremely poor conditions of hygiene. In particular, conditions in Adi Abeito were reportedly extremely bad. Inmates told they were allowed to relieve themselves twice per day for five minutes only. They were always taken to the same place for relieving themselves, "*thus the soil was covered by the waste and the prisoners added to*

[1191] TNR078, TSH004, TNR022, S033, TCDP026.

it continuously making new layers of wastes." Outside of these hours inmates had to relieve themselves in large but insufficient containers put inside the cells, which spilt over the floor on detainees forced to sleep next to it due to overcrowding. Inmates also frequently defecate inside the cells, making the conditions inside *"horrible and intolerable."* A former inmate recalled: *"All the urine came under the blanket, our blanket and clothes were wet. The next day, all of us had a throat infection, struggling to breathe and swallow."* Another witness told the Commission that there were epidemic diseases like dysentery. A witness told the Commission that during the first six months of his detention he had to sleep next to the toilet, which according to him caused problems with his ears and eyes, as well as asthma.[1192]

Detainees relieving themselves[1193]

921. International norms stipulate that women prisoners must be able to access, without embarrassment, facilities and material specific to their hygiene needs, including sanitary products and water for washing during menstruation. The Commission finds that women's particular sanitation and hygiene needs are not being met in Eritrean detention centres, causing unnecessary humiliation for female detainees. Former women detainees reported to the Commission that they were not provided with sanitary products. The lack of washing facilities was particularly difficult for women detainees, though some did report that after begging for water to wash during their perids, on occasion it was provided by lower ranking officers or guards. Women detainees told the Commission:[1194]

> *"Since I was menstruating so much, all the prisoners who had an undershirt cut it for me to use it to stop the bleeding. The guards were not able to help me. They just said this was part of the punishment. When all our underclothes were cut and finished, the old woman in detention with us had a cloth which she gave me and we cut it. We used it as a pad."*
>
> *"I could wash just twice in one month. We did not have enough water. We did not receive sanitary products for menstruation; it was a very big problem because we*

[1192] TNR032, TCDP026, TNR049, TLA036, TNR019.

[1193] Drawing provided to the Commission by an Eritrean torture survivor and published with permission of the artist.

[1194] TAM074, TSH042, TBA051, TBA001.

could not wash. We used to smell a lot, it was very unhygienic and difficult for us. It was humiliating."

"Sometimes we were allowed to wash our bodies, sometimes we begged them to wash, when we had our period, and they let us."

922. A former prison guard described his predicament, trying to provide women with water while trying not to be discovered by more senior officers: *"Due to the stress and the beatings, the women had their periods and lots of blood, but they were not allowed any sanitary pads. We often heard them screaming, knocking at doors. There was no place to wash, they were very smelly due to the blood and the beating. We could not take it anymore, some of us tried to help them. We knew what happened to them, because they talked to us and were asking for help. We prepared some sheets of tissues to help them and put a can of water in the toilet so that they could wash and use the sheets as sanitary pads. We also got oil for them to disinfect their wounds. They washed but not too much, so that they would not appear too clean and left their hair dirty, to hide that we were helping them. ... We tried to be careful as there were spies amongst the prisoners. We only left the sheets in the bathroom in case they found out, no one would know who had put the sheets there."*

(v) Food & water

923. Access to adequate food and drinking water are essential elements of the right to be treated with humanity. The deprivation of food and water may endanger the health and life of detainees. All prisoners shall be provided with food of nutritional value, adequate and wholesome quality for health and strength, and free access to drinking water.[1195]

924. Food rations distributed to inmates are minimal and of poor nutritional quality. Meals invariably consist of one cup of tea, one or two dried sorghum bread or *injera* two to three times a day and sometimes watery lentils or *shiro*.[1196] Several witnesses also told the Commission that when they were in transit or when the food distribution was disrupted, they were sometimes not given any food at all during several days.[1197] Drinking water is sometimes limited in quantity, despite high temperatures in many detention locations, and it is often unclean. Witnesses said they were prone to malnutrition and diseases.[1198]

A former interrogator described food in custody: "*Provision of food to prisoners consists of two little meals served daily without meat or vegetables. This makes the prisoners prone to many diseases due to malnutrition in addition to the physical and mental torture they were systematically subject to and the denial to see their families. Some of the prisoners are detained in solitary confinement which makes it worse. Due to all these factors mental illnesses are widespread in those prisons and they are left without any medical services*."

Another witness detained in Adi Abeito recalled: "*In this makeshift prison we were only eating bread and lentil soup. We also had a cup of tea. We would eat once a day. There were times we would not eat the whole day if the bakery vehicle did not come to deliver food.*"

A man detained in an underground cell in Wi'a explained: "*We survived thanks to food that our family smuggled through guards. The water was warm and dirty, collected from the river nearby, which was also used as toilet and for washing. We*

[1195] Rule 30 Standard Minimum Rules for the Treatment of Prisoners.

[1196] Shiro is a stew prepared with powdered chickpeas or broad-bean. TNR078, TAM055, TBA061, TAM022, TSH036, among others.

[1197] TSH032, TNR049, TAM074.

[1198] TAM074, TCDP036, S014, TFM038, TCDP075.

were able to wash once per week. Some died of diarrhoea because of the water. The conditions were inhumane."

A witness who was incarcerated in Mendefera and Asmara compared the provision of food between the two: "*Most of the time we ate only a very small portion of injera in Mendefera. In Asmara, we received dry bread and watery lentil soup which smelled so badly that we avoided eating it. So when the guards were not looking we would throw it away and limit ourselves to eating the bread. We would break it into pieces and leave it in the water to get softer to have a sort of porridge. Our stomach seemed to be full for a while but then we had consequences on the digestive system. It was so painful when it was toilet time, we were crying while the guards were laughing at us. Because of the nutrition deprivation, ill-treatment and lack of medical assistance and general healthcare, my two kidneys are now out of order. It started with kidney failure and because of the lack of medical assistance I will have to live the rest of my live with dialysis treatment.*"

A daughter testified about her father, a Jehovah's Witness detained in Me'eter: "*My mother was only able to see him once. My father had lost all his teeth and was very skinny, because they do not feed them. My sister was in another section but she could see him from afar – she does not talk about it but she has the trauma of seeing my father getting skinnier all the time. They give them a piece of dry bread and some lentils.*"

925. In order to ensure the survival of their loved ones, families often complement the rations or smuggle money into custody so that inmates can buy food at the black market or sometimes in some shops managed by the detention centre. Access to food complement is, however, prohibited for inmates held *incommunicado* and in solitary confinement – which are forms of detention prevalent for political and religious detainees, and suspects of cross-border 'crimes' – and during the interrogation phase of the detention. The Commission suspects that starvation rations are used as a means to exert additional pressure on detainees to confess or to accept to recant their faith quickly to ensure their survival.[1199]

One of the students detained in Wi'a in 2001 told the Commission: "*Hunger has also played a big role. The food ration was more like medicine than food*."

A doctor incarcerated described the impact of food deprivation on inmates and how they relied on outside contribution: "*Because of the lack of food, the colour of the face of detainees changes, it happens most for those who don't have family members who can bring food complement. The food doesn't have sufficient nutrient, you need to take nutrient's pills to complement, in order not to die."*

A witness detained in Karshele prison for four years explained: "*I was in a small cell, in solitary confinement. I did not get anything from outside, I had no contact with my family. The food is from the prison, just lentils, more water than lentils, and one bread. There is no food from outside*."

A former inmate detained in Assab during three years explained how detainees could buy items inside the prison at a higher price than outside: *"You can buy things inside the prison if your relatives send you money. You can buy soap, foodstuff, soft drinks. These belong to the officials and the guards. It is more expensive. For example, soft drinks cost eight Nakfa outside and ten inside."*

926. When inmates engage in forced labour, the food is generally only distributed twice a day, as breakfast and lunch are served together at mid-day (a practice referred as *mitigal*).

[1199] TLA036, S077b, TCDP027, TBA061, TNR032.

Despite having to engage in strenuous types of activities, the quantity and quality of food rations does not change much. Outdoor activities, however, give an opportunity to detainees to snatch some vegetables and enter into contact with their families through civilians met at the workplace, who then smuggle money and food complements.[1200]

927. Many witnesses said that they were prone to illness and disease, due to the squalid and insalubrious conditions of detention and the meagre food rations received that barely assured survival. The Commission heard many reports of epidemic problems and infectious disease outbreaks, often spreading extremely quickly in overcrowded and unventilated environments and causing many deaths among prisoners.[1201]

> A former health assistant explained that there were two epidemics of dysentery during his detention between 2008 and 2011.

(vi) Health care and medication

928. The enjoyment of the highest attainable standard of physical and mental health is a human right provided under article 12 of the International Covenant on Economic, Social and Cultural Rights.[1202] Recognised minimum international standards provide that detainees should enjoy unrestricted access to medical services whenever needed and be transferred to adequate medical institutions if they are sick and require specialised treatment.[1203]

929. Medical personnel have a duty to provide prisoners and detainees with health care equal to what is afforded to those who are not imprisoned or detained.[1204] The primary responsibility of health-care personnel is to protect the health of all prisoners. Health-care personnel shall not commit or give their permission for any acts which may adversely affect the health of prisoners.[1205]

930. Health facilities in Eritrean prisons are almost non-existent and the range of medicines available seems to be almost exclusively limited to pain killers and antibiotics in extreme cases. In prisons located in military training camps, a health assistant on its national service duty is usually available to detainees. In other detention centres, it was reported to the Commission that health assistants or first aid persons are sometimes designated among prisoners themselves. Given the lack of medicines, their intervention is limited to counselling and referral of critically ill cases to the health station or nearby hospital. Several detainees, including religious believers, told the Commission they were denied access to health services and medication, which were sometimes vital. Testimonies received also reveal that inmates are generally only taken to the hospital or released when critically ill or on the brink of death.[1206]

> A source explained: *"There are no health facilities in Eritrean prisons, especially at the secret locations. Prisoners did not get any medical attention even if they suffered from serious diseases which caused many deaths which remained secret."*

[1200] TLA017, TCDP027, TLA025.
[1201] TNR032, see also *infra.*
[1202] Article 12 ICESCR.
[1203] Rules 22 to 26 of the Standard Minimum Rules for the Treatment of Prisoners.
[1204] Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment adopted by General Assembly resolution 37/194 of 18 December 1982.
[1205] 2 Principles of Medical Ethics, principles 1 to 6.
[1206] TBA032, TBA019, TCDP036, TNR078, TCDP027, TSH004, TAM028, S129, S014, TFM007, TNR049, TCDP013, TCDP026.

A witness said that during his detention in Adi Abeito one person was critically ill one night. He was shouting and making a disturbing noise as a result of extreme pain. Detainees called for emergency aid but the guards refused to listen to the call: *"We were making loud shouting and noises demanding them to allow him medical access and telling them that he was going to die if he was not taken to the hospital. All our calls and efforts, however, fell on deaf ears and the guards warned us not to knock on the door or we would face severe punishment. It was only in the morning that we found out that the ailing person was lying on his back with his stomach incredibly inflated. Even in the morning, they did not react with urgency; it was at about 8 am that they admitted him to the hospital."*

A man detained during 15 months explained: *"In Eritrea, there is no medical care in the prisons. If the guards feel pity for you then they take you to a room prepared to be a first aid room. The room has no medical equipment except for heart measurement. All the medication that you receive for pain is Amoxicillin pills."*

A witness who was working as a military nurse in Dahlak prison explained how a civilian who was taken to prison for a land dispute died in custody: *"I told my commander that one person was seriously injured and needed to be referred to a hospital. My commander refused and the person died."*

931. Admission to the hospital often create an opportunity for detainees to have contact or even just to be seen by their family and relatives. Several witnesses told the Commission that the only chance they had to see or talk to their loved ones held *incommunicado* was during their stay at a hospital.[1207]

932. Testimonies reveal that health assistants may also be asked to oversee inmates during torture sessions, to inform interrogators when victims reach their limit.[1208]

(vii) Contact with the outside world

933. Recognised minimum international standards provide that detainees should be allowed to communicate with their family and friends on a regular basis and to receive visits.[1209]

934. Testimonies reveal that most prisoners are not allowed any contact with their family at the beginning of their detention and during the investigative phase of their detention.[1210] In addition, "*there are different types of prisoners*" and the possibility to have family visits "*depends on the case*".[1211]

935. Some categories of detainees, such as those convicted or 'sentenced', are generally allowed to have contacts with their families, usually once or twice a week. In these cases, families can bring food, clothing, bedding and medicines. Nevertheless, given the prevalence of *incommunicado* detention and the severe restrictions of freedom of movement in the country, relatives are not always able to visit their loved ones in detention. Sometimes, showing up at a prison to visit relatives and friends can even put the visitor at risk of arbitrary arrest.[1212]

[1207] S121, TCDP071.
[1208] TCDP062, TCDP063.
[1209] Principle 19; Principles on Detention or Imprisonment, and rules 37 and 79, Standard Minimum Rules for the Treatment of Prisoners,
[1210] TNR078, TNR049, S033, TNR022, TBA060, TLA036.
[1211] TBA044, TCDP065.
[1212] TNR078, TLA036, TNR022.

A member of the military who was detained during six months in Tessenei recounted: "*My family did not know about my arrest. Even as soldier there was no means of communication. You cannot contact your family. Only once a year, we go home for two weeks. But sometimes also, if you get a telephone you could call them. They are far away from you. Even if they know by other means, they are not allowed to the prison. If they come they would also be imprisoned.*"

936. Political and religious prisoners, high-profile detainees and others accused of cross-border 'crimes' are often detained in undisclosed locations and denied access to their families throughout their detention, which may last a life time. In some cases, authorities permit family members to deliver food and clothing but not to actually visit the prisoners. A source told the Commission that the decision reportedly comes from the main National Security Office of the region, or even from a higher authority. Those in charge of the custody just follow the orders.[1213]

A member of the military suddenly perceived as a threat was abducted, blindfolded and moved to several places before being sent to the secret high security prison of Eiraeiro. The witness explained that after he managed to send a secret message to his wife, she tried to come and visit him. "*She almost made it through all the security gates. When she got to the last one, she was beaten and sent back to Asmara."* After this incident, the witness was relocated to Asmara and placed in solitary confinement.

A member of the diaspora was arrested and incarcerated in Karshele during one of his trips to Asmara. He explained: "*Inside Karshele, there is a shop where you can buy bread. I asked for my family to send money. But they did not allow them to bring me money. My sister asked for me, the second time she came, she went to the back door. A guard told her that I was fine and asked her to go back, otherwise she would be arrested.*"

(viii) Separation of detainees, including detention of women and children

937. Recognised minimum international standards provide that different categories of detainees are required to be kept separately on the basis of their sex, age, criminal record and reason for their detention.

938. The Standard Minimum Rules for the Treatment of Prisoners stipulate that women should be kept separate from men, under the responsibility of a woman who retains custody of the keys for that part of the institution and attended to only by women officers.[1214] Male staff can carry out their duties in the women's section when accompanied by a woman officer.[1215] However, where this is not feasible, at a minimum policies and procedures to minimise the probability of a woman prisoner being ill-treated must be in place.

939. The Convention on the Rights of the Child stipulates that children must be detained only as a measure of last resort, in exceptional circumstances and for the shortest appropriate period of time. Child detainees must receive specific care, protection and all necessary assistance - social, educational, vocational, psychological, medical and physical - that they may require. Child detainees are to be afforded visitation rights that permit frequent contact with their parents and/or legal guardians.[1216]

[1213] S127, TCDP065, S149, TBA038, TCDP071, TBA044.
[1214] Rule 53(1), Standard Minimum Rules for the Treatment of Prisoners, 1997,
[1215] Rules 53(2) and (3), Standard Minimum Rules,
[1216] Arts. 37, and 40Convention on the Rights of the Child.

940. Testimonies and confidential submissions received by the Commission indicate systematic violation of children's rights in detention. Throughout Eritrea and for the whole period under investigation, children of all ages have been detained with incarcerated relatives and in their own right, without trial, in the same inhuman conditions as other detainees and without care specific to their needs.[1217]

> Three 14 years old boys were caught while trying to cross the border. They were beaten all over the body with wooden sticks and tied in the *helicopter* position, before being taken to a prison in Senafe for three days. There, they were detained with 15 other inmates. They were then moved to a container in Dekemhare where they stayed for two days. During all this time, they did not receive food from the prison but relied on items shared by other detainees or brought by their parents. Finally, they arrived to Gergera prison, where the boys were registered as minors. One told the Commission that during the three months of incarceration, he saw many people sick and witnessed the death of four people. In Gergera prison they were detained in a cell with 130 other people, most of them adults. He noted that when they were about to leave the prison, children younger than him were being brought in.
>
> A witness detained in Wi'a on suspicion of smuggling people out of the country described seeing children in the detention centre: "*I was in a water tank on the top of the mountain for two months. We were about 300 people in the tank, some of them had tried to cross the border, others were smugglers or military deserters. There were two children, one of 12 and another of 13 years who were accused of crossing the border. I saw five other children from different families. I was in detention with them for five months*."
>
> A man detained in Assab between 2008 and 2011 recalled: "*There was a 10 year old there. He was left in the corridor, but he was a prisoner. At night he slept in the corridor… The child's mother was preparing food for the general, the high commander. When this child saw the general dominating his mother for sex, he kicked him. The general arrested him. That was why he was in prison. … He spent three months in prison*."
>
> A former detainee of Hashferay prison in Keren described the situation of children at the prison in 2012: "*There were many people under 18 years old, staying three-four months until someone came to get them. I saw a child nine years old. He stayed two months and a half. He was from Keren and was arrested for trying to cross the border. He was alone. He was also sleeping in cell no. 1 or 2; in one of the cells for civilians. In these cells there were more than 200 children. Half of them were children - always detained for crossing the border. Children were not punished as we were. Sometimes they were receiving 'normal' punishments, for instance spanking or pulling the ear."*

941. Information received by the Commission indicates that in some detention facilities, detainees are separated on the basis of their civilian or military status, their political or religious affiliation, or the alleged offences and wrongs they are believed to have committed.[1218]

> A former detainee described the prison of Hashferay, where he stayed until 2013. *"In Hashferay there were four underground cells and six small cells for special cases such as political prisoners or others. In one small cell, there were maximum*

[1217] TCDP026, TNR078, TCDP031, TNR049, TAM055, TNR032, TNR056, TCDP015.
[1218] TSH021, S121, TCDP031, TLA033.

20 persons. In one of the big cells there were people working for the ministries who had tried to cross the border. In two others, there were civilians trying to flee the country and in the last one, army deserters were detained. Elders had a special sleeping place in the cells."

Another witness explained: *"In 2008 I was taken to Wi'a with about 70 students. Some of the persons had been arrested during 'giffas', others had been caught trying to escape. Those that had been rounded up were kept in a cell outside. Those that had been caught trying to escape were put in the water tank prison."*

A Pentecostal believer detained in Mai Serwa told the Commission that, as a follower, he was not allowed to share his cell with another person because the guards were afraid he would proselytise.

A witness recalled that when he was detained in Gedem prison, near Massawa, inmates were classified in two categories: those suspected of smuggling or attempting to escape who were locked all day; and others who were allowed to stay outside of the cell.

(ix) Self-management of cells

942. The self-management system of cells within a prison is allowed by international standards, provided that it does not work to the detriment of the most vulnerable prisoners. Thus, such systems must be officially recognised and organised through clear and transparent criteria, including for the appointment of chiefs of cells, their terms of reference, etc. Responsibilities of these *capo camera* must be limited to basic and day-to-day management issues. Prison authorities must remain accountable for the actions of the "capo camera" and must be the only ones responsible for deciding and implementing disciplinary sanctions. It is important that all detainees are treated equally and that the *capo camera* is not accorded excessive privileges compared to other detainees. [1219]

943. The Commission received several testimonies detailing the role of individuals with management responsibilities within a cell, often referred to in Eritrea as 'prison monitors', 'coordinators' or *capo*. Most of the time, the coordinator is designated by prison authorities, even though selection by other inmates was also reported to the Commission. Responsibilities of the coordinator can include organising the sleeping, distributing food, taking prisoners for first aid and generally keeping order within the cell. The coordinator is usually the one knocking at the door and informing the guards if something happens. Reports of favours granted to these coordinators have been received, such as possibilities to wash more often, wear shoes, move around to bring items to other detainees and organise small trades within the detention centre.[1220]

944. Witnesses were rather positive about the role played by these coordinators and none of them reported abuse of authority or discrimination in the management of the cell. The appointment of these coordinators, however, doesn't seem to be transparent or based on clear and transparent criteria.

[1219] Rule 28 of the Minimum Standard Rules on the Treatment of Prisoners.
[1220] TNR032, TNR068, TSH032, TNR036, TBA060, TNR042, TNR049, TNR056.

(x) Discrimination

945. Basic principles for the treatment of prisoners prohibit discrimination on grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.[1221]

946. As mentioned above, the Commission finds that high-profile prisoners, those considered as 'traitors' and those suspected of cross-border 'crimes' are often detained in the harshest conditions and in the worst detention facilities, located in the most inhabitable parts of the country.

947. In addition, the Commission documented three types of differentiation in the treatment of detainees in various detention facilities, based on their faith, their category (prison term decided or not) and on their personal affiliation.

948. The Commission received testimonies attesting that members of unauthorised religions are often denied access to family visits and external supplies of food and clothing, health services and possibilities to wash and get fresh air during outdoor activities.[1222]

> A Christian prisoner explained: "*As a Christian, I was not permitted to receive food or clothing from family members. I was also denied medical assistance when I became sick. Yet, the prison guards would give rest and medical attention to other non-Christian prisoners."* Another former religious prisoner in Mai Serwa detailed similar discrimination against members of unauthorised religions: *"For religious prisoners, there is no food, no possibility to get money*."
>
> A religious believer detained in the Fourth Police station between 2010 and 2011 explained: "*The prison officials treated the Christian community differently than non-Christian prisoners. For instance, evangelical Christians in the prison were denied access to visits from families and friends. However, other faith groups were granted the privilege of seeing their family members and receiving food items.*"

949. Information received by the Commission indicates a difference between the treatment of those for whom a decision has been made about the length of their prison term (whether they were tried and sentenced or not) and those who have no information about their fate. Information shows that showers or family visits are only for those whose prison term has been decided.[1223]

950. Several witnesses also referred to privileged treatment. One of them explained that he was placed in a zinc house rather than in a container and was allowed to work outside during the day, because he is a doctor. In an uncommon testimony, a journalist explained that during the first two years of his detention, the food was good and diversified and that after a while in detention, he could start reading the Eritrean Government's newspaper and his family could bring books and magazines. Similarly, a political prisoner detained in Mai Serwa in 2011 explained that he could receive books from his family.[1224]

(xi) Possibility to practice one's religion

951. Under article 18 of the International Covenant on Civil and Political Rights, the right to hold a belief is an absolute, non derogable right. According to the international standards,

[1221] See article 26 of ICCPR for a general prohibition of discrimination and Rule 6(1) of the Minimum Standard Rules on the Treatment of Prisoners and Principle 5 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

[1222] TNR032, S130, TCDP027, S138, S124.

[1223] TNR078, TNR032.

[1224] TCDP066, TSH034, TCDP027.

the exercise of religion may be restricted – nevertheless such restrictions should be reasonable, proportional and defined by law. In the context of detention, international standards provide that detainees have the right to have access to a qualified representative of their religion, appointed or approved by the institution, under certain conditions. They should be allowed to observe the tenets of their religion and be in possession of religious books as far as this is practicable in the context of detention.[1225] Additionally, in application of the international standards on the prohibition of torture, detainees cannot be subject to punishment that would amount to torture, cruel or inhuman punishment for practising their religion.

952. Information received by the Commission indicates that while in custody, religious believers are prohibited to manifest their religion or belief in worship, observance, practice and teaching. Believers caught praying in detention or in possession of religious books are usually severely punished and their books taken away. The Commission received several testimonies of members of unauthorised religious groups kept in isolation or prohibited to share their cell with members of other religions in order to avoid 'the spread' of their religion. When placed with others, these believers are prohibited to interact with other detainees. A member of the Muslim faith also told the Commission that during his detention in 2011 he was not allowed to pray, and ablution was not respected due to the lack of water. He also witnessed a Muslim being severely beaten because he had defied the order not to pray. [1226]

> A witness detained during three years explained: "*As a follower of Christ, I was often not allowed to share a cell with another person. The guards were afraid I would proselytise. I did not have a Bible during this period. In fact, possession of a Bible would result in a punishment of several additional years of imprisonment. The officials kept telling me that I could not interact with others because I would spoil them and that my only chance for freedom was to betray Christ."*
>
> Another follower of an unauthorised religion detained in Barentu military prison in 2012 explained: *"First, the guards separated us into two compounds, one for the Christians and another for the rest. They did this because they were afraid that Christianity would spread. Second, the non-Christians were permitted to go to work but the Christians were not allowed to even see the sun. As Christians, we were not allowed to talk or share very often. We used a strategy of sharing encouragement through a paper that we passed to each other. There were even harsher punishments for ministers within the Christian community. The ministers would be put into a special cell and kept in this cell without access to sunlight or fresh air.*"

(xii) Women and children in detention

953. While conditions of detention may not be discriminatory as such, not taking into account the special needs of women in a system primarily design for men results in detention having a discriminatory effect on women.[1227] Women in detention, especially mothers, have particular physical, vocational, social, legal and psychological needs that are different from men.[1228] Women and children in detention are recognized as vulnerable

[1225] Art.18 of ICCPR and Rules 41 and 42 of the Minimum Standards on the treatment of prisoners.
[1226] S130, TBA050, TBA019, S121, TNR057, TAM043.
[1227] The Office of the High Commissioner for Human Rights (OHCHR), 'Dignity and Justice for Detainees Week: Information note no.5' Geneva 2008, p 3.
[1228] Ibid, p 2.

groups with special needs and requirements.[1229] In addition to women's sanitation requirements,[1230] women have particular needs that are not being met in Eritrean prisons. Pregnant and nursing mothers and women with children are particularly discriminated against and vulnerable to abuse, degradation and humiliation.

954. Pregnant detainees have particular health needs and are entitled to adequate ante- and post-natal care.[1231] Where possible, women should be permitted to give birth in a hospital outside the prison system.[1232] Of the few cases the Commission received about pregnant women in detention, none were permitted to give birth in a hospital outside of the prison. The Commission is also deeply concerned about reports received of pregnant women miscarrying and being forced into premature labour as a result of beatings.[1233]

> In one case, a Christian woman detained for her religious beliefs was given the choice to give birth in a hospital on the condition she relinquish her faith, or give birth in the prison: "*If you want to go to the hospital, you have to stop the Christianity*" she was told.
>
> A man described seeing a pregnant woman beaten: *"It is called the butchery because there is blood everywhere. I saw one pregnant girl (three to four months) lose her baby from the beating. She was caught trying to go to Sudan. I was in the queue after her to be punished. I could see her getting hit with a thin sleek stick all over her body by four men. She began bleeding. She was taken to the nurse. I don't know what happened there, but I heard they took the baby out."*

955. Nursing mothers also require particular care.[1234] Women detainees are not to be discouraged from breastfeeding.[1235] The Commission received two testimonies relating to nursing mothers. The Commission finds that the treatment of these nursing mothers is consistent with the general pattern of degrading and humiliating treatment of women in detention.[1236]

> In one case, a nursing mother picked up at a church in a large group with her baby was castigated for not leaving the baby behind. She told the Commission: "*At the police station, when they saw me with the baby, they were mad and said: if anything happens to your baby, we are not responsible, you are responsible. They asked me to send my baby to someone, but I couldn't, I was breastfeeding my nine months old baby. I said: 'I have to be with my baby.' My husband couldn't feed the baby. The police officer was mad at me*." Eventually, a police officer who knew the young mother persuaded his superior to let the woman go home. Her family posted bail and she was released the same day.
>
> In the second case of a nursing mother heard by the Commission, the young mother had been arrested and detained. She was not only denied access to her new-born and prevented from breast-feeding her baby; she was also shackled to prevent her from relieving the pain in her chest that built as a result of being unable to breastfeed. A man in the next cell recounted: "*When I first met her she was in chains. The handcuffs were not normal, they were 'W' shaped – they make them there from iron.*

[1229] United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) General Assembly Resolution 65/229.
[1230] See supra.
[1231] Standard Minimum Rules, Art 2.
[1232] Standard Minimum Rules, Art 23 (2).
[1233] S035; TNR032, TSH026, TNR032, TBA087.
[1234] Rule 48, Standard Minimum Rules, Art 23; the Bangkok Rules.
[1235] Rule 48, the Bangkok Rules,
[1236] TBA051, TSH079, TSH026.

The screws are screwed very tight and it is very painful. It is one of the torture methods they use during interrogation. The chains/cuff were so tight that her circulation was cut off and blood came out of her fingernails. Because she was supposed to feed her infant, her breasts were filled with milk. She screamed in pain because she could not breast feed. Because her hands were tied she could not do anything. There were other women in her cell, but they were too scared to help her. They had been threatened by the officers not to help her."

956. Decisions as to whether children should be permitted to stay with their mothers in prison are to be made in the best interests of the child.[1237] Ideally, pregnant women and women with small children should not be detained, but where this does occur, the prison system should accommodate their specific needs. Mothers with children outside the prison should be able to maintain contact with their children.

957. The Commission has received several testimonies detailing children in detention with their mothers, and detained mothers being separated from their children who remain outside of detention. The Commission finds that the decision as to whether the children should remain with their mother, or the mother have access to her child or children is rarely based on the best interests of the child. Rather, security sector personnel exploit the vulnerable position of mothers, using the situation of their children as an additional means with which to harass and punish women. Moreover, when children are able to be with their mothers in detention, they are subjected to the same unhygienic conditions, lack of food and sanitary facilities not specific to their needs.[1238]

A Pentecostal mother told the Commission of the arrest and detention of her prayer group, consisting of five married women with children and two single women without children. The five women with children were held separately and threatened their children would be detained with them if they did not disavow their faith. After their release was negotiated following one month of detention, they received the same threat as a warning: "*We were warned that if we continued to follow the religion we would be imprisoned in a worse place, next time with our children."*

The mother of a one-year-eight-month old daughter was detained together with her daughter because her husband left the country. During detention, the presence of the woman's child was used to inflict additional suffering. *"I was handcuffed, very tight, an iron stick placed between my hands, a stick behind my knees and attached to my hands. Then, hung upside down, placing the stick between two tables, and beaten. I was beaten for 17 days with a stick or a whip, sometimes also slapped. One single person was beating me… most of the time early morning and in the evening. The last days they started beating me at 1 a.m. They were bringing my baby in front of me and then they were beating me. Otherwise, they were beating me in the third room and they were putting my baby in the second room, I could hear the cries. … When my child became sick, they asked me to bring 50,000 Nakfa and I was released."*

A mother caught while trying to cross the border with her children told the Commission that she was detained for six months in Dekemhare with her five children, aged between 8 and 13."*There was not enough food in the prison and my children got sick because of the lack of air and food*."

Some years ago, a woman, member of an unrecognised Christian church was imprisoned for one year with her three children in the Fourth Police Station in

[1237] Art. 9 of the Convention on the Rights of the Child; and rule 49.of the Bangkok Rules.
[1238] TBA019, TCDP059, TNR036, TSH042, TBA090, S138, TBA061, S138

Asmara. She explained: "*The Fourth Station was a particularly difficult prison because the official at that station would scream and beat us, and torture us repeatedly. His torture was so intense that it seemed to me that only an individual possessed by demonic forces could do that to another person. … I had my three children with me in this unsafe condition. At the time I was imprisoned, my youngest child was two months and twelve days old. Other prisoners also had their children there with them. Altogether there were 56 of us in this particular compound. Our food primarily came from relatives when they visited us. The situation was very awful. There was not even one bathroom and everything quickly became unsanitary, especially for the children."*

(xiii) Discipline and punishment

958. All forms of punishment and disciplinary measures that may be applied to detainees should be provided by law or the regulation of the competent administrative authority. There should be prison rules and sanctions, which should be communicated to all detainees[1239] and prison personnel, and which should be administered in a transparent and consequent manner. Detainees should be informed of the disciplinary offence they have allegedly committed and they should also have the possibility to be heard and to appeal the possible sanction imposed to them.[1240] Ideally, there should be a specific register on discipline measures. Collective sanctions of detainees are not permitted.[1241]

959. Corporal punishments, placement in a dark cell and any cruel, inhuman or degrading punishments are prohibited as punishment for disciplinary offences.[1242] Instruments of restraint as '*ferro'* should never be applied as a punishment. Chains or irons should never be used as instruments of restraint, can only be used during transfer of detainees to prevent escape or as a last resort to prevent a detainee from injuring himself or damaging property.[1243]

960. The Commission received testimonies of punishments in custody for various reasons, among which 'breaching the regulations' such as taking too much time for leaving or going back to the cell,[1244] talking to each other,[1245] requesting permission to leave the cell,[1246] objecting orders or talking back to the guards,[1247] or fighting with other inmates.[1248] Several witnesses also told the Commission that they had been punished for having or reading the Bible,[1249] praying, preaching or teaching religion,[1250] during forced or hard labour,[1251] for attempting to escape prison,[1252] or for no reason.[1253]

1239 Rule 35 of the Standard Minimum Rules for the Treatment of Prisoners.
1240 Rule 30 of the Standard Minimum Rules for the Treatment of Prisoners.
1241 Rule 30 (2) of the Standard Minimum Rules for the Treatment of Prisoners and Rule 67 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty.
1242 Rule 31 of the Standard Minimum Rules for the Treatment of Prisoners.
1243 Rule 33 of the Standard Minimum Rules for the Treatment of Prisoners.
1244 TBA051, TNR052, TAM055.
1245 TNR082.
1246 TAM028, TAM027, TNR078.
1247 TCDP031, TNR056, TNR072, TNR056.
1248 TLA004.
1249 S064.
1250 TCDP027, TCDP034, TAM043.
1251 TBA099, S143i.
1252 S143i. See chapter VI, B, 4, Torture, ill-treatment and punishment.
1253 TSH033.

961. For these reasons, inmates can be handcuffed or shackled[1254] during their detention and be deprived of food[1255] or water,[1256] exposed to the sun during prolonged periods,[1257] tied in the *otto* or *helicopter* positions,[1258] kicked, slapped, beaten with sticks[1259] which sometimes have nails,[1260] asked to roll or crawl on the muddy ground[1261] or on stones,[1262] dig a hole,[1263] or forced to do hard labour, like carrying stones or working to the fields. [1264] In many instances, these punishments can be qualified as torture or ill-treatment.[1265]

> A former inmate told the Commission that he was punished when he asked permission to go to the toilet because he was suffering from diarrhoea. The punishment involved lying on the floor and being beaten with plastic with wood inside during ten minutes.
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> A follower of an unrecognised religion explained: "*I have been punished and beaten only once, because I was caught preaching. They chained me and put me outside from 8 a.m. to 6 p.m. under the sun for 40 days. Ten other persons were found preaching in the containers and beaten in front of other people by five prison guards for 30-40 minutes each. Guards were beating them so much that their stick broke. One person was taken out of the cell, tied up and beaten repeatedly because he was teaching religion inside the cell.*"
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> Another witness caught together with others having a bible, praying or preaching with other detainees was punished as follows: "*We were taken out and beaten very harshly. They beat us with a big stick and they tied us in the helicopter position during three days and three nights with one short and one shirt. During the day it was very hot and at night very cold.*"
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> A former detainee in Sawa recounted: "*On the way back from the toilet, we had to carry stones. One stone was too heavy; a guard saw that and started beating me on my back with a stick that had a nail in it.*" The witness still bears a scar of about five centimetres.

962. Severe punishments are also systematically imposed on inmates who attempt to escape prison. In light of the nature of the punishment imposed on them, these cases are addressed in the chapter on torture, ill-treatment and punishment.[1266]

(xiv) Principal findings

963. Conditions of detention in Eritrea are extremely harsh. Inmates are generally locked night and day in utterly overcrowded cells or, on the contrary, in solitary confinement in unspeakable hygienic conditions. Access to fresh air and natural light is limited to the bear minimum, often on purpose. Food rations distributed to inmates are minimal and of poor

1254 TBA080, TNR049.
1255 TLA036.
1256 TBA080.
1257 TCDP027, TCDP034.
1258 TAM027, TCDP031, TLA004, TNR072.
1259 TBA051, TNR052.
1260 TBA099, TAM043.
1261 TBA051, S143i, TAM055, TNR072, TCDP031, TCDP038.
1262 TAM055.
1263 S124.
1264 S050, TCDP016, TFM021, TCDP026, TCDP038.
1265 See chapter VI, B, 4, Torture, ill-treatment and punishment. TAM028, TCDP027, TCDP034, TBA099.
1266 See chapter VI, B, 4, Torture, ill-treatment and punishment.

nutritional quality, a fact that often causes hunger and starvation. Drinking water is frequently unclean and sometimes limited in quantity, despite the high temperatures experienced in many detention locations. Due to the squalid and insalubrious conditions of detention and the meagre food rations received, which barely assure survival, detainees are easy prey to illness and fatal epidemics. Therefore, the Commission finds that the conditions of detention in Eritrea constitute a form of inhuman, cruel and degrading treatment or punishment,[1267] as well as a violation of the right of detainees to be treated with humanity and with respect for the inherent dignity of the human person.

964. Further, the Commission finds that deprivation of sensorial stimuli, measures humiliating and dehumanising inmates and methods inducing physical weakness are often aimed at exerting additional psychological and environmental pressure to punish detainees or to "break" their resistance during interrogation. They can be qualified as torture.[1268] The harshest conditions of detention and the strictest regimes of detention are deliberately employed to punish those considered as a threat to national security, 'traitors', and suspects of 'cross-border crimes'; or during the investigative phase of the detention, with the intent to obtain self-incrimination, extract a confession or information, or force religious believers to recant their faith. Thus, Eritrean authorities intentionally use the conditions and regime of detention as means of torture or in support of other methods to increase psychological and physical pain and suffering with a view to achieve a specific objective.

965. The Commission also considers that the denial of contact with family members during extended periods of time, sometimes lasting several years, constitutes in itself an inhuman treatment and a violation of the right of prisoners to be treated humanely.[1269]

966. The Commission also finds that the absence of health facilities in prisons and the lack or deliberate denial of medical care and medicines regularly result in preventable illnesses, epidemics and deaths. This constitutes a specific violation of the right to health, as well as of the right to be treated with humanity and with respect for the inherent dignity of the human person.

967. The Commission notes that women are generally kept separated from men, in accordance with international standards, but that they are not generally under the responsibility or attention of women officers. The Commission considers that lack of female officers responsible for and attending to female detainees puts them at increased risk of sexual and gender-based violence and causes unnecessary humiliation for the women detainees, who do not have their special needs taken care of.

968. Finally, the Commission finds that the rights of children in detention are systematically violated. Children are detained together with adults in the same inhumane conditions and without any specific care for their needs. As for the others, children are often held *incommunicado*, without any possibility to contact their parents or a legal guardian.

969. The Commission finds that disciplinary sanctions and measures of punishment of detainees are usually carried out arbitrarily, without due procedure and safeguards and that the forms of sanctions amount to cruel, inhuman or degrading punishment and in some cases torture. Moreover, the Commission finds that the fact that detainees are severely punished if caught praying in their cells and are denied the possibility of having religious

[1267] Art. 7 of ICCPR; arts. 1 and 16 of CAT; art. 37 8(a) of CRC and art. 5 of ACHPR.

[1268] See chapter VI, B, 4, Torture, ill-treatment and punishment.

[1269] The Human Rights Committed considered that denial of contact with family for 9 month constitute inhuman treatment in breach of article 7 and 10 (1) of ICCPR, see communication no. 577/1994, R. *Espinoza de Polay v. Peru*, views adopted on 6 November 1997, para. 8.4, 8.6 and 9.

books, constitutes a violation of the right to freedom of religion, since this blanket prohibition of religious activities is abusive and unnecessary in the context of detention.

(f) Deaths in custody

970. The right to life[1270] is inherent to all human being and is the most fundamental of all rights. No derogation of it is permitted, even in times of public emergency. In addition to the obligation for the Eritrean authorities not to arbitrarily deprive someone of his or her life, they also have a positive obligation to protect life, in particular in the context of detention, when individuals are particularly vulnerable. Eritrean authorities are responsible for the life and well-being of the individuals that they decided to place under their custody.[1271]

971. Death in custody may result from the detention in inhuman conditions and in particular the denial of access to health care, combined with the lack of provision of adequate food and/or safe drinking water. In such instances, Eritrean authorities are directly responsible for these deaths since they are a result of their failure to maintain an adequate standard of health for detainees, which is one of their positive obligations under human rights law. It "is incumbent on States to ensure the right of life of detainees … the essential fact remains that the State party by arresting and detaining individuals takes responsibility to care for their life. It is up to the State party by organizing its detention facilities to know about the state of health of the detainees as far as may be reasonably expected. Lack of financial means cannot reduce this responsibility".[1272]

972. Death in custody may also be caused by the excessive use of force by public officials during the punishment of detainees. In this case, it will usually imply that acts of torture or cruel, inhuman or degrading treatment have been committed.[1273]

973. As part of their positive obligations under human rights law, Eritrean authorities have the duty to investigate the circumstances of death happening in custody and prosecute the persons responsible, if the death results from an action or omission of a public official.[1274]

974. Official data on the prevalence of death in prison and detention facilities are not available. Several former inmates and prison personnel reported to the Commission deaths in custody due to the use of lethal force, harsh conditions, denial of medical care, epidemics and communicable disease, overcrowding and heat stroke, among others.

(i) Use of lethal force on prison escapees

975. Death in custody may result from the excessive use of force or use of lethal force to maintain discipline or prevent the escape of detainees. According to international standards, prison guards may only use force against detainees in self-defence, in case of attempted escapes or active and passive physical resistance to a lawful order. The use of force has to be limited to the minimum strictly necessary and prison guards should be specifically

[1270] Right enshrined in art. 6 of ICCPR, article 6 of CRC and art. 4 of ACHPR.

[1271] See Human Rights Committee, *Fabrikant v Canada*, Communication No. 970/2001, views adopted on 11 November 2003, para 9.3.

[1272] Human Rights[1272] The Human Rights Committed considered that denial of contact with family for 9 month constitute inhuman treatment in breach of article 7 and 10 (1) of ICCPR, see communication no. 577/1994, R. *Espinoza de Polay v. Peru*, views adopted on 6 November 1997, para. 8.4, 8.6 and 9 ; Committee, Lantsova v Russian Federation, Communication No. 763/1997, views adopted on 26 March 2002, para 9.2.

[1273] See chapter VI, B, 4, Torture, ill-treatment and punishment.

[1274] Article 2 (3) of ICCPR.

trained to restrain aggressive detainees without excessive force.[1275] While prison guards may use firearms to prevent the escape of a detainee, it has to be a measure of last resort when less extreme means are not possible. However, the use of firearms should be preceded by a clear warning of the intent to open fire, with sufficient time given for the warning to be observed. The use of firearms should not be made with the intention to kill the detainee, as this is only authorised in order to protect life.[1276]

976. The Commission received several testimonies of people shot and killed while trying to escape inhumane prison conditions and likely death.[1277] The use of firearms seems to be systematic in case of attempted escape, and witnesses have not reported being warned before shooting started. Several testimonies also referred to people "shot in front of everybody" or "shot in the head," or shot inside the detention facility, which suggests that firearms are used with the intention to kill the detainees.[1278]

> A witness told the Commission that during the transfer of detainees, one of them started running. He recounted: "*A soldier was shouting 'He is running away' and I heard them firing five or six times, and then I heard them saying 'We got him'.*"
>
> The Commission received reports[1279] of escapes from Wi'a in June 2009, during which many detainees were shot dead. The attempt took place out of increased desperation for the conditions in the camp and the spread of the meningitis epidemic that led to the death of hundreds of people.[1280] "*Our life was very hard in the underground prison, in particular for the heat and the number of people in the cell. Even the water was limited and hard to drink; the lack of hygiene was unbearable. We were not able to wash ourselves. We had no medical assistance, we were not receiving treatment. The conditions were inhumane. We were 400 men with underage and old people. We all decided to run away. We thought if we were succeeding, at least we had a chance to survive. During the night of 15 June 2009 we started to run away. Most of us managed to escape but many were shot dead. The moment we threw down the fence, I could see six to eight bodies but they kept shooting and many others were injured. I would like to express the horror we were living in. Our conditions in the prison were unbearable. If we wanted to have a chance to survive, we had to try to run away. We were already dead; this is why we decided to take the risk to run away. I had never thought I would ever see something like this in my life.*"
>
> Another witness recounted an attempted escape from Adi Abeito. There was a shortage of food and that evening some detainees had not received dinner: "*We had one cup of water with sugar and one piece of bread of 80-100 grams in the morning and in the evening. The weather was cold. It is not enough. People inside started to get upset. We discussed and decided to push the door at midnight, escape and join our unit. When we forced the door, many soldiers were waiting for us. The Colonel had asked help to another unit because 'Ethiopians' were trying to escape. At midnight, when we forced the door, they started to shoot at us. Outside the hall it*

[1275] Rule 54 of the Standards minimum rules for the treatment of prisoners and article 3 of the Code of Conduct for Law Enforcement.

[1276] Principles 9 and 10 of the Basic principles on the Use of Force and Firearms by Law Enforcement Officials.

[1277] TSH082-TSH085, S144p, TSH026, TSH019, S150, TCDP070, S090.

[1278] TSH026, TCDP023, TSH019 TNR024.

[1279] TCDP075, TCDP023, TSH019, TFM005.

[1280] See infra.

> *was like a war zone. At that time four to six people died and more than 20 others were injured*."

Adi Abeito escape attempt, 4 November 2004[1281]

977. On 4 November 2004, a major *giffa* took place in Asmara. Thousands of young people, reportedly mostly men, were taken off the streets, from shops and homes. Witness reported that "*they arrested everyone from the streets,*" men, women, children, elders, foreigners, priests, students, teachers, etc.[1282] People arrested were taken first to intermediate collection centres, for example a neighbourhood cinema, and then on to Adi Abeito prison.

978. All public sources and Commission's testimonies from victims and witnesses agree in saying that by the evening several thousand people had been gathered in the prison – so much so that they had to be placed in several parts of the prison compound, including crop storages, hangars, cells and fenced areas.[1283]

979. By ten o' clock in the evening, in one area of the prison the crowding had become so overwhelming that detainees were increasingly pressed against the wall, which eventually collapsed in part. Armed guards stationed outside saw people coming out and started shooting.[1284] In the words of one of the detainees:

> "*It was so crowded and people were pushing so hard to get out and the wall collapsed. All of a sudden the army came and shone lights on us and surrounded us. The army started attacking the people as if there was another army in front of them. Some people tried to hide in the holes in the ground, but were then squashed and died there*."

980. It is unclear how many people died in the shootout or as a consequence of being trampled. After having initially denied the claims, Government sources eventually reported that two people had died.[1285] Other numbers mentioned by several sources are twelve, thirty-seven and up to fifty-four. It is unknown how many people were wounded.

981. Prison authorities started checking papers shortly thereafter in order to release detainees.

982. The European Parliament, as well as several other organizations, condemned the events and requested a thorough and independent investigation in order to bring those responsible to justice.[1286] The Commission has found no evidence that such an investigation was ever conducted.

(ii) Starvation, sickness and epidemics

983. The squalid conditions of detention in the overcrowded and windowless cells, combined with acute malnutrition, dismal hygiene and dirty water have led to the death of many inmates, including through several outbreaks of epidemic diseases. The Commission received many testimonies mentioning cases of deaths in custody resulting from a lack of

[1281] Open sources for this incident include Amnesty International, UA 301/04, AFR 64/008/2004, 9 November 2004, and the European Parliament resolution on the human rights situation in Eritrea, 18 November 2004.
[1282] TSH084, TSH085, TCDP070.
[1283] TSH084, TSH085.
[1284] TFM027, S149, TLA041, TCDP070, TSH084, TLA035.
[1285] See BBC article "Eritrean jail deaths 'overblown'", 08 November 2004.
[1286] European Parliament resolution on the human rights situation in Eritrea, 18 November 2004.

access to or denial of medical care and medication for treatable diseases, such as malaria and diarrhoea.[1287]

> A former inmate incarcerated in Hashferay in 2012-2013 described the health situation in custody: "*There is shortage of medicine, there is some but this is not enough. Two persons died when I was there, one of diarrhoea and one of malaria*."
>
> A witness, who stayed 18 months in Dahlak told the Commission that at least six prisoners died in custody while he was detained.
>
> A witness detained as a child in Gergera prison in 2014 told the Commission that he witnessed many sick inmates: "*So many people were sick and some of them died. If someone claimed that he was ill, they would give him pills. The worst thing I saw was the dead people. One person in the room I was in died. I did not know him. He was sick. He was suffering from malaria. When he fell sick, a doctor was called and saw him. He said he was fine and he was allowed to stay outside a little while and he was taken back to the room. He died at night.*"
>
> A witness imprisoned in Massawa in 2012 recounted the following incident: "*One man got an infection in his finger, near his ring. He was newly married. He was denied medical treatment, the guards refused to take him to the hospital. He kept asking to be sent to the hospital. [One of the leaders] shot him dead. His family was not told*."

984. Nine of the eleven G-15 political prisoners and a number of journalists detained in the wake of the 2001 crackdown are reported to have died in custody.[1288] In the course of its investigation, the Commission has not been able to ascertain this information. Furthermore, the Government has neither confirmed nor denied any of these reports.

985. Many inmates who get seriously ill often survive only because of medicine supplied by their families. Not all detainees, however, have access to external supplies of medicines. Information received by the Commission indicates for instance that believers of un-authorised religious communities face discrimination in the little access to health care and medication available to inmates. They are often denied the possibility of asking their family to bring lifesaving medication or are refused medical care. The Commission received information about a number of religious prisoners who have reportedly died in detention due to malaria, diabetes complications, meningitis, pneumonia, and anaemia, refusal of medical treatment, dehydration, starvation and failing health, among others.[1289]

986. Epidemics regularly ravage military training camps and other detention facilities, as illustrated in the example below.

Conditions of detention and death in detention: diseases outbreaks at Wi'a

987. Particularly stark evidence of the consequences created by the supremely harsh and unsanitary conditions of Eritrean places of detention is provided by Wi'a – a prison camp and military training centre located in a desert area about 30 kilometres from Massawa, in the south of the country.[1290]

[1287] TCDP016, TNR022, TCDP026, TAM055, TCDP031, TSH026, TFM035, TSH019, S037.
[1288] S073, S108.
[1289] S071, S109, S129.
[1290] See also chapter VI, C, 1, National service and Annex VI.

988. Cases of people dying while held in Wi'a were first reported in 2001, when thousands of students were forcibly taken from Asmara to the camp to be trained, in implementation of the Warsai Yikealo Development Campaign.

989. The unforgiving heat, lack of shelter, limited access to water, food and medicine, overcrowded conditions and primitive sanitation led to a number of diseases' outbreaks that caused many more victims through the following years.

990. In November 2004, reports indicated the death of up to 161 persons. In 2006, a meningitis outbreak hit the prison, which at the time was estimated to hold about 3'000 prisoners. Wi'a was then allegedly locked up, with "nobody allowed in and out."[1291]

991. In line with documented periodicity for the African meningitis belt, Wi'a then saw the epidemic wave continue during the following three years. Epidemics were exacerbated by the existence in the camp of all of meningitis' known risk factors: medical conditions and concurrent infections (caused by lack of medicaments and physical weakness brought on by on-going debilitation of prisoners and trainees); demographic and socioeconomic conditions (movement of people, overcrowding and poor living conditions); and climatic conditions (drought and dust storms).[1292]

992. The Commission received testimonies of an outbreak in 2007, killing an unknown number of prisoners and trainees; of a smaller outbreak in the course of 2008; and finally, of a bigger epidemic that in 2009 led to the death of hundreds of people and finally the temporary closure of the camp.[1293] "*Bodies were buried in the fields. The graves were not marked. Initially, the leaders thought that the situation was normal. Then, they got worried. Afterwards, they moved the camp to a different location. In August, we left the camp.*"

993. The health service in Wi'a was almost non-existent. For a prison with the capacity of 15,000 prisoners, there is one health station: poorly equipped, with no laboratory, extremely constrained by shortage/lack of medicine; it is also poorly staffed. It is run by health assistants on their national service duties. What is worse is that since detainees are not trusted, instead of medical treatment they receive punishment for being sick or ill. As a result many have died because of lack of treatment combined with the effect of beating and torturing.

994. Testimonies corroborated by satellite imagery[1294] obtained by the Commission indicates that Wi'a has been reopened since 2009.

(iii) Heat stroke and suffocation

995. Information received by the Commission indicates that inmates regularly die in custody due to the heat strokes brought on by extreme temperature and suffocation. Most of the deaths reported to the Commission took place in closed underground and overcrowded detention facilities located in inhospitable desert area.[1295]

[1291] S149, TNR082.

[1292] Information on the African Meningitis Belt and the risk factors of meningitis is taken from the Meningitis Vaccine Project, available at http://www.meningvax.org/epidemics-africa.php.

[1293] TBA044, TBA091, S108, TBA058, TCDP075, TCDP026, TAM020, TBA100, S071, TRDV003, TNR055. Open sources were also consulted on these events, in particular Open Doors, the US Department of State and the Eritrean Human Rights Electronic Archive (HREA). While the outbreak is confirmed, the reported number of 526 victims of the 2009 outbreak could not be confirmed.

[1294] See Annex VI.

[1295] S001, S006, S077b, TBA100, TCDP015, TFM038, TCDP072, TFM038, TSH021, TNR081, TSH018.

A man detained in an underground prison in Me'eter described the effect of heat on the inmates: "*Me'eter is the worse place. It was too hot, our skin started peeling, it became white and some people became crazy because of the heat. Some people were bleeding because of the heat. I saw one person die. Once they took four persons among us and they disappeared. We know that they never went back to their village. They were unconscious, they were very ill. One more started getting crazy; he fell down and started vomiting. They took him out and he never came back*."

A man rounded up during a *giffa* in 2008 and taken to Wi'a recounted: "*Those who had been caught trying to escape were put in the water tank prison at Wi'a. We call it underground because you have to get in by climbing down. After three days we were let outside, and some people escaped at that time. As a punishment they put all of us in the tank. There were over 200 of us. On the first night, one person suffocated to death. We tried to ask them to open a door, but they would not. They took the dead body out in the morning. In the morning people started to have diarrhoea because of a lack of oxygen. We were asked to take out all the sick people, but everyone was sick so it was difficult. The following day, three men were taken out because they were nearly dead. One died en route to the hospital, the other two did not return*." Prisoners were finally moved to another type of cell two days later.

In letters that a detainee managed to smuggle out of Me'eter, he explains: *"One of them died when they put him in the underground prison. There is a mountain and they dig holes in it and those are used as punishment. They put prisoners in there, then they close the hole and there is no air. He died when they put him in that hole because he could not breathe. They opened the door, they took him out. All the others were sick and they had to drag them out because they could not move any more – there were several people in one hole."*

(iv) Death as a consequence of torture[1296]

996. Information received by the Commission indicates that several inmates died as a result of torture sustained mostly during interrogations.[1297]

(v) Suicides

997. The Commission heard several reports of detainees committing suicide out of desperation.[1298]

A former detainee recounted: *"One prisoner committed suicide. This person was suspected of being homosexual and this is illegal in Eritrea. He underwent many interrogations. One of the interrogators beat him very badly but they had no evidence to prove that he was homosexual. Once he was being brought to the toilet, he slipped out of the group, went into the guards' room and shot himself. This happened on 19 August 2007 at 6 a.m."*

Another one told the Commission: *"Those injured during the war were still with us and their wounds were infected. At the end they built some centres where they were washing their wounds with some disinfectant. One of them tried to commit suicide by*

[1296] See Chapter VI, B, 4, Torture, ill-treatment and punishment.

[1297] S006, S014, S071 (14 deaths reported), S075, S077j, S143k, S144p (16 deaths reported), TBA044, TBA054, TBA071, TBA095, TCDP013, TCDP027, TFM007, TNR032, TNR036, TNR057, TNR081, TSH004, TSH017, TSH019, TSH026

[1298] TLA032, TNR032, TFM030, TSH026, TCDP072, TCDP071.

drinking this liquid. They were not receiving much attention or treatment so from times to times people died."

(vi) Disposal of bodies and notification to families

998. In accordance with the internationally recognised standards, next of kin or family of a detainee who has died, is seriously ill or injured should be immediately informed.[1299]

999. The Commission heard several testimonies indicating that families are not notified about the death of a relative and that bodies are buried around the prisons.[1300] Some families find out about the death of their loved ones through other prisoners who have been released or when they visit the prison. In some cases, however, families are notified of the death[1301] or they are called to collect the body of their relatives[1302] or to pick them up on the brink of death.[1303]

(vii) Principal findings

1000. The Commission finds that the Eritrean authorities are accountable for the violation of the right to life of detainees who were under their responsibility and died in custody. Deaths in Eritrean prisons result from excessive use of force by penitentiary authorities; torture; suicide due to the deterioration of the mental health of detainees; and squalid and insalubrious conditions of detention that, combined with starvation food rations, render detainees prone to fatal diseases and epidemics. The Commission finds that in all these cases, the Eritrean Government did not abide by its positive obligation to protect the life of the persons in custody and its obligation of due diligence to investigate death incidents.[1304]

4 Torture, ill-treatment and punishment

(a) Legal framework

1001. Article 1 of the Convention against Torture defines torture as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity."

1002. By this definition, torture is not a kind of act but a legal qualification of a treatment inflicted on a person. In order to qualify as torture, the treatment should cause a physical or mental pain or suffering that reaches a certain level of severity; it should be inflicted intentionally for a specific purpose; and a public official should be involved, either directly or indirectly.

1003. The right not be subjected to torture is absolute and no exception or derogation is allowed under international human rights law, even during states of emergency threatening the life of the country, as provided among others by article 7 of the International Covenant

1299 Rule 44 of the UN Minimum Standards Rules for the treatment of prisoners.
1300 S150, TCDP031, TLA032, TCDP026, TNR024.
1301 TBA044.
1302 TSH079, TAM055.
1303 S071, TFM011, TSH054, S129, TFM007, TBA071, TCDP013.
1304 Right enshrined in art. 6 of ICCPR; art. 6 of CRC; and art. 4 of ACHPR.

on Civil and Political Rights and article 5 of the African Charter on Human and Peoples' Rights.[1305]

1004. A treatment during which one of these elements is missing may constitute cruel, inhuman or degrading treatment or punishment (also called ill-treatment). Cruel or inhuman treatments are those directly or indirectly involving a public official and that cause lesser pain or suffering; or treatments directly or indirectly involving a public official that cause severe physical or mental pain, but are not committed intentionally or for a specific purpose. Degrading treatment causes a particular humiliation or debasement but does not necessarily cause severe pain or suffering. It may be committed without a particular purpose. Such treatments also include those inflicted as a form of punishment. Ill-treatment constitutes a violation of the right not to be subjected to cruel or inhuman or degrading treatment or punishment.[1306]

1005. Eritrean law that was in force at the time of the investigation provided that "any public servant who treats persons in an improper or brutal manner or in a manner incompatible with human dignity, especially by the use of blows, cruelty or physical or mental torture to obtain a statement or a confession, or to any other similar end, is punishable with a fine or simple imprisonment."[1307] This disposition was not in line with the definition of torture under international human rights law as it does not include, among other things; torture inflicted at the instigation of or with the consent or acquiescence of a public official or any person acting in an official capacity; torture inflicted on a third party; and torture as a form of punishment.

(b) Extent of torture and ill-treatment in Eritrea

(i) Widespread and systemic

1006. Torture is widespread throughout Eritrea. It is inflicted on detainees – in police stations, civil and military prisons, and in secret and unofficial detention facilities – but also on national service conscripts during their military training and throughout their life in the army. Testimonies and confidential submissions collected by the Commission indicate that torture has been employed during the past twenty years and that the objectives, means and methods of torture employed throughout the country have not changed much during that period. Information also points to the fact that the same torture and punishment methods are applied in military training camps and in detention facilities. The Commission finds that the recurrence and prevalence of certain torture methods constitute strong indications that torture is systemic and inflicted in a routine manner.[1308]

1007. Based on testimonies and confidential submissions received, the Commission finds that torture is used as a means to subjugate national service conscripts, instil fear among the population and silence opposition. It also appears that orders to torture a suspect or a conscript are either given by officials or with their consent or acquiescence.[1309] Recurrence, coherence and similarities among testimonies received by the Commission are clear indicators of the existence of a deliberate policy.[1310]

[1305] Right enshrined in art. 1 of CAT; art. 7 of ICCPR; art. 37 (a) of CRC; art. 5 of ACHPR.

[1306] Right enshrined in art. 16 of CAT; art. 7 of ICCPR; art. 37 (a) of CRC); art. 5 of ACHPR.

[1307] Article 417 of Transitional Penal Code, which was replaced by the new Penal Code promulgated by the Eritrean government on 11 May 2015. The commission hopes that torture is adequately criminalised under the new Code.

[1308] See A/HRC/13/39/Add.5, para. 56.

[1309] TCDP008, TBA068, TFM025, S077k.

[1310] TCDP071, TCDP065, TFM025, TCDP010.

A former interrogator explained: "*Those who guard the prisoners have the permission to torture anyone in the prison but sometimes special people come to interrogate some of them. … The interrogators were also from the military but higher officials.*"

A former National Security agent confirmed the flexibility given to interrogators and the fact that they receive instructions to torture: *"[Agents of the National Security Office] can use any kind of information gathering techniques, including torture… We are informed if the person is supposed to be jailed or tortured.*" He also explained that an interrogator from the main national security office is called to deal with "*serious cases*".

A national service conscript, who had been assigned as the leader of his row, explained how he had to take his team to collect wood and how this led to torture: *"Once we returned and one guy was missing; he had escaped. Everyone started searching for him, without success. One colonel started swearing. He insulted my mother and slapped me because he assumed I had aided the person who escaped. He asked my leader to impose military punishment. A bit later, another person escaped from my row. It was a horrible time. I was beaten very badly by all commanders. Trainers from other teams came to beat me with sticks and kicked me with their military boots. About ten people were beating me at the same time, two from each ganta [platoon] of our battalion, plus others. They beat my back with small branches from the tree. There are still small dots on my back and I still have marks of their boots. On my eyebrow I still have a scar of the punches*."

1008. Testimonies from former judges who used to conduct monitoring visits of places of deprivation of liberty and former prison guards also indicate that the court and judges are aware of the unlawfulness of detention and the treatment of detainees but are not given access to those arbitrarily arrested and detained and are silenced when they inquire about them. [1311]

(ii) Perpetrators

1009. Torture is generally inflicted with a view to obtaining self-incrimination, extracting confessions and information, and intimidating, suppressing, punishing, humiliating or subduing detainees and national service conscripts.

1010. Anyone in charge of detainees or conscripts can inflict torture and other forms of ill-treatment. Given the system of rotational occupation within the security sector of national service conscripts, it is very likely that young conscripts - victims of torture themselves during their training - are then taught, formally or informally, to apply the same methods when they are assigned to work as trainers, interrogators, prison guards, at the border control, etc.

1011. Guards, interrogators, trainers or officers do not seem to be aware of the absolute prohibition of torture or to receive human rights trainings for interrogation or for the handling of detainees and national service trainees. On the contrary, torture and ill-treatment seem to be condoned, encouraged and even instructed by their superiors. [1312]

A former interrogator in Ala explained: "*There were differences among interrogators, some were beating a lot, others not. There was no instruction given, just that we had to stress them. … There was no rule when we had to stop torturing*."

[1311] See chapter VI, B, 1, Administration of justice.
[1312] TCDP036, TCDP071, TNR001, TAM042.

Another witness selected to work as interrogator explained: "*Your job is to torture and abuse them when interrogating them. Some are hung up, it was the first time I could hear such screams and I almost vomited. I had never been trained for interrogation but during these two-three weeks, I was shown*."

A former trainer at Sawa noted: "*The trainers decide about the punishment. There is no manual on what kind of punishment for a certain type act. There are no rules*." A witness who was punished during military training in Sawa confirmed: "*The punishment was administered at the whim of the trainers.*"

A witness, who was regularly punished during military training, explained: "*It was usually my commanding officer who would punish me, he would receive orders but it would be up to him to punish me and decide how."*

(iii) Impunity

1012. The Convention against Torture and the International Covenant on Civil and Political Rights provide that those who violate the prohibition of torture, or other cruel, inhuman or degrading treatment or punishment, whether by encouraging, ordering, tolerating or perpetrating prohibited acts, must be held responsible.[1313] Detainees and conscripts should be able to lodge complaints against torture and ill-treatment, and complaints should be investigated promptly and impartially by competent authorities.[1314]

1013. None of the testimonies received by the Commission refer to the existence of a complaint mechanism or to the possibility of accessing it, and not a single one mentioned that a perpetrator of torture was held accountable and punished with sanctions. Impunity seems indeed to be the norm.[1315]

A former interrogator told the Commission that "*when a prisoner was beaten very badly nobody asked questions.*" He added: "*Prisoners have no rights. This is the Government's policy.*"

A conscript detained in 2011 told the Commission: "*The military rule does not allow any torture. However, there is no way to complain. To whom should you complain? You cannot oppose the authorities. The prison is isolated. There is no one there, so they can do whatever they want to do. There is a saying in prison: If you scream, only the sea will hear you*."

1014. The Commission also received indication that torturers are sometimes masked in order to disguise their identity.[1316]

A former inmate detained in Adi Abeito in 2013 recounted: "*The people who torture … wear masks. They hit … with square metal sticks. It hurts a lot. It can break your bones. They wear black masks, black gloves, kind of black boots so that you cannot recognise the trousers. No one knows where the torture takes place. When they take you to the torture room, it is always dark. You do not know where it is. Only in the morning, when you get conscious, when your fellow prisoners help you in the cell, you realise that you have been tortured."*

[1313] Article 7 of ICCPR, article 4 of CAT.
[1314] Article 2, para. 3 of the ICCPR, article 12 and 13 of the CAT.
[1315] TCDP004, TNR001, TNR002, TNR042, TCDP036, TBA068.
[1316] TCDP032, TBA069.

(c) Torture and punishment methods

1015. Torturers usually combine a variety of methods in order to inflict intense physical and psychological pain and suffering and achieve their aim. Victims may for instance be tied up for extended periods of time in extreme temperatures or locked in minuscule cells in social and sensory deprivation before or after the interrogation and the beatings. [1317]

> A former interrogator in Ala and Mendefera prisons explained: "*Torture includes beating with whips, plastic tubes and electric sticks, standing [under the sun] on a very hot sunny day at noon, tying the hands and feet like the figure of eight, tying the hands and feet backwards (known as "helicopter"), tying to trees, forcing the head down into a container with very cold water, beating the soles of the feet and the palms. In addition, the interrogator is allowed to use whatever fantasy comes to his mind. Most of the time, we were beaten with a stick, electric wires and ropes while the person was handcuffed and seated with a stick under the legs or placed under the sun. There is a room for interrogation made in bricks, if you are afraid that people will shout*."

> A former prison guard in Tessenei used to see detainees taken to Blocco Tessenei by intelligence officers for their interrogation. He recounted: "*They would show up in pairs, holding a stick and a gun, usually with a Toyota. They would bring a piece of paper with one name and ask for the person. We would not ask any question. They would start with torturing, tying up the person on the back of the car and pulling the persons on the ground, using different chains, with metal, tie them up with the head down and beat them on the soles of their feet. They would put a plastic bag over their head for oxygen deprivation. They would leave them overnight. Most of these things would happen at night. Detainees hate nights. They do not know what would happen to them. The detainees would smell of urine, and the women often had their period due to the stress*."

1016. In addition, inmates and conscripts are often able to hear screams of torture and see their mates faint after their "treatment", which builds up their fear and creates intense distress. [1318]

> A witness detained in 2013 in Adi Abeito said: *"You hear screams of torture, even during the night. You always wonder who will be next. People think they will die."*

> Another witness explained his interrogation in the 2nd Police Station/Karshele high-security prison: "*Most of the time they were coming at night, around 9-10 p.m., sometimes after midnight. They can use any methods: beatings with sticks, ropes, pistols, kicking or drowning you in a barrel full with dirty water until you confess your involvement. You hear a lot of cries, especially at night. You hear sounds of torture.*"

1017. In the military, conscripts are regularly punished and humiliated in front of others to reinforce military discipline and to instil fear, in particular aimed at deterring them from escaping. [1319]

> A conscript explained the treatment of those who tried to escape from military training in Wi'a: "*The guards shaved the heads of the people who had unsuccessfully tried to escape. They put a notice on their shirt saying something like*

[1317] TCDP036, TBA001.
[1318] TBA069, TCDP008.
[1319] TSH085, TAM018.

'I am a lesson, learn from me' in front of us. They put them in small houses and took their shoes. They had to walk barefoot in 40-45 degree heat."

Another one also spoke about the treatment of the many conscripts who tried to escape from Wi'a: *"When they were caught, they were tortured in front of everyone and left in the sun. Once, they forgot someone in the sun and the person died*."

1018. Witnesses mentioned many different methods of torture. Some of them are briefly described below. Torture and ill-treatment inflicted on detainees should be read in conjunction with the findings related to the conditions of detention described in Chapter VI, B, 3. Methods applied during military training and in the army form part of the overall conditions during military training and life in the army, described in chapter VI, C, 1.

(i) Beatings[1320]

1019. During the beatings victims are usually tied, including with cuffs, and water is sometimes poured over the body, before or during the beatings. Witnesses reported being beaten with sticks (plastic, wooden, metal, square, with nails, etc.), clubs, handles of guns, plastic rods (with wires inside), whips, electric or rubber wires, leather straps, plastic tubes, water pipes, ropes, chains, branches, thorny sticks, etc. They are also punched, slapped and kicked all over the body, including in their face, head, ribs, genitals and on the soles of the feet. In detention, victims are often beaten at night, some on a regular basis and during several months.

1020. Some of the witnesses were beaten by several persons at the same time and many said the beatings were so harsh that the stick used for that purpose broke. Many victims fainted in the course of the beatings and several reported severe injuries such as broken bones and teeth, open wounds and bruises. The Commission also received reports of deaths due to the beatings and long-term effects such as spinal damage (some resulting in paralysis), hearing impairment and memory loss. A witness was beaten so much on the soles of her feet that the skin came off in one piece. She explained that for years her feet remained sore and she could not walk properly. Another witness reported that a conscript was beaten so hard during the training in Sawa that he sustained leg injuries and is dependent on crutches; and another one developed a mental illness after he was kicked on his face until he fell and violently hit his head.[1321]

1021. Tying' methods described below are either used as a stand-alone punishment or accompanied with beatings before, during or after the tying.

[1320] S014, S033, S046, S048, S050, S064, TCDP026, S077c, S077dd, S077e, S077g, S077k, S077pp, S077q, S077, S077, S103, S115, S125, S135S136, S143e, S143q, S144 & TCDP076, S144j, TAM012, TAM016, TAM023, TAM026, TAM027, TAM028, TAM029, TAM043, TAM055, TAM056, TAM065, TAM071, TAM072, TAM073, TAM074, TAM075, TBA001, TBA003, TBA025, TBA032, TBA038, TBA044,TBA050, TBA051, TBA054, TBA058, TBA064, TBA066, TBA068, TBA069, TBA071, TBA075, TBA076, TBA080, TBA085, TBA087, TBA090, TBA091 & S143r, TBA099, TBA100, TBA101, TCDP006, TCDP008, TCDP015, TCDP027, TCDP031, TCDP032, TCDP034, TCDP036, TCDP041, TCDP049, TCDP051, TCDP052, TCDP053, TCDP059, , TCDP062, TCDP063, TCDP066, TCDP068, TCDP070, TCDP071, TCDP072, TCDP075, TFM001, TFM009, TFM016, TFM030, TLA010, TLA013, TLA015, TLA020, TLA023, TLA025, TLA026, TLA029, TLA032, TLA034, TLA036, TLA038, TLA040,TNR012, TNR024, TNR032, TNR038, TNR042, TNR052, TNR056, TNR068, TNR078, TNR079, TNR081, TNR082, TSH004, TSH004, TSH013 & TSH014, TSH017, TSH019, TSH025, TSH026, TSH032, TSH033, TSH034, TSH035, TSH036, TSH040, TSH042, TSH052, TSH054,TSH057, TSH066, TSH076, TSH077, TSH082, TAM029 TAM038, TAM039.

[1321] TNR045, TSH013.

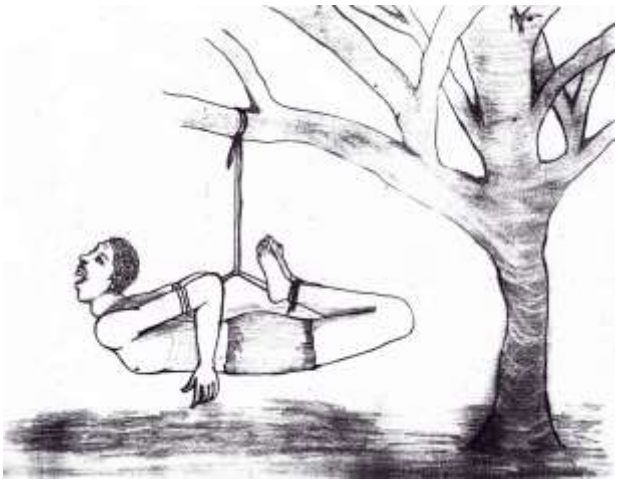
(ii) Helicopter[1322]

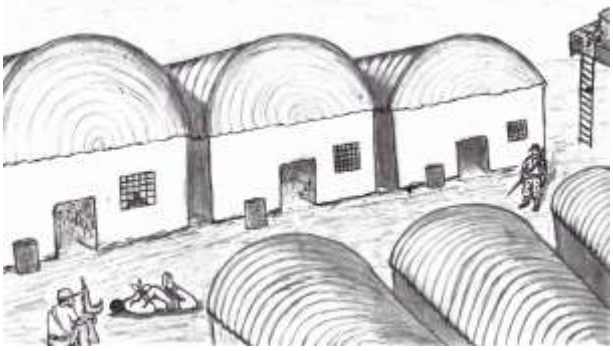
1022. The hands and the feet of victims are tied behind their back and they are made to lie on the ground, face down, or suspended in the air. Some witnesses said they were tied with metal strings or plastic ropes. Victims are often beaten or kicked while being tied or suspended in the *helicopter* position. Testimonies reveal that milk or sugared water is sometimes poured over the body of the victims to attract insects so that they are bitten but cannot relieve their itch.

1023. Victims may be tied for days outside, exposed to extreme temperatures. Witnesses said they are generally only released two or three times a day for meals and to relieve themselves.

1024. Witnesses explained that their arms and legs were wounded and bleeding by the ropes, which were generally placed on the same wounds day after day. After a while, the upper and lower limbs would swell and feel numb and the blood flow was blocked. This sometimes resulted in gangrene and ultimately led to amputations.

Helicopter[1323]





[1322] S004g, S064, S077e, S115, TAM001, TAM028, TAM029, TAM045, TAM055, TAM069, TAM075, TBA003, TBA034, TBA066, TBA085, TCDP004, TCDP005, TCDP015, TCDP025, TCDP026, TCDP031, TCDP032, TCDP034, TCDP036, TCDP049, TCDP052, TCDP058, TCDP062, TCDP071, TCDP075, TFM014, TFM030, TLA020, TLA032, TNR012, TNR057, TNR072, TSH019, TSH026,TSH054, TSH077, TAM045 TAM029 TSH019 TCDP004.

[1323] Drawings provided to the Commission by an Eritrean torture survivor and published with permission of the artist.

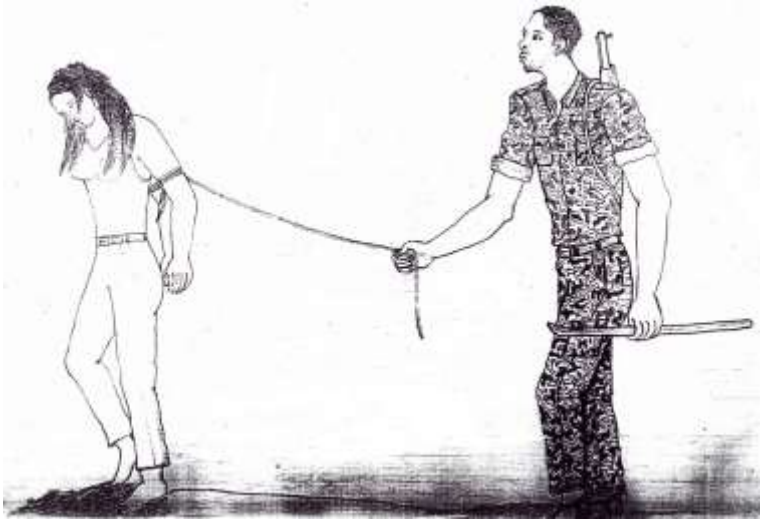
(iii) Otto[1324]

1025. Witnesses described having their arms tied behind their back, face down and lying on the ground. In this position the elbows are brought together. The ties are sometimes made of metal cords. A witness explained a variant consisting in placing two pens between the shoulder blades and tying the victim tight so that the pens penetrate into the flesh.

1026. Even years later, several witnesses displayed scars on the arms and the wrists due to the ropes. Several said victims had their blood circulation blocked by the ropes and they had to undergo an amputation because gangrene had started. A victim also explained that the bones in his chest broke because the torturer pushed his back with his feet while pulling his arms backwards.

1027. In the army, conscripts are often tied up outside of working hours, to ensure that the punishment does not interfere with their work assignments.

Otto[1325]



(iv) Jesus Christ /Crucifixion [1326]

1028. Witnesses described having their arms spread out and their wrists tied on the branches of a tree, sometimes with electrical cords, and being left hanging in such a way that they touch the ground only slightly with their toes. Former conscripts reported that in some military units, soldiers were tied in this position to the cannon of a tank. A witness reported being left in *Jesus Christ* position for 24 hours; another one explained he was only untied when foam started to come out of his mouth. A former soldier described that the hands of conscripts would swell in this position because the blood could not circulate, noting that as a consequence one of his comrades had his hand amputated.

[1324] S004g, s064, TCDP026, S077pp, S144&TCDP076, TAM027, TAM031, TAM038, TAM064, TAM075, TCDP036, TBA054, TBA060, TBA099, TCDP005, TCDP015, TCDP036, TCDP049, TCDP052, TCDP061, TCDP068, TFM014, TNR081, TBA100, TLA004, TLA004 TAM031 TAM038.

[1325] Drawing provided to the Commission by an Eritrean torture survivor and published with permission of the artist.

[1326] TAM043, TBA025, TBA068, TCDP055, TBA100, TCDP066, S064, S077o, TAM026 TFM020.

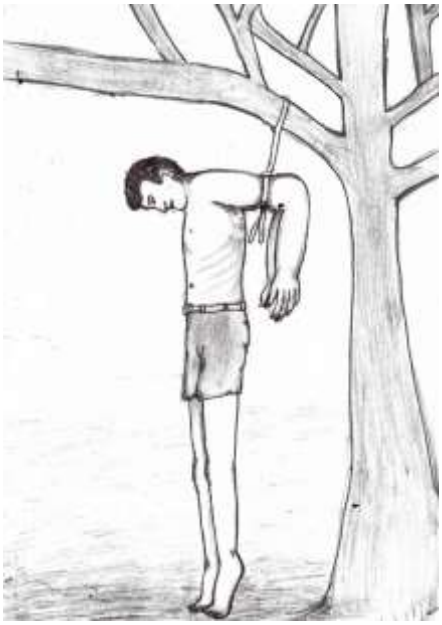
1029. A variant consists of hanging the victim with the wrists tied together to the ceiling of the torture room or the branch of a tree. A witness also explained that onion powder was sprayed in his eyes while he was tied up in the *Jesus Christ* position.

(v) Almaz (diamond)[1327]

1030. The *almaz* or *diamond* method is a variant of the *Jesus Christ* position described above. Victims are generally hung to a tree with their elbows tied behind their back and are forced to stand on tiptoes. A witness said this punishment can last up to 12 hours.

1031. Several victims fainted after a while and witnesses described severe pain in their arms, even months after the torture, and sometimes long-term paralysis of the upper limbs. A witness explained that the arm of a victim had swollen to bursting point after being hung from a tree in the *almaz* position for six hours. The pain was so intense, he could be heard screaming "*Ciao*, I am dying" all night.

Almaz[1328]



(vi) Torch[1329]

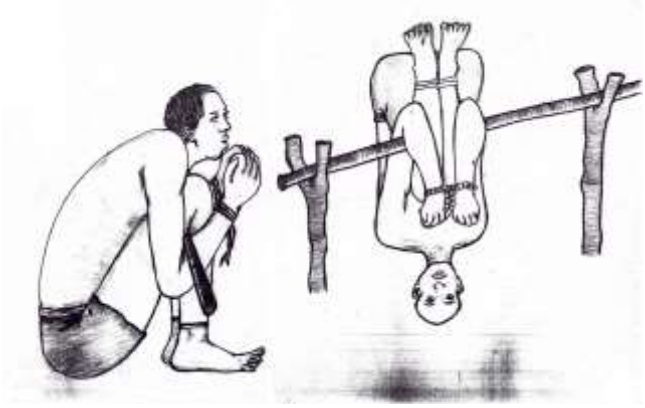
1032. Many witnesses described having their hands and sometimes legs, tied or handcuffed, a stick placed under the knees, and being hung upside down and beaten, especially on the soles of the feet.

[1327] S004f, S004g, S143i, TAM029, TAM069, TAM075, TBA066, TCDP014, TSH019, TSH019, TNR030, TAM029 TNR030.

[1328] Drawing provided to the Commission by an Eritrean torture survivor and published with permission of the artist.

[1329] S004g, TAM074, TBA031, TBA038, TCDP049, TCDP051, TCDP059, TCDP061, TCDP071, TFM001, TLA025, TLA029, TNR019, TNR038, TSH025, TSH034, TSH036, TBA031.

Torch[1330]

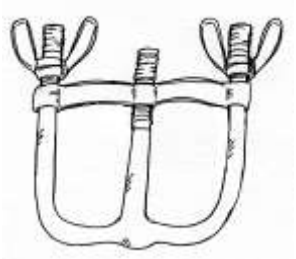


(vii) Ferro[1331]

1033. Several testimonies refer to the use of ferro during interrogations. They described 'special' iron handcuffs with bolts that can be screwed from underneath to tighten them *("the metal goes inside the flesh").* This creates severe pain with every move and stops the blood flow. Depending on the replies given to the questions of the interrogator, the *ferro* are tightened or loosened.

1034. Witnesses described severe pain, numbness in the hands which swelled and bled and temporary paralysis due to these 'special' handcuffs. One said the paralysis lasted for three months, the pain six months, and six years later he still suffers from neurologic problems and feels pain in his arms. Some victims displayed scars on the wrists from the iron pin.

Ferro



(viii) Electric shocks[1332]

1035. Several witnesses reported the use of electric shocks on their body during interrogation. A witness reported losing consciousness after having received electric shocks on his fingers and toes.

1330 Drawing provided to the Commission by an Eritrean torture survivor and published with permission of the artist.

1331 TBA032, TLA040, TNR024, TCDP066, TCDPO61, TBA091&S143r, TLA025, TSH079, TBA058, TFM014.

1332 S048, TBA038, TBA044**,** TCDP032, TCDP051, TSH040.

(ix) Gomma and some variants[1333]

1036. A victim reported being tied in the *otto* position and placed inside five rubber tyres, head upside-down. His legs and his feet were then beaten.

1037. Another victim reported a variant, whereby he was tied up in the *helicopter* position with eyes and mouth shut, and forced to lie down on his chest in a narrow barrel in a very uncomfortable and extremely painful position.

1038. A witness described detainees having to take a small container to the top of a hill several times, then being forced to enter into it and being pushed down the hill. Due to this torture, several detainees reportedly become mentally deranged.

(x) Mock drowning[1334]

1039. Witnesses described the victims' head being submerged in water – sometimes dirty – so that they believe they will drown. While most testimonies refer to a barrel or a container full of water in the interrogation room, one reported that the victim was tied to a tree trunk and put all day into a partially empty well.

(xi) Buried alive, death threats and mock executions[1335]

1040. The Commission received several testimonies describing detainees being forced to dig a hole into the ground, "like a grave" and threatened to be buried inside. Some witnesses were forced to enter into the hole, had dirt piled in it up to their neck and were then threatened with execution or scared with bullets shot next to them. Another said a hammer and a shovel were hung on the door of the interrogation room and he was ordered to tell the truth, otherwise he would be killed with the hammer and buried with the shovel.

1041. Several witnesses told the Commission the interrogators pointed a rifle or a gun to their face and threatened them with death.

(xii) Staring at the sun[1336] *and being exposed to the scorching sun*[1337]

1042. Several witnesses described a punishment method consisting of being forced to stare at the sun for several hours, and often during several days, when the sun is at its brightest. Victims are reportedly beaten if they close their eyes or move their head away.

1043. Testimonies also reveal that victims are otherwise exposed to the sun during the hottest hours of the day. Witnesses were for instance tied up and forced to lie down or to roll on the hot sand or on iron tanks under scorching sun for several hours, sometimes day after day; or forced to walk barefoot on burning ground. A witness reported for example being chained and left outside, under the sun, from 8 am to 6 pm for forty days. During military training, witnesses were forced to sleep on the hot sand, at temperatures between 35 to 40 degrees, some of them over a period of up to two weeks.

[1333] TCDP023, TCDP062, TCDP052.
[1334] S014, S143e, TBA068, TCDP008, TCDP036, TCDP063, TLA032.
[1335] S077q, TAM074, TCDP006, TSH004, TSH066, TSH076, TBA027, TFM014, TCDP049.
[1336] TAM051, TBA044, TCDP014, TCDP015.
[1337] TBA066, TBA075, TBA054, TBA047, TCDP015, TCDP027, TCDP032, TCDP034, TCDP036, TFM014, TLA004, TLA038, TNR038, TNR049, TNR058, TNR072, TSH004, TSH036, TAM042, TAM038.

(xiii) Cold water[1338]

1044. Water is poured on the ground and victims are asked to roll on the wet and muddy ground. They are then left dirty, lying on the wet ground and in cold weather (in the highlands) without possibility to wash, sometimes for several weeks.

(xiv) Use of human waste[1339]

1045. The Commission heard two testimonies describing the use of human waste as a form of punishment. In the first, victims tied in the *helicopter* position were covered with pillows previously soaked in the barrel used by detainees to relieve themselves. The second witness explained that soldiers were asked to pee on the detainees tied up in the *otto* position and attached to the lid of an oil tank.

(xv) Sexual torture[1340]

1046. Rape and other forms of ill-treatment and torture targeting victims' sexual and reproductive organs were documented by the Commission.

(xvi) Others[1341]

1047. In addition, conscripts serving in the army are subjected to other forms of punishment, which may vary from battalion to battalion.

(d) Torture and ill-treatment inflicted on detainees

1048. This section focuses mainly on torture and ill-treatment occurring in civil and military detention facilities, whether inflicted on civilians or national service conscripts. The Commission documented cases of torture in detention for the purposes of interrogation or as punishment for: presumed or actual attempt to flee the country or after forced return, deserting the army, overstaying a military leave or moving without permission, escaping prison, criticising or questioning policies and orders, asking questions or requesting something. In addition, it has been used against those suspected of challenging or questioning the Government (political opponents, journalists, conscientious objectors, religious leaders and congregations, ethnic groups), and those suspected of 'cross-border crimes' (black market money exchange, smuggling and trafficking, and terrorism).

1049. Punishments applied in the penitentiary context – which may also amount to torture and ill-treatment – are documented in the Detention chapter.[1342] The conclusions drawn in this chapter, however, take findings stated there into consideration.

1050. In the course of its investigation the Commission heard almost 300 stories of torture and ill-treatment covering the period between 1991 and 2015. The detention facilities mentioned most often by torture survivors are: Aderser, Barentu*, Sawa*, Adi Abeito, Tessenei*, Assab*, Wi'a*, the 2nd Police Station/Karshele*, Me'eter, Mai Serwa* and Ala.[1343]

1338 TCDP026, S077x, TAM027, TAM075, TBA032, TBA034, TCDP013, TFM014, TFM030, TNR012, TNR038.

1339 TCDP023, TBA054.

1340 TSH035, TLA030, TBA098, TSH095, TSH026, S035, TSH079, TBA054, TAM074, TBA001, TBA054, TNR036.

1341 TSH077 TNR042 TCDP022 TSH077 TNR043 TAM029 TAM032 TNR043 TNR037 TCDP022.

1342 See chapter VI, B, 3, Detention.

1343 An asterisk is added when several detention facilities were mentioned for a location.

1051. Torture is an established feature of the interrogation process; it is used to intimidate, suppress, punish and subdue suspects.[1344]

1052. In order to break detainees' resistance during interrogation, torture is often combined with particularly harsh conditions of detention aimed at exerting additional psychological and environmental pressures on them. For instances, inmates are often placed for long periods in extremely overcrowded and filthy cells or, on the contrary, in solitary confinement in minuscule, windowless, hot and stuffy cells, and deprived of any sensorial stimuli.[1345] Detainees are also often subjected to measures aimed at humiliating, dehumanising and creating psychological suffering, such as having their hair shaven off[1346] or their shoes confiscated, not providing a change of clothes, banning inmates from washing and keeping them in filthy cells.[1347] In addition, methods inducing physical weakness intended to lower the inmates' capacity for opposition are applied, such as imposing starvation rations of food and exposing them to extremes of heat and cold or to prolonged damp.[1348] In these circumstances, the Commission finds that conditions of detention and food deprivation aimed at 'breaking' detainees in order to extract a confession or information can be qualified as torture.[1349]

> A former interrogator explained: "*The persons were beaten to confess or to believe what they had done … It was very stressful for the prisoners; they have no right to anything. There were small rooms packed with more than twenty persons to make it stressful. Prisoners do not wear shoes and there was a shortage of food, medicines. It is very bad for the mind and the bodies of the detainees … The conditions of detention were made to make the prisonres feel stressed. It was a government's policy.*"
>
> A former prison guard recalled: "*They cannot wash or shower. There is no health care. The men get to the point that their testicles are infected. They are screaming with pain … They are not allowed to wear shoes, their feet are swollen from the bruises. They are in constant suffering*."
>
> A man arrested at a check-point was detained *incommunicado* in solitary confinement. He was not told the reasons of the arrest and was interrogated and tortured every day for three weeks. He remembered: "*The officer said: 'you are here to suffer'. They have a stick to beat you. … I was hungry, cold and angry. I was fearful. I had almost lost my mind. You do not speak to anyone, in the cold, in the dark, with no food. The whole thing became a torture. After three weeks, I dropped down, I was unconscious. They took me … to emergency hospital. I weighed 66 kilogrammes, I had lost 12 kilogrammes in three weeks.*"

1053. Whereas anyone in charge of detainees can inflict torture, the treatment of suspects seems to be particularly brutal and inhumane in detention places where they are interrogated by the National Security Office or Military Intelligence tasked with suppressing opposition groups, critics of the government, people suspected of 'cross-border crimes' and those believed to be traitors. Witness testimonies indicate that some detention facilities renowned for their torture have their own investigators, while others are either sending suspects for torture to National Security offices or Military Intelligence

[1344] TCDP036.
[1345] See chapter VI, B, 3, Detention.
[1346] TCDP005, TCDP052, S077o, TBA099.
[1347] See chapter VI, B, 3, Detention.
[1348] TCDP036, TLA036.
[1349] Art. 7 of ICCPR; arts. 1 and 16 of CAT; art. 37 8(a) of CRC and art. 5 of ACHPR. See also A/HRC/13/39/Add.5, para. 34. TCDP036, TBA001, TBA032. See also chapter VI, B, 3, Detention.

facilities[1350] or receiving intelligence personnel in their own torture room(s) for interrogation.

1054. Interrogators are generally chosen among national service conscripts and military personnel. The selection is made in full secrecy and without prior consultation of the person selected. Individuals who refuse face detention, threats and intimidation to force them to accept.[1351]

(i) Torture and ill-treatment as a means of obtaining self-incrimination and extracting confessions or information

1055. Article 14(3) of the International Covenant on Civil and Political Rights provides that detainees should have the right not to be compelled to testify against themselves or to confess guilt.[1352] The investigating authorities should not use any direct or indirect physical or undue psychological pressure on the accused with a view to obtaining a confession of guilt.[1353] Domestic law should ensure that statements or confessions obtained in violation of the right not to be tortured are excluded from the evidence, except if such material is used as evidence that torture or other treatment prohibited by this provision occurred,[1354] and that in such cases the burden is on the State to prove that statements made by the accused have been given of their own free will.[1355]

1056. To ill-treat persons against whom criminal charges are brought and to force them to make or sign, under duress, a confession admitting guilt violates both the prohibition of torture and inhuman, cruel or degrading treatment and the prohibition of forcing someone to testify against themselves or confess guilt.[1356]

1057. The Commission received many testimonies indicating that the use of torture during interrogations was aimed at forcing the accused to acknowledge the charges or the accusations of 'wrongs' brought against them and to sign a self-incriminating document.[1357]

1058. In many cases, torture used during interrogations increases in intensity until the detainee finally agrees to admit guilt. A witness told the Commission that *"their technique aims at making you admit you are guilty of something you did not commit."*[1358] Many witnesses told the Commission that they finally confessed being guilty for something they had not committed in order to stop the torture and save their life. [1359]

> A witness recounted: "*They have ... barbaric methods of torture, in order to get [what they want] they do anything to us. Some [confess] just to survive. Then, the*

[1350] See chapter VI, B, 3, Detention.
[1351] TCDP071, S046, TSH018. See also chapter VI, B, 3, Detention.
[1352] Article 14, paragraph 3 (g) of the ICCPR.
[1353] Communications No. 1208/2003, *Kurbonov v. Tajikistan*, paras. 6.2 – 6.4; No. 1044/2002, *Shukurova v. Tajikistan*, paras. 8.2 – 8.3; No. 1033/2001, *Singarasa v. Sri Lanka*, para. 7.4 ; No. 912/2000, *Deolall v. Guyana*, para. 5.1; No. 253/1987, *Kelly v. Jamaica*, para. 5.5.
[1354] Cf. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 15. On the use of other evidence obtained in violation of article 7 of the Covenant, see paragraph 6 above.
[1355] Communications No. 1033/2001, *Singarasa v. Sri Lanka*, para. 7.4; No. 253/1987, *Kelly v. Jamaica*, para. 7.4.
[1356] Article 7 and article 14, paragraph 3 (g) of the ICCPR. See also Communications No. 1044/2002, *Shakurova v. Tajikistan*, para. 8.2; No. 915/2000, *Ruzmetov v. Uzbekistan*, paras. 7.2 and 7.3; No. 1042/2001, *Boimurodov v. Tajikistan*, para. 7.2, and many others**.**
[1357] TCDP051, TFM001, TSH034S077f, S048, S077k, S077pp, S103, TAM074, TNR068.
[1358] TBA100.
[1359] S103, TSH054, TCDP023.

interrogators write a confession and make them sign it. They beat me in all parts of my body, including sensitive parts. They locked me in a dark room with no water and food for an indefinite time. They kept saying the same thing: 'Nobody will ask about you, I am in charge, I can kill you and nobody will know.'"

A man who was taken to an underground prison and tortured in Assab said: "*They tortured me for four months. They accused me of sending people from my homeland to Ethiopia. ... I was electrocuted on the forearms and upper arms. ... I was tied with my arms between my legs and chest bent forward. A rope was tied under my knees and behind my neck. On other occasions, my hands and legs were tied behind my back and I was left lying on my chest. I was beaten while tied. It is so horrific, you just say whatever they want you to say.*"

An army deserter was interrogated in Adi Abeito before being sent to Mai Serwa. He recounted the torture and ill-treatment endured in both prisons: "*They hit you until they feel tired. They asked me again and again: 'Who gave you a permission paper?'... It was too hard. I could not stand it anymore ... You have to say something to take a rest. I had scars on my legs and after three or four times it started bleeding. ...* [In Mai Serwa] *they tortured me. They beat me and said: 'Tell us the truth'. I replied: 'Tell me what you want, I will tell you.' ... I started to think and make up a story for them to stop torturing me."*

1059. Once self-incrimination or confessions have been obtained, the interrogation generally comes to an end. A witness explained: *"If you confess, it takes one day. If you do not confess, you stay for a week and then they make you sign your confession. If you do not sign, you stay forever."* Another was told that, if he did not confess, he "*will rot in prison*".[1360]

A witness who used to work for the United Nations Mission in Ethiopia and Eritrea (UNMEE) was detained together with a colleague whom they accused of working as a CIA agent. If he admitted this accusation, he knew he would probably face the death penalty. The witness explained: "*They gave him a period of two months to self-incriminate on the unfounded accusation of spying for the CIA under disguised recruitment by UNMEE. It was difficult to admit such unfounded accusation, so he did not do it. Then they took him and he was never seen again*."

Another witness detained in a secret prison house and interrogated by national security officers explained: "*They asked me if I was planning to cross the border and since they beat me, at last I said yes. They beat me with a stick, a water pipe or electric wires. First, they beat my back and then my legs. If you say yes, they stop beating you. If you say no, they beat you on the soles of your feet. There was only one person beating me at a time. As he did not manage to make me say yes, they changed the guard. It was worse. You cannot endure it. The intensity is too great ... The suffering is getting worse and worse, so you have to say yes and then they send you to* [prison]*."*

A young man was arrested on the street and taken to a secret prison in Tessenei where he was accused of cooperating with smugglers, being a spy and conspiring with foreign Governments. He recounted: "*I was interrogated ... every day while I was being beaten ... Being a spy or working for another Government is much worse than smuggling, so many people just confess to smuggling or helping smugglers. I was resolute not to confess to anything. At first I was just beaten, but as time went on the treatment got worse and worse because I would not confess to anything.*

[1360] S014, S077k, TCDP031, TAM075, TBA100, TNR068, TSH004.

Guards used sticks, rods, guns and whips made with strips of rubber attached to a rod to beat and whip me. Basically they used anything they had with them. I was regularly tied to a chair by the wrists, and a rod was put behind my legs to prevent me from moving them. Then I was beaten and left in the sun all day. During the course of the day guards asked if I was ready to confess and each time I refused I was beaten again and then left in the sun for another hour or so. This went on and on for days."

1060. Confessions and self-incriminating documents obtained under torture are then used to decide on the "sentence" and prison term, as well as for propaganda material to support the Government's policy.[1361]

A victim, who also used to work as prison guard explained: "*Torture happens often. There are special people who carry out torture … The purpose is to get people to confess. The officer prepares the confession and the person signs it. After that this document is given to the Court*."

A witness told the Commission that several inmates detained with him in Mai Serwa had been arrested in the context of a governmental crime-eradication programme. He recounted: "*They accused me of having made fake papers, others were accused of rape, others of trafficking. If they find something from you during the beatings, they will interview you on the radio. When* [detainees] *admit on the radio, they say: 'You see, Isaias is working hard*.'" Two former journalists who worked in the Ministry of Information confirmed that confessions were used as propaganda material to illustrate achievements made by the Government on crimes and corruption eradication. One of them explained that "*The work was not in line with the ethic of journalism but you do what you are told. …* [Information] *only comes from the leaders and it is only about what they want people to think.*" The other one added: "*Those who had to confess things were not criminals. They had to confess because they were tortured.*"

(ii) Torture and ill-treatment as a means of intimidation and suppression

1061. Testimonies collected by the Commission reveal that torture and ill-treatment used during interrogations are also aimed at terrorising suspects and deterring them and others from repeating the offence or the 'wrong' they are accused of having committed.

a. Targeting religious groups

1062. Testimonies from members of unauthorised religious communities indicate that they are subject to torture and ill-treatment in the course of their interrogation to extract information on their religious affiliation, force them to recant their faith and/or join one of the four authorised religion. [1362] Routinely, torture is also aimed at extracting information about other members of their religious community and the sources of funding or foreign backing of the community.[1363]

A member of the Full Gospel Church was detained in the 2nd Police Station/Karshele for four years, including two in solitary confinement. He recalled the questions posed during his interrogation: "*They asked me for the names of the members of the Church. They said I was an agent for the American and Ethiopian*

[1361] TNR079, TCDP023, TCDP033, TCDP024. See also chapter VI, A, 3, Freedoms of expression, assembly, and association.

[1362] S129, S135, TBA050, TBA064, TCDP034, TCDP059, TSH042, TFM014.

[1363] S129, S135, TBA061, TCDP027, TAM023, TBA064, TCDP062, TCDP063, TBA027.

Governments. They said I was a spy. They said I would have to accept my guilt and give the full information regarding the contacts with Ethiopia and the United States, aims and objectives, funds and names of members. They said I would never see my kids and my wife [again] *if I did not agree to cooperate.*"

A member of an Evangelical Church was arrested, interrogated and detained in Ala. She remembered: *"The examiner was a harsh man … and he used to slap us, insult us, threaten us, and beat us. Every night we were asked, 'Are you going to leave Jesus?' But we would reply, 'He is the life. How can we leave life? We can never leave our Lord Jesus.' This pattern continued every day but we remained steadfast in our confession … Afterwards, I was moved to the Dekemhare prison… The interrogator at that prison came in the morning and said, 'If you are found praying even in your home; if you are found kneeling down even in your own home then remember that the gun is just beside us. Know this, you are never allowed to do anything Christian."*

When inflicted on Jehovah's Witnesses, torture is sometimes also aimed at forcing them to join the military training, or at punishing them for not doing so.

A Jehovah's Witness detained in Sawa, in a prison-container of the Sixth Brigade, recounted: "*The first two months, there were no beatings but I was tied in the otto position. They would release me to eat and wash. Then, they took me to the interrogation room. They handcuffed my arms and legs and put a stick behind my knees, hung me and beat me. They were beating me every other day. When you start to recover, they come back. In 17 days I was beaten* [eight to nine times] *during 20 to 45 minutes. I was not able to walk straight, the soles of my feet and all my body was swollen due to the beatings. They had to carry me to the interrogation room. They were asking me to do the military training. After seventeen days, they beat me during one and a half hour and I fainted. They took me to the hospital. Then I joined Sawa training camp.*"

Another witness explained the treatment he received in Sawa when he refused to take part in the military training: "*They tied me up in the helicopter position, with eyes and mouth shut, and put me in a barrel cut in half for almost one hour. Then, twelve soldiers started beating me with sticks, branches, tubes, anything. They beat me for almost four hours until my eyes were blurred. They beat me during three days continuously and continued with less intensity during two weeks. A [health assistant] was coming every day to give me first aid and wash my wounds. He was very nice and tried to convince me to recant my faith. I was detained for three months. I almost starved to death because I was only given sugar dissolved in water as food.*"

1063. Religious believers in detention who are found in possession of a holy book or caught while practicing religion and preaching are regularly punished with torture or cruel, inhuman or degrading treatment.[1364]

A religious believer imprisoned for a year recalled: "*Some of the regulations at Adi Nefas were the following: do not engage in religious talks, in groups or in pairs, do not pray or read religious material, avoid conversation in groups. Punishment started because I violated the rules of not reading books and participating in gatherings; I brought a small prayer book hidden in my shoes.*"

[1364] TLA032, TBA047, TBA049, TCDP027, S064, .TFM014, TCDP027.

A witness detained in Mai Serwa explained: "*I have been punished once, because I was caught while preaching. They chained me and put me outside from 8 am to 6 pm under the sun for 40 days. During this period people in the containers were suffering even more than me. They were found preaching in the containers and were beaten. Ten persons were beaten by five prison guards during 30-40 minutes each. They were beaten so much that their stick broke.*"

b. Targeting perceived political opponents

1064. Testimonies collected by the Commission indicate that detained individuals suspected or perceived as opposing or challenging the Government were interrogated and tortured with a view to extracting information about their views on the Government's policies, their possible involvement in opposition groups abroad, connection with rebel groups or foreign Governments and about plans to foment a revolution or desire for independence.[1365]

A member of the diaspora, arrested when visiting Eritrea and interrogated in the 2nd Police Station/Karshele, remembered: "*They told me that I was against the Eritrean Government, because I had participated in a meeting in London against the Government. They asked why I had not paid the 2 per cent tax. They had a list of meetings I had attended in London, and records of what I had said. I admitted that everything was correct. There are underground rooms where prisoners are beaten. I had to clean those rooms. They put a stick under the knees and beat you on the soles of the feet. I saw people who had been tortured. They were unable to walk for two weeks. We helped them, to heal their wounds. They put electricity on them. Some are handcuffed. I was handcuffed for a week. I was not beaten, but I was stressed, which is worse. They make you mad.*"

A tradesman was detained one year and eight months in prison. He recounted his interrogation: "*They asked me: 'Why were you going to Yemen? What brought you to Yemen? You went to Yemen to bring guns from Yemen'. They beat me when they were interrogating me. Two guys were there during the interrogations. The first was interrogating you and the second one was beating you. Sometimes they tie your arms and legs in the helicopter position. They bring cold water, pour it on your body and beat you. They were beating me with a plastic stick or a metal stick covered with plastic. They would beat me for 30 minutes. When you become unconscious or start vomiting they stop until you recover. Then they would continue during an hour. My chest is broken because of that … I also have scars due to the ropes on both arms and I have a broken finger. Because of the tortures, my veins are painful from my feet to my hip. I have to lift my feet, otherwise they swell.*"

Another witness told the Commission that he was arrested while fishing: "*They told me that I was imprisoned because we were the people letting other Governments come in or Eritreans escape our country. They would interrogate me three times a day. During the first month, they were beating us every night. Then, they continued to beat us frequently, always at night, but not every night. They were pouring cold water on our body and beating us with electric wires. Sometimes they make you lie on the ground and they beat you on the back and the buttocks; sometimes they ask you to stand and hold metal bars while they beat your back; sometimes they beat the soles of your feet. As a consequence of the beatings my body became all black; my skin came out of my body. I was in great pain*."

[1365] TCDP049, TCDP051, TCDP052, TCDP053, TNR057, TAM065, TCDP066, TBA038, TBA091.

(iii) Targeting individuals fleeing the country and smugglers

1065. People caught when fleeing the country are interrogated at the onset of their custody by national security officers. Interrogations follow the same pattern. Individuals are questioned on the reasons for fleeing the country, the route, the use of a smuggler, the origin of the flight plan and the identity of any other individuals involved.[1366] Interrogations are routinely accompanied by ill-treatment or torture and often last several days, until the captives confess or give out information. After each day of interrogation, individuals are told to reflect about the responses to be given the following day. Confession involves signing a paper prepared by national security officers that often detainees are not even allowed to read. [1367]

> A victim described his treatment by national security officers when caught attempting to cross the border to Ethiopia: "*I was beaten constantly until they thought I had given them all they wanted. I was kept there for four days and questioned all day. My arms were handcuffed behind me at night so it was difficult to sleep*." He was given a prison term of two years. He was returned to his military unit upon release.
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> Another victim caught in the vicinity of Tessenei explained that he was tied in the *otto* position for two days. Then he was interrogated about the circumstances of the attempt: "*I was continually beaten when they interrogated me. I was beaten by three people, usually one in front and two behind. You cannot see what is coming. They targeted my ribs a lot. It was really horrible.*" He was re-integrated into his unit after a year and a half of incarceration.
>
> A man described his interrogation: "*The first day they told us to think about it and confess. The second day we admitted and they stopped the beating. They did not ask us to remove the clothes when they beat us. We signed a confession but we did not see what it said. They wrote themselves and told us to sign it. We did not read it*."

1066. The Commission found that unaccompanied children caught crossing the border equally undergo interrogation and are subjected to ill-treatment and torture, before being sent to prison. [1368]

> One victim, who was 14 at the time of his first attempt, explained: "*We did not know the persons who arrested us. They asked us where we were going. At first we told them that we were visiting a village, but later when they beat us, we told the truth. They tied our hands and legs at the back together*."
>
> Another victim, who was 16 years old when he was caught, was interrogated for two years, during which time he was beaten.
>
> A witness described the situation of Ethiopian children caught at the border who were detained with him: "*Among the children who were in the prison were two 11-year old Ethiopian children from the village of Adi Hibtai … The Ethiopian children were in a very distressing condition. Before reaching Adi Abeito prison, they had passed through four prisons and through a lot of questioning, harassment and intimidation.*"

1067. Children arrested with their parents are not subjected to interrogation and are normally held with them. A family apprehended with several children, for instance, was

[1366] TNR068, S077pp, TBA075, TFM001, TFM016.
[1367] TSH032, TSH033, TNR068.
[1368] TAM055, TNR068, S075.

detained in a shipping container for one month until an amount of 75,000 Nakfa was paid for their release.[1369]

1068. Before being taken to camps for interrogation and subsequently to detention, women are systematically beaten by border guards. In addition, testimonies gathered show that they are also subjected to sexual violence. They are also tortured during the interrogation by National Security officers. [1370]

> A victim explained: "*The soldiers arrested us and the smuggler. They beat me all over my body*."
>
> Another said: "*Close to the border, there were three soldiers. The soldiers were protecting the border. All three raped us in the evening. Afterwards, they took us to a military camp. They asked us where we had wanted to go. We said we wanted to leave to Ethiopia. It was in an underground prison, a hole with sticks on the top and some leaves, covered by soil. There is a ramp. We were only girls. There are many guards. We were not able to tell anyone what had happened to us.*"
>
> A woman who was caught crossing the border to Sudan explained: "*I was interrogated for two days. On the third day they were not able to get any information from me. This is when I realised the other group was caught. I was beaten severely for about four days. I was beaten with a plastic rod with metal inside. I decided that I would not reveal the information that they wanted. I knew that if I mentioned the names, then their families would also be in trouble. The interrogation got tougher. On the fifth day, my hands were handcuffed. He turned me upside down and started beating me on the soles of my feet. I was bleeding. I lost my consciousness. They later took me to the place where they give first aid. I lost consciousness for a day and half. The flow of blood had not stopped. They did not have any sympathy towards me.*"

1069. A source explained that smugglers, often called 'pilots' by Eritreans, receive harsher treatment and punishment than others. Several witnesses confirmed that smuggling is considered as one of the 'worst' crimes, which deserves harsh treatment and particularly punitive conditions of detention.[1371]

> A witness detained in Hashferay prison told the Commission that the small underground cells were for the smugglers. "*They were beaten and questioned. I saw the wounds. They were told they were the main cause for the problems of the country*", he recounted.
>
> Another witness explained: "*Bidoho is a dangerous prison. There are four underground cells. The detainees are smugglers, those changing dollars at the black market and those suspected of trying to escape. It is under the National Security Office supervision. [The investigator] injured many people. He beat them ... and broke their bones. He used motor chains and sticks.*"
>
> A student caught at the border and accused of being a smuggler described his treatment: "*I was beaten every few days for three hours at a time and had to stay in the sun to think over what I was going to say. I was beaten with sticks, rubbers, most of the time on the back, sometimes on the hands and fingers and on the soles of the feet. I have scars next to my eye and the nose as I once turned my head when they were beating and was beaten on the face – involuntarily*." The torture was intended

[1369] TFM004.
[1370] TBA062, TBA090, TAM074.
[1371] S035, TBA085, TBA063, TCDP036, TBA071, TLA038.

to extract information about the smuggling enterprise he allegedly ran. He was held for one year and then conscripted upon release. He was denied family leave as an additional punishment.

(iv) Torture and ill-treatment as a means of punishment

a. After forced repatriation

1070. Individuals forcibly repatriated are inevitably considered as having left the country unlawfully and are consequently regarded as serious offenders and also as "traitors." A witness recollected a comment made by a prison guard to a group of returnees: *"You are traitors, garbage, you left your country so you will be punished."* A common pattern of treatment of returnees is their arrest upon arrival in Eritrea. They are questioned about the circumstances of their escape, whether they received help to leave the country, how the flight was funded and whether they had contact with opposition groups based abroad. Upon their repatriation, witnesses said they were detained between ten weeks and five years in harsh conditions of detention, subject to torture and punishment and sometimes to forced labour.[1372]

A returnee from [country A] described his interrogation: "*I was asked why I left Eritrea. I told them the indefinite length of the military service that I saw from my brothers and sisters made me believe I could not take care of myself and my family and hence I left Eritrea. I was also questioned with whom in the opposition we were communicating and I told them I had no communication with any opposition. We were handcuffed and they tortured us by constant beatings*."

Another deportee from [country A] described his interrogation at Adi Abeito: "*We were questioned one by one in a separate room … We were forced to remove our shirts. One officer put his gun on the table pointing at me to send a message and beat me (all of us) on the back with a leather strap. Another officer sat behind a table and asked many questions. How did you leave Eritrea? Where did you get money from to leave? Did you meet with anyone in the opposition outside the country? … When I said I did not have contact with opposition people outside the country I was beaten. Each day about 10 people were subjected to this treatment*."

A witness deported from [country B] in 2008 recounted the torture received during interrogation: "*The torture started when I was in Asmara. They wanted to get information from me. In the house they held me, I was tortured a lot for about one month. I was interrogated at 1 am. I was then transferred to the Second Police station which is known for corporal punishment. I was interrogated sevral times. This was done at 1 a.m. They used big ropes with metal inside to beat me. I never saw anyone else who was beaten. The commander of the police station and another security officer were watching the beatings and interrogation."*

b. Prison escapees

1071. Testimonies reveal that detainees who attempt to escape prison are severely punished by the prison guards. They are systematically subjected to torture or cruel, inhuman and degrading treatment and punishment. On the principle of "guilt by association", co-detainees and prison guards are also punished for not having informed the prison authorities of the plans of the escapees and for not having prevented it from happening. Treatment and punishments documented by the Commission include severe

[1372] TCDP026, S077e, TCDP076, TBA054, TNR024, TSH077, TAM012.

beating, whipping, stoning, being tied up (in *almaz*, *Jesus Christ*, *otto*, or *helicopter* positions), deprived of food, forced to roll on the muddy ground, exposed to extreme temperatures and having cold water splashed over the body to increase the feeling of cold.[1373]

> A former detainee witnessed several escape attempts in Aderser. He explained the consequences: "*A man had attempted to escape but he was caught by the prison guards. They beat him severely for almost a week and tied him up regularly for days. This included tying up his four limbs together and hanging him on a tree for hours on a daily basis until his arms had become almost paralysed. Five* [prisoners] *thought up a plan to escape but one person from the group refused to join them and the four others escaped. The prison guards tortured him by beating and tying him up for long hours for not reporting to the prison guards about the plan of the escapees."* He also witnessed several attempts in Wi'a: *"The victims were tortured to the extent that for some it resulted in physical disabilities or serious health problems. For instance: beatings, tying up in the helicopter method and leaving in the burning sun, lying on the ground on their chest for long hours for several days. Finally, they were taken to a worse prison*."
>
> A former inmate tried to escape twice; he recounted the punishments that ensued: "*They put water on your body. It is very cold in the night. We were shivering. You are outside. They tie your legs and arms and hang you from the tree for 45 minutes. Some might have died but the officers simply said those who disappeared had been transferred."*
>
> A witness explained the collective punishment that followed the escape attempt of some detainees: "*Seven people tried to break out … We heard gunshots and the following morning we heard that people had been shot. Then during the following night they rounded us up and beat us up because we did not inform the guards about the attempted escape. We were put on the floor and were beaten with sticks. After two hours of beating they took us back into the hall. We were warned that if we again do not tell them about people fleeing, it would be on us."*

c. National service conscripts in detention

1072. National service conscripts may be detained for a variety of reasons, including for desertion, unauthorised movement or absence, insubordination or for asking questions.[1374] The Commission documented many cases of detention in military training camps' prisons and others for the reasons mentioned above, often accompanied by torture and ill-treatment. Upon release from prison, national service conscripts are sent back to their military unit where they may be subjected to additional punishment.[1375]

1073. The Commission finds that detention of national service conscripts is more often accompanied with the use of constraints methods (i.e. tied up in various positions) than other detainees tortured and ill-treated in the course of their detention.[1376]

[1373] TCDP026, TSH026, TNR049, TNR081, TAM064, TLA015, TBA085, TSH057, TAM075, S143i, TBA034, S064, TSH082.

[1374] See chapter VI, C, 1,National service.

[1375] Ibid.

[1376] S077cc, S077dd, S077q, TAM075, TBA080, TNR038, TNR072, TCDP026, TAM016, TAM025, TAM029, TBA054, TBA068, TBA069, TBA091, TFM030, TLA023, TNR012, TSH004, TSH025, TSH036, TLA018.

A deserter and prison escapee was caught and taken to his division's prison. He recalled his treatment in detention: "*The division head had decided that I should be tortured. There is a torture* [they use], *once they are done with the beatings. It is called Jesus Christ. They do this to threaten you and prevent you from escaping from the prison. Before,* [six soldiers] *beat me with metal bars used for construction, iron bars, on the left leg. They beat me all over my body, but the worst injury was on my left leg. I* [still] *have a mark over my knee and my foot. The boss was … the officer of that jail*."

A witness explained that when conscripts with whom he was sleeping escaped at night, he was sent to prison for a week. He recounted: "*I was kept in one of the rooms during the night, and taken outside during the day. They made the place I sleep wet. They put water on the floor … I was handcuffed. They kept beating me. It was difficult really. Anytime they came inside the room, they beat me when I* [denied that I knew their plans]. *They used a plastic and a wooden stick. Daily, when I was outside, they* [tied] *my hands and my legs in the back* [with a plastic rope], *face down. It started at 8 am and lasted until 3, sometimes 5 pm.* [It] *was very tough, my arms and legs were bleeding, I had wounds. They were swollen and numb. It was very tight, the blood flow was blocked. They intentionally tie me on the same wounds. If you speak the truth, they release you. There were scars on my arms but they are now fading out.*"

(v) Sexual torture

1074. The Commisison documented rape and other forms of ill-treatment and torture targeting victims' sexual and reproductive organs. Victims are sexually abused to inflict pain and to humiliate them. In many cases it also serves to force victims into submission (particularly before interrogation).

a. Rape as a form of intimidation and torture

1075. Rape perpetrated by detention officials against both men and women detainees were documented by the Commission. A report of detainees being forced to abuse each other sexually was also received. Rape is a particularly egregious form of sexual torture that carries with it the risk of becoming pregnant or contracting sexually transmitted diseases (including HIV). Victims also suffer shame and stigma that are attached to victims of sexual abuse. The Commission finds that rape is also used as a tool to cause additional fear and intimidation.[1377]

A young woman and her friend arrested and detained on suspicion of attempting to escape were raped repeatedly before being interrogated: "*On the first day I was searched. They made us get naked and put a pen in my anus and my friend's anus looking for money. Then we were forced to stay in a dark cell for two days. They gave us a military sheet but would not give us our clothes back. We were raped in the same room many times over the three days by two men. The men were always wearing black and had their face covered. After three days we were separated for two days and beaten (alone). I was interrogated. … The two men who did the beatings were different from the men that had raped us. I was beaten so badly I could not walk*."

A middle-aged woman was detained after her two sons escaped from the national service and fled the country. She reported being raped twice by the local

[1377] TSH035, TLA030, TBA098, TBA054, TSH095, TBA054, TNR036, TCDP075.

administrator while held in detention at a local administration office: "*I was detained in the local administration building for two weeks. I was raped twice by the local administrator. I was too afraid to complain to anyone about that.*"

Another woman detained in a secret detention centre reported a similar experience: "*Seven months later, they arrested me and detained me in a private residential house. I do not remember who they were. I stayed there for one month. I was able to move within the house. I was alone. They beat me and raped me. They were wearing civilian clothes. I was trying to tell them to let me go. I wanted to be with my son*."

"*In Hadish Measker, there was a unit leader in charge of investigation; he forced other men to have sex with men in the camp. Other young people told me that they had been raped by him. When he wanted to rape people, he took them from us to small underground cells and raped them there. They had dug deep holes, put stones to construct a wall, and covered the top with long wood and put some soil over to sticks. The sand does not trickle through. There are some leaves and bags from flour. You cannot see anything from above."*

"*I did not see anyone being sexually assaulted but a lot of ladies were being abused. The prison officials are asking us to have sex with them. They know that I am Muslim. I tell them that it is not ok. They left me alone. This happens especially at night. A woman was ill at the medical facilities inside the prison. The prison staff member raped her. From that place, they transferred her to another clinic. Actually, the person denied that he had sex with her*."

"*The women who were caught while crossing the border where kept in a big hall made of zinc. I know about the rapes because when we ran away [together] the women told us that we were better than them because at least we were not sexually abused or raped*."

b. Other forms of sexual torture

1076. The Commission has also documented other forms of torture and ill-treatment targeting the sexual and reproductive organs of detainees. These include beatings on pregnant women inducing abortion, preventing a lactating mother from breastfeeding or otherwise relieving the build of milk in the breasts to cause immense pain, beating and applying electric shocks to the testicles of men and violently inserting objects into the vaginal cavities of women.[1378]

One detainee reported: *"It is called the butchery because there is blood everywhere. I saw one pregnant girl (two-four months) lose her baby from the beating. She was caught trying to go to Sudan. I was in the queue after her to be punished. I could see her getting hit with a thin slock stick ("sordanage" in Arabic) all over her body by four men. She began bleeding. She was taken to the nurse. I do not know what happened there, but I heard they took the baby out."*

A witness reported his friend died from torture involving trauma to his testicles in Shela Tessane: *"I was in Shela Tessane for about two months. We were beaten every other day. Towards the end of the time there, my friend was beaten on the testicles with a stick. When he came back everything was bloody. He could hardly walk, his testicles swelled to bigger than the size of a fist. He was in a lot of pain ... He died shortly after arriving in Adarsal. We were transferred there quickly so the guards at Sheila Tessenei would not get in trouble for his death. I do not know what they did*

[1378] TSH026, S035, TSH079, TBA054, TAM074, TBA001.

with his body. His family has not called. I later heard his family was still looking for him. They did not know he was dead."

A witness described the severe internal damage she suffered as a result of being beaten inside her vagina: "*I was beaten with a plastic rod with metal inside. I decided that I would not reveal the information that they wanted. I knew that if I mentioned the names, then their families would also be in trouble. The interrogation got tougher…"* The victim has suffered significant complications from the internal beatings. Later at the Sawa military training camp, a doctor reported the extreme bleeding she was experiencing as a consequence of womb damage, rendering her medically unfit for the military training: "*They have messed up my life. I have not been able to bear a child. I got pregnant five times but I have not been able to bear a child for the eight years after I got married."*

A former guard at a detention centre confirmed the targeting of sexual and reproductive organs during beatings and interrogations: "*They targeted their physical differences and tortured them violating their breasts, private parts, inside and outside*."

(e) Torture and ill-treatment inflicted upon conscripts during military training and in the army

1077. The prohibition of torture equally applies to members of the armed forces, in an absolute manner and without restrictions.[1379] Conscripts should not be subjected to torture or other practices that may constitute cruel, inhuman or degrading treatment or punishment. The protection extends to the period of military training and prohibits that trainees are subjected to such practices in the context of particularly harsh or rigorous training.

1078. Torture is widespread, routine and deliberate in the military. Punishment amounting to torture is inflicted upon conscripts in a military environment characterised by the objectives of national service to train recruits to be part of a strong defence force, to create a hardworking, disciplined and ever-ready new generation and to preserve 'the courage and culture of heroism of former fighters'.[1380]

1079. Many witnesses trained in various military training camps described being subjected to harsh punishment amounting to torture during military training. Conscripts are regularly punished and humiliated, often in front of other conscripts. Already in the early years of military training after independence, conscripts were beaten, tied up in the *helicopter* position and left in the sun in the training camp of Sawa.[1381] Until today, punishment amounting to torture forms part of the conscripts' daily routine in Sawa and other military training camps. Punishment inflicted in Wi'a, however, seem to be applied with more cruelty, leading more frequently to death. An explanation shared with the Commission points to the fact that punishment there was inflicted by the para-commando trainees, who applied the techniques they had been taught during their training, such as aiming at the head and using martial arts, boxing and kicking.[1382] Torture and ill-treatment experienced by conscripts during their military training continues once they are assigned to serve in the army. Conscripts continue to be subjected to various forms of punishment amounting to torture, which resemble those applied during military training.

[1379] See *supra*.
[1380] See chapter VI, C, 1, National service.
[1381] TSH077, TAM024, TFM021.
[1382] S075, TAM018, TNR041, TNR055.

1080. Conscripts being trained and serving in the army are regularly subjected by the trainers and officers to torture and ill-treatment for a variety of reasons, namely insubordination; breach of army rules, such as unauthorised absence or movement; lack of performance, including during exercises; expression of an opinion; request for leave or release; and manifestation of religious beliefs.

(i) Insubordination and disobedience

1081. Regularly, conscripts are severely punished for actual or perceived insubordination, disobedience and disrespect for military discipline including absence during one of the regular roll calls, being late, in particular for meals, irrespective of a possible justification.[1383]

> A witness, who joined Sawa as a minor, told the Commission: "*I was punished. I was the youngest one. I was asked to be a spy among the conscripts and to report on other people. There were many conscripts from Assab, who spoke Amharic. I speak Amharic and was asked to observe them. I refused to obey. Already the next day, they asked me what kind of information I had collected. Again, I refused. During two weeks, I was punished during lunch time, the hottest time of the day. They tied me up and hung me upside down*."
>
> A witness, who started the military service in Mai Serwa in 2012 at the age of 18 after being caught trying to cross the border, reported: "*We were punished when we did not follow orders, did not do the training properly, did not come on time, if you argued with them, if you refused an order."*
>
> A former conscript was punished because he had refused to participate in a round-up when not feeling well. "*They made me crawl for hours. When I became unconscious they left me there. Then they forced me to stand for eight hours until the next day*."
>
> Another former conscript recalled: *"One day, I got into an argument with the leader, who was not happy with my performance. I was not able to work hard enough. We were eating our lunch. When I was done, I left. The leader asked me why I did not stay behind to wait for the others. They tied me up in otto, with the belly on the ground. I was left in this position for five hours in the sun. I started shouting. The first aid person saw me and heard me crying. Prior to this, another soldier had been tied up in the same position and had almost died. The first aid person warned the leader that he should be careful that this should not happen again. The leader took me to the shade for a moment, but when the medic had left, he took me back into the sun and left me there for the entire day. In the evening, the other soldiers took me to our place to take care of me. My arms had swollen and remained so for some time. I had black marks on the arms where I had been tied with the rope. The inner sides of my hands turned black and remained so for about two weeks. The finger nails turned black. I was taken to the first aid station in the camp, where I was given 14 injections over a period of two weeks. First, the medic refused to treat me. He did not want to be responsible for me, in case I would die. But the leader insisted. I still have a scar on my elbow, where the skin tore when the arms were swollen, and liquid came out. The area was so hot, that even the lightest form of punishment/beating would lead to shock. Many soldiers fainted due to the heat. The leaders stayed all day in the shade*."

[1383] S114, TAM045, TFM019, TNR060, TNR058, TNR068, TFM030, TLA004, TNR043, TAM014, TBA031, TBA086, TCDP022.

1082. Harsh punishment is also inflicted for unsatisfactory performance during military training exercises, including where this is resulting from an injury or a disability.[1384]

> A former conscript noted: "*I witnessed bad treatment. I met people who had papers certifying that they had a mental disorder. However, they ignored the papers, arguing the papers were forged. The training was very harsh, there were always people who fell down.*"

1083. Reportedly, conscripts are also punished for not being able to understand orders in Tigrinya.[1385]

> A former conscript, who was sent for training in Adi Rosso in 2010, reported: "*We had marching training for hours. If we slowed down we were hit, forced to roll on the hot ground. We built a lot of houses. We trained in shooting, if we missed the target we were forced to roll. The Afar had a difficult time understanding because they could not understand Tigrinya and their trainer could not speak Afar. They were beaten a lot for making mistakes*."

1084. It is common for conscripts with a supervisory function, as well as trainers, to be punished for the behaviour of their subordinates. [1386]

> A witness who joined Sawa at a young age explained how he was punished. "*In the ganta [platoon] conscripts are assigned according to their height to rows. In our ganta we were 22 people and were divided into three rows, according to our height. I was the youngest but they chose me to be the leader of my row, which I refused. I did not want to be responsible for the others. The leader of the ganta told me I would be punished for not taking the responsibility for my row and would be forced to accept the assignment. He asked soldiers to wake me up at 4 a.m. and assign me to different activities. Between 5 a.m. and 12 a.m., they tied me in the otto and helicopter positions, changing from one to the other. They released me only for lunch. In the end, I accepted to be the leader of the row."*

> A former trainer noted: "*I was running with my division around the compound when my trainees saw women and greeted them. I was then punished for not controlling them. I was sent to the 6th Brigade but the guards did not beat me because they knew me*."

1085. Conscripts in the army subjected to forced labour[1387] are frequently punished for reasons such as taking a rest, not working hard enough, as well as fighting, conversing or not following orders. It appears that punishment was particularly prevalent at the Bisha mine.[1388]

> A witness explained that conscripts working at the Bisha mine were supposed to work day and night: *"It was too much work and they wanted to have a rest. Many were punished. They were tied to the tree, hanging down*."

> A former conscript who worked at the Bisha mine stated: "*Usually, they punished us by tying us at night, not to waste our labour during the day. They always tied us in otto. There was no beating while we were at Bisha. Mostly, they punished us for not obeying orders while working*."

1384 TBA031, S075,S077h.
1385 TSH082.
1386 TCDP002, TCDP010.
1387 See chapter VI, C, 2, Forced labour.
1388 TBA101, TBA100.

(ii) Desertion

1086. Desertion from the army is punished harshly. If conscripts attempt or manage to escape, their peers, too, are blamed and are severely punished.[1389] Reportedly, in a speech to new recruits in Sawa on 14 July 2002, President Afwerki publicly said that people who escaped from the camp during training were like weeds among the crops that needed to be cleaned; they would be punished severely; those delaying their recruitment into the national service would also be severely punished and would be deprived of their citizenship, economic and other rights.[1390]

> According to a witness, a mere suspicion about the intention to escape from Sawa was sufficient for being punished. "*Conscripts are beaten if they indicate they are sick, as supervisors think that it is a ploy to flee*."
>
> One witness described what happened when several conscripts escaped from Sawa. "*Our supervisors asked us about their escape, but we had no idea. They told their bosses that the escapes had been our fault, accused us and were told to punish us. As a punishment, they beat us and tied us up. We had to roll on the floor, while they continued to question us. It was very painful*."

1087. In particular in Wi'a, many conscripts tried to escape despite the camp being heavily guarded. Some died because they became entangled in the thorny trees or were shot at by the guards. Those who were caught and survived were ruthlessly punished, which sometimes also led to their death.[1391]

> Another witness explained that beating in Wi'a was common. "*The beating is a normal thing in this place and it is common. People would be beaten if they did not do exactly what they were told to do. I remember this one person who tried to escape and they chased him. His skin was torn from the beating. They left him in the sun on a hot rock*."
>
> A witness described what happened when his fellow trainees tried to escape from another camp, Adi Rosso. "*About 30 people tried to escape. Six succeeded, the other 24 were tortured constantly. They were chained in awkward positions, hit with long sticks. They screamed and screamed. All the roommates of those that tried to escape were also tortured. One of my roommates escaped so I was also targeted but managed not to be tortured because I said 'I am just a simple man ready to fight for my country' and my trainer liked me*."

(iii) Absence without leave

1088. Leave without permission and failure to return within the granted leave period are also severely punished. Reportedly, conscripts have been killed for having left camp without permission to see their families or returning late to the base.[1392]

> A former conscript was caught when returning after a short while away from the base without permission. "*My superior tried to arrest me but I resisted and punched him. In reaction a whole battalion was taking me down and beating me. They beat me roughly and tied me up. I still have some bruises left on my body. When they were beating me, they sent blows to the chest. When I was taken down to the ground, they kept stamping on me with their hands and feet. They brought my arms behind,*

[1389] TLA004, TAM029, TBA099, TNR043.
[1390] S075, TBA022, TAM011, TAM040.
[1391] TNR081, TAM033, TBA054, TSH082.
[1392] S077a TSH017, TNR002, TNR030, TCDP025.

my shoulders and hands tied back with a rope. The blood stopped flowing and I could not feel my arms for a while. I tried not to show pain. I looked at my superior and told him: sacks and people are tied up and one time they get released. This made him even angrier. He called his superior who decided I should be tied for eight days. They untied me only when I had to eat. My legs were tied too, they joined my legs up. That did not hurt as much as my arms, because the ropes on my arms were always tighter. I was constantly in pain and bleeding. I had marks of ligatures on my arms and my hands from moving and rubbing the ropes. I was freed only once a day to urinate. I did not receive any medical care."

"I once left the base without permission. I was away for one month because I was looking for my brother who was taken from home. My punishment was 120 hours (five days) tied in the otto position, tied by a rope. They gave me only a piece of bread. They did not untie me for toilet. I was left outside the day in the sun and at night in the cold. Sometimes, they poured water on me. They give me water only when I told them 'I'm dying, give me water'."

"For example, some people were asking to visit their family but the officers refused to give permission. As a result, they would go home without permission and the military would go to their homes to bring them back and punish them very harshly. They would be placed in shipping containers and special cells."

(iv) Expression and religion

1089. Freedoms of religion and expression are severely limited during military training and in the army. Exercising these freedoms puts conscripts at risk of being severely punished.[1393]

A former conscript at the Bisha mine recalled: "*In 2011, one day after hearing a safety briefing, I asked our supervisor why they continue to give us safety briefings but not provide any safety equipment. He told me that our Government was paid for the briefing so we should have it. … Shortly after, I received a telephone call from someone in the Government asking why I had said those things. I tried to deflect the situation and deny I had said anything. Soon after the call I was picked up at the construction site by military men and taken to the Bisha National Security Prison. I was held underground in the prison and beaten day and night*."

1090. According to testimony received by the Commission, conscripts who are caught praying or reading Holy Scriptures during their period of military training or in the army are severely punished.[1394]

A witness, who was caught praying with others during military training in Sawa, described how they were punished during the lunch break over a period of ten days. "*The temperature was 33-34 degrees and we had to run between two trees for 15 minutes. Then, we had to lie on the floor and stare at the sun. If you were turning your head, they would beat you with their rifle butt or punish you by forcing you to stand in a specific position: you were standing with the upper part of your body leaning forward, head down and your arms around your legs. This position is very unstable and if you bent your legs, they would push you from the back and make you fall. One person was collapsed each time, he had to stare at the sun and then he became ill*."

[1393] TSH001. See also chapter VI, A, 3, Freedoms of opinion, expression, assembly and association.
[1394] S052, TBA050, TCDP011.

(f) Death as a consequence of torture

1091. The Commission received a number of reports indicating that some inmates died in custody as a result of injury from torture mostly during interrogations.[1395]

> A man who witnessed the death of a detainee in Mendefera Police Station prison recounted: "*He was abused, tortured and beaten by the guards there to a point that he kept vomiting and had diarrhoea. They did nothing to help him. Consequently, he died in the courtyard*."
>
> In 2006, several women arrested during a wedding refused to sign papers stating that they would never participate in other religious gatherings and were sent to Wi'a. A minister of a church explained the ordeal endured by sisters, as recounted to him by one of them: "*One night, they started to beat them, three people beat her sister, two people beat her, asked them to sign not to follow their religion, but they refused. Both of them lost consciousness. She said: 'I remember that when I opened my eyes, my sister was asking other prisoners to hold her tummy, I again passed away.' They took her to the clinic; after two weeks she woke up, but her sister had died.*"
>
> A son recalled the death of his father in 2003: "*One day at 3 p.m. security people came and arrested him. At 10 o'clock the next day the police came and asked us to go to the police station and collect my father, who was on the brink of death. My mother and my sister went and saw my father lying on the floor next to the gate of the small police station. He was covered with foam of saliva. They collected him but on their way to the hospital he passed away.*"
>
> A son recounted what happened to his father after having enquired about the G-15: "*This was not liked by the Government; security people came and during the night took him. My family was crying, in their presence he was beaten by the military people who had been sent to do this. In the morning at about 11 o' clock they brought him back to our home and told the wife: 'Your husband is about to die.' The family took him to the hospital, where he died. When she inquired how he died, the doctor indicated that he died of serious injuries around his chest*."

1092. The Commission also received reports about conscripts, who died following the severe punishment amounting to torture they were subjected to during military training and service in the army.[1396]

> A witness, who was a conscript in Wi'a in 2004, said: "*We stayed there for nine months, and did military training and were working. 37 people died in Wi'a during the nine months I stayed there. Most of them were beaten to death, some of them were shot. I saw this. Wi'a is flat, you can see everything. Even if I did not see what had happened, I heard it from others. This is how I collected the number of those killed. Some people were eaten by hyenas. The people were beaten in front of us.*"
>
> A former conscript who did military training in Wi'a in 2006 witnessed the death of a peer: "*When I was there that week, three people tried to escape from the camp. We had no news about two but one was brought back. They tied him in the otto position and we knew he was going to die because his fingers turned red. They told the trainer but he ordered them to shut up. The 24-year-old man died after having been tied for 24 hours, blood came out of his mouth. I knew him personally*."

[1395] S006, S014, S071, S075, S077j, S143k, S144p, TBA044, TBA054, TBA071, TBA095, TCDP013, TCDP027, TFM007, TNR032, TNR036, TNR057, TNR081, TSH004, TSH017, TSH019, TSH026, TSH069.

[1396] TAM029, TNR046 , TAM018, TFM020, TBA054, TFM015, TNR042.

A former soldier who had spent 14 years in the military by the time he fled in 2012 remembered: *"I have seen many conscripts who died, some of them following punishment. In one case, they tied a conscript up when he was sick. He fell after being unfastened. He was taken to the hospital but later he died. Others die from lack of medical treatment. They bury them in the military cemetery. Civilians may think that people die only of a natural cause, but soldiers know better. The family of the deceased is not informed of the real reasons. The bodies are never returned to the family.*"

(g) Immediate and long-term effects of torture on survivors

1093. The Commission met survivors of torture who displayed visible traces of torture[1397] and suffering from on-going physical effects from their treatment. Many survivors, however, could only speak about the severe psychological suffering and trauma left by the torture they endured. Several of the torture methods documented by the Commission do not leave visible physical traces, for instance prolonged solitary confinement, mock executions, prolonged unlawful detention in squalid conditions of detention, or food deprivation. These methods are nevertheless equally destructive as physical torture methods.[1398]

1094. Similarly, sexual assaults are not just physical. They cause psychological harm and can have long-lasting effects. Experiences of sexual violence are emotionally difficult to deal with and the stigma associated with sexual abuse can cause additional trauma. In many of the cases the Commission documented, witnesses spoke of fears of infertility, loss of virginity and marriage prospects, as well as lasting physical impairment and pain.

1095. A treatment centre for torture survivors[1399] noted that individuals who had been tortured in Eritrea have been subjected to *"a wide range of physical, psychological and environmental torture methods in a systematic way."* The centre explained that they have recorded severe physical and psychological impacts of torture, including Post Traumatic Stress Disorder and severe depressive disorders. Their clinicians have noted *"the depth and breadth of these depressive symptoms, the prolonged treatment required towards rehabilitation and the accumulation of traumas involving both torture and other experiences suffered during flight and journeys to seek protection and claim asylum."*

1096. Many torture survivors told the Commission that even years after their experience, they are still suffering, physically and psychologically.[1400]

A man tortured until 2010 explained: "*Now I am still suffering. Because of the torture I faced in Eritrea and on my way to [a foreign country], I am not well. Even when I am sleeping, I will suddenly wake up and try to escape.*"

Another witness who was beaten, held in indefinite solitary confinement, deprived of food and water and threatened with death told the Commission: "*They left me no*

[1397] The Commission took pictures of scars, medical certificates and other information corroborating the testimonies of victims. This material has been saved in the confidential database of the Commission.

[1398] See the report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, Study on the phenomena of torture, cruel, inhuman or degrading treatment or punishment in the world, including an assessment of conditions of detention, A/HRC/13/39/Add.5.

[1399] Expert testimony received from Freedom from Torture on 20 May 2015. Freedom from Torture is the leading treatment centre for torture survivors in the United Kingdom, providing rehabilitation services, including psychological therapies and physiotherapy. Their specialist doctors prepare forensic medico-legal reports which document physical and psychological evidence of torture in connection with torture survivors' claims for international protection.

[1400] S048, S103, S077d.

visible disability, but the scars I have are all inside me. Because of this trauma I am broken inside."

Another one testified: "*I was tortured to a point I had no idea if I would survive it. In that prison, they took my health, my body strength and left me with scars for life.*"

(h) Principal findings

1097. The Commission finds that Eritrean officials are using a variety of forms of ill-treatment during interrogations and to punish detainees and conscripts. The common element of these forms of ill-treatment, such as *otto, almaz*, rapes or beatings, is that they are intended to cause severe physical and psychological pain. Many of them are also causing long-lasting psychological and physical damages to the victims or result in the death of the person. These acts are intended to extract confessions and information, punish, intimidate and coerce detainees and conscripts. The commission finds that this ill-treatment constitutes torture, which can therefore be described as widespread in Eritrea.

1098. The Commission also finds that torture is either directly ordered by officials, or inflicted with their consent and acquiescence. The recurrence, coherence and similarities of the many torture incidents documented by the commission is a clear indication of the existence of a deliberate policy to inflict torture in a routine manner in the context of investigations and interrogations as well as during national service. The commission finds that perpetrators of torture enjoy general impunity since to its knowledge they are never prosecuted. The commission concludes that the Government is accountable for the widespread torture inflicted on Eritreans throughout the country.

1099. The Commission is of the view that torture is used by the Government as a means to subjugate national service conscripts and detainees, instil fear among the population to deter any attempt to avoid national service or flee the country and silence any form of opposition.

5 Arbitrary deprivation of life

(a) Legal framework

1100. The right to life, enshrined in article 6 of the International Covenant on Civil and Political Rights, article 6 of the Convention on the Rights of Children and article 4 of the African Charter on Human and Peoples' Rights, is the most fundamental of all human rights from which no derogation is permitted even in times of a public emergency. The protection of this right entails the positive obligation to ensure that no one's life is arbitrarily deprived.[1401] Accordingly, the police, army, national security or anyone acting in any other public capacity, may only use firearms under limited conditions and circumstances. Firearms may only be used as a means of last resort. They may be used when it is strictly necessary and in a proportional manner in situations of self-defence, defence of others against the imminent threat of death or serious injury, to prevent the

[1401] In Eritrean law, the right to life was protected for all persons by the Transitional Penal Code, in which five types of homicides are recognised: murder, manslaughter (intentional homicide without premeditation or malice), extenuated homicide (homicide committed while defending right to privacy or property but not in self-defence – involuntary manslaughter), negligent homicide and accidental homicide (r of an accident or force majeure). The Transitional Penal Code recognised limited criminal responsibility due to age, insanity, necessity and in case self-defence (Articles 522, 523, 524 and 526). However, no public information was available to the Commission on the regulation of the use of force and lethal force in particular, by public officials. The Transitional Penal Code was replaced by a new Penal Code promulgated by the Eritrean Government on 11 May 2015.

perpetration of a particularly serious crime involving a grave threat to life, to arrest a person threatening the life of others and resisting the arrest, to prevent escape if a person is in custody. The use of firearms with a deliberate lethal intention is only authorised in order to protect life in cases of self-defence or to protect the life of a third person.[1402] Any killing resulting from the use of firearms or other kind of lethal force that does not comply with these requirements constitutes an arbitrary killing and a violation of the right to life.[1403]

1101. Extrajudicial executions are a specific form of arbitrary killings as the deliberate use of lethal force against a person is committed by, at the behest of, or with the acquiescence of public officials outside of any judicial process and usually as an alternative measure to the judicial process. States have an obligation to prevent arbitrary killings by any public official and they should prescribe by law the exceptional circumstances in which a person may be deprived of his life by such authorities.[1404]

(b) Extrajudicial killings

1102. The Commission heard that the Government of Eritrea has, since the *de facto* declaration independence of Eritrea in 1991, carried out extrajudicial executions with impunity. Testimonies from family members of victims and witnesses are replete with descriptions of the use of lethal force by state security agents. The information that the Commission obtained indicates that extrajudicial executions that began from the time of independence have scontinued and they have particularly been prevalent in the military.

(i) National security killings: Execution of enemies, collaborators of the enemy, traitors and deserters

a. Collaborators of the enemy: the extrajudicial executions of Eritreans and Ethiopians between 1991- 1993 (Adi Quala prison)

1103. In the aftermath of the liberation struggle that led to the *de facto* independence of Eritrea in 1991, Eritreans and Ethiopians who were considered to have collaborated with Ethiopia before or during the liberation struggle were executed by the newly established Government of Eritrea.[1405] Most of the victims of these executions were first detained in Adi Quala prison, located south of Mendefera near the Ethiopian border, before their execution in 1991 and 1993.[1406]

> A former detainee in Adi Quala prison told the Commission that sometime in 1993 prisoners witnessed the execution of about 170 people who were accused of working with the Ethiopian Government prior to Eritrea's independence.
>
> The Commission also heard that "*The freedom fighters walked to Asmara and declared their victory. Ethiopians who were in the city escaped and they scattered in different directions. There were also Eritreans who were cooperating with the Derg (Ethiopian) Government who ran away. But a lot of them surrendered and they were put in Adi Quala prison… The victory was declared in 1991… At the end of 1991, a number of people from the mechanised brigade were selected – 20 to 30 people. They were taken to a faraway place and they were told that there was an operation. The organiser and commander of that operation was Brigadier General [x] who worked with Colonel [x] (he is now Brigadier General). Over 150 prisoners, mostly*

[1402] Principle 9 of the Basic principles on the use of force and firearms by law enforcement officer.
[1403] Arbitrary killings are also referred to as summary killings.
[1404] Human Rights Committee, General comment No. 6, para. 3.
[1405] TAM072, TSH079, TAM048.
[1406] S143g, TAM072, TSH079.

Eritreans but also some Ethiopians, were taken in military vans and were transported from Adi Quala to Shie'b (north of Massawa). They brought them to the place where the 20-30 people from the mechanised unit were stationed. The organisers had asked that holes be dug and they stated that they would use them for agriculture. The over 150 people who were handcuffed were killed and put in these holes. They shot them and buried them in a mass grave."

b. Extrajudicial execution of soldiers for cowardice in the context of the war with Ethiopia

1104. During the Ethiopia-Eritrea border war of 1998-2000, an unknown number of Eritrean fighters were reportedly executed for alleged desertion or for retreating from the frontlines without orders.[1407] The information collected by the Commission indicates that the executions were intended both as a punishment and as a deterrent to others.[1408] It was reported to the Commission that it was during this war that a circular of the Ministry of Defence empowered officers with the rank of colonel and above to execute deserters and defeatists while acting as an ad hoc military court.[1409] Soldiers were labelled as traitors for retreating from the battle front or other minor offences, and were all executed by commanding officers.[1410] Reportedly, their families were informed that they died during the war and not that they were executed.[1411]

A former fighter who in 2000 fought the war against Ethiopia told the Commission that: "*When Eritrea heard that Ethiopia was assembling the army in readiness for another offensive, the Government started putting people in units. I was out in a different unit… I was fighting on the front close to Adi Quala and Tsorona… I was scared at that time. The unit leader was shooting all the soldiers who were scared. My friend was shot. He died. We were told that the squad had taken care of him because he was running away from the war… My leader told me that since the Ethiopian forces were coming hard on us … We were going to be ordered to retreat. So before everyone, he ordered me to retreat. The offensive grew stronger and everyone dispersed. I started to run backwards. Everyone was ordered to stay. But the order for retreat came and everyone retreated. My leader then decided to register me as a deserter. This meant that I was going to be executed*."

A former fighter, who was a controlling officer of rifles and bullets during the war, told the Commission about the execution of a person who retreated from the battle field and another soldier who was executed for taking time off when others were fighting: *"There were stories of executions but I witnessed the killing of three people. One of them was a captain. He was very brave and a good friend of mine ... During the war in 2000, our unit was scattered and then we retreated to Barentu from where we were immediately sent to Adi Quala. During the war, some high-ranking officials retreated from the battlefield. The captain was very upset about it and was always criticising them for having abandoned us without a word. During peace time at a meeting, they accused him of showing weakness. He had an argument and challenged the high-ranking officials by reminding them of what had happened … They decided during an official meeting to kill him. The person who shot him dead came to my office to report on the use of the bullets. Even the Lieutenant-Colonel told us that many others were sentenced and many more were going to be executed. Another person who was executed was … an operator … One*

1407 TAM075, TCDP077.
1408 TAM075.
1409 See chapter VI, B, 1, Administration of justice.
1410 TAM075, TCDP077.
1411 TAM075, TCDP072, TCDP077.

day he was driving a truck full of weapons and he stopped at a shop to have a drink. He was accused of having tea while the others were fighting. But it was relatively peaceful at that time. They executed him for this reason. This also happened in 2000."

Another former fighter who, in 2001, witnessed the execution of two of his friends who were accused of cowardice because they had retreated from the frontline said: "*Both were executed because they thought that during the war they had tried to escape when we had to scatter following a retreat.*"

1105. The Commission also collected information that some fighters were killed immediately after the declaration of cessation of hostilities between Ethiopia and Eritrea.[1412]

A former fighter who witnessed the executions of more than seven people in his military division two weeks after the ceasefire told the Commission: "*It was 15 years ago … After the war some soldiers were executed to give a lesson to others. They were executed two weeks after the ceasefire which was signed on 11 June 2000. Among others, four were killed for not having fought bravely. Another one was suspected of having shot himself during the war. There were other people. I do not remember their names. Another person was also suspected of shooting himself in the hand. His friend told him that he was about to be killed and advised him to flee the country and go to Djibouti. He was caught when he was trying to flee the country. When they interrogated him, he said he was afraid for his life. Both of them were executed – himself and the person who advised him to flee. They called us for a meeting and told us they were going to be executed. After many years, the authorities told their families that they had died during the war; that they were martyrs but later they learned that they had been executed.*"

c. Extrajudicial killings of conscripts during peace time

1106. The Commission heard that each post war period in Eritrea witnessed extrajudicial killings of suspected and actual deserters of military and the national service.[1413] People were also executed for other infractions by officers within their military units including disputes with superiors.[1414] Typically, deserters of the army in the immediate aftermath of the three rounds of war between Ethiopia and Eritrea were systematically executed. The execution was ordinarily conducted by their military units.[1415] If apprehended, deserters would be paraded before their military leaders where the accusation would be made and the execution conducted. [1416]

In August 2000, a soldier who served in Brigade (18.2) and Battalion (18.2.2) was reportedly executed in Dembe-Doran (Molque subzone) at the age of 19 on accusation that he deserted.

A former military officer who witnessed the killing of his colleague, informed the Commission that his colleague was executed in Senafe in 2000 by his military superiors for alleged desertion. He told the Commission that there was a meeting which to them had a semblance of a hearing where the military leader made fun of

[1412] TCDP072, TCDP077.
[1413] TCDP019.
[1414] TCDP014.
[1415] S144i.
[1416] S003, S144i, S143b, TCP019, TCDP071.

his name and later executed him. The Commission heard that the victim was one of the many deserters who were executed in the 32nd army division.

A former military officer told the Commission about the orders they received to execute any deserters and how these were implemented by his battalion: "*In February 1999, we received an order from the PFDJ telling us that the battalion commanders could shoot anyone who escaped. Before 1999, a person who would go home without permission would go to prison. The length of the imprisonment was determined by the commander. In March 1999, I was in a temporary military camp in Ketay … One person from the national service went to see his family without permission … and they sent two guys to bring him back. The commander called a meeting and said 'this person left twice and we will apply the death penalty'. This was the first death penalty I saw in my life. The penalty was imposed the following day … They left the camp walked 10 minutes and I heard the firing of two bullets. After that they took a pick-up truck. A close friend of mine who was a radio operator received an order from the battalion commander to dig a hole and bury the body. Then I asked to see the place. I went there and I saw the grave-there was blood on the ground … Again, in June 1999 the war had started and we were on reserve in the military ... A conscript escaped because he was scared … The next day, he was brought to the unit… and the commander said 'yesterday you left us. When you left us, where did you go?' He said 'I went to the department of logistics'. He received the death penalty… The commander said this order came from the top of the army… The leader of our battalion … could decide the death of his troops, as per the 1999 circular.*"

The existence of orders in the post 1999 period to execute soldiers who disagreed with superiors or deserted was confirmed by other witnesses. One witness who served in the 1st brigade of the 271 corps told the Commission about the torture and executions of military officers: "*Our daily life in the military was a torture. Even if someone was a good fighter, when he is in disagreement with his leader he was executed. There were many cases of alleged executions but I personally know three. In 1999, following an argument that he had with a high-ranking official, he disappeared from the division. We heard that he was in town and after three months they captured him, accused him of being a traitor and executed him. I was the controlling officer in charge of all weapons and rifles, so if any bullet was missing soldiers had to report to me. A soldier came and told me that 10 bullets were missing and he explained that he executed another soldierwith the 10 bullets.*"

A witness recalled the orders that came from the Office of the President regarding the infractions that elicited summary execution. He told the Commission that: "*In 2004, orders came from the Office of the President. The Mayor read all the regulations and punishments. I can remember some of them. If you try to escape, if you challenge a ranking officer or if you threaten him with a weapon or if you are found selling a weapon you will be executed. A soldier was suspected of fleeing the country so they told us the rules in a meeting and told us the sentence … He was allowed to speak to defend himself but he was starving to death and thirsty- he could not speak. He barely moved his lips not uttering words. He was sentenced to death by execution. After the meeting, the deputy, the driver and an armed soldier, loaded him in pickup truck along with a shovel and pick axe. This was the last time I saw him alive… Later on, the Brigade told his family that their son was killed in exchange of fire with the adversary called the Mujahedeen.*"

1107. Extrajudicial killings are not reserved for deserters of military service for already conscripted military officers. They extend to deserters and escapees of military conscription during the conduct of round-ups (*giffas*)[1417] and partly in the course of undertaking military training at different military camps.[1418] The execution of people avoiding military service who dare to escape from round-ups has been observed by witnesses as recently as 2013. [1419]

> One witness told the Commission that: "*In mid-2013 … a man escaped from a giffa. He escaped early in the morning on the day of the giffa. Military were surrounding the area. They shot and killed him ... The family later asked the administration office but they were told not to talk about it.*"
>
> A person who witnessed the killing of a conscript in a military camp told the Commission: "*In Sawa, in 2004, a soldier who was sick with malaria went to the hospital but the doctor refused to give him medication and started beating him. The soldier was angry and shouted at him. Then the doctor went to the leader of the Division, called [x], who asked the doctor to kill the sick soldier. The doctor took his gun and shot him dead. The doctor was a military officer. They took the body and buried it. Some people from our unit saw the body. The leader reported to the head of the battalion that the soldier was angry such that he killed himself. After several months, a member of the soldier's family came to Sawa. He was a colonel himself and told the leader of the Division "I know who killed my family member". When peace comes you will be punished. [x] organised a meeting and warned us: 'if someone comes late after being granted permission … he will serve as example and we will shoot him'*."

(ii) Politically-motivated killings: arbitrary killings of war veterans with disabilities, Muslims and political dissidents

1108. Politically-motivated killings in Eritrea began to be witnessed at the onset of the official declaration of independence in 1993. Mostly, such killings were ordered with a view to preventing potential uprising or simply to punish manifestations of dissent with the Government's policies and practices. However, extrajudicial executions have apparently also been ordered based on mere suspicion that a person might have committed a crime. The Commission notes from the information obtained that the Government has since independence committed numerous extrajudicial executions of individuals and political opponents including the killing of disabled war veterans in Mai Habar in 1994 and about 150 Muslims in Kushet in June 1997.

a. Extrajudicial killings of war veterans with disabilities in 1994

1109. In July 1994, the Government committed extrajudicial killings when war veterans with disabilities resulting from war injuries took to the streets and demonstrated against their conditions of living in the camps.[1420] The war veterans sought to march to Asmara but when they arrived in Nefasit, the Government sent troops who opened fire thereby wounding and killing an unknown number of them. Reports indicate that the war veterans with disabilities only sought to protest their living conditions in Mai Habar.[1421]

1417 TAM008, S144i.

1418 TCDP075, TCDP014, TSH069. See chapter VI, C, 1, National service.

1419 TSH054, TCDP014.

1420 S036, TNR008, TFM040, TAM022, TAM030. See also chapters VI, A, 3, Freedom of opinion, expression, assembly and association and VI, C, 1, National service.

1421 TFM033, TNR008, TFM040, TAM022, TAM030.

> A former military officer who was among those who witnessed the shooting and counted at least seven people who were shot dead told the Commission: "*In July 1994, disabled former fighters started a demonstration and pleaded with the Government for their rights. They started from Mai Habar and wanted to reach Asmara. On their way, in Nefasit, the army came and shot them. They were shot indiscriminately by the army. I was there doing some work and I saw it … I saw six or seven people shot and lying on the street.*"

b. Summary executions of Muslims in 1997

1110. The Commission obtained information that in June 1997, about 150 civilian Eritreans from Keren, Senafe and Agordat were rounded up and shot for allegedly being collaborators of the Eritrean Islamic Jihad also known as the Eritrean Islamic Salvation Movement or the Eritrean Islamic Jihad Movement.[1422] Reports abound that the killings were part of a retaliation offensive ordered by the Government after five Belgian tourists were killed in late December 1996, allegedly by the Eritrean jihadists.[1423]

(iii) Border killings to prevent escape from the country ("shoot-to-kill policy")

1111. The Eritrean Government allegedly instituted a "shoot-to-kill policy" with a view to curbing the growing number of people who have been fleeing the country.[1424] In justification of this approach, the Government identifies such people as 'deserters' and 'collaborators with the enemy' who are responsible for the 'disaster in the country'.[1425] While the exact date of the introduction of this policy is difficult to establish,[1426] the Commission observes from the information gathered that there was a surge in reported cases of border killings in the year 2004 even though the shoot-to-kill order might have its origins during the Eritrea-Ethiopia border war period.[1427] The Commission documented many cases of killings resulting from the implementation of this policy. So far an unknown number of people have been shot and some killed for attempting (actual or suspected) to illegally cross over to Djibouti, Ethiopia and the Sudan. The Commission also documented cases of shootings and killings by the Eritrean naval forces at sea when people are suspected to be attempting to cross to Yemen by boat.[1428] The Commission also heard testimony from border guards, who implemented the policy, confirming that instructions were proffered by local administrators to warn families that people who attempted to cross the border illegally would be killed.[1429]

> A witness and former military officer informed the Commission about the warning that was issued in 2004 in the southern *zoba*. He said: "*In 2004, people in the village near the border were being told that if their children were seen trying to cross the border they would be shot. The southern zoba administrator went to all the villages near the border telling parents to stop their children from crossing otherwise they will be killed. In 2005, the zoba administrator told the military that he had warned*

[1422] TNR085, S036, TNR007, TCDP018.
[1423] S036, S017.
[1424] See the tweet by Ms. Rahel Weldeab, the head of the Foreign Affairs Department of the National Union of Eritrean Youth and Students (NUEYS) made on 19 June 2013 stating that the shoot to kill policy was necessary because of the tense situation at the borders which has been engendered by jihadists and the war between Eritrea and Ethiopia.
[1425] TNR082.
[1426] The shoot-to-kill order might have its origins during the 1998-2000 Border war. See TLA018
[1427] TBA057.
[1428] TAM027.
[1429] TSH015, S143b.

everybody. The military then told their soldiers that everyone had been warned so they had to shoot to kill people who tried to cross the border. At the end of 2005, we had a meeting with our commander. At the meeting, we were told again that we must shoot to kill anyone who tried to cross the border. I asked if there was not anything else we could do instead of shooting the people … When we were sleeping, some officers came and woke me up. They took me to detention."

1112. The Commission heard many testimonies that confirm that for a considerable period of time there has been a standing policy to shoot with the intention to kill anyone who attempted to cross the border illegally.[1430] The Commission has documented cases that military personnel and border guards had a long-standing order to shoot on sight anyone suspected to be crossing the borders illegally.[1431] A former military officer, who in 2006 completed his military training in Sawa and was deployed to work as a border guard under the 33rd army division of the border surveillance in Ghermayka, explained to the Commission: "*Our orders were to kill on sight people who tried to cross the border*".[1432] The Commission also heard that military personnel who did not implement the shoot-to-kill policy were put in prison.[1433]

1113. Although the "shoot-to-kill policy" is implemented in all frontiers of Eritrea including at sea, the majority of the testimonies collected by the Commission related to incidents that occurred when people attempted to cross to Ethiopia and to the Sudan. A number of people who survived the shootings spoke about how they witnessed other escapees getting killed and how others had been maimed after surviving bullet wounds.[1434]

A victim of the shoot-to-kill policy told the Commission: "*I was shot close to [x] border in 2009... I was shot by border security. I was with four people. My friends managed to cross the border. I was arrested because I was still on Eritrean land. I was taken to hospital. The doctor decided to take care of my leg. He said there was no need to amputate the leg. Then when the military realised that I was getting better, they were planning to imprison me and I decided to escape to Ethiopia.*"

A witness told the Commission: "*When I tried to escape to Sudan in 2008, one of the people who were trying to escape was shot in the shoulder. I do not know whether he is alive or dead ... I took care of him whilst in prison. He told me that the military warned him to stop running during the escape but he did not. He was shot. His wound was getting an infection.*"

A victim who was shot in the abdomen in 2007 and is yet to fully recover from the shooting told the Commission: "*I crossed the border at night. When I climbed the mountain I lost my direction and I came to the valley instead. When I tried again the next morning, they saw me from afar, they shot at me. It was a steep slope; I got shot. I fell. They told me: come back, we will finish you off. I was afraid. They captured me. I was bleeding … They beat me … I was exhausted. They moved a bit and started discussing how they should finish me off.*"

Another person, who was shot in the leg in 2005, showed the Commission the scar from the bullet wound he sustained when he attempted to escape. He was shot and arrested by the Eritrean army and interrogated about the whereabouts of people who

1430 TAM027, TAM028, TAM036, TNR047, TBA085, TBA064, TNR010, S077i.
1431 S144g, TNR082, S077i.
1432 S144g.
1433 TNR082.
1434 S002, S004j, TAM002, TAM016,TNR046, TLA026.

were in his company. After being tortured by the authorities he was imprisoned for four years.

1114. Most people undertake border crossings in groups either in the company of a person who knows the exit routes or in the company of smugglers. As a result, the survivors of the shootings informed relatives of those who had been killed or captured because the military personnel detained those captured and buried those killed without informing family members.[1435]

A former border guard, who worked in Aderser between 2007 and 2008, informed the Commission that when a person was killed, they would bring the body either directly to a grave site or to the head of the battalion who would then order burial.

One witness informed the Commission that in January 2013, after bribing the military to help him cross to Ethiopia, he witnessed the burial by the military of people he thought had been killed by them.

1115. The number of shootings and killings that have occurred near Eritrean borders since the establishment of the shoot to kill policy remains unknown. However, the Commission estimates that the number is quite high when one considers the number of cases documented ny the Commission involving specific incidents. In order to highlight the magnitude of the problem, the Commission obtained information on certain specific incidents.[1436]

Shootings in Karora in September 2014: The Commission collected information indicating that sometime in September 2014 about 16 children attempting to leave Eritrea through the Ginda port on the border with the Sudan were shot at by military personnel at the border area of Karora. The Commission was told that 13 children, seven male and six female, are believed to have been killed in the incident. The children are believed to have been between 13 and 18 years of age, and to be predominantly from the 27th round of national service. Most are believed to be children of soldiers and military officers. The children are believed to have been from the Qachew. Three girls were reportedly shot and killed.

The killing of 40 at the border in 2014: The Commission also heard that a group of 46 people tried to flee to the Sudan in late 2014. Out of this number 40 were shot, six managed to escape.

Killings at sea in 2013: In 2013, about 20 people, who were mainly from the Afar ethnic group, are reported to have been killed when they attempted to flee to Yemen.

1116. The Commission also heard that there has been a revision of the shoot-to-kill policy such that now border guards are under orders to shoot below the knee with a view to stopping the flight after firing a warning shot in the air.[1437] The Commission notes that in a tweet of 19 June 2013, Ms. Rahel Weldeab, the head of the Foreign Affairs Department of the National Union of Eritrean Youth and Students (NUEYS), said that the Eritrean Government no longer implements the shoot-to-kill order.[1438] However, the Commission obtained conflicting testimonies from people who left between 2014 and early 2015, some of which attest to the fact that the border guards continue to shoot at people who attempt to

[1435] TSH006, TNR082, TFM026.
[1436] TNR010, TNR084, TAM044, TAM050, TAM051, TAM052.
[1437] TAM035, TLA018, TBA077, TBA057, TNR082, TLA026, TLA023.
[1438] See https://twitter.com/RahelWeldeab/status/347336306331893761.

cross the border, while other witnesses explained they crossed without any problems as it is reported that border guards no longer shoot at people.[1439]

> A person who escaped in 2015 *said* "*When we were escaping from Eritrea, we saw a checkpoint. We then took a different route. When the soldiers noticed us, they began to shoot at us.*"
>
> Another person, who escaped in 2014, told the Commission: "*In 2014, I decided to flee. My friend in the military helped me to escape. There were soldiers at the border. They tried to shoot at me. My friend was 15 metres ahead of me. The soldiers were shooting at my friend. We ran into different directions. I think they tried to hit us.*"
>
> On a different note, a witness who crossed the border with Ethiopia in early 2015 stated: "*Now, no one fears to escape the country because they know the military will not dare to shoot at you.*"
>
> A witness summarised the whole ambiguity of the current situation: "*I was shot at when I tried to cross the border alone around Adi Quala in January 2014. It was during the night and I was not injured even though bullets were directed at me. The guards started to shoot as soon as they had yelled to stop. … I had heard that people were killed before while trying to cross the border at this place but not recently, so I was very surprised that they shot at me.*"

(iv) The extrajudicial killing of ethnic minority groups: the case of the Kunamas and Afars

1117. While individual victims of human rights violations belong to all ethnic groups in Eritrea, information obtained by the Commission indicates that the Kunama and Afar ethnic groups have been specifically targeted by the Government by being subjected to enforced disappearances and extrajudicial killings.

a. The poisoning of Kunamas in 2007

1118. The history of the escalation of the tense relations between the Kunama and the Eritrean authorities is often traced from the period when the border war between Eritrea and Ethiopia broke out in 1998. During this time, the Kunama were already portrayed as spies and collaborators of the Ethiopian (*Derg*) regime. This image was reinforced when the Kunamas, unlike other ethnic groups, did not flee their villages during the 1998 Ethiopian occupation of the Eritrean territory. This conduct of the Kunamas did not only buttress the Government's theory that they were spies and collaborators of the Ethiopian Government but also added an indictment that they failed to resist Ethiopian occupation.

1119. In 2000, the Eritrean Government's post-war retaliation campaign against the Kunama for their alleged collaboration with the Ethiopian Government led to deaths and imprisonment, which also forced several thousands to flee to Ethiopia. In addition to the accusation of being collaborators and spies for the Ethiopian Government, the Kunamas have also been accused of financing and providing support to the Kunama resistance movement called the Democratic Movement for the Liberation of Eritrean Kunama (DMLEK). Reports abound that now over 300 Kunamas have been detained in various prisons, tortured and killed during interrogation.[1440]

[1439] S077jj, TNR010, TNR047,TNR048, TLA009, TLA019, TLA039,TLA031, TLA028, TAM036, TLA009, TBA085.

[1440] TCDP036.

1120. The Commission obtained information that in April 2007, 28 members of the Kunama ethnic group were killed in Mai Duma prison and buried in a mass grave. Twenty-six people were poisoned and two died during interrogation after being subjected to torture and other punishments. A former military intelligence officer explained that the prisoners were made to dig holes allegedly meant for toilets. Then, Major [x] brought 20 litres of poison which was administered on the 26 Kunamas. They were later buried together in the holes that had dug.[1441]

> A former military intelligence officer also told the Commission that "*The Government wanted to eliminate Kunamas. In one month, about 350 Kunamas were arrested for no reason. I witnessed it from January 2007 until September 2007. It was very hard for interrogation. We had no questions to ask, there was no reason for them to be in prison. They were put in prison for no reason, they were sent to Mendefera prison without any court judgment. We were only mentioning their names on the paper and then they would stay in prison for 20 years. The plan of the Government was to eliminate Kunamas.*"[1442] To date, the number of Kunamas who have been executed by the national security agents for their alleged collaboration with the Ethiopian Government and the DMLEK remains unknown.

b. The killing of members of the Afar ethnic group and reports of the existence of mass-graves

1121. During the border war between Ethiopia and Eritrea, the Afar people on both sides of the border were caught in the middle. The Commission collected information that the Afar people have been subjected to extrajudicial killings and enforced disappearance by the Eritrean Government since 2000.[1443] These killings have also triggered their displacement from their lands within the country and across borders to Ethiopia and Djibouti.[1444] This has posed great difficulty to their livelihoods as they depend on their traditional lands for the sustenance as an indigenous ethnic group.[1445]

1122. The Commission obtained information that in 2000, two cousins were killed in Dabu (close to Assab) by Eritrean soldiers.[1446] About five days later in Abihte-Koma about 18 Afar civilians were reportedly killed by militaries.[1447] Information supplied to the Commission indicates that on one morning, the militaries opened fire on families killing 16 Afar men. This massacre was followed by the looting of personal property including livestock. The information also states that the dead bodies remained unburied for about three days until other Afar people from neighbouring villages later came to bury them in mass graves.[1448]

> A widow of one of the 16 people who were killed in this incident told the Commission that: "*On Sunday morning many soldiers came at about 7 a.m. We did not know we were surrounded. We were loading our camels, making tea and milking our livestock. The soldiers came closer, and without saying anything to us they started shooting. My little daughter of two years old … my older children and my husband were next to me. My husband was shot. We all escaped and the camels fled when they started shooting. We do not know what happened to us, because it*

[1441] S036, TCDP036.
[1442] TCDP036.
[1443] S078.
[1444] S078, TCDP018.
[1445] TNR057, S078.
[1446] TCDP057, TCDP044.
[1447] TCDP044.
[1448] TCDP044.

happened very quickly. In this incident 16 people died. My husband died immediately, one was wounded and managed to escape. Those wounded were shot at again and again. They were targeting the men while the children and the women were escaping. 16 men were killed and two women escaped but one woman who was pregnant (first pregnancy) died in the course of the flight."

1123. Similar incidents have also been reported. The Commission heard about the rape and killing of four Afar women in the years 2000, 2013 and 2014.[1449]

A witness of the rapes and killings told the Commission: "*The soldiers raped the women and the girls. And if they refused, they killed them. A lot of women were killed that way. During the last war with Ethiopia, this has increased. They find the women guarding goats or fetching water and food. That is when they rape them. I can tell you about four women who were raped. One was 15 years old; they gorged her eyes out and left her on the street. Another one was sexually violated. They placed big stones on her*."

1124. Based on the testimonies, the Commission was informed that 18 people were killed in the above incidents.[1450] The Commission has not only received information of extrajudicial killings but also specific reports on the existence of mass graves in Abihte-Koma, Hayli-Iddi and Harsile. The Commission also obtained information of reports that hundreds of Afar have disappeared and are feared dead as well as reports of the existence of mass graves in other parts of the Afar region.[1451]

(v) Other extrajudicial killings

1125. The Commission heard that some prominent people in society were reportedly executed by killing squads established by the Government as early as 1991, which continued to operate in the aftermath of the *de facto* independence of Eritrea.[1452] Some of the victims were prominent businessmen killed in 1994 and University lecturers who were killed between 2003 and 2005.[1453]

1126. The Commission also heard that people are executed by the military for reasons such as suspicion of smuggling people to neighbouring countries.[1454] Most of those who were executed were border town residents. Executions were carried out in public places, reportedly to be a deterrents for local populations. The Commission did not collect any evidence indicating that those executed had access to justice nor whether they were able to contest their conviction.[1455]

A witness recounted an incident which took place in 2002: "*We found one prisoner. He was accused of being a smuggler. This person was beaten until he was unconscious, then we were called and had to bring him from the beating place to the underground cell. He eventually died. The person who killed him was [x], I do not have much information about him. He is the one who had beaten him to death.*"

A witness described an announcement made by local administrators on the penalty of death for people caught facilitating the escape of others from the country: "*In the period 2005-2006, the authorities gathered local administrators and people's*

[1449] TNR057.
[1450] S078.
[1451] S078, TCDP046.
[1452] TRDV001.
[1453] TRDV001, TCDP013.
[1454] S017, TSH004. For further details, see chapter VI, A, 2, Freedom of movement.
[1455] *S075, S143n, TSH004, TSH083, TBA054.*

representatives in Tessenei and announced to them the Government's new policy of death punishment to those who are involved in facilitating people's cross border migration. Following the announcement, many youths were shot dead in front of people gathered for the sole purpose to observe the process of execution. Mainly people who forced to attend such executions were religious leaders, local administrators and representatives, PFDJ local representatives, Youths and women representatives."

In another instance, the Commission was informed of only one case of execution in 2007 of members of the Eritrean army, including a military unit leader and a captain, suspected of smuggling.

1127. The Commission also heard that people have been executed by the military just to intimidate others either in a military unit or a village. [1456]

A man who witnessed the execution of suspected smugglers reported: "*In 2004, two were killed in my town by the Government … The two were suspected of smuggling people out of the country. They were taken to their parents and shot in front of them to set an example for the whole community*."

A former conscript who witnessed the killing of other conscripts during military service told the Commission that: "*When I was in the national service, thousands of people were killed. Some people were killed because they left without permission to see their family or tried to leave. Any excuse was used. At the end of 2000, a guy from Keren escaped and they killed him. In 2011, a man I knew from Keren was also in the same national service camp as me. He often criticised the guards for their treatment of the women, telling them it was wrong. One day an officer and six guards came to get him, but he saw them coming and got his gun and shot them all. Other officers and guards came and attacked him. During the attack, one of the women held captive by the officer was shot but not killed. The man from Keren was shot and killed*."

A person who witnessed the execution of a colleague in his unit for no reason told the Commission: "*In 2011, after I was released from prison, I was told that my unit was going to work for three months in Tessenei. We got there and then the guards were told to take their arms. They executed one soldier. But what we saw was that he was taken off the line and he was shot. At that moment, they introduced superiors of our commanding officers. One of the people, a senior war veteran stood up for the boy. He asked why they killed him. He was upset and tried to find out why they killed him. He was threatened and the superiors were against him. He was then imprisoned*."

(c) Impunity and consequences on families of victims

1128. One of the features of the apparently systematic use of extrajudicial killing in Eritrea is the climate of impunity within which this happens. This is exacerbated by a dysfunctional court system hamstrung by executive interference and control.[1457] Suspected perpetrators are never investigated and families of victims are left without a remedy. As a result, killings and executions by the military and other security agents of the state go unpunished. Furthermore, the pervasiveness of military control and the intimidation on the civilian population through reprisals, whenever they attempt to seek justice, facilitates the

[1456] TAM001,TSH004, TSH017.

[1457] See chapter VI, B, 1, Administration of justice.

perpetuation of the sense of impunity.[1458] In a country where the mere asking of questions about the whereabouts of a detained or disappeared person attracts detention itself, family members lack the fortitude to seek redress.[1459]

(d) Principal findings

1129. The Commission has sufficient grounds to believe that extrajudicial executions and arbitrary killings have been widely committed as a form of punishment in Eritrea since its independence. Before the border war, punishments in the form of summary executions and extrajudicial killings were meted out to thwart protests against demands made peacefully by war veterans with disabilities and political opponents, including Muslims scholars and others. Extrajudicial executions have also been carried out by Eritrean authorities publicly or secretly to punish other political opponents, as well as suspected smugglers and ordinary citizens for other crimes that are often not among the most serious crimes or are largely speculative. Mass killings have also occurred against certain ethnic groups. Authorities often resort to the use of lethal force to punish less serious crimes, which are mainly carried out by the military. The Commission finds that Eritrean soldiers accused of cowardice or desertion during the 1998-2000 border war with Ethiopia, were systematically executed. This also includes Eritreans and Ethiopians suspected of being 'collaborators of the enemy' after the war, in particular Kunamas who were accused of having supported the Ethiopian Government. These executions were systematically carried out by the military without recourse to the judicial process.

1130. The Commission finds that the Government of Eritrea has for a considerable period of time, been implementing a shoot-to-kill policy close to the borders with its neighbours to stop Eritreans from fleeing the country, who are labelled as traitors and collaborators of the enemy. The shoot-to-kill policy has largely been implemented by the military, particularly the border surveillance division. The surge in its implementation in 2004 was preceded by warnings from local administrators to their communities regarding the strict instructions received from the Government to shoot and kill those who attempted to leave the country. While the Commission found that people have been shot at while trying to cross the border as recently as 2014, some testimonies indicated that the shoot to kill policy might have been revised. However, the Commission is not in a position to conclude that the policy has been officially abolished by the Government. The Commission recalls that the right to leave one's country is a fundamental freedom recognised under international human rights law.[1460] The use of lethal force to prevent individuals from leaving Eritrea, albeit not complying with national legal procedures and requirements, is a violation of the right to life.[1461]

1131. While some of the killings and executions have been committed upon orders of the Eritrean Government, which is directly responsible for these violations on the right to life, some might have resulted from "personal initiatives" or excessive use of force by military officers. The Commission recalls that under international human rights law the Eritrean Government has the obligation to investigate, prosecute and punish the authors of such killings.[1462] The Commission finds that the Eritrean Government breached its due diligence obligation and as a result, these killings are imputable on it. The Commission is concerned

[1458] See chapter VI, B, 2, Violations of the right to liberty and security of person.
[1459] Ibid.
[1460] See chapter VI, A, 2, Freedom of movement.
[1461] Ibid.
[1462] Art. 2 (3) of ICCPR of the right to effective remedies - See Human Rights Committee, General comment No. 31, para. 15. See also principles 9 and 18 of the Principles on the effective prevention and investigation of extra-legal, arbitrary and summary executions.

that the general climate of impunity for Eritrean officials thus created, is conducive to the continued practice of arbitrary and extrajudicial killings in Eritrea. As a result, family members of victims are left without any remedies. The Commission, therefore, finds that the Eritrean Government is responsible of all these extrajudicial executions and arbitrary killings that constitute violations of the right of life guaranteed under international human rights law.[1463]

6 Violations of the right to property

1132. The right to property is guaranteed under the African Charter for Human and Peoples' Rights.[1464] Other international human rights treaties leave each State the freedom to regulate private property in its territory. Where the right to private property is proclaimed under national law, international human rights law provides that there should be no discrimination in the enjoyment of this right based on religious, gender or ethnic grounds, among others.[1465] Usually, the right to property relates to two main uses of land, namely land that may be used for farming purposes and is the primary means of subsistence of the owner, and land used for housing or other immoveable use such as commercial buildings.

(a) Seizure of property (lands, businesses and assets)

(i) Property regime and access to land

1133. Traditionally, in Eritrea, land was communal property owned by each village and to which individuals gained access through usufruct rights, i.e. the right to enjoy the use and advantages of another's property short of the destruction or waste of its substance. Usufruct rights were acquired through residence in a village, marriage to a resident of the village followed by residence in the village, or through inheritance from residents of the village. Depending on the local customary law and agrarian system specific to each village, the use of the land could be on an individual or on a collective basis. Individual land could be assigned on a permanent basis or could be regularly redistributed among people.

1134. After independence, considering that the traditional tenure system was obsolete and not conducive to the development of the country, the Government enacted Proclamation No. 58/1994 "to reform the system of land tenure in Eritrea, to determine the manner of expropriating land for purposes of development and national reconstruction, and to determine the powers and duties of the land Commission". It remains the main text regulating the right to property in Eritrea.[1466] This Proclamation abolished all previously existing land tenure arrangements in villages and proclaimed instead that the Government has exclusive ownership of the land and natural resources and contents above and below ground but that it may grant various usufruct rights to its citizens.[1467]

1463 Art. 6 of ICCPR, art. 8 of CRC and art. 4 of ACHPR.

1464 Article 14 of ACHPR.

1465 Arts. 2 and 5 (d) (v) of CERD, arts. 2, 3, 14 (2) (g) and 16 (h) of CEDAW.

1466 The 1997 Constitution that never entered into force recognises a partial right to private property in its article 23. However, since the Constitution never came into force, it is Proclamation No. 58/1994 that is the relevant legislation regulating property. Proclamation No. 58/1994 was later complemented by Proclamation No. 95/1997 that further details the regime and related procedure of registration of land rights and immovable properties in a cadastral regime; and Legal Notice No. 31/1997, that provides the implementing measures for Proclamation No.58/1995.

1467 Article 3 of Proclamation No. 58/1994.

1135. Under the new land regime, different kinds of usufruct rights may be granted to citizens of 18 years of age and above.[1468] The usufruct rights that may be obtained by citizens include the right to be allocated a piece of land for housing in one's village of residence or village of origin,[1469] as well as an usufruct right to use the land for farming purposes.[1470] The land reform intended to develop commercial farming and a better use of the land in line with the concept of self-reliance promoted by the Government. A Land Authority Commission, directly accountable to the Office of the President, was expected to be established with the mandate to determine which land should be distributed under the land reform for farming purposes or for housing. As of February 2014, the Land Authority Commission has reportedly not been established and it is the Ministry of Land, Water and Environment that has *de facto* responsibility for the implementation of the land reform under the Proclamation.[1471]

1136. According to Proclamation No. 58/1994, the land to be used for farming must be distributed in the most equal possible manner among citizens. Land grantees then have the usufruct right to the land for their lifetime. On their death, this right is usually transferred to their spouse or their children.[1472] The right can be leased in part or in whole[1473] but it cannot be sold or donated.[1474] On the contrary, land on which houses were built may be leased, inherited and sold, but the seller cannot apply for a new piece of land to build another house.[1475] Ultimately, the Government retains control of the allocation of land as it can revoke the usufruct right over a piece of land if it is not used for the purpose for which it was granted initially.[1476]

1137. Pursuant to Proclamation No. 58/1994, the Government has the right to expropriate traditionally owned or used land if it is needed for national reconstruction and development purposes,[1477] including for redistribution in the framework of the land reform and in accordance with Proclamation No. 58/1994. The expropriation decision made by the Government is final and cannot be appealed against in Court.[1478] The Proclamation provides for compensation to the legitimate holder of expropriated land for the loss of this right, in

[1468] In Eritrea, citizenship differs from nationality in that it is linked to the fulfilment of the national service duties (Article 6 of Proclamation No. 82/1995 on the National Service).

[1469] Lands for farming should be distributed in priority to citizens who are permanent residents in the village and to those whose primary means of subsistence is farming (Article 14).

[1470] Proclamation No. 58/1994 provides that the management and allocation of land in urban areas for purposes of business was supposed to be regulated by another regulation to be enacted pursuant to the said Proclamation (art. 5.1), without further details. The Commission has been unable to find out whether such subsequent regulation has been promulgated. Thus, the Commission does not know what is the legal regime and regulation of the land to be used for business purpose.

[1471] See Muluberhab Berhe Hagos, *Customary versus modern laws of Eritrea on Gender Equality*, Atlas Graphic Printer, Asmara, February 2014, p. 274.

[1472] Arts. 12 and 13 of Proclamation No. 58/1994.

[1473] Art. 27 of Proclamation No. 58/1994.

[1474] Art. 24 (1) of Proclamation No. 58/1994.

[1475] Art. 31, 32, and 34 of Proclamation No. 58/1994.

[1476] Art. 45 of Proclamation No. 58/1994. For example a land for housing on which no house was built after three years or farming land not cultivated for two years.

[1477] For purposes of "urban expansion and development, all kinds of capital investment; industrial, trade and tourism development projects; agricultural development, including all land, forestry and animal conservation projects; all projects of mining, quarry, salt extraction … ; all energy and water development projects ; programs pertaining to social development (such as schools, clinics, etc.); government land requisite for other similar development and nation reconstruction programs" (Art. 2 (9)).

[1478] Art. 50 of Proclamation No. 58/1994.

cash or in allocation of another piece of land.[1479] However, land that was used or owned as a result of an illegal allocation of land due to war or the past colonial regime, or held illegally can be expropriated without compensation.[1480] The High Court of Eritrea has the exclusive jurisdiction over compensation-related disputes in the context of expropriation for national construction or development projects.[1481]

(ii) Cases of seizure of properties

1138. The Commission collected testimonies of Eritreans whose land had been seized in the framework of the land reform or for development projects – mainly state farming –, as provided by Proclamation No. 58/1994.[1482] In most cases, it is difficult to determine whether the persons expropriated received compensation "commensurate to the loss accruing to [them]."[1483]

> As an example, a victim reported that his parents were forced to leave their farm to the Government. "*During the first years, the authorities collected our crops and left us only 100 kg of the harvest. Next they announced that they had to requisition the land for State projects. They encouraged people to go to Gash-Barka to work on new land. However, my parents did not get new land in Gash-Barka. They were compensated with 3,000 Nakfa. It is very difficult to work on new land with that sum.*"

1139. The Commission also received testimonies showing that the Eritrean authorities had seized businesses and assets as reprisal against unauthorised churches and religious groups.[1484]

> For instance, when the Full Gospel Church, one of Eritrea's large Pentecostal denominations, was officially closed in 2003, all the Church's assets were confiscated, "*from the musical instruments to the building itself.*"
>
> Similarly, a member of the Full Gospel Church reported that in 2003 his licence to import religious goods was not renewed and all the materials he had imported were seized.

1140. Seizure of property is also used as a form of reprisal against relatives of people who fled the country. The Commission received several accounts of Eritreans whose lands were seized after the departure of a member of their family.[1485] Such seizures can also happen after the authorities summon the family to pay a fine, even if the fine was paid. Houses can also constitute surety. They can be seized when people are not able to pay fines.[1486]

> One man told the Commission how his family was imprisoned and his house taken after he left Eritrea: "*My wife, my kids and my aunt were jailed during two months. They confiscated my house. They eventually released them from prison but they had to pay 50,000 Nakfa.*"
>
> A witness, having fled Eritrea in 2006, reported that the authorities asked his father to pay 50,000 Nafka once they discovered that he had left the country. "*I was*

[1479] Art. 51 of Proclamation No. 58/1994.
[1480] Art. 53 of Proclamation No. 58/1994.
[1481] Art. 54 of Proclamation No. 58/1994.
[1482] For instance: TBA100, TNR012.
[1483] Article 53 of Proclamation No. 58/1994. See TNR079.
[1484] S133, TNR014.
[1485] TBA090, TLA006, TLA028.
[1486] S016, TCDP036, TAM001, TAM011, TAM047, TFM019, TNR033.

already in Italy at that time so I gathered the money here and sent it to my father. But even if we paid, they took his land. After almost three years, they gave him some land – but not the same. They gave it to him because everybody has left the country."

A man reported: "*The Government took our house when my brothers left Eritrea because the government demanded 150,000 Nakfa which could not be paid by my family. The house was used for a while but now they demolished the house.*"

An Eritrean who left the country in 2005 with an official exit visa after being detained for four years without trial or charge recounted: "*Days after I left Eritrea, I was informed that the National Security Office had cashed the 100,000 Nakfa bail, also called my official representative to their office and forced him to surrender my private car and my house in Asmara to them. Since then, they are using all my assets unlawfully and without any due process of law.*"

Another man who left Eritrea in 2013 recounted: "*In the past, they would force families to pay 50,000 Nakfa. They would take you to jail if you defaulted. Now, they just take one family member to jail. If you have a business, they would close it. This has changed in the last four years. The money did not stop people from leaving Eritrea but jail did, hence the change in policy.*"

The spouse of a person who left Eritrea reported: "*The National Security Officers asked me: 'Where is your husband? Or otherwise we will arrest you.' They then told me: 'You have six houses. Until you bring your husband, your houses will be confiscated' ... They indeed confiscated the houses, took the keys. They only left one house for me. Even this house, they asked me to pay the rent, even though it belonged to the family. They ordered: 'You have to pay.' They did not decide how much money for the rent. They noted something on the property license, and they took the property paper.*"

A man recounted: "*My father escaped to Ethiopia in 1998. He was a businessman selling salt. He used to trade in Namagita. This is on the way to Haalib. He had a shop in Namagita. He escaped because he was drafted to go to Sawa. When my father left, I tried to run the shop. But within one week, the police came and put a "Taashigu" (restriction paper) on the door of the shop. I was told that my father should come back and present himself, failing which I could not continue running the shop. I then abandoned the shop and went to Harsile and then to Ali Abo. I was going back and forth to check on the shop but it was always closed.*"

1141. There are also cases of seizure of property aimed at rewarding veterans or affiliates of the Government.[1487] In addition, the Commission collected testimonies of looting of properties, including houses and businesses, by security forces, which according to the victims interviewed have not been investigated nor prosecuted.[1488]

For instance, a woman reported: "*In 1991 after independence, they came to every house looking for money. The person who came was a security person. My father was a rich business man in Assab. He had an import and export business. The security guy asked my father: 'Where is your money?' My father replied: 'Did you come to bring independence or steal?' The man said: 'Do not talk to me like that!' and he beat my father with the butt of his gun. My sister and I screamed and screamed. He took everything from my father, including his money, medicine, etc.*"

[1487] TAM004, TBA030.

[1488] S125, TBA061, TBA072, TSH056, TSH051, TSH056, TSH058.

(b) Forced evictions

1142. Land is a resource that affects the enjoyment of many fundamental rights enshrined in international human rights law such as adequate housing, food and work, in particular in rural areas where farming remains the primary source of food and income.[1489] The right to adequate housing is defined as the "right to live somewhere in security, peace and dignity", and housing should include key elements such as "availability of services, habitability, location and affordability".[1490] The Eritrean Government must ensure the security of tenure to individuals, especially when their right to adequate housing, right to food and right to work depend on their access to land. It must protect individuals against any risks of forced eviction, i.e. the involuntary removal of persons from their homes or land, directly or indirectly attributable to the State and usually carried out by force and with a certain degree of violence that may entail additional human rights violations.

1143. In certain circumstances, the expulsion from a house or a land may be legitimate,[1491] but the Government must ensure that all the steps of the eviction are conducted in compliance with the human rights law and principles of proportionality and reasonableness. The community or person concerned must be notified of the upcoming eviction and consulted on possible alternatives. If they are relocated, it should be as a result of a participatory process and with the free and informed consent of the persons or community concerned.[1492] Eviction must not lead to the violation of additional rights, in particular the right to food or the right to work, when the land is the primary means of subsistence. The eviction must be lawful and not arbitrary. Community and persons who are victims of unlawful or arbitrary forced evictions are entitled to an adequate compensation.

1144. Against this background of standards, testimonies collected by the Commission show that, just as for seizures of property referred to above, Eritrean authorities utilise forced evictions as a form of reprisal. This can be against members of unauthorised religions such as Jehovah's Witnesses, individuals perceived as opponents to the Government, or dissenters' family members and relatives.[1493]

> For instance, the Commission interviewed the wife of one of the military officers who seized control of the Eritrean Television in Asmara on 21 January 2013. The victim explained how two months after her husband's enforced disappearance following the incident she received a letter from the city Office of Housing and Rent Administration notifying her of her eviction from the State-owned house where she and her husband had been living for almost twenty years.[1494]

1145. Forced evictions can also be resorted to reward veterans or affiliates of the Government or to allow a high-ranking official to undertake farming operations.[1495]

> A man interviewed by the Commission described his family as "*under-nationalists*" who had not taken part in the armed struggle and who as such was less entitled to rent a Government's house than veterans' families. The victim recounted that the authorities decided to evict his family in 1997. The mayor of the town "*came with armed men. They put everything out of the house in front of us. The mayor had the*

[1489] Art. 6 and 11 (1) of ICESCR.
[1490] CESCR, General comment No. 4 on the right to adequate housing, para. 7 and 8.
[1491] Unpaid rent or illegal construction.
[1492] See Basic principles and guidelines on development-based eviction and displacement, established by the Special Rapporteur in adequate housing, A/HRC/4/18.
[1493] TCDP059, TCDP063, TRDV004.
[1494] For further details on that incident known as the "Forto incident", see chapter IV, B on the current context and chapter VI, B, 2 on Violations of the right to liberty and security.
[1495] TCDP013, TAM017, TAM031, TLA030.

power to decide. The reason was the same: we were under-nationalists. They gave the house to people in position, heroes of the country working in government offices. There was a confrontation between my father and the mayor. He was very rude, swore, slapped my father, spit on him, shamed him. The person who took the house was there and moved in right before us. We started to survive in the outskirt of Asmara. We were sleeping on the floor. We were living in the street. We built a shelter with recycled material."

Another man told the Commission: "*If you live in a government house, military commanders force people out and they put their relatives in these houses. They leave people homeless. Most government houses are used by people whose relations are powerful people.*"

A victim recounted: "*There was a time when I asked for a piece of land in my area. I was asked to bring a paper from my Unit that explains that I could be given land. When I brought the paper, I was not given the land but relatives of other military people have access to land. There is a lot of corruption.*"

A woman whose husband had a printing shop after the independence reported: "*The shop was downstairs in the house where we were living. The whole house belonged to the Government. My husband had an associate who was from the Government. One day, my husband had an argument with him. In reprisal, he was sent to prison in Sembel. He stayed there for one month and then was released. However, we were forced to leave the house and the printing shop was closed.*"

The Commission interviewed someone who was the spokesperson of a zoba administrator in the 2000s.[1496] At the time, he was in charge of dealing with land disputes and making reports to the administrator. As he noted, this task was "*a challenge because the military administration was grabbing land from residents by force.*" He particularly mentioned a zonal military commander[1497] as having big farming operations in the military zone under his supervision.[1498] In that context, "*the military was taking a lot of land from people. The residents did not get any compensation from the Ministry of Defence.*" In particular, the witness recounted how the armed forces under the zonal commander's authority moved a whole village, with an estimated number of about 300 inhabitants: "*First, they gave them a warning to pack and leave. They did not leave. Then the military sent a brigade to occupy the land and they started mechanised farming on some of the land that was taken by force … They spread the people all over … They did not find land for them to be resettled. The military just evicted them. The ones who resisted, the military burnt their huts. Some were imprisoned and others were tortured. The government did not give them compensation. It was inhuman.*" The witness produced a report showing that the forcible removal and eviction of the inhabitants would have political and economic consequences that the Government would have to face. In response, the zonal military commander summoned him in his office and asked him why he was mentioning economic and political issues in his report. "*I told him that it was my finding. He did not agree.*" After that confrontation, "*rumour started going around that I would be killed. I realised that it became very dangerous for my life. I then made a request to go on a self-funded medical treatment trip. The Government allowed me but it was done discreetly so that the military head did not*

[1496] TAM070.
[1497] The name of this commander is not mentioned for protection of witnesses' purpose.
[1498] Similarly, the name of the zoba is not mentioned for protection of witnesses' purpose.

know. I managed to escape Eritrea. The main reason for leaving was the threat to my life."

1146. The Commission also collected testimonies of demolitions of houses having taken place recently near Asmara.[1499] Photos of houses destroyed in March 2015 in Adi Keih, a town located approximately 110 km southeast of Asmara, circulated on social media[1500] after students of the city High School stood up against that measure. [1501]

A witness interviewed by the Commission confirmed that *"students stopped the destructions. Three of them were arrested. The following days, many soldiers came to the village, they declared a curfew, and people had to stay indoors. They brought many soldiers and destroyed the houses."* The houses were built without permit in 2010. It is not known if inhabitants of Adi Keih were provided any relocation alternatives.

1147. Even though private construction has been prohibited in Eritrea since April 2006, when construction became a State monopoly, people can *"buy cement from the Government"* to construct houses, which are de facto illegal. This leads to *de facto* situation of lack of security of tenure. Expulsions are conducted without complying with international standards. [1502]

For instance, according to the same source, "*there was a woman, who was poor and mentally ill. We all helped her. We built her house. Her husband was a military officer. He did not earn enough money, so we helped her to build the house. They recently destroyed her house*."

(c) Impact of the property regime on women and the family unit

(i) Women's access to land

1148. International human rights law prohibits discrimination in access to land. In the specific context of women's access to land, the Human Rights Committee has clarified that "the capacity of women to own property, to enter into a contract or to exercise other civil rights may not be restricted on the basis of marital status or any other discriminatory ground".1503 Discrimination can be de jure (prescribed by law) and de facto (in practice).1504 The new land tenure system removed the *de jure* discrimination against women and single persons owning land and property. Traditional land tenure arrangements varied across the country but one commonality was their lack of provision for women and non-married persons to own land and livestock themselves.[1505] While the new land tenure system removed former *de jure* discrimination against women and appears to be gender-neutral, women and girls still face disproportionate difficulties in accessing and owning land and property due to the barrier of citizenship, denial of their legal autonomy and persisting traditional practices.

1149. Failure to complete national service obligations or obtain a formal discharge from national service renders an individual unable to obtain citizenship and, therefore, access to

1499 TBA093, TFM014, S028.
1500 See for instance: https://www.youtube.com/watch?v=zxrmFmD0azM; https://www.youtube.com/watch?v=7R0N7JMzod0.
1501 TBA093.
1502 Ibid.
1503 Human Rights Committee General Comment No. 28, paragraph 19.
1504 The Committee on Economic, Social and Cultural Rights, General Comment 16.
1505 C. Mason, Gender, *Nationalism and Revolution: Re-Assessing Women's Relationship with the Eritrean Liberation Front*, Working Paper #274 (December 2001), p. 18.

land. Informal exemptions from national service are generally provided to women and girls who are married, pregnant or have children. Early marriage has traditionally been practiced in Eritrea. Additionally, due to the fear of ill-treatment and sexual violence in national service, many young women and girls, often at the behest of their families, seek to avoid military training and national service through early marriage and/ or motherhood. Consequently, many women do not undertake or complete their national service obligations due to marriage and/or motherhood, and are, therefore, unable to access land, social services or Government sanctioned employment. [1506]

> "*If you would like to use land, you have to get permission from the Government. But you must also do national service, without which they would not allow you to use any land.*"
>
> "*Women who have left the national service are also suffering – they left the army because they were pregnant or got married, but have no way of earning a living. They cannot work or have access to land without having been released, and they are not released if they leave for reasons of pregnancy or marriage. They are said to be 'no better than those who abscond'.*"
>
> "*Without formal release from national service, women cannot access services, land or further education (college). They are out of the system.*"
>
> "*Women who leave the national service for marrying or having a baby, cannot be employed formally and do not have access to land or social services since they are not officially discharged. They are allowed to leave but they are not legally released so they live in between. They cannot go back to studying either. There is an implicit exemption but it is not legally granted.*"

1150. The barrier to citizenship renders land inaccessible to young unmarried women who have not completed national service. Married women who have not completed their national service obligations do not have access to land in their own name but may have access if their husbands can obtain land.

1151. The requirement of citizenship to access land may be waived for divorcees, widows, women above 40 years, unmarried women with children and ex-combatants, returnees, refugees and internally displaced women heads of household.[1507] However, the underlying traditional inequalities between men and women can lead to women who by law have access to land, facing difficulties in accessing land in practice. Married women are subsumed under their husband's claim to land as land is registered in the name of the head of household.[1508] Although, in principle, women are part of the household that owns the land, in practice the right of ownership is often exercised by their husbands.[1509] Such practices in effect deny women their legal right to access land.

1152. A further practical challenge to women's access to land is that the distribution of land is in most cases handled by land distribution committees at the village level where traditional attitudes towards women's land rights prevent equality in distribution being

[1506] TAM008, TSH022, TSH024, TSH074.

[1507] UN Habitat and OHCHR 2002 report, *African Regional Civil Society Consultation on Women and Adequate Housing*, 31 October 2002, Nairobi Kenya, 6.

[1508] TSH006; UN Habitat and OHCHR 2002 report, *African Regional Civil Society Consultation on Women and Adequate Housing*, 31 October 2002, Nairobi Kenya, p. 6.

[1509] TSH006; UN Habitat and OHCHR 2002 report, *African Regional Civil Society Consultation on Women and Adequate Housing*, 31 October 2002, Nairobi Kenya, 6; CEDAW/ERI/CO/5, para 36.

implemented.[1510] Communities may be unwilling to allocate land to women or to enforce national laws at community level. In Muslim communities, for example, Sharia law takes precedence over national law,[1511] and it limits women's inheritance to half of what a man is entitled to.[1512]

> "*Although single women can access land in theory, they cannot access it in practice. Women who ask for property are shamed by their village because women are supposed to want to marry. Some girls/young women do try to claim land, but it is an uphill battle. It is easier if the woman is older because then village community might think she is too old for marriage so may be more inclined to give her land. Otherwise she has to have a strong father or brothers who can fight for her to get a piece of land. But basically, women do not ask because of the shame of the family. If women do have land before they marry, they have to give it up when they marry.*"

> "*Traditionally, when there is a son and a daughter the son gets the property, with the understanding that women will be "covered" by their husbands. This has changed in law as it stands now. Women have equal rights, including property. But if this is brought to court, men bribe the judges, women turn into the losers. There are lots of cases of women losing their rights through corruption and discrimination. There is also a lot of acrimony because of the contrast between the law and the culture – it is very difficult then to enforce their rights. Legally, the law is more favourable to women. What then happens in reality can be different … Many of the judges do not have knowledge of the law in many cases. Therefore decisions are taken on the basis of tradition – and the result is in most cases not favourable to women.*"

(ii) Women's access to productive resources

1153. In addition to discrimination in the access to land, women also face difficulties in working the land due to traditional stereotypes of appropriate duties for women and girls and the disappearance, death and departure of family members who could assist.[1513] In rural areas, most families depend on the labour of the family for the production of food. Food security is, therefore, increased when there is a high ratio of producers to dependents in the house. Conflict-related deaths, the mandatory and effectively indefinite national service obligations, alarming numbers of detentions and disappearances, and recent rise in emigration have left and continue to leave many households with fewer producers than dependants, increasing their vulnerability. Rural women also face difficulties in accessing resources to work the land and livestock. As men are still seen as the owners of the land, they have more access to agricultural services.[1514] Female headed households, in particular, are at risk of food insecurity in rural areas because of these difficulties. Urban-dwelling women face similar difficulties in accessing land for businesses. As a result, women are placed in positions of vulnerability, leaving many unable to support their families via state-sanctioned means.[1515]

[1510] NUEW as cited in the African Development Bank, Eritrea Gender Profile, 2009, p10; UN Habitat and OHCHR 2002 report, *African Regional Civil Society Consultation on Women and Adequate Housing,* 31 October 2002, Nairobi Kenya, 6-7.

[1511] FAO, Eritrea: Full Country Report. Gender and Land Rights Database, in http://www.fao.org/.

[1512] TSH006,TSH022, TSH024, TSH074, TSH102.

[1513] TSH006, TSH022, TSH024, TSH051, TSH074, TSH102. See African Development Bank, *Eritrea Gender Profile*, 2009, p. 18.

[1514] See African Development Bank, *Eritrea Gender Profile*, 2009, p. 18..

[1515] TSH006, TSH022, TSH024, TSH051, TSH074, TSH102.

"*Even when women have land it is difficult for them. My mother has a farm and it is very difficult for her to rent the machinery she needs from the Government to do farm work. They tell her excuses like 'someone asked for it before you'. When I go with her to get the machinery it is fine, but if I do not go it is hard for her. Basically it is corruption and stereotyping. Now husbands are in the National Service, detention, etc., so it is mainly women left to do the farm work. People in the village are getting used to seeing women do the ploughing, etc., because it is so common. This is affecting the food security of families, as women do not have as much time as men to plough as well because they have to look after their children. Men usually plough three or four times before the rain comes so the minerals can go deep into the earth, but women can only plough while their children are at school. A friend of mine lost three children because she did not have anyone to help her farm or look after the children. Her husband was in the National Service and she took her children to the farm with her while she worked. These farms are not close by the villages. She left her four children near a mud house and it collapsed, killing three of them. It was very sad.*"

"*When women's husbands are taken into prison they have no means of earning anything. They lose the breadwinners. Their living standards go down, they have to fend for their children without any training that would allow them to earn a living.*"

"*More men are leaving than women. It is a vicious circle, because women can leave the army they do, but then they do not have access to anything, they become tied to the sink. Men are unable to leave the national service and are thus forced to flee. Men are driven to be financially responsible, it is culturally inappropriate for a man to stay at home. Men also have more possibility to leave*."

"*After my husband left, I was farming with my brother. My father had a generator to pump water. The government took my brother to the military, took the generator and set fire to our farm.*"

1154. Women who have tried to overcome these hurdles and establish businesses to support their families have also been the target of government seizure of property. The Eritrean Women War Veteran's Association (BANA) and Tesfa Associations established to assist women engage in the workforce and establish small business were closed in 1996 by the Government. Replacement services have not been established since.[1516]

"*When women got released, they were expected to get 10,000 Nafka. Some women got together to set up businesses. This took place and it seemed to be working, then it was realised that it was becoming successful and it was addressing the independence of women and then the Government stepped in and closed it.*"

1155. The difficulties in accessing, maintaining and working land through farming, agriculture or small business activities places enormous burden on the family unit. The Commission has received many reports of below subsistence level wages of national service conscripts and of general food insecurity.[1517] The inability to earn a subsistence wage, work one's land or obtain land for income earning activities also has negative consequences for the health and education of family members.

[1516] TSH102. See chapter IV, E, The situation of women.

[1517] See chapter IV, A, Ethnic and religious composition of Eritrea.

(d) Impact of the land tenure reform on minorities' access to land

1156. Eritrean law does not recognise land rights for pastoralists. On the contrary, by making allocation of land possible in the village of residence or village of origin, the Government has *de facto* pushed the quasi-nomadic communities in Eritrea to settle in specific localities. Additionally, the traditional use of considerable swathes of land for the grazing of livestock was not taken into account or recognised under Proclamation No. 58/1994. On the contrary, the possibility of allocating farming lands traditionally used for grazing has impacted the way of living of various pastoralist communities among Eritrean minorities, such as the Afars and Kunamas.[1518]

(i) Afar people

1157. The Commission collected numerous testimonies from Afar people who fled Eritrea. These testimonies confirmed that land traditionally belonging to or used by Afars was seized in the framework of the land reform and afterwards by decision of the Government, without consultation of the impacted communities.[1519]

> Speaking about the methods used by the authorities, a victim noted: "*They do not say: 'it is not your land'. They just take it. The land becomes property of the Government. A lot of people have left. Half of the people who were in our area have left the land.*"

1158. None of the Afar people interviewed mentioned having received any compensation after the seizure of their lands and properties.[1520]

> For instance, a man told the Commission: "*My family had parcels of land that we used for agriculture. … The Government asked for some land and we gave it to them. They did not compensate us because they said that it is their land. We did not give it voluntarily but we were afraid. If we had refused, they would have taken all our parcels.*"

1159. Several Afars interviewed by the Commission suspect that the Government intentionally confiscated their lands and properties to prevent them from living and developing activities on their ancestral land.[1521]

> A man who had a salt flat, recounted: "*I had been working on my salt land and started benefiting from it. With that profit, I opened shops. When they saw my situation, they also took my land. I had inherited that land from my great-great-grand-father. It has been in my family since time immemorial … Everybody knows that we owned that land. During the Derg regime*[1522]*, the then authorities interfered by taking land tax from us. For this regime, they do not even tax us, they seize our land.*"
>
> Another man noted: "*They also make us poor by taking our camels and our goats. I believe they do it in order to decimate Afar people. They do these things deliberately.*"

[1518] Ibid.
[1519] TNR057.
[1520] TAM043.
[1521] TNR073, TCDP040.
[1522] The regime which ruled Ethiopia and Eritrea from 1977 to 1991.

1160. Similarly, some Afars interviewed mentioned the cutting of trees and grass by authorities as a means to take away their means of livelihoods. [1523]

> A man noted: "*They cut our trees and when you ask why, they take you and beat you.*"
>
> Another told the Commission: "*The Government cut almost all trees in Dankalia [central and southern parts of the Southern Red Sea Region]. Beilul [a locality of the southern part of the Southern Red Sea Region] was surrounded by a big forest, but now it is a desert. They cut the trees and took the wood to the Highlands. There was a person who was the leader of a tribe in Beilul. He asked them why they were cutting the trees. He was imprisoned in Massawa for seven months.*"
>
> Regarding the cutting of grass, a victim reported: "*I had land. Before I left, there was nothing growing on it. The military were cutting the grass and taking it away. We used the grass to feed our goats.*"

1161. It is the case that cattle belonging to Afars are looted by military personnel without any measures taken to hold those responsible accountable.[1524]

> A victim explained how military in his region took control of a stream: "*I was a herder and I had cattle, camels and goats. If you tried to take your herd to the water, they would catch you or take away your cattle. I had my own sign on the camels and my friend was there in 2014 and he told me that he saw my camels. The camels are kept by the military in Gibdo [a locality south-west of Assab] where there is a military base. Around 20 of my camels were taken. The military administration was put in our area in 1998. Since then, I had been gradually losing camels.*"

1162. The Commission also documented cases of forced resettlement of Afars.[1525]

> A victim reported about his family and 250 households in his village who were relocated to another locality of the Southern Red Sea region: "*Everyone was threatened that if we did not move we would be tortured. After we resettled, 10 small children and two elderly people died. There was no health care in the place we were assigned to.*"
>
> Another victim reported: "*I left Eritrea because of what they did to me, my family and my parents. We were having goats, sheep and camels. They took them all and forced us to resettle in another area. When they requested the community to resettle, those who refused were tortured, taken to prison and sometimes killed. Soldiers came to inform the community that we had to gather on one specific day. On that day, the military leader - I think he was a colonel - came and spoke to us. 'We have a plan for you. This area is not good for you. We have a better area for you.' Some argued. The military leader replied: 'This is a government order. You do not have to object these things.' He terrorized us saying: 'If you try to object the order, we will torture you and kill you.' I had to leave within a week. Initially, my family refused but when they saw the killings and the rapes, they accepted. They also took our cattle. In my case, they took 172 goats and three camels.*"

1163. Even when resettlements are done apparently for the sake of the people, testimonies collected by the Commission show that the way those resettlements are conducted are questionable and fuel Afars' distrust in the authorities. For instance, the Commission

[1523] TAM042, TAM050, TAM058, TAM060.
[1524] TAM041.
[1525] TCDP041, TSH054.

interviewed Afar people having been relocated after the eruption in June 2011 of the Nabro volcano.[1526]

> A man reported: "*When we were relocated, there was no first aid from the government side. People fled without their clothes and belongings. Some became seriously ill because of the delay. The authorities came only after weeks. Even the nearest district administrator did not visit the disaster area. They did not provide us places to live. For six months, we lived under trees, without any shelter*."

1164. All people interviewed by the Commission complained about the areas where they were eventually resettled, which they considered too hot and inhospitable.[1527] They also suspect the Government of having taken that opportunity to seize their lands.[1528]

> A man recounted: "*They knew that people were going to die in this area, this is too hot. They did this because we were living in a very fertile and nice area. They wanted to destroy my people. In the new place, there is a lack of water. The temperature reaches 47°C. The area is in the desert. There is no tree, nothing. Even the animals we owned were destroyed.*" The same person was imprisoned when he refused to be relocated. He added: "*The Administrator of Assab told me that those who accept will be considered as Eritreans, the others as Ethiopians. People were transported in trucks, accompanied by soldiers. Security forces came with guns. The administrator said those who refused will be killed.*"
>
> Another man told the Commission: "*To those people who refused to leave the disaster area, like the older people, the Government refused them any assistance. They said: 'you have to go out to the place, otherwise you will not give any food aid'.*"

1165. It appears from these testimonies that the authorities used force and coercion to resettle the affected people.

(ii) Kunama people

1166. From the information collected through interviews and submissions, it appears that, after the liberation of Eritrea, the Government sought lands to resettle former fighters and Eritrean refugees returning from the Sudan and Ethiopia. In that context, the fertile plains of the Gash-Barka region, traditional homeland to pastoralist Kunama people, were seen as semi-vacant areas conducive to resettlement and agricultural plans. The Proclamation No. 58/1994 gave legal grounds to the authorities to resettle people in the region and deprive Kunamas from accessing and using their traditional lands.[1529]

> A witness reported: "*Since independence, the Government started settling other people on their land, forcing the Kunama to leave. Most of their fertile land was taken*."

1167. In 1996, the loss of control by the Kunamas over their traditional land led the then Kunama administrator of the Gash-Barka region, Mr. Germano Nati, to protest. In response, he was "frozen"[1530] and replaced by a more loyal civil servant.[1531] In 2001, Mr. Nati was arrested with the other members of the G-15 group that he had joined.[1532]

[1526] A stratovolcano located in the Southern Red Sea Region which until 2011 was believed to be extinct. TNR071

[1527] TAM050, TNR071, TCDP046.

[1528] Ibid.

[1529] TSH079, S143g.

[1530] See chapter VI, A, 3, Freedoms of opinion, expression and association.

1168. Testimonies and submissions received by the Commission also confirmed that seizure of lands traditionally used by Kunamas continued after the 1998-2000 border war.[1533]

> A submission noted: "*The border war further exacerbated the Kunamas' situation and consequently they ended up becoming refugees in Ethiopia, in the unsafe area just over the border with Eritrea and in close proximity to the contested border village*."

(e) Principals findings

1169. The post-independence land reforms were a significant departure from previous customary law in Eritrea. To date, they have been implemented to varying degrees across the country. The Commission finds that the Government's exclusive ownership of the land and natural resources has been used as a means by the authorities to harass and punish perceived "enemies" of the State. The Commission collected several testimonies showing that seizure of property and forced evictions have been utilised as a form of reprisal against members of unauthorised religions, opponents, and relatives of people having fled the country. Both practices have also been used to reward veterans or associates of Government and dispossess people considered as "under-nationalists" because they did not contribute to the armed struggle or fulfil their national service duties.

1170. Although the land reform laws appear gender-neutral, the Commission finds the system to be indirectly discriminatory towards women. Women and girls are disproportionally affected by the citizenship requirement to access land as many do not undertake or complete national service due to marriage and motherhood. Traditional attitudes to women's rights and roles in society further hamper women's ability to access land and resources to work the land in their own right. Female heads of households, including single mothers, are particularly vulnerable to food insecurity and inadequate health and education resources due to their limited access to agricultural lands in rural areas and land for businesses in urban centres.

1171. The Commission also finds that land reform impacted pastoralist minorities such as Afars and Kunamas. The way resettlements of members of these communities are conducted by the authorities may be construed as an intentional act to dispossess them of their ancestral lands, their livelihoods and their cultures.

C. Abused, Exploited and Enslaved

1. National Service

(a) Background and legal framework

1172. Mandatory conscription is utilised in Eritrea. Mandatory conscription *per se* is not unlawful under international human rights law, as military service lies at the heart of State sovereignty and its national defence. Although mandatory conscription into national service may constitute an infringement by the State of the individual freedoms and liberty of its citizens, governments enjoy a considerable level of discretion regarding the details of mandatory conscription, namely its scope, length, organisation and other aspects. Very few international human standards have been developed to regulate mandatory conscription.

[1531] S039.
[1532] See chapter VI, A, 3, Freedoms of opinion, expression and association.
[1533] S039,TCD018, TLA007.

The few dispositions of international human rights law that are relevant to mandatory conscription are related to the legality of mandatory conscription, the enrolment of children and conscientious objectors, as well as to the overall treatment of conscripts during military service. The principle of legality requires mandatory conscription by governments to be provided for by law and be implemented in a lawful manner in such a way that is not arbitrary or discriminatory.[1534] In addition, during the national service, conscripts should not be deprived of their fundamental rights and freedoms. Some limits and restrictions of these rights may be imposed, provided these are reasonable, proportional and necessary to the interest of national security.

(i) The National Service Proclamation and the Warsai Yikealo Development Campaign

1173. In Eritrea, the national service, *hagerawi agelglot* in Tigrinya, is regulated primarily by the National Service Proclamation No. 82/1995 (National Service Proclamation) that was published on 23 October 1995 in the Eritrean Gazette.[1535]

1174. The objectives of the national service in Eritrea, as outlined in Proclamation No. 82/1995, go beyond the establishment of a "people based strong defence force to assure the existence of free and sovereign Eritrea" and aim at:

> "Preserving the courage and culture of heroism that the people of Eritrea have shown during the armed struggle in the past 30 years and pass them to the next generations;
>
> creating hard working, disciplined and an ever ready new generation that participate in reconstruction;
>
> enhancing the economic development of the country using its human resources in a trained and organised manner;
>
> providing regular and continuous military training and vocational training in training centres to alleviate [elevate] vocational skills and promote physical fitness; and
>
> cementing the unity of Eritrean people by promoting unity and nationalism and eradicating sub-national attitudes."[1536]

1175. The Government of Eritrea considers as the main purpose of the national service the formation of a secular and socially integrated nation, transcending ethnic, religious, community and provincial allegiances, which are seen as possible causes of division and threats for the country. It is also intended to put men and women in a position of equality during the time of service, just as they were during the liberation struggle. Conscripts are referred to as *Warsai Yikealo*, literally meaning the "heirs of the freedom fighters", who, during their national service, are supposed to embrace the virtues attributed to the freedom fighters during the struggle which contributed to their victory over the Ethiopian army. The

[1534] See for example: Inter-American Commission on Human Rights, "Fourth report on the situation of human rights in Guatemala" (OEA/Ser.L/V/II.83, Doc. 16 rev., 1 June 1993, chap. V).

[1535] Unofficial English Translation of the Gazette of Eritrean Laws, 1995-10-23, Vol. 5/1995, No. 11, 16 pp., available at http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=79562&p_country=ERI&p_count=24

[1536] Art 5 of Proclamation No. 82/1995, which formalised Proclamation 11/1991 that established the initial National Service Programme, an 18 months development service under the Ministry of Regional Administration introduced in 1991 by the Provisional Government of Eritrea.

national service thus provides the framework for indoctrination of subsequent generations and the creation of an ideal citizen. [1537]

1176. The national service was also designed to contribute to the economic reconstruction of the country following the independence struggle. The proclaimed economic development objective of the national service lays the ground for the assignment of conscripts to perform non-military activities, such as agricultural work, construction of roads, houses, buildings and mine infrastructure, which is in direct contradiction with international law related to forced labour.[1538]

1177. The *Warsai Yikealo* Development Campaign, launched in mid-2002, is presented by the Government as an additional national, social and economic development effort to reconstruct the country further devastated by the border war with Ethiopia.[1539] With the national service as its main pillar, the *Warsai Yikealo* Development Campaign provides for the deployment of national service conscripts in the military service, in the civil service (including in ministries and local administration) and in companies owned by the State, always under the direction of the Ministry of Defence. National service conscripts are assigned to fulfil a broad set of tasks, going by far beyond military core functions, and work in the development, construction and maintenance of infrastructure projects, in the agricultural sector and in the fledgling industrial and mining sectors.

(ii) The scope of mandatory conscription in Eritrea

1178. All Eritrean nationals, both female and male between the ages of 18 and 50 years have the duty to participate in the national service.[1540] According to estimates, the majority of the estimated 201,750 current active members of the armed forces are national service conscripts.[1541] Exact figures are not available and it is unclear how many of these are women.

1179. Nationals between the age of 18 and 40 years have the duty to participate in an 18-months active national service, comprising six months of military training in a training centre followed by 12 months of active military service and developmental works in a combatting force.[1542] During the investigation, the Commission noted that witnesses did not differentiate between military service and national service. Therefore, the term miliray service may be used in the report to describe military service in the army.

1180. According to the National Service Proclamation, all Eritrean nationals between 18 and 50 years, who have completed their active national service, as well as former fighters are enrolled in the Reserve Army.[1543] Members of the Reserve Army have the duty to provide reserve military service, respond to calls for periodical military training and enhance the Regular Army when needed to defend the country from outside attacks or invasions and in other situations as detailed in the National Service Proclamation. During periods of national mobilization, those in the Reserve Army may be recalled to serve in the

[1537] See David M. Bozzini, Low-tech Surveillance and the Despotic State in Eritrea, in Surveillance & Society 9(1/2), 2011, p.97; Gaim Kibreab, Forced labour in Eritrea, in Journal of Modern African Studies, 47, 1, 2009, pp. 45-46.

[1538] See chapter VI, C, 2, Forced Labour.

[1539] The *Warsai Yikealo* Development Campaign was not proclaimed by law; a written policy is not available.

[1540] Art. 6 of Proclamation No. 82/1995.

[1541] The Military Balance 2015, International Institute of Strategic Studies, London, p. 445-446.

[1542] Art. 8 of Proclamation No. 82/1995.

[1543] Art. 23 of Proclamation No. 82/1995.

army.[1544] The age limit for service in the Reserve Army can be extended beyond 50 years during general mobilisation.[1545]

1181. The National Service Proclamation stipulates that the 18-month long active national service may be extended in case of general mobilisation.[1546] With the *Warsai Yikealo* Development Campaign, the Government extended the statutory national service of 18 months to an indefinite period, effectively leading to a constant state of general mobilidation. The Government argues that the so-called "no war, no peace" situation with Ethiopia justifies the period of conscription be indefinitely extended. In this context, it is important to note that the Government of Eritrea has never declared a state of emergency. The so-called "no war, no peace" situation does not fulfil the criteria required under international law for a state of emergency. The so-called "no war, no peace" situation is used by the Government to describe the risk of war during peace time, which has no legal ground or effect on the application of the international obligations of Eritrea.[1547] Throughout the national service, conscripts are only paid a meagre amount of pocket money.[1548]

(iii) The legal framework regarding conditions and treatment during national service

1182. During national service, the Government must ensure that conscripts are treated at all times in a way that is compatible with their human dignity and right to security. Under no circumstances, not even in emergencies, can the non-derogable rights of conscripts be breached, namely the right to life protected by article 6 of the International Covenant on Civil and Political Rights and article 4 of the African Charter on Human and Peoples' Rights, the right not to be subjected to torture enshrined in article 7 of the International Covenant and article 5 of the African Charter, as well as the right of conscripts to be recognised as a person before the law, as provided by article 16 of the International Covenant.

1183. Regarding the living conditions of conscripts while in national service, the Government is obliged to respect human rights standards related to right to adequate food, primarily guaranteed by article 11 of the International Covenant on Economic, Social and Cultural Rights,[1549] right to adequate housing, also mainly provided for by article 11 of the International Covenant on Economic, Social and Cultural Rights,[1550] the right to the highest attainable standard of health and access to health care, mainly guaranteed by article 12 of the International Covenant on Economic, Social and Cultural Rights and article 16 of the African Charter;[1551] the right to marry and found a family primarily guaranteed by article 23 (2) of the International Covenant on Civil and Political Rights;[1552] and the right of everyone to the enjoyment of just and favourable conditions of work includes the right to rest, leisure and reasonable limitation of working hours and periodic holidays with pay, guaranteed by article 7 (d) of the International Covenant on Economic, Social and Cultural Rights.

[1544] Arts. 25, 27, 28 and 29 of Proclamation No. 82/1995.
[1545] Article 31 (1) of Proclamation No. 82/1995.
[1546] Art. 21 of Proclamation No. 82/1995.
[1547] See chapter II, E, 2, Non-derogable rights.
[1548] See chapter VI, C, 2, Forced labour.
[1549] Right also provided by art. 12(2) of CEDAW; arts. 24(2)(c) and (e), 27(1)-(3) of CRC.
[1550] Right also provided by art. 14 (2) CEDAW, art. 27 (3) CRC, art. 5(e) (iii) ICERD.
[1551] Right also provided by art. 6 (2), 23 and 24 of CRC; arts. 11(1)(f), 12 and 14(2)(b) of CEDAW; art. 5(e) (iv) of ICERD; art. 16 of ACHPR.
[1552] Rights also enshrined in art. 16 CEDAW; art. 5 (d) (iv) ICERD

1184. The Government of Eritrea is further obliged to respect the conscripts' fundamental rights and freedoms and in particular, the right to liberty and security,[1553] the freedom of expression and opinion,[1554] freedom of religion or belief,[1555] freedom of movement,[1556] as well as the right to privacy.[1557] These rights can only be restricted to the extent that is necessary for the national defence and in a proportional manner.

(b) Conscription into the National Service

1185. Conscripts are drafted into the national service through the official call-up system, which is facilitated by the formalised militarisation of the last year of secondary education. In 2003, the Government added a 12th grade to high school, requiring students to go to the *Warsai Yikealo* Secondary School at the military training camp in Sawa for their final year of schooling and sit the exam for the Eritrean High School Leaving Certificate there.[1558] In addition, 12th grade students have to undergo military training during that last year of school. This change was introduced to reduce increasing numbers of draft evaders and facilitate the mobilisation of the youth. Before 2003, many high school students, particularly girls, deliberately repeated classes and dropped out of school to avoid going to the training centre in Sawa. Until today, a large number of draftees do not respond to national service calls by trying to hide. Frequent round-ups by the military target those who try to avoid the regular conscription.

1186. The establishment of the *Warsai Yikealo* Secondary School has blurred the lines between the enrolment of young Eritreans into military service and the mandatory enrolment in a school as it is administered by the armed forces for 12th grade students. The enrolment of children into military schools is not prohibited under international human rights law, provided that such schools guarantee the right of children to education as required by article 13 of the International Covenant on Economic, Social and Cultural Rights and article 20 of the Convention on the Rights of the Child,[1559] and do not constitute conscription into military service. The testimony the Commission collected indicates that the mandatory enrolment in the *Warsai Yikealo* school for high-school students combined with the military training in Sawa constitute the first step of national service and hence forced conscription of children in violation of international human rights standards.

(i) Regular conscription

1187. According to articles 10 and 11 of the National Service Proclamation, registration for national service takes place at the regional, sub-regional and village levels. Since the introduction of the 12th grade in Sawa, in practice most nationals get recruited at school. When students finish their 11th grade, the school directors submit the students files to the education office at the local level, which shares them with the military training administration of the same town.[1560] 11th grade students are then called to join their training round in Sawa,[1561] sometimes through the director of their school.[1562] Those who do not respond to the call may be taken from their homes, under threat of arrest and often by

[1553] Right provided by article 9 of ICCPR and art. 6 of ACHPR.
[1554] Rights provided by art. 19 ICCPR; art. 13 CRC; art. 5(d) (viii) ICERD; art. 9 (2) of ACHPR.
[1555] Right provided by art. 18 and 27 ICCPR; art. 14 CRC; art. 5(d) (vii) ICERD; Art. 8 of ACHPR.
[1556] Right provided by art. 12 ICCPR; art 5. (d)(i) et (ii) ICERD; art. 12 (1) and (2) of ACHPR.
[1557] Right protected under art.17 of ICCPR.
[1558] The decision was not proclaimed by law; a written policy is not available.
[1559] The right also enshrined in article 17 of ACHPR.
[1560] TNR001.
[1561] Military training rounds started after independence; the 28th round is ongoing.
[1562] TAM028 TBA089.

recourse to violence.[1563] Conscription is also enforced by arresting or threatening to arrest a close family member, who will only get released once draftees hands themselves in.[1564]

> A person who was recruited for military training in Wi'a while still attending school stated: "*A list with names had been put up and my name was on the list. I returned home to hide but the soldiers came to my home and arrested my father and detained him for one month. I decided to go to Wi'a for my father to be released*".

(ii) Underage recruitment

1188. The Convention on the Rights of the Child defines a child as any human being below 18 years of age.[1565] Among the few international standards applicable to national service, it is widely recognised that States should not enrol children below 15 years of age (article 38 of the Convention on the Rights of the Child; article 24 (1) of the International Covenant on Economic, Social and Cultural Rights) and children below 15 must not take part in hostilities.[1566] Children between 15 and 18 years may be enrolled but the State should avoid their participation in hostilities. The recruitment of children should be voluntary, with the informed consent of the children and their parents or legal custodians. Eritrea acceded to the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict on 16 February 2005. It has yet to submit its initial report.

1189. Contrary to the lower age limit for national service of 18 as stipulated by national law, Eritrea's current system of conscription results in the drafting of minors, including children below the age of 15. Almost all of these children are recruited involuntarily.[1567] Children were among those conscripts who had to participate in the 1998-2000 war against Ethiopia. Several witnesses reported that they had to participate actively in the hostilities, when they were still below the age of 18. Many remembered friends who were sent to the front line as child soldiers and died during the battle. [1568]

> A witness recalled:"*There were many underage boys in Sawa. One of them remains in my memory. He was trained like us and was sent to the front. He must have been between 16 and 17. He was trained to shoot and he was a full soldier*."
>
> A former child soldier who participated at the age of 17 as a regular soldier during the first round of the war in 1998, notably in the attack of the Ethiopian town of Bure, underlined that he and many of his friends were not given a choice. He remembered that there were many under-age soldiers who were deployed and died in the battle.
>
> Another witness who was recruited at the age of 16 but not sent to the war zone himself remembered three of his friends, all 16 years old, who were sent to the war zone.

[1563] TNR002 TSH017.

[1564] TAM020, TBA086; see also supra and chapter VI, B, 2 Violations of the right to liberty and security of the person.

[1565] Art. 1 of the Convention on the Rights of the Child.

[1566] This was confirmed by the ICC in its March 2012 decision in Thomas Lubanga's case, see Judgement, Thomas Lubanga Dyilo (ICC-01/04-01/06), 14 March 2012.

[1567] For forced conscription of children during round-ups, see infra.

[1568] TAM003, TBA008, TAM023.

1190. Testimonies collected by the Commission show that children below the age of 15 have been recruited into active national service, notably prior to the 1998-2000 war with Ethiopia but also afterwards.[1569]

> One witness testified that he was recruited at the age of 13 for military training in Gahteley where he was scared and vomited from fear. After one month of training, the officers realised that he was too small to even hold a gun and released him.
>
> A witness reported that he was rounded up at the age of 14 because he was physically tall and had no means to prove he was underage.
>
> Another witness named nine children between the age of 11 and 14 years, who were part of his battalion that completed military training in 2007.

1191. The recruitment of children between 15 and 18 years is common, given that it is not the age but the school grade is the decisive factor for enrolment in the 12th grade. The Commission heard many testimonies about minors who had finished 11th grade early and where conscripted before their 18th birthday.[1570] The Commission has also documented cases of children, who were recruited from lower grades, prior to reaching 11th grade.[1571]

> A witness, who participated in military training in Sawa, said that during the 17th or 18th rounds of national service about 70 persons were below the age of 18.
>
> One witness explained that he finished school in June 2001, when the final year of high school was still 11th grade. In July 2001, at the age of 17, he had to go to military training in Sawa.
>
> A witness, who finished school at the age of 17, received the call letter and decided to leave the country.
>
> A witness told the Commission: "*I was called by the administration. I was at school at that time, in eight grade. It was in October 1997. They knew I was 16 but they wrote down my age as 18 so that they could take me to the military service.*"
>
> A witness who was rounded up in 2005 and sent for military training in Sawa at the age of 15 said: "*They knew some of us were under age because we were separated from the others.*"

1192. Reportedly, children are deliberately recruited for Special Forces training in Wi'a.[1572]

(c) Permanent and temporary exemption from national service

(i) Exemption on health grounds

1193. Proclamation No.11/1991 that regulated the national service prior to the promulgation of the National Service Proclamation (No. 82/1995) provided for several categories of persons to be exempted.[1573] However, according to the 1995 National Service Proclamation, only people with severe permanent disabilities "such as blindness and mental

[1569] TSH069, TNR024, TNR072, S075.
[1570] TLA041, TCDP006, TLA041, TSH021.
[1571] TSH016 TNR001 S077d TNR030, TNR055, TNR001, TSH016.
[1572] TSH018. See *infra.*
[1573] Gaim Kibreab, *The open-Endend Eritrean National Service. The Driver of Forced Migration* (Paper for the European Asylum Support Office Practical Cooperation Meeting on Eritrea), p.2.

derangement" are permanently exempted from the national service and are issued with an exemption certificate.[1574]

1194. Temporary exemptions of active military service may also be granted on health grounds, but citizens have to perform their active military service once their health condition has improved.[1575] Those exempted only from military training will have to perform an 18-month long national service in public and government sectors.[1576]

> A witness told the Commission that he was released when his health deteriorated during his service in the army. "*I became very sick. In 2012, I was released because I was very ill and thin. I did not get any medical care in the military. I was surviving by what I found.*"

1195. The Commission heard the testimony of war veterans, who were severely injured during the 1998-2000 border war with Ethiopia. Some of them had been exempted from military training but nevertheless had to continue serving in the military once the war was over.[1577]

> A former soldier, who was injured in the back during the border war with Ethiopia, reported that his medical condition deteriorated considerably when he was severely tortured during interrogation and due to conditions in detention in Eritrea. After his release, he was reassigned to the military. When he asked to be released, he was told that there were people with more severe disabilities who had lost a leg or an eye. They told him to wait for his health to improve. They threatened and punished him, suggesting he was not willing to serve his country. Eventually, he saw no other options than to flee.

1196. The Commission documented cases of conscripts who had to participate in military training and subsequent service in the army despite severe injuries sustained during the military training or disabilities sustained during torture inflicted by prison guards or interrogators. The Commission is concerned that exemptions on health grounds are rarely granted, even though the state of health of the persons concerned prevents them from serving in the military.[1578]

> A witness was arrested by soldiers at a hospital, where she was receiving medical treatment after an accident, and was sent straight to Sawa. At Sawa, despite being severely incapacitated and unable to eat, the military thought she only pretended to be ill. "*Fortunately, one of the visiting doctors to the Sawa hospital was my regular doctor who attested to my health situation. He signed documents saying that I was incapacitated for military service and should be released.*" Nevertheless, she was not released.
>
> A witness who was severely tortured during detention described to the Commission how she was sent for military training in Sawa after being released from detention. The injuries sustained during the torture and detention caused her severe pain on the soles of her feet and her back, as well as abnormal vaginal bleeding, which did not stop. Nevertheless, when a medical doctor visiting the training camp declared her unfit for military training, she was not discharged but assigned instead to work in the military administration.

[1574] Art. 15 of Proclamation No. 82/1995.
[1575] Art. 14 (1) of Proclamation No. 82/1995.
[1576] Article 13 of Proclamation No. 82/1995; TSH064. See also chapter VI, C, 2, Forced Labour.
[1577] TLA027 TFM035, TNR042.
[1578] TSH085 TNR043, TBA031, TSH005, TAM074.

1197. Reportedly, blind and severely visually impaired people have also been sent to Sawa, when they should have been permanently exempted.[1579]

(ii) Exemption of students

1198. By law, temporary exemptions to the military service may be granted to students with a view to allowing them to complete their studies. Since the establishment of the 12th grade of high school in the *Warsai Yikealo* school in Sawa, the temporary exemption regime for students has been rendered irrelevant, as all students have to pass through active military training in Sawa for their final year of high school.[1580]

1199. According to the National Service Proclamation, students who are temporarily exempted only get their diplomas once they have completed their active military service at the end of their studies.[1581] The principle of withholding diplomas is still being applied to students of higher education, who only receive their final diplomas once they have been formally released from national service, which does not happen as national service is indefinite. Those who have graduated are thus unable to apply for jobs for which they would require their diploma.[1582]

> One witness reported: "*No one gets their university certificate because then you could work outside. They tell you, you can get your certificate when you finish national service, but no one finishes national service. I was never released. Consequently, I do not have a certificate showing I graduated from medical studies or any documentation noting my experience. I am therefore now unable to work as a doctor.*"
>
> This was confirmed by another witness, who studied at the Teachers' Technology Institute. He said that they did not receive their certificate, but only a temporary paper indicating that the certificate would be obtained once the national service was completed.
>
> Similarly, a witness, who graduated in 2011 at Eritrea's Institute of Technology, told the Commission: "*I had a graduation ceremony in July 2011 but they did not give us our degrees. After completing a semester we were only given our results. No one gets a copy of their degree.*"

1200. An option that is not available to the vast majority of people is to bribe Government officials to avoid conscription or being exempt due to health reasons. Families, who are well connected, have relatives in high-ranking Government or army positions may succeed in getting their children exempted from national service.[1583]

(iii) De-facto exemption of married women and mothers

1201. Proclamation No.11/1991, which regulated the national service prior to the promulgation of the National Service Proclamation (No. 82/1995), provided for married women and single mothers to be exempt from national service.[1584] Although the 1995 National Service Proclamation removed these exemptions *de jure* for married women and

[1579] TSH105.
[1580] See *infra*.
[1581] Art. 15 of Proclamation No. 82/1995.
[1582] TLA041, TAM040, TSH030, TNR074, TAM034.
[1583] TSH043, TSH082.
[1584] Gaim Kibreab, *The open-Endend Eritrean National Service. The Driver of Forced Migration*, Paper for the European Asylum Support Office Practical Cooperation Meeting on Eritrea), p.2.

mothers, many married women and single mothers continue to be *de facto* exempted, at the discretion of recruiting officers.[1585]

1202. Early marriage is a traditional feature of many ethnic groups in Eritrea that continues in some groups today despite the legal age for marriage being 18 for both women and men.[1586] Additionally, many women and girls themselves seek to avoid national service through marriage or motherhood, or are coerced to do so by family members in order to avoid national service.[1587] The primary reason why girls seek to avoid national service is to avoid the risk of the sexual abuse that is known to occur within the national service (particularly during military training), but also to keep women and girls at home so that they may take care of family members and household responsibilities.[1588]

> One witness described being married at 16 years in a marriage arranged by her family so she would not go to national service. Her first husband later died whilst undertaking national service after which she remarried.
>
> The Commission heard from an elder in the Eritrean community: "*Early marriage is one of the main ways of evading conscription. Once a girl is married early, we know what the consequences will be for the rest of her life. This is common practice but not a stated policy. We have heard recently that they have started taking married women for national service as well. Girls also drop out of school to avoid conscription; some girls get pregnant to avoid conscription, or to leave the army once in*."
>
> One witness explained to the Commission the prevalence of early marriage among young women, due to tradition, they or their parents wanting them to avoid Sawa or to leave Sawa: "*In the Eritrean society 65 per cent of girls don't have an education and were wedded at an early stage, 35 per cent of the rest go to the national service, which is endless, so when you are released you are too old to have children*."

1203. Reportedly, the exemption is, however, applied on an *ad hoc* basis, and women who are married or had children have been taken to national service against their will.[1589]

> A young woman who had recently given birth was reportedly taken to Sawa in a *giffa* in 2002 when out shopping. She was still breastfeeding her baby and begged officers to let her return to her baby but was not permitted. She suffered from extreme pain in the breast because she could not breastfeed and quite severe depression. Another young woman who shared the hospital room with her in Sawa recalled "*She was afraid she was going to die*".

1204. Early marriage and motherhood have a profound impact on a girl's life. In the Eritrean context, early marriage or motherhood goes hand in hand with withdrawal from education at an early age, not only due to cultural pressures within the family but also because education can only be completed within the national service. While early marriage is the most common reason for girls to leave school early, fear of sexual violence en-route to and at school,[1590] and the fear of being forced into national service before grade 12 are also factors for the underrepresentation of girls in schools, particularly secondary and higher educational facilities.[1591] According to the Government of Eritrea's most recent

[1585] TLA012, TSH043.
[1586] TSH035, TLA012, TSH072, TSH056, TNR051.
[1587] TSH022,TSH087, TSH095, TFM037.
[1588] TSH055, TSH086, TAM046, TLA012, TSH012, TSH022, TSH035.
[1589] TSH105.
[1590] CEDAW/C/ERI/CO/5, para 28.
[1591] TSH055, TSH086, TAM046.

CEDAW report, in 2012 just 20 per cent of secondary school aged girls were enrolled in school.[1592] Limited or incomplete education can have long term health, economic and social consequences for girls and young women. Leaving school early can perpetuate poverty and inequality as early leavers often lack the skills necessary to obtain well-paying work outside the home, and the opportunity to contribute to decision making roles in their family and community. Child marriage also places girls further in positions of vulnerability to violence and abuse because of their age and sex. In the Eritrean context, these problems are compounded by the inability to obtain state-sanctioned work without a certificate of completion of the national service, which as seen above is not customarily provided to women and girls who have not completed national service due to marriage or motherhood.[1593]

> "*Girls marry early to avoid Sawa. Their chances of continuing their education after marriage are slight. Historically it has not been important to send girls to school. Girls should be good at cooking and pretty. School is seen as an opportunity for marriage and unnecessary after marriage. In the diaspora, however, there are more girls in school than boys*."

> "*Because of the compulsory military service, women are marrying as young as 11- 14 years old in an attempt to avoid it. We know what early marriage means for women and girls, how they will be treated. They stop going to school, they become house servants*."

> "*I got married when I was in high school, I was 15 years old. I took the initiative to continue my education, disregarding my parents' view that I had to work and take care of my family. I was working half a day and going to school the other half of the day. In Eritrea, women face problems because their parents refuse to send them to Sawa so they marry them at a young age. They have children and assume this responsibility, there is shortage of food, etc. due to the fact that you don't go to the national service, you cannot have an employment or access to family's support*."

1205. The Commission received recent reports indicating the Government of Eritrea is trying to restrict girls and women who have not completed national service from marrying.[1594] One report suggests the Government is prohibiting churches and mosques from officiating marriages of women and girls of conscription age without permission from the Government, which is only issued if the woman has completed national service. Such a prohibition would amount to a violation of the right to form a family.

(iv) Conscientious objection

1206. Mandatory conscription of conscientious objectors is the denial of the right of a person to refuse to perform military service if the use of lethal force conflicts with a person's conscience or religious beliefs. This right to conscientious objection is derived from the right to freedom of thought, conscience and religion, enshrined in articles 18 and 27 of International Covenant on Civil and Political Rights and article 8 of the African Charter on Human and Peoples' Rights[1595] and is applicable both during peace time and war time.[1596] Provisions for the exemption of individuals from military service for other reasons

[1592] CEDAW/C/ERI/CO/5, para 28.
[1593] TSH087, TSH095, TCDP037.
[1594] S149, S156.
[1595] Also in article 14 of CRC, article 5(d) (vii) of ICERD.
[1596] See Human Rights Committee, General comment No. 22, para. 11.

(for example health, education or family situations) are not acceptable substitutes for legal recognition of conscientious objection to military service.[1597]

1207. Pursuant to international human rights law, Eritrea is required to provide for various forms of alternative service for conscientious objectors to the compulsory military service, irrespectively of the so-called "no war, no peace" situation. Such alternative services should be of a non-combat or civilian character, in the public interest and not of a punitive nature.

1208. However, Eritrea does not recognise the right of conscientious objection to military service, neither in law nor in practice.[1598] Jehovah's Witnesses have been arrested and detained with a judicial process for their declared conscientious objection to military service.[1599]

> A submission to the Commission indicated: "*The first conscientious objectors known to have declared themselves to the military authorities were twelve Jehovah's Witnesses, who were incarcerated at Sawa in September 1994, in metal shipping containers that exacerbated the extreme range of the desert temperatures. Nine of the twelve relented under these conditions and agreed to perform military service; after twenty years, the other three remain imprisoned at Sawa without ever having been charged. The Jehovah's Witnesses, however, report that in recent years their unshakeable resolve has earned the respect of their guards, and their conditions of detention have improved*."

1209. Reportedly, at least 14 Jehovah's Witnesses arrested for concientious objection remain in detention today.een detained without a judicial process They remain in detention without judicial process.[1600]

> A Jehovah's Witness was arrested, detained and sent to Sawa for military training. '*When I arrived in Sawa they had already started the training. It is when the persecution started. I told them I could not take the military training and they get very angry.*' He was severely tortured over a period of two weeks, detained and eventually managed to escape from hospital.

1210. Others decided not to declare their faith to the authorities and instead tried to evade military service by hiding or fleeing the country.[1601] Many who were caught by the authorities after hiding from conscription because of conscious objection have been detained without access to justice and have been subjected to serious ill-treatment and torture aimed at recanting their faith.[1602]

(d) Forced conscription during military round-ups

1211. Members of the Eritrean Defence Forces regularly conduct round-ups in search of citizens who have failed to respond to a national service call by the Government to report for national service, have absented themselves from the army without leave or have otherwise attempted to evade conscription. In Eritrea, these round-ups are known as *giffas* in Tigrinya or *raffs* in Afari. While many people reported voluntarily to conscription calls

[1597] See Human Right Committee, CCPR/CO/84/SYR, para. 11.
[1598] S086, TCDP061.
[1599] S149.
[1600] S149, TCDP062.
[1601] TAM013, TBA045.
[1602] See chapter VI, A, 4, Freedom of religion and belief. See also the views adopted by the Human Rights Committee regarding the deportation to Eritrea of a conscientious refusing to bear arms owing to his adherence to the Christian Pentecostal Movement, communication 2007/2010, *X* v. *Denmark*, Views adopted on 26 March 2014.

in the early years of independence, the Commission has collected testimonies indicating that people have been forcefully recruited during round-ups from as early as 1995.[1603]

> "*I was conscripted in 1995, I was 14. I was in the middle of the school year, I was taken when there was a giffa in my neighbourhood. At that time there were no student ID card. Only the military had an ID. I was physically tall, they thought I was old enough.*"

> "*I started working for the military in 1995. The Government administration took me by force to Sawa. We were about 60 people who were taken during this giffa.*"

(i) Giffas in the public space

1212. Usually, round-ups are conducted by soldiers in cities and villages where draft evaders or deserters are suspected to be hiding. The number of soldiers participating in a *giffa* depends on the size of the village or the city. Often soldiers are deployed in regions far from their home town to avoid them coming across relatives and friends when conducting *giffas*. As a result, they do not know the age of people and arrest everyone without distinction.[1604]

> A witness noted: "*The people who do the giffas come from very far and they do not know who is who in the towns where they do the* giffas*. Therefore, they round up everyone they see and meet. Sometimes this includes serving soldiers and administrators. But they are released upon being identified by the officer in charge of them. Everyone who has to be taken to the military centre has to be handcuffed.*"

1213. *Giffas* have also been reportedly conducted by members of the Tigray Peoples' Democratic Movement (TPDM).[1605]

> A witness, who was picked up during a *giffa* in 2011 from his home, informed the Commission: "*They do not tell you where they would take us but you know it is a round-up. There were Tigray soldiers. They carried guns and were in uniforms*."

> A witness said: "*We recognise the Demhit* [members of the TPDM] *because they have a different accent. They are involved in the giffas. The government uses them because they don't have any links with the people*."

1214. The order for a *giffa* is taken by the higher ranking officers, sometimes in coordination with the village administration. Soldiers refusing to participate in a round-up risk being arrested and detained or are threatened to be assigned to another military unit further away from their home town. The conduct of the soldiers during the round-up is controlled by their superiors and trainers.[1606]

> A soldier who was involved in many *giffas* said that he and his comrades did not want to conduct the round-ups but that they had to execute the order. "*If we do not obey, we would finish in jail. None of us wanted to do it. Of course, we were not willing*." The soldier assumed that the victims knew that the soldiers were conducting the round-ups unwillingly.

1603 TNR072, TAM029.

1604 TNR002, TAM051.

1605 An Ethiopian opposition group stationed in and supported by Eritrea. See chapter IV, B, Political context and migration; TNR052, TBA095.

1606 TCDP022, TBA072, TNR002.

1215. G*iffas* target almost everyone who is found on the streets and places of public gathering such as markets, weddings and classrooms.[1607] Soldiers arrive in a village and surround it so that no one can escape. Often, the round-ups take place at crossings during the times of the day when many people are moving around, namely in the morning or during market days. The soldiers gather the people they have arrested at the local police station, in a schoolyard, a town hall or in an open-space area where they are screened by the officers in charge.[1608]

1216. Large-scale round-ups were particularly frequent shortly before and during the 1998-2000 war with Ethiopia. The Government issued national calls for military training. However, the response was insufficient and many conscripts were rounded up during these years. Hundreds of people were picked up in the streets of Asmara during a single round-up.[1609]

> "*In 1999, I was 19 years old when I was recruited. I was rounded up by the military in a giffa from the streets of Asmara. We were hundreds of people. I was part of the 11th round. This was during the war when they needed people. We were more than 11, 000 people in Sawa. We were considered deserters during a challenging period. We were more of a labour force. In their eyes we were not fit to be anything because we did not show up when the country needed us.*"

> A pastor, who was rounded up in 1999 said: "*The city was flooded by soldiers in uniforms with guns. They took us to a collection place, about five miles away from the city, where we had to stay for the entire day. There were doctors, nurses, people with disabilities. Most were men, but also women, as well as older people; they simply brought everyone.*"

> "*Soldiers surrounded the area in 1999. Most of civilians who worked in that company were taken by force. Some of them run away, they used to shoot at them. I saw people running away. I saw shooting at them but I didn't see anyone injured. When we saw that we started to hide ourselves.*"

1217. Intense round-ups have also been reported in November 2004, when people were taken by trucks to Adi Abeito prison.[1610]

1218. In 2006, soldiers rounded up students for the 19th round directly from the class rooms. [1611]

> "*Students were picked up from schools. This round was full of underage people. They first group were told they were going to technical schools but they disappeared after that. Later, groups of armed military officers just came into classrooms and took whoever they wanted. Those that finished their training in this round became the Government's most trusted officers.*"

> "*I heard the students shouted and threw their uniforms and bags things from the truck when they were taken. There were more than 20,000 in this round. They were all trained in Klima.*"

1219. Reportedly, in 2006 there was another round of large-scale *giffas* throughout the country specifically targeting women, accused of either being prostitutes or having tried to flee to Sudan.[1612]

1607 TAM054, TAM013, TBA100, TAM035, TSH016.
1608 TNR002,TNR042, TBA008, TAM035, TNR075.
1609 TAM003, TBA045, TNR044.
1610 TSH084, TSH085, TCDP070: See chapter VI, B, 3, Detention.
1611 TSH085, TSH082.

"*In 2006, when the President was living in Massawa, they collected women from all over Eritrea and accused them of being prostitutes. They took them to Wi'a. They trained them but also punished them. Some of the women were caught on the allegation that they were trying to escape to Sudan. I saw some of the women when I went to the clinic in Wi'a. I saw some women there. The girls told me that they had been to various underground prisons. Their skin colour had changed because of lack of sun.*"

1220. In addition to *giffas* targeting everyone passing by, there are also house-to-house searches, as well as targeted round-ups, when soldiers receive a list with names of children who have dropped out of school or deserters who are suspected to be hiding at home.[1613]

(ii) Giffas at schools

1221. Round-ups are also conducted at schools, with armed soldiers searching school buildings and indiscriminately rounding up students, often without checking the age.[1614]

A witness described a *giffa* that took place when he was in 10th grade: "*Soldiers came and surrounded the school. They had a list of names, called out names and we were taken from classes. We were rounded up and taken to Wi'a. Our parents were called by the administration of the town, informing them that we would leave so they could come and say goodbye, but we were already boarding the bus, so our parents started screaming. They had no possibility to say goodbye or to give us anything, like money or food. We just left.*"

(iii) Giffas at sea

1222. The Commission also received testimonies indicating a practice of soldiers conducting round-ups at sea to round up fishers.[1615]

A witness, who was working as a fisher near Assab, was rounded up during a giffa at sea: "*The navy came to get us from our boat at sea. We were taken back to the shore. There were more than 100 of us.*"

(iv) Giffas in private spaces

1223. Giffas can also involve house-to-house searches during which soldiers enter houses without search warrants. If they suspect someone is hiding, they search each room, looking for possible hide-outs. The Commission heard many accounts of witnesses stating that *giffas* involving house searches are often conducted very early in the morning or at night, when people are sleeping.[1616]

A witness said "*I have always witnessed giffas. They always take place. I was caught in a giffa before I left. They caught me at my house in Massawa. They came into our house around 6 p.m. They did not knock on the door. They just stormed into the house. They did not break anything but searched everywhere under the bed, in the toilet, cupboard, the roof and everywhere they think people can hide*."

[1612] TAM018.
[1613] TBA072.
[1614] TSH016, TSH085, TBA100.
[1615] TNR052, TSH071.
[1616] TNR052, TNR060, TNR082, TAM010, TAM032, TAM041, TNR052, TBA045, TNR030, TBA029, TBA020, TBA024, TAM052.

1224. The Commission also gathered information which revealed that door-to-door *giffas* often entail the breaking of house doors by military personnel in order to force themselves inside the house. Military personnel also break household items if their search is impeded when places where they consider that people could be hiding are locked. [1617]

> A witness told the Commission that: "*During giffas, the military come inside houses to look for people to be taken for national service. They even break the cupboards if you did not have the keys to it. If the house is locked, they knock on the door with the butt of the gun. But if it is not locked, they just open and storm in the house. If the door is locked and there are noises in the house, they even break the doors. This is commonplace. I remember one night, we were sleeping and suddenly they were in the house. They forced the door open. They took me but I was young. They later released me… One time I hid in the toilet from morning till night time when they were rounding up people.*"
>
> Another witness, who said that he had seen *"more giffas than anything else in his life",* explained that the military would enter the house without knocking on the door. They would just break the door and enter. *"They would search everywhere, including under the bed. 'They came to my house so many times. The last time they came to our house was in 2010. When they came, they searched everywhere. They broke all the dishes. Luckily the door was open and they did not break it. My brother and I had a menkesakesi* [a valid pass permit] *but we were all collected.*"

1225. Several witnesses said that they were rounded up during bible studies or at church.[1618]

(v) Round-up of children

1226. The Commission collected a large number of testimonies regarding the round-up of children, both boys and girls.[1619] In some instances, the soldiers examined the student identification cards or birth certificates on the spot and refrained from arresting those who had a valid document.[1620] However, it is very common for soldiers to initially arrest any young persons who look tall and strong and in good physical condition for national service, without taking into account the fact that the children can prove they are going to school. Later, when their student cards are verified, these children may be released.[1621]

> A soldier, who participated in round-ups, said that they would first gather all young people in a village and then release the students identified by the school director. All those who were not attending school would be taken for military training.
>
> "*When I was in the eighth grade, I was taken by soldiers from home to be sent to Sawa. I was arrested together with more than 100 people. I was in a prison for three hours. When I showed them my student identity papers, they released me. When I was arrested, I was not told the reasons for my arrest but I assumed that they were rounding up people so that they can take them to Sawa.*"
>
> A witness carrying his student card was stopped during a *giffa*, arrested and taken to prison. Although he showed his student card to the military personnel there, they did not accept it, but wanted to see another certificate. He was only released after they sent someone to his home to pick up his certificate.

[1617] TAM048, TAM051, TNR066.
[1618] TAM02; See chapter VI, A, 4, Freedom of religion and belief.
[1619] TAM047 TNR060 TLA004 TBA029.
[1620] TBA024, TBA071, TNR064, TNR066.
[1621] TCDP022, TAM010, TBA089, TBA029.

Another witness described how soldiers entered the house looking for national service evaders. "*They beat the children severely who were 10, 12, 14 and 16 years old. The 14 year-old boy was arrested. They took him to a detention centre. We got his student card to show that he was a minor, after three days he was released*."

1227. On many occasions, however, children are rounded up and sent for military training despite the fact that they can produce a document indicating that they are under-age, such as a student card or a birth certificate.[1622]

A witness was rounded up from home at the age of 17, although he had a student card, which he showed the soldiers. He was taken to a place with other students from his school. "*They rounded everybody up, even older people; some of them were between 50 to 60 years old. The parents went to the teachers asking them to write letters. The school sent letters*."

A teacher described that if one of his students was picked up during a *giffa*, he would note down the student's name, the father's name, the grade, the age and look for the missing children. When finding them, he would have to negotiate their release, not always successfully.

1228. It is common for parents not to be informed if their child is rounded up. They usually find out only by chance.[1623]

A witness was rounded up from home at the age of 15 when his parents were not there. "*I had a student ID card, but they still took me to Sawa. I could not inform my parents, but my nephews saw me, this is how my parents knew that I was taken.*"

(vi) Excessive use of force

1229. Soldiers regularly apply excessive use of force when arresting people during the round-ups. When people try to escape during a round-up, soldiers frequently beat and handcuff them. Sometimes, the violence used is so severe that the victims need to be treated in hospital.[1624]

A former soldier who participated regularly in *giffas* said that they were advised to do whatever was necessary and to use force if someone resisted. The extent of violence used depended on the individual soldier. He noted that the soldiers themselves were stressed and angry about the situation. "*If someone is injured they can simply beat him up and take him. There is absolutely no medical care if someone is injured.*"

A witness told the Commission that soldiers came to his house and beat him with a stick when he did not follow their order, and forced him out of the home. He said: "*My father tried to talk to them and they told him to stop talking. They beat me in front of my father. It is normal in Eritrea to beat people. They shouted at my father and asked him to move away. I was handcuffed and taken from the house. They took me to the school compound where they collected people and beat us. If you try to escape, they are ready to shoot*."

A witness, who was arrested on his way to school, did not have his student ID on him but managed to get released after his school director intervened. However, before taking him to the school director, the soldiers beat him with the butt of their

[1622] S077d, TNR052, TNR053.
[1623] TNR041, TSH015, TFM014, TNR030.
[1624] TBA052, TCDP014, TBA082, TNR002, TNR082, TCDP010.

guns. The director had to take him to hospital. Scars from the beating remain on the victim's arm.

1230. In several instances, people have been fatally wounded or shot dead during the round-ups. According to testimonies received, soldiers who apply lethal force do so in line with an order from their superiors to shoot those who resist or try to escape. Some were killed while trying to resist the *giffa* or refusing to comply with the order.[1625] Reportedly, others have been killed without any resistance.[1626] The Commission did not hear of any of these cases being investigated.[1627]

A former soldier, who participated in many *giffas*, said that they were ordered to shoot whoever resisted. This, was not implemented in his unit, however it was implemented in another unit. "*We had no limit to the force we could use. That being said, it also depends on the soldier. Some have more tendencies to use violence and use force.*"

In this context, a soldier who conducted *giffas* explained the dilemma they were facing during the conduct of round-ups: "*They tell us to shoot if anyone escapes. Most of the time, soldiers shoot in the air, not directly at the person. But it was unethical for us. If you are guarding prisoners, they tell us to shoot if someone escapes, we would be imprisoned in their place if they run away. If you kill, you are responsible, if they escape you are responsible*."

According to a witness participated in many *giffas*: "*They even told us to shoot if someone would try to escape. In Brigade Seven, they shot one in the middle of the street*."

(vii) Screening

1231. During these round-ups, every man and woman who appears to be of conscription age is a potential target. Soldiers round up people without distinction and irrespective of whether they are in possession of an identification paper. Once people are collected in a place, a screening takes place and those who can present a valid permit may get released. This applies to those with a *menkesakesi*, a travel permit, students with a valid documentation, children who can prove they are underage and serving military officers on leave, as well as occasionally married women and mothers. However, many remain in custody despite being able to present a document that shows they are either below conscription age or have already been discharged.[1628]

A witness noted that he was taken handcuffed to the police station despite having a *menkesakesi* but was released after 24 hours once his papers had been checked.

Another witness, who was rounded up together with his brother, said both of them were arrested although they were able to produce their *menkesakesi*. Only when the director of the school intervened, they were released.

1232. Reportedly, some people who are rounded up manage to get released after bribing the officers.[1629]

[1625] TSH071, TBA024, TNR032.
[1626] TCDP006, TNR002, TNR042, TBA024. See also chapter VI, B, 5, Arbitrary deprivation of life and chapter VI, B, 2 Violations of the right to liberty and security of the person.
[1627] See chapter VI, B, 5, Arbitrary deprivation of life.
[1628] TNR002, TNR082, TNR042, TSH082, TAM052, TAM051.
[1629] TNR052 TNR037.

1233. While the screening takes place, the people who have been rounded up remain under arrest. Once the process is finalised, those who are not released are loaded on trucks and taken to one of the military training centres, such as Sawa, Wi'a or Me'eter. Civilians are sent for military training, while deserters or recruits who were otherwise absent are sent back to their military unit or assignment. Depending on the number of people rounded up, they might be taken to a detention facility first, where they spend time in detention before onward transportation to the final destination is arranged.[1630] Frequently, people are detained for a longer period of time, be it for punishment or simply because the next round of military training has not yet started.[1631]

> A witness described the experience of his brother, who had tried to escape to avoid national service: "*My younger brother who was trying to get to Saudi Arabia was caught in Foro, near Massawa. As they make no difference between people being caught or rounded-up, he was sent to Sawa for military training. Since the training of the 6th round had already started, they put him in prison until the start of the 7th round. They did not tell him that he was suspected to be trying to flee the country, they simply kept him in prison for five months until it was time to start the 7th round of training.*"
>
> A witness who was rounded up at the age of 46 told the Commission: *"At that time, there was a round-up everywhere. They even arrested students with a student card. I was on the street with my cart. They stopped me and I left the cart there. At night, they took us in lorries to Wi'a training centre. Before that, my mother used to visit me every three months, when she came she couldn't see me, she knew that I was taken to military centre."*

(e) Draft evasion and desertion

1234. Article 37 of National Service Proclamation provides for punishments for the non-performance of military service, without prejudice to more rigorous punishment under the 1991 Transitional Penal Code of Eritrea.[1632] Avoiding national service by mischief, deliberate infliction of bodily injury or by any other means (para 1); absconding from national service by leaving the country (para 2); and assisting to avoid national service or registration (para 3) are punishable with payment of a fine or imprisonment of up to five years. Under the Transitional Penal Code, these statutory offences can lead to imprisonment of longer periods of time, in the case of desertion in times of emergency, general mobilisation or war up to life imprisonment. Desertion from active service can be punished with the death penalty.

(i) Escaping the country to avoid conscription

1235. The majority of refugees fleeing to neighbouring countries cite the indefinite national service among the main factors pushing them to leave Eritrea. In particular young people, including increasing numbers of minors leave the country before being conscripted for military training. [1633]

> A young refugee told the Commission: "*I left Eritrea because I could not help my family. There are no jobs in Eritrea. I was in the 11th grade when I left. I had not completed the 11th grade. After completing 11th grade I was expected to go to Sawa.*"

1630 TBA008, TNR054, TNR082, TSH070, TSH069, TBA072, TCDP026.

1631 TNR001, TNR041. See chapter VI, B, 3, Detention.

1632 The Transitional Code has been replaced by the new Penal Code promulgated on 11 May 2015 by the Eritrean Government.

1633 TAM056, TNR075; See Report by the SR on Eritrea, A/HRC/26/45, para. 25.

Another refugee added: "*I left Eritrea because of problems. I was at school, they wanted to send me to Sawa. I escaped before going to Sawa. When I finished the 11th grade, I was told to go to Sawa. Those who went before us became soldiers, if they do not get good point to enter the university. I heard that the military is not good. They punish you, they do not allow you to continue your education at the university.*"

(ii) Hiding to avoid conscription

1236. Students avoid conscription after 11th grade by intentionally dropping out of school to avoid reaching 12th grade and being sent to Sawa military training camp, hoping they will not be included in the lists of conscription.[1634]

A man told the Commission: "*I was in 10th grade when I left. I did not want to go to Sawa after completing my 11th grade. I would not have had any opportunities in my life if I went to Sawa. I left the country because I was afraid about the life in Sawa and that I would have no work afterwards. My sisters did not go to school and therefore did not go to Sawa.*"

Another man, who left Eritrea in 2012 to avoid going to Sawa, reported: "*I was in school in Assab … After you finish 11th grade, you are expected to go to Sawa. You do not get a certificate until you finish military training in Sawa. After Sawa you get a low paying job such as teaching, which pays about 500 Nakfa a month. You cannot help your family with this salary. If you refuse to go to Sawa, they take you by force. The people I know who went to Sawa are now soldiers. The soldiers get paid about 500 Nakfa if they have one star on their shoulder. My sister has never attended any school. If you stay at home without going to school, you can avoid being taken to Sawa. Life is bad in Sawa. And there is no future for anyone who goes there.*"

A man said: "*I was in the 1st grade, and then I lied that I was sick so that I should not go to Sawa. So, I was at home after the 1st grade. The military came to our house many times to ask for me.*"

A woman recounted: "*We survived by doing different kind of work, making handicrafts, taking wood to the city. My children did not go to school. I didn't send them to school because if they went to school they would be sent to Sawa.*"

1237. The Commission found that girls are particularly impacted. Families are more inclined to take them out of school early to avoid Sawa.[1635]

A young male explained how his three sisters avoided national service: "*I have three sisters. None of them went to Sawa. They quit school. Even if you leave school you still have to go to Sawa. You either get married or escape in order to avoid going to Sawa.*"

Another witness stated: "*Many women quit against their own will to avoid being caught in a giffa. Some even leave in elementary school."*

1238. The Commission also found evidence of self-maiming to avoid conscription. Pursuant to Eritrean law, this is a criminal offence punishable by two years of imprisonment or a fine of 3,000 Birr [the currency at the time of adoption of the proclamation], and the respective persons will also be compelled to do their service. Self-

[1634] TAM01, TAM009, TAM060, TSH055, TRDV004, TAM009.
[1635] TAM046, TSH086.

maiming rendering a person are unfit for national service is punishable by three years of additional imprisonment.[1636]

A witness, who was detained in Adi Abeito prison, was jailed with some people who had maimed themselves to avoid being drafted.

A witness said: "*My friends L. and N. shot themselves so that they could be handicapped and avoid military service. When government authorities make inquiries into such cases, such cases are presented as attempted suicide, however, the real reason is to avoid military service.*"

(iii) Escaping from the army

1239. The Commission was told that at various stages of their national service, conscripts decide to leave the army. Soldiers either escape from the military camps or during their leave. They do not return to their post but stay with their families or in the vicinity of their homes or with friends and relatives elsewhere, trying to hide from being captured by military officers.[1637]

One witness described how he escaped from the military compound. "*One day, together with two friends, we got a chance to escape, pretending to go to toilet. There were no fences*."

A witness said that he had tried three times to desert during his family leave but each time he was discovered by military officers, detained and eventually sent back to his unit. "*I have been jailed for three times for deserting the army. I stayed with my family but was stopped during military round-ups and arrested because I did not have a valid permit. I was jailed in the military prison of my division, located within the military compound. I was detained twice for one month, and the third time for one week*."

1240. Some deserters manage to hide for extended periods of time. Some work during the day and spend the night in a hide-out out- or indoors, which they change frequently. While in hiding, they are trying to work to contribute to the income of their family and relatives.[1638]

A soldier, who absconded from his military unit in 2013 without permission and returned home, said: *"The leaders sent soldiers who tried to arrest me, but during one year I managed to escape several times. My wife always warned me. I never ate at home as I was afraid the soldiers would find me. I had to hide from everyone. My wife brought my meals to the forest where I was hiding and also sleeping. However, I was unable to help my family as I was left alone, most neighbours having already fled. Therefore, I eventually decided to flee."*

Another witness said: "*I deserted from the military and started working in a garage. I was constantly hiding. I slept in the garage and did not go to my village; in fact I did not visit any other place. I sent the money to my wife in Asmara*."

[1636] Proclamation no.82/1995, Art. 37 (2) ; S143p, TAM003, TAM025.
[1637] TLA028, TNR052, TBA027, TNR043, TBA059.
[1638] TBA086, TBA068.

(iv) Punishment and implications of draft evasion and desertion

1241. If caught, draft evaders and deserters are severely punished as detailed above.[1639] Reportedly, people who have fled from the military several times may risk execution.[1640]

> A witness said that in 2000, a memorandum was issued announcing the introduction of new legislation stipulating that soldiers who disobeyed military orders and draft evaders would be executed. He said he knows of a soldier who was executed by firing squad in front of the soldiers after he had deserted the army for the third time.
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> Another soldier witnessed in February 2013 how the military opened fire to stop several recruits who tried to flee from the military camp by jumping over the thorny trees serving as a fence. He said that nine people were killed. *"First they gathered us in one corner, asked us to turn to the other side and to stand still, while they took the bodies away by car. We do not know where they took them. We were more than one hundred."* The next morning they were gathered and taken to prison by three trucks.

1242. Despite the regular round-ups and tight controls, it appears that some Eritreans manage to slip under the radar screen and live outside of the national service without being detected by the Government. However, life outside of the system comes with a lot of sacrifices and is dominated by the fear of being reported by one of the numerous spies or uncovered during a military control. Moving from one place to the other becomes almost impossible and most people's daily routines are limited to trying to cope with the situation.[1641]

> A young person who had been trained in Sawa but decided to leave due to the inhumane conditions experienced in the military told the Commission that a normal life without having done national service was almost impossible. "*You cannot lead a normal life if you do not go to Sawa. You must have a military identification or a student card to live in Asmara. I was constantly hiding."*
>
> A witness, who had tried to avoid military training due to his religious beliefs noted: "*I went to local government office and applied for a pass to move around. They asked if I had been in Sawa. I did not say that I did not want to go due to my faith. You can't say that. I had been hiding for eight months. When I went to the local office, I was fed up I could not continue. They did not ask about my religion. You have to fill in a form, with only Christian or Muslim as an option. They ignore other religions on purpose. So eventually I had to go Sawa*."

1243. Reportedly, teachers who surrender after having deserted from the Ministry of Education can be reinstated as a teacher within the national service, without being punished. This is reportedly due to the shortage of teachers.[1642]

1244. Family members of draft evaders and deserters have been severely punished, by being arbitrarily detained without formal charges. In detention, they risk being tortured and only get released when the wanted person surrenders or a fine of up to 50,000 Nakfa is paid.[1643]

1639 TCDP025, TNR052. See chapter VI, B, 3, Arbitrary deprivation of life and chapter VI, B, 4, Torture, ill-treamtent and punishment.

1640 TCDP025, TNR052.

1641 TAM034, TCDP070, TBA045, TBA064; See chapter VI, A, 2, Freedom of movement.

1642 TBA064; See chapter VI, C, 2, Forced labour.

1643 See chapter VI, B, 2, Violations of the right to liberty and security of the person.

(f) Release from national service

1245. The National Service Proclamation limits active national service to 18 months.[1644] According to the Proclamation. national who has duly served active national service, shall be released and issued a certificate of completion by the Ministry of Defence.[1645] During times of war and general mobilization, an active national service conscript can be required to serve beyond the duration of 18 months, unless officially released.[1646]

1246. The Government of Eritrea has repeatedly justified the prolongation of the national service with what they consider to be the continued occupation of its sovereign territories[1647] and the so-called "no war, no peace" situation.[1648]

(i) The unresolved status of former fighters

1247. According to article 12 of the National Service Proclamation, "all fighters and militias who devoted their time to the liberation struggle shall be exempted from active National Service". Since Eritrea became independent, the Government has never carried out a comprehensive programme to release former fighters from national service. A protest by former fighters against the extension of their national service for a further four-year period was violently crushed in May 1993.[1649] Reportedly, about half of those who fought during the struggle were discharged just after independence, while many former fighters had to remain in service, despite their expectation to be released.[1650]Reportedly, family members of the leaders were more likely to get discharged than former fighters without such connections.[1651]The Commission documented many cases of former fighters who were not discharged after independence.[1652]

> *"After independence I continued to work as a soldier. I would have liked to stop. I asked the Government, i.e. the Ministry of Defence many times. I wrote an official letter asking to be released. They refused, given that there is no peace. All of my fellow former fighters continued."* The witness remained in the army where he worked as a finance officer until he fled at the end of 2014.
>
> An ex-freedom fighter who joined the struggle in 1989 told the Commission that he remained a soldier after independence even though he asked to be released in 1994. The military refused to let him go. He subsequently tried to escape from the army several times but was always caught and sent back to his military unit, after a period in detention. Eventually, he fled the country in 2014.
>
> Another former fighter, who had joined the struggle in 1988, told the Commission how he was forced to remain in the national service after independence. As a former

1644 Article 8, Proclamation No. 82/1995.

1645 Article 20, Proclamation No. 82/1995. The Commission understands that in the rare cases where conscripts are 'released' or 'discharged' from active national service, it does not necessarily mean that they are 'demobilised', since according to Proclamation No. 82/1995, they are still due to serve in the Reserve Army until they are 50 years old and can be recalled to serve in their original unit in case of general mobilisation.

1646 Article 21, Proclamation No. 82/1995.

1647 See National UPR Report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21, A/HRC/WG.6/18/ERI/1, para. 91; Statement of the Eritrean Delegation, 18th Session of the UPR Working Group, 3 February 2014, p. 10.

1648 See chapter II, E, 2, Non-derogable rights.

1649 See chapter VI, A, 3, Freedoms of opinion, expression, assembly, and association.

1650 TSH103, TBA077, TLA023, TBA094.

1651 TBA028.

1652 TNR044.

fighter, he was assigned to various positions in the health sector, mainly to supervise the professional medical staff, who were all civilians. Many times, he requested to be released, which was refused with the argument that only those who had joined the struggle after 1990 were being discharged because they were less experienced and were thus dispensable.

(ii) Unimplemented programme of release following the 1998-2000 war with Ethiopia

1248. After the border war with Ethiopia and according to the Algiers Peace Agreement, a process to formally released conscripts was launched in December 2000. Yet, it came to a halt before completion in 2002.[1653]

1249. The Commission heard testimonies from witnesses who had participated in the 1998-2000 war with Ethiopia and expected to be discharged but never were. [1654]

A former conscript explained that after the Algiers Agreement, some people asked for their release. "*Instead of releasing us, they increased our salary from 150 to 450 Nakfa. This was a trick. They did not want to release us. They wanted to make our minds busy and keep us under their control. The Government then started the Warsai Yikelo Development Programme and decided officially that there would be no release of conscripts. When the new programme was announced, the trainings and political awareness increased tremendously. People were very angry and started to question the decision taken. There was no leave authorised to rest and join our families.*"

A soldier who fought in the border war with Ethiopia testified that in 2002 they were told they would be released and the paperwork started. Although his certificate of completion indicated that he had accomplished his national service, he was kept in the service and was never released. In his view, the Government just wanted to compile the evidence required for receiving finance assistance from the international community that was intended for rehabilitation.

Another witness asked to be released after the war finished, but his request was denied. He tried to hide but was caught and sent for advanced military training from where he eventually escaped.

(iii) Indefinite length of national service

1250. The Commission documented a pattern of conscription into the national service at an early age without any prospect of being formally discharged or otherwise released. There is a clear pattern of conscription beyond the statutory period of 18 months of national service. Conscripts are not informed about the length of time they are expected to serve beyond the statutory 18 months and have to remain in the national service when the mandatory period of active national service has lapsed.[1655]

1251. The Commission heard testimonies of Eritreans who were drafted into the army at the beginning of adulthood and remained national service conscripts, being deprived of a civilian life. Many witnesses interviewed by the Commission highlighted the length of time they had spent in the national service,[1656] which frequently exceeded a decade, amounting

[1653] See chapter III, C, 3, Political crackdown (2001-2002).
[1654] TAM007, TCDP006, TBA001, TSH038.
[1655] TAM021, TNR068, TBA095.
[1656] TBA024, TBA023, TCDP008.

to a quarter of the average period of adulthood in Eritrea.[1657] It should be noted that these people were not formally released from national service but at one point in their life decided to escape from national service to put an end to it. Had they stayed, presumably they would still be serving.[1658]

> A witness conveyed to the Commission how he had expected to stay for one more year of active military service after the six months training period in 1996. However, instead of being released, he was forced to continue his national service for an unknown period of time. He eventually escaped after 17 years in the national service.
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> A witness described to the Commission how life in Eritrea became unbearable for the family after her husband had deserted after 18 years in the military. As it was impossible to be regularly released, his only option had been desertion. His wife described him as being exhausted and worn out from the endless national service as a carpenter assigned to various construction sites across the country. Throughout his 18 years of services for the Government, he was paid 450 Nakfa a month.
>
> A former conscript recounted that he had decided to flee the country, after having spent 14 years of his life in the national service, without rights and a regular salary, while being forced to perform various types of work.
>
> Another witness confirmed that it is common for conscripts to be kept forever in the army, despite the stipulated length of 18 months. Three of his brothers were drafted into the national service during the 5th, 7th and 9th rounds respectively, and were still serving in the army. This means that so far the three brothers have served in the army respectively between 17 and 19 years of their lives.

(iv) Refused requests for release

1252. The procedure for discharge from national service is unclear, as is the terminology to describe a conscript's separation from the military. The Commission has not been able to access official documentation outlining rules and procedures in place guiding the process of release. Testimonies reveal a pattern of arbitrariness in this regard.

1253. The Commission documented requests for release which were systematically refused, without any explanation or indication of the length of the remaining time someone was expected to continue performing national service. There also appears to be no mechanism available to challenge the refusal. Almost all witnesses the Commission heard from emphasised how having to live facing an uncertain future and without being given any choice about what they would make of their own lives has affected an entire generation in Eritrea.[1659]

> A witness described how everyone in his military base had been disillusioned by the fact that there were many soldiers who had been there for many years, including people who were unfit or with disabilities, who had not been discharged although they had asked many times. "*This showed us the reality quite plainly. If not even these people had been released, we did not have any prospect of being discharged. In fact, we never saw anyone being released*."

[1657] TLA008, TAM001, TAM026, TAM002, TSH064. According to WHO statistics for Eritrea, in 2013, the life expectancy at birth was 66 years for women and 61 years for men, see http://www.who.int/countries/eri/en/ [visited on 29 Mai 2015].

[1658] TBA047, TNR033, TFM021, TNR082.

[1659] TBA047, TNR043, TNR042, TNR041, TLA028, TBA095, TBA100, TBA068, TNR041.

A soldier, who had joined the army in 1999 and worked as a clerk in the administration of his division before he deserted in 2014, told the Commission that he had first expected to be discharged due to the financial difficulties of his family, and then when he had turned 40 years old. His requests to be released had always been ignored. He earned 500 Nakfa until he escaped from the army.

A witness, who was recruited in 2007, stated: "*I have applied many times by letter to be released. I am aged and I am only one for my family. They said you were hiding in Ethiopia. You should be ashamed. You give the letter to your superior who is commander of the company, give it to battalion leader, they shelved the demand. I did not get a written response."*

(v) Procedure for release from national service

1254. It appears from testimonies that conscript first needs to get released from their direct employer, which is certified a release paper. The release paper serves as a travel permit but not as a work permit.[1660] It is the precondition for getting a certificate of completion of national service, which is issued by the Ministry of Defence. This certificate indicates that the holders are discharged from national service and permits them to move around and to choose work freely. The Commission found that release was extremely rare and difficult to obtain. It can usually only be obtained through bribery or for medical reasons not on the basis of the number of years of service.[1661]

A witness described the procedure to get released: *"I went to the zonal administrator in my town to ask for release on economic and family grounds, he gave me an approval for release. I took it to my military officer but he refused. I had no money to bribe him. If you follow the right procedures, with the certificate of approval from your zonal administrator, your division should agree for you to be discharged. In my case, they did not approve the request. My life became difficult. I had no money, and two families to support. My wife became pregnant again mid-2013. Since I had little money, I had a debt. The house owner wanted to throw me out."*

Another witness added that a certificate of completion of national service was extremely difficult to get without facilitation by a high-ranking employee of the Ministry of Defence.

This was further supported by a witness, who explained that those who could afford it were paying from 100,000 to 200,000 Nakfa for the much-sought after certificate of completion. He also noted that certificates were occasionally issued until the 13th round, i.e. around 2000.

1255. Some conscripts assigned to civil service get discharged from active national service without being entirely free as they have to continue performing the civilian job they were assigned to during their service.[1662] They may receive a salary, which is higher than the previous one, and be allowed to move freely within the country. However, they are not permitted to choose where to work freely.[1663]

1660 See chapter VI, A, 2, Freedom of movement.

1661 TBA068, TSH036, TBA064,TNR026.

1662 While this practice has been corroborated, the Commission was not able to clarify the legal basis for obliging released conscripts to continue working and their 'official' status during this period of time; for details, see chapter VI, C, 2, Forced labour.

1663 Idem ; see also David M. Bozzini, Low-tech Surveillance and the Despotic State in Eritrea, in Surveillance & Society, 9(1/2), 2011, p.100 .

(vi) The de facto *release of women*

1256. Some women marry while in national service in order to be able to leave with the permission of the officers in charge. Women who become pregnant (by choice or otherwise) are also able to obtain permission to leave. Leaving the national service early due to marriage or motherhood, however, does not guarantee a woman will be officially discharged. The provision of a certificate of completion to a woman who is leaving national service also appears to be a non-standardised practice that is effectively at the discretion of a conscript's leader. The timing of release is also at the leader's discretion and women are not always permitted to leave directly after marrying, rather many must serve until they are visibly pregnant. [1664]

A woman who had been blacklisted for her religious belief told the Commission that she was not released immediately after her marriage and did not receive a certificate of completion: *"While serving, I got to know my husband and then I got married. I did not finish the national service. Since I was blacklisted, I continued to serve for three months after I got married. Then I was able to leave because of my marriage. I got married because I wanted to escape from the military."*

Another witness reported to the Commission that his wife, who was assigned to a construction company for her national service, was permitted to leave when she became pregnant, but could not obtain a certificate.

One witness reported that his sister who was in round five at Sawa received a certificate of completion when she left the national service after becoming pregnant: "*She fell in love with a soldier. They got married. She was released after she got pregnant. She received the paper*."

(vii) Recall after release

1257. In theory, the holder of a certificate of completion of national service should not be subjected to call-up or arrest for service evasion. However, information received by the Commission indicates that people who have been formally released were recalled at a later point in time. For example, conscripts of the 1st to 4th rounds, who completed the statutory 18-months national service before 1997, were initially released and provided with certificates of completion. However, they were recalled ahead of the first round or during the border war with Ethiopia, without being discharged from national service once the war was over and indefinitely retained in the national service.[1665]

A member of the 1st round of military training in Sawa testified that upon completion of the national service, he was allowed to return to civilian life. However, when the war with Ethiopia started, he was forced back into the military, where he worked in logistics. After the war, he did not get released, despite having asked many times. He was told fighting with the enemy could erupt anytime and they had to be on standby. He was assigned to do agricultural work. He was never again discharged before he fled in 2013.

A member of the 3rd round was sent home at the end of the 18-months period. "*In 1998, Eritrea started a war with Ethiopia and I was recalled to the same military unit. The military unit names changed often but the people remain the same. In between the rounds of fighting, we worked on construction projects, bridges, roads etc. My unit did logistical things when the fighting was happening"*. After the war,

[1664] TBA095, TSH036, TAM074.
[1665] TCDP004, TBA081, TSH077, TBA059, TAM075.

he was not released and eventually fled the country but was deported. After detention, he was sent to the military again, from where he managed for a second time to escape and flee the country.

A witness, who was a member of the 4th round in December 1995, shared his experience with the Commission. "*Before I went to Sawa, I was a civil servant in the port of Massawa. I did military training for six months and served for one year in Sawa camp as a driver. After 18 months national service, I returned to my previous job. Following the Government's declaration in April 1998, I was called back for developmental work under the military. Even though we were called for development work, I was assigned for guarding the border near Sudan as a soldier. When we asked why we had to serve as soldiers, they said that those previously guarding the border had been sent to do developmental work and we had to replace them. Developmental work was intended for 30 days only. Eight days before the end, the war broke out*." After the war, he continued working in different divisions of the army, without being released.

A witness, who had received a certificate of completion of national service, was recalled six months after the war broke out. "*I signed up because we were asked to. It was not voluntary because they warned us that there would be consequences if we did not sign up. At the time, I was looking for jobs and everybody said the country was under attack and I had to go and fight. I went to the Ministry of Education and asked what they wanted us to do. We were told to sign up. So in 1999, together with my colleagues, who had recently come out of military training, I went to Mai Nefhi, where we started a new military training course on combat. We trained for about three months*." After the war, the witness remained in the national service until he fled the country in 2014.

1258. Former fighters, who were discharged at independence, were also recalled when fighting erupted with Ethiopia and remained conscripted beyond the war for an indefinite period of time.[1666]

> *"I was in the EPLF, I was a radio technician. In 1991 we came to Asmara. When I arrived in Asmara I changed my job to a telecommunication technician at the only Government company. I worked there until 1995. In 1995, I was forced to return to the military, I had no choice but to return. I was sent to the air defence force unit in the air force*."

1259. Furthermore, soldiers, who had been discharged on health grounds, some of them due to injuries they sustained during the fighting, were later recalled and forced to serve again in the army or civil administration.[1667]

1260. Many of those who had been released at some point have been recently called back into the People's Army.[1668]

1261. Reportedly, even persons who have documentary evidence that they have completed their active military service find themselves at risk of punishment as evaders of reserve responsibilities if they leave the country while still of military age.[1669]

[1666] TBA067, TLA027, TSH076.
[1667] TLA008, S004c.
[1668] TBA067, TAM040.
[1669] S086.

(viii) 2014 announcement regarding limitation of national service

1262. In 2014, the Government announced that the duration of the national service of future conscripts would be limited to 18 months. Reportedly, similar announcements were made previously, including in 2001, when the Government ordered that the maximum 18-month term of national service be adhered to, and that conscripts be allowed to complete their period of service in their own districts, allowing access to families.[1670] The announcement was reportedly not made public in Eritrea.

1263. The Commission collected testimonies from Eritreans who left the country, as recently as February 2015, but only two of them had heard that conscripts of the 27th round had been informed in November 2014 about the Government's intention to respect the statutory 18-months maximum duration of national service when they were assigned to their military units. None of the other witnesses who had left the country recently, were aware of such an announcement.[1671] There is a lot of scepticism as to whether the Government will this time fulfil its promise, as it has made similar announcements in the past that were never followed through.[1672]

> A witness, who fled the country at the end of 2014, had heard about the announcement. *"They told us in meeting in early November 2014 that every national service conscript as of the 27th round would be released after 18 months. We old ones did not take it seriously, because they had made promises before, regarding salary raises and that those above age or ill would be released. The announcement was also made to the rest of our division and other divisions nearby. We had conscripts of the 27th in our division, who were hopeful."*
>
> This was confirmed by a witness who fled the country in early 2015. *"Soldiers of the 27th were told by the officers about the new 18 months maximum duration that would be respected when they were assigned to their military units, however nobody believes it for the moment."*

(g) Military training

1264. Military training of six months is the first part of active national service that every Eritrean national between the age of 18 and 40 years is obliged to undertake, as stipulated in article 8 of the National Service Proclamation.[1673] During military training, conscripts are routinely subjected to punishment amounting to torture and ill-treatment, which is dealt with under a separate chapter.[1674]

1265. The first round of military training started after independence in Sawa in 1994. Since the establishment of the *Warsai Yikealo* Secondary School in Sawa in 2003, high-school students undertake military training in Sawa while studying during 12th grade for their Eritrean High School Leaving Certificate examination, also referred to as "the matriculation".

1266. However, not all conscripts participate in the academic part of the programme in Sawa. The Commission learned that conscripts are also sent to Sawa for military training only, most of them having been aken there after a round-up.[1675]

1670 S147.
1671 TNR054, TBA089, TBA086, TNR052.
1672 TBA057, TLA039.
1673 Art. 8 of Proclamation No. 82/1995.
1674 See chapter VI, B, 4, Torture, ill-treatment and punishment.
1675 TSH016, TAM011.

A witness who attended military training and 12th grade in Sawa in 2003 stated that there were two groups of conscripts in Sawa: "*The first group comprises of students and the other group is constituted of people rounded up under giffas*."

(i) Military training in Sawa

1267. The current Commander of the Training Center for the Eritrean Defence Forces in Sawa is Brigadier General Tekle Libsu, the Commander of the National Service Training Center is Col. Debesai Gide, and the *Warsai Yikealo* school is under the direction of Mr. Kelit Girmai.[1676] According to the Government, about 11, 500 students, including 42.6 per cent females pursued studies at the *Warsai Yikealo* school in 2014/2015, and a total of 170,000 students have pursued studies in Sawa since 2003.[1677]

a. Layout of the camp[1678]

1268. The first conscripts, who were sent to Sawa for military training, had to construct the training camp from scratch.[1679]

A conscript of the 1st round described how they started constructing the military camp in the wilderness: *"We cleaned up and constructed houses. We were 10,000 young people, including 3,000 women, all coming from high schools in Asmara. Conditions were bad but we were happy and excited, there was a new Eritrean leadership and we had to work for the Government."*

Another conscript of the 1st round who was sent to Sawa mid-1994 remembered: *"Many people had never experienced the desert and military so it was difficult to cope. It was very hot, there was no water, no electricity, no shelter. There were no building, just military tents under the trees. We were guarded and were unable to escape. We had to construct roads and meeting rooms. It was manual labour, we had to carry stones. I got malaria and was taken to the temporary hospital where I received chloroquine tablets. I stayed three weeks at hospital, lying down on the floor. I remember somebody died because he was exhausted and sick like me."*

1269. Testimonies collected by the Commission show that as of today, the military training centre in Sawa consists of accommodation for about 20,000 conscripts divided in blocks, each comprising ten hangars in two rows. Each hangar houses about 150 students. The new conscripts are assigned to one of the five or six blocks, one or more being assigned to female conscripts, depending on the size of the round. The *Warsai Yikealo* school consists of a hall surrounded by several blocks. Each block is in a separate small compound with a fence around it and two entrance gates, one on each side. The halls are surrounded by fences, and are attached to different classes. The compounds are all surrounded by fences, and are heavily guarded by soldiers.[1680]

[1676] See "Eritrea: Warsai Yikealo Secondary School in Sawa Concludes 2014/2015 Academic Year". available at http://www.shabait.com/news/local-news/19508-warsai-yikalo-secondary-school-in-sawa-concludes-20142015-academic-year- [visited on 28 April 2015]. According to media sources, Mr. Kelit Girmai was previously head of the Education Ministry's branch office in the Gash-Barka region.

[1677] Ibid.

[1678] For satellite imagery, see Annex V.

[1679] TFM035, TCDP004.

[1680] TSH018, TAM045, S052 S075; See Annex VI for a satellite picture of Sawa.

b. Registration

1270. Upon arrival, new conscripts have to fill in a form, providing personal details, including the address, date of birth, place of origin, ethnicity and religion. The form follows the conscripts to any assignment during their military careers. They receive their military uniform and plastic shoes, locally called "congo shoes", which were also worn by fighters during the struggle.[1681]

c. Underage conscripts

1271. The Commission has documented a pattern of underage conscripts being sent to Sawa for military training. Many children, who start school early, finish 11th before reaching adulthood and are sent to Sawa as minors. In addition, there are also those under-age conscripts who arrive in Sawa after having been rounded up.[1682]

> A former trainer informed the Commission that the trainers are not in a position to know whether a trainee is a minor. "*I am not informed whether there are minors or not in my unit. There are files, but that are given directly to the logistics office*."
>
> A witness, who was sent to Sawa in 1995, stated that there were some children between the ages of 14 and 15. *"Some of their parents bought school documents for them. However, these children were also forced to do military training."*
>
> A former teacher, who was assigned to teach in Sawa, noted that he had many students who were only 16 or 17 years old.

1272. Reportedly, in a speech to new recruits in Sawa on 14 July 2002, President Afwerki publicly said that children would be participating in the national service programmes and there was no problem in handling this age group because Eritrea had a long history and experience from the struggle in dealing with minors and some professional training programmes would be designed for them.[1683]

1273. Witnesses confirmed that under-age conscripts occasionally receive different training and are exempted from physically tiring and exhausting exercises, or released completely from military training under the condition that they serve the Government in a different capacity.[1684]

> A witness, who became an orphan when his parents died during the struggle, grew up at an orphanage in Asmara. *"When we were told to do military service, we asked for a meeting with the then Minister of Social Affairs. She knew our parents. We asked how we were being treated like anyone else. We were underage and we had no guardianship. We asked why we could not be shown any mercy. She said that we could go to Sawa and then return. There was an uprising in the orphanage and we were first taken to Adi Abeito prison and then to Sawa for military training. Many of my orphan friends were underage. There were so many underage people who were taken to Sawa. This took away a sense of family. The youngest of the people who were taken were about 14 to 16 years old."*
>
> A former conscript was rounded up and sent to Sawa in November 2005 when he was in 10th grade at the age of 15. *"We started primary training, physical activity and military training. There were no academic classes. They knew some of us were under age because we were separated from the others."*

1681 TBA050, S075.
1682 TNR001, TAM024, TBA027.
1683 S075.
1684 TAM003, TSH016, TNR024.

Another witness, who was sent to Sawa at the age of 13, was unable to cope with the training and conditions in the camp. Together with about 12 other underage trainees, he was sent back home to recover. *"After a week, they came to check us at home. The person who came told me I had recovered, but I would have to spy for them in Asmara. So they just made me spy."*

d. Training programme

1274. According to the National Service Proclamation, military training should last for six months. Shortly before and during the border war with Ethiopia, conscripts were sent to the front after a shortened military training, some of them after only four weeks of military training.[1685]

1275. Currently, the year at Sawa starts in July and is divided into three months of military training until September, followed by six months of high-school education from October to April, and another three months training, whereas the allocation of time may differ from round to round.[1686] Conscripts who arrive in Sawa after being rounded up may have to wait for up to several months for the arrival of additional conscripts before training starts. In the meantime, they are assigned to conservation and protection, as well as agricultural work in and around the camp.[1687]

A witness, who was sent to Sawa after being detained, explained to the Commission: *"Together with about 50 detainees, I was transferred to Sawa training camp. There were only a few people in the camp when we arrived, the camp was empty; they were reorganising themselves. Every day we were going to the riverbank, they were making us work."*

e. Military training

1276. Every day except Sundays, conscripts have a strict daily routine, stretching over more than 12 hours per day. They start the day with running early in the morning, sometimes as early as 3:30 a.m.[1688] The morning run is followed by up to three hours of military training before lunch break, political classes and additional military training in the afternoon until dinner is eaten at 6 p.m.[1689] Sometimes breakfast and lunch are combined in what is locally called mitiglal.[1690]

A former trainer in Sawa described the daily routine during military training: *"Under me I had a unit of 60, comprising conscripts from all regions of the country. I woke up the trainees at 5 a.m. They had to stand in lines, so that I can count them and check their uniforms. I checked if those who were sick the previous day are fit enough for training. At 5.30 a.m., we ran to the urinating point, which is 2 km away. I allowed those who are sick to start ahead of us and walk. Those who were too sick, just went to urinate and returned to the camp with someone. Upon return, I did a recount. We usually commenced the military training after breakfast, sometimes before. We returned to the camp for a lunch break, before we continue the training or I took them to political classes until 6 p.m. when we had dinner."*

[1685] TSH038, TAM007, TNR001.
[1686] TSH032, TNR036, S052, TAM039, TSH084, TBA065, TCDP011.
[1687] TNR001, TCDP026.
[1688] TAM045, TAM039.
[1689] TCDP002, TSH032, TAM039, TNR001.
[1690] TAM045 TAM029 TAM039, TAM038, TBA088.

A conscript who was part of the 26th round in 2012/2013 explained: "*We had to do a lot of running and to walk for about 60 kilometres and were obliged to run for about 15 kilometres. It was step by step, we first started with 15, then 30 and later 60 kilometres. This was not very regular because we had many other tasks, including agricultural and construction work, collecting firewood and stones. For the colonels, we had to build houses and prepar food*."

Another conscript added: "*We had to collect small stones to clean the surroundings, with the main purpose of preventing us from resting."*

1277. The intense military training involves physical exercise, military discipline and tactics, firing, survival tactics, recognition and camouflage tactics, as well as political classes. Former conscripts described the training as very harsh and physically demanding, in particular during marches towards the end of the training.[1691]

A former trainee stated that he and his comrades were taken for a week with little water and food. They had to carry heavy items and run during long hours aimed at increasing their tolerance and creativity to survive.

A former trainer from Sawa noted: *"What we always do at the end of the training is 'going on mission' to train on specific military techniques, including how to work in a group and how to survive in difficult situations. We take them to a place outside of the camp."*

1278. The daily political classes take place in addition to the 12th grade schooling and are attended by all conscripts and not only those who are enrolled for 12th grade. During the political classes, conscripts are taught among other issues about the values of the struggle for independence.[1692]

f. The academic part of 12th grade at the *Warsai Yikealo* Secondary School

1279. Pursuant to international law, the Eritrean Government is obliged to ensure that schooling during the 12th grade in Sawa is directed towards the development of children's personalities, talents, mental and physical abilities, their development of respect for human rights and fundamental freedoms and for the national values of their country and other civilizations as well as their preparation for a responsible life in a free society.[1693]

1280. Furthermore, discipline of 12th grade students in Sawa is to be administered in a manner respecting the children's dignity; corporal punishment is prohibited under international law.[1694] Corporal punishment in families, schools and any other institutions is indeed prohibited under the Transitional Penal Code of Eritrea, but only for children below 15.[1695]

[1691] TAM024, TAM045, TAM034, TAM042, TFM030, TCDP006, TNR001.

[1692] TFM020, TSH021, TNR001.

[1693] Art. 3 (5) of Optional Protocol to CRC on the involvement of children in armed conflicts read in conjunction with Arts. 28 (1) and 29 of CRC.

[1694] Art. 3 (5) of Optional Protocol to CRC on the involvement of children in armed conflicts read in conjunction with Art. 28 ((2) of CRC. See also CRC, General comment No. 8 on corporal punishment.

[1695] According to the Government of Eritrea, corporal punishment and flogging are prohibited as inhumane kinds of punishment under Proclamation No. 1/1991 and that therefore, all government and civilian institutions are obliged to use alternative forms of discipline like caution, rebuke, admonishment, etc., rather than using corporal punishment", see CRC/C/ERI/4, par. 145 and 146. 1995 Concluding observations of the Committee of the Rights of the Child forthcomming.

1281. After the initial period of military training, 12th grade classes begin for those conscripts taking part in the academic part of the programme. High-school students, who do not respond voluntarily to the conscription call and are forcibly recruited for military training in Sawa are not allowed to attend 12th grade at the *Warsai Yikealo* school. Reportedly, they forfeit the right to education.[1696]

1282. Teaching takes place usually in the morning, in subjects such as English, mathematics, biology, chemistry, and politics.[1697] Many witnesses told the Commission that they were disappointed when they realised that the time set aside for studying and revising was insufficient as they had to continue performing daily military duties. The teachers were not motivated and the teaching material was inadequate.[1698]

> A former conscript, who attended the *Warsai Yikealo* school after its inauguration noted that he realised shortly after his arrival that it would not be an academic year, as they had been told. "*Prior to the regular classes, they sent us to work in the cotton fields on the border to Ethiopia. After six months of training, we started regular classes, but Sawa is not a place for education. There was no time left for studies, only for military training. We were made to understand that we were there not as students but as soldiers*."
>
> Another conscript added: "*They took us for military training, and at the same time, we had to continue our studies for the matriculation exam. When we finished our studies, they forced us to work. We were not able to revise our studies as much as we would have liked to. We worked as slaves. We would have required good grades to be able to go to the university; however, we were not given the opportunity to study, we just worked for military service*."

1283. A small fraction of those who take the matriculation exam, passes and is allowed to enrol for university studies or vocational training.[1699]

1284. Education in Sawa is entirely militarised and the students attending the *Warsai Yikealo* school have a military status under the jurisdiction of the Ministry of Defence.[1700] Military rule and discipline dominate the instruction at the *Warsai Yikealo* school.[1701] The military trainers escort their conscripts to the school building and back to the military compound. Mistakes during the lessons get sanctioned by the military officers.[1702]

> According to a former conscript, they did not carry guns while attending the lessons for the 12th grade, however, "*the military trainer of each group became the leader for each group. The trainers could also take you to do some other work unrelated to learning. The behaviour of students is expected to be the continuation of military training*."
>
> A former teacher at the school told the Commission: "*Some students were in the 11th grade, others were pre-university. The students had very little time for studying. They spent a lot of time in the military training. The military bosses were in charge, not the teachers*."

1696 TNR001.
1697 S052.
1698 TBA065, TBA027, TAM038, TFM019, S052, TBA022, TNR058.
1699 See infra.
1700 See also Child Soldier International, Louder Than Words, 2012, p.41.
1701 TAM034.
1702 TFM027, TAM034, TBA027.

1285. Reportedly, conscripts in Sawa can graduate with a specialised degree.[1703]

g. Language of the training

1286. Eritrea's national languages are Tigrinya, Arabic and English, yet, military training is only in Tigrinya. Conscripts from non-Tigrinya speaking regions are prohibited to speak their local languages and have to learn Tigrinya to be able to follow the training. It is unclear what language courses are offered to recruits from non-Tigrinya speaking regions. The Commission heard that some conscripts suffered punishment for not following the training due to their difficulties to understand Tigrinya.[1704]

> A Afar former conscript explained the difficulties he encountered during the training. "*We could not understand what people were saying in Sawa because everything was in Tigrinya. I think the officers thought we were being belligerent but we simply could not understand them. They told us Afar that we were donkeys*."

h. Freedom of religion

1287. The freedom of religion is severely restricted in Sawa.[1705] Upon arrival, new conscripts have to indicate their faith during the registration process and are told that it is prohibited to practice any religion in the camp. Those who are caught praying or reading holy scriptures are severely punished.[1706]

i. Labour

1288. Apart from military training and studying, conscripts are assigned to various tasks, falling outside of the core military work, which are not remunerated.[1707]

j. Living conditions

1289. Many witnesses complained about insufficient food. Generally, meals consist of lentils, bread and tea.[1708] Rarely, some conscripts may receive some vegetables. Meat appears to be a very rare exception.[1709] Reportedly, there have been shortages of water and food. Some conscripts are able to complement the limited and insufficient diet with food brought from home or sent by relatives, such as injera, ground barley and milk. Some can afford to buy items available at the military shops in the camp.[1710]

> A former conscript told the Commission: "*We ate bread and lentils all the time. We brought dry injera from home. We were also allowed to bring milk. There was no restriction on bringing food from outside but we could only bring food that would not spoil. Our parents could also send us money. Inside Sawa, there were shops and traders from Sudan who sold various things that we could buy using the money that our parents sent us. We got the money through the post office. Sometimes they would send the money through someone who went home on vacation. The post office was about five minutes' walk from my camp.*"

1703 S144c.
1704 TSH069, TNR074, TSH071, TNR001. Failure to follow instructions in Tigrinya can lead to punishment; see chapter VI, B, 4, Torture, ill-treatment and punishment.
1705 See chapter VI, A, 4, Freedom of religion and belief.
1706 TSH069, TNR074, S052, TBA050, TCDP011.
1707 See chapter VI, C, 2, Forced labour.
1708 TAM038, S075.
1709 TCDP002.
1710 S075, S052, TNR045, TNR058, TAM038, TAM029, TAM039.

> Another former conscript recounted: "*They gave us two pieces of bread. The bread was hard and you had to eat it with salt and oil. They served us with tea as well as lentils, however, the portions are small and watery, you cannot even see that there are lentils*."
>
> Another one remembered: "*We ate lentils dry bread and tea, nothing else while I was in Sawa. My home is very far away from Sawa, so I wasn't able to bring anything from home*"

1290. During the early years, accommodation was very basic. Conscripts who went to Sawa before 2003 informed the Commission that the houses were not well built and conscripts had to sleep on the floor. When it rained, the interior got wet. There was no sanitation.[1711] These days, between seven to 20 conscripts share one dormitory and there are toilet and showers, although insufficient for the number of conscripts.[1712] Reportedly, the dormitories are locked after dinner.[1713]

> A former conscript explained the sanitary facilities: "*The toilets and the shower are in one room. There are nine toilets which are used by 160 people. The same people use a shower which is an open area and there is no running water in the shower. Water is stored in a tank and we queue to draw water in a bucket from the tank. You take the water to the shower room. The tank is filled twice a day. The water automatically stops running to fill the tank when the tank is full. In order to draw more water, we keep taking water so that the tank is not filled up. We keep water in containers, we hide it so that we can take showers. Sometimes you hide it so that it can cool down because it is often lukewarm. We use the same water for drinking, washing and showering*."
>
> A witness noted that "*about 450 people shared five toilets; mostly we were going outside*."

1291. According to testimonies, health care is also insufficient. Visits to the health care centre have to be approved by the health personnel officer assigned to each camp. Reportedly, medical doctors from outside pay visits to the clinic.[1714] According to article 22 of the National Service Proclamation, conscripts are entitled to medication, however, in practice this is rarely the case, as there is a shortage of medication. Painkillers and broad-spectrum antibiotics are the only available medication, which are indiscriminately prescribed for any illness.[1715] Reportedly, conscripts have died from malaria, due to insufficient treatment.[1716] Emergency treatment is not sufficient. Those who die get buried at a cemetery next to Sawa. Usually, the families are not informed.[1717]

> A witness described how another trainee succumbed to his wounds. "*When we trained shooting at a target, my friend was accidentally shot at by someone. He was wounded and bleeding, we had to carry him to a clinic. When we carried him, the officer drove by in an empty land cruiser, but did not take him to the clinic. He only told us to carry him quickly to the hospital. He later died. They told his mother he had a heart attack*."

[1711] TBA008, TBA001, TSH002, TSH015.
[1712] TAM042, TSH016.
[1713] TLA004, TAM038, TAM045.
[1714] TSH005.
[1715] TAM045, TAM038, TNR045.
[1716] TAM031.
[1717] TCDP002, TNR045, TBA099, TSH019.

A former conscript told the Commission that his glasses broke during the first semester in Sawa. He was granted a ten-day leave permit and sent to the hospital to get new glasses. He got the prescription, but had to raise money at home to be able to buy the glasses. When the ten days expired, officers from the military intelligence unit came to his house to arrest and detain him in Track B and Me'eter.

1292. Life in Sawa offers very limited time and opportunities for recreational activities. Some activities such as music, drama, football and martial arts are organised by the National Union of Eritrean Students and Youth, the youth movement of the People's Front for Democracy and Justice. They also organise political classes, in addition to the 12th grade curriculum, where conscripts learn about Eritrea's history, the independence struggle aimed at developing a sense of patriotism.[1718] The National Union of Eritrean Students and Youth tries to recruit new members by providing incentives such as sparing them from the agricultural work to which other conscripts are assigned during the free days of the week.[1719] A witness, who worked at the National Union of Eritrean Students and Youth office in Sawa, explained that the Union organises festivals, holiday programmes and since 2009 the Sawa youth festival.[1720] During the annual Sawa youth festival in July, concerts and other cultural activities are organised at the military compound with artists who work for the People's Front for Democracy and Justice Cultural Affairs Department.[1721]

A former conscript told the Commission: "*There is a students' festival every year. They tell us to wear civilian clothes. Everything is changed, even the food is different because visitors come, including foreigners. They give us a little freedom. During the time of the festival, there are no prisoners, and we do not have to work [at the farm] in Molober. Parents of the conscripts also come, however, not everyone is allowed to attend, only government supporters. Eritreans who visit the Sawa and Asmara festivals from abroad are all government supporters. They pay a lot of dollars to the Government*."

1293. In the course of the year in Sawa, conscripts have very little contact with their families. Some witnesses did not have any possibility to communicate with their families while in Sawa. Others noted that their families were able to visit during "parents day."[1722]

"You can write a letter but they warn you not to write anything that is inappropriate, only greetings. There is a time when mothers can visit their children. At that time, food is changed and we get good bread. My mother came to see my sister. When she came, she thought they were fine as they had good food to eat, lentils with onions and good bread. My sister showed her the bread from the previous day, very dry sorghum bread."

Another witness added: "*If something happens in the family, for example if a relative dies, they do not tell us. I remember many students who only found out when they returned home that the father or another family member had died. During my time, we were given a few days for home leave after the first semester but I think now there is no more family break because people would not return to the camp."*

[1718] TBA070, TBA050.
[1719] TBA050, TAM042, TNR046. See also chapter VI, C, 2, Forced labour.
[1720] TBA070.
[1721] TBA091, S052.
[1722] TSH077, TNR045, TNR058.

(ii) Military training in other camps

1294. In addition to Sawa, the Commission has heard about other military training camps in the course of the investigations. Conscripts who are sent to these other military training camps include children and adults who are caught when attempting to flee and are thus seen as "traitors"; individuals who are punished for the conduct of their parents; those who do not reach 12th grade because they drop out of school, did not attend classes or did not pass exams; and those suspected to have purposely repeated classes several times to avoid reaching 12th grade and being sent to Sawa.

a. Wi'a military training camp

1295. One of the most notorious camps was opened in Wi'a around 2003[1723] and was in operation until its closure sometime before 2010.[1724] When Wi'a was closed after the high number of deaths during the 23rd round, the camp was abandoned by the military and conscripts of the 24th round were directly sent to other camps.[1725]Testimonies corroborated by satellite imagery obtained by the Commission indicates that Wi'a has been subsequently re-opened.[1726]

i. Location and layout of the camp

1296. The Wi'a military training camp is located in the desert area close to Foro, about 30 kilometres from Massawa and the river Hadas.[1727] At least until the temporary closure, the training centre was divided into three camps, namely Arag, Fenkel and Halhal. accommodating about 500 conscripts.[1728] Conscripts were heavily guarded and the camp was fenced with spiky agefa trees.[1729] Given the harsh conditions, escape of conscripts was a major concern. They were therefore constantly guarded, with armed guards being placed at every gate, within and around the camp.[1730] The guards belonged to a special force, the para-commando, selected for their physical strength.[1731] Whereas training and other day-time activities took place at a larger compound, including tents for the officers, the conscripts had to spend the night in much smaller, highly congested open air compounds, where it was easier to guard them. When changing location in the morning and evening, conscripts were accompanied by the soldiers to avoid escapes.[1732]

> A former conscript testified that he was sent to Wi'a in 2006 with 200 students. When 30 of them escaped, the remaining conscripts had to build a fence around a sandy place where the training took place during the day. "*They sent guards and we were constantly guarded. We would get closed in at night again. The women were living in a tent where they had some form of protection; the military assumed that the women were less likely to escape*."
>
> A witness, who was sent to Wi'a in 2006, told the Commission. "*When we came to Wi'a, the military only gave us two sheets, there was nothing else. They built pens, similar to the fences used to keep animals, in one fence we were about 700 to 1,000,*

[1723] TCDP006, TSH085, TBA071.
[1724] See chapter VI, B, 3, Detention,
[1725] TSH082, TBA091, TNR055, TRDV003.
[1726] See Annex V.
[1727] TAM020.
[1728] TAM020, TSH026, TNR081, TNR082, TAM018.
[1729] TNR081, TAM018, TNR054.
[1730] TAM018, TSH021, TNR054, S075.
[1731] TBA091.
[1732] TNR081, TNR082, S075, TBA100, TNR081, TFM015, TBA100.

it was very crowded but for them it was easier to guard us. There were many of these fences. In total, there were almost 20,000 students."

ii. Trainees

1297. The majority of conscripts in Wi'a were people caught at the border, rounded up before being assigned to military training or taken from school, as well as conscripts who had overstayed their leave.[1733] According to testimonies of witnesses, some were first detained in one of the detention facilities in Wi'a, before being assigned to military training in the compound.[1734] Others were transferred to Wi'a directly for military training, either after being arrested or from another detention facility.[1735]

A witness, who was sent to Wi'a in September 2005 and detained in a container, stated: "*After three months, we were forced to undergo military training. This included people who were Orthodox who were compelled to be in the military. It also included monks. I was already disabled at my leg at that time, but I was made to do target shooting. I stayed at W'ia for one year*."

"*In April 2008, I tried to cross to Sudan and was caught at the border. Initially, I was imprisoned in Aderser, and later transferred to Wi'a, where I was detained two months. After being released, I joined the 22nd round of National Service in Wi'a. I stayed there until March 2009*."

A person, who was arrested in June 2006 and sent to Wi'a as a punishment was directly assigned to an eight-month military training.

iii. Training and labour in Wi'a

1298. Conscripts undertook a combination of military training and other tasks, such as construction, of a varying length. Military training consisted of marching, physical exercises, military activity training, such as shooting guns and targeting. Reportedly, conscripts were taken on long hikes in the mountains, without food and water.[1736] Conscripts also attended political classes where they were instructed not to betray the country.[1737]

A person, who was arrested in June 2006 and sent to Wi'a as a punishment was directly assigned to military training. "*I was in Wi'a for eight months doing military training. The training was very tough. It is a very hot place, many people get sick and die there. In one day, seventeen people died. Many people died after committing suicide*."

1299. Conscripts were also sent to Wi'a for para-commando training as part of the Special Forces, part of Unit 525, involving specialised military training.[1738] Reportedly, those who did para-commando training were also employed as guards in the camp itself.[1739]

A witness, who was sent to Wi'a in February 2003 for a four-month para-commando training noted that in Wi'a there were told that "'*in the previous training nobody died, which means that this is not an effective training. This is why we received a*

[1733] TAM020, TNR041.
[1734] S128.
[1735] S075, TCDP015, TAM018, TBA057, TSH034.
[1736] TBA071, TCDP006, TBA054, TAM013, TBA086, TNR041.
[1737] TSH021, TAM033, TSH034.
[1738] TSH018, S075, TCDP006, S077q.
[1739] TBA091, TCDP006, TSH018.

message to make it harder.' We … went on a four-day walk. People began to die while walking. The training in Wi'a lasted four months. They said 'this is a wonderful training, people scarified themselves for the country'. In Wi'a we had our own gun and we had to carry ten kilograms. It was a para commando training. We had to jump, climb mountains, do judo, and defence training. During my time there were two divisions in Sawa and two divisions in Wi'a doing para-commando training and we exchanged the training camps at some point."

A witness, who was deployed to Wi'a in 2007, reported: "*There is a section especially for underage recruits in addition to the regular training centre. Children 10-16 are round up in giffas and sent there for special training to become commandos (Special Forces). They are taught taekwondo, parachuting, para-commando and military training as well. They are usually kept for two to three years minimum*."

1300. Most conscripts had to work from the time they arrive. Especially when the camp opened, conscripts had to construct the camp facilities.[1740]

A witness, who arrived in Wi'a in June 2006 described his work. "*From morning to midday we had training, two-hour break, then labour work. We had to carry rocks from far away to where we had to build a dungeon for a prison. We slept outside. This routine continued for six months until it was finished*."

Another witness, who was sent to Wi'a for military training in February 2009 told the Commission: "*We were 20,000 trainees during the 22nd round. Our training included running and carrying water. We also had to collect firewood in Erafaele, which is about 30 km away. We would depart at 6 a.m. and return at 6 p.m. Some people fainted. We had to carry them back, together with the firewood. The officers accompanied us to guard us, they had a gun*."

iv. Living conditions

1301. Many witnesses described the harsh living conditions, exacerbated by the very hot climate sometimes reaching up to 50 degrees celius, making it unbearable to work at day time and sleep on the hot sand during the night.[1741] The food, consisting of lentils and bread, was insufficient, as was the water and there was insufficient medical care.[1742] There were no educational opportunities offered to conscripts in Wi'a.[1743]

"*We were fed only watery lentils and bread. We were guarded all day and night. We could go only two times a day to the toilet. We slept in a pen with a fence made of spiky trees. No beds, no blankets. We were given green overalls and shoes. The worst thing about the training was the food, I constantly felt weak. Everyone was hungry, but nothing changed*."

A witness, who was assigned to Wi'a military training in 2006 described the living conditions. "*The smell of the toilet is overpowering. It is a little hole, however, most people just go anywhere in the camp, including those with diarrhoea. At night, people have to sleep in a line sometimes on a mat. Otherwise, we would take off our clothes and use them as a blanket. The clothes that we wore were the only thing we had. We were not allowed to keep on the shoes that we used for training but had to take them off. At times, it rained the whole night and the rain would flush the faeces*

[1740] TBA071, TSH083, TBA091. See chapter VI, C, 2, Forced labour.
[1741] TBA100, TNR082, S075.
[1742] TSH021, TAM013, TNR081, TSH085, TBA091.
[1743] TNR082, TNR055, TSH021, TNR081.

towards us while sleeping and a lot of people got diarrhoea. The main cause of death in Wi'a was diarrhoea."

1302. The harsh treatment, the lack of a clear distinction between training and labour, combined with the blurred line between trainees and detainees suggests that Wi'a may have been used as a re-education and correction camp rather than a normal training centre with the common division detention facility attached to it.

b. Other military training camps

1303. There is an extensive network of military camps covering the country, with many of them serving as training grounds for new recruits. The conditions during the military training in these camps are equally harsh.[1744]

1304. Reportedly, in 2010, about 4,000 conscripts of the 24th round were sent to Adi Rosso area for military training and for para-commando training by para-commanders of the Special Forces part of unit 525 as the beginning of their training coincided with the closure of the military training camp in Wi'a; conscripts were exhausted from the training and insufficient food.[1745]

1305. Reportedly, a regular military training of members of the reserve army takes place in Ala, near Dekamhare. It involves field exercises such as marches in the desert without water and food, shooting exercises and physical training. Reportedly, the camp also serves as a training ground for training of medical staff of the army.[1746]

1306. Gahteley military training camp was used temporarily for military training mainly during the border war with Ethiopia, given the proximity of Sawa to the border. While many students voluntarily responded to the general conscription calls addressed to college and university students, there were also conscripts who had been rounded up, reportedly also minors. Given the lack of infrastructure, conscripts had to improvise to protect themselves against the hot climate.[1747]

1307. The Commission heard testimonies regarding a military training centre in Klima, close to Assab, which reportedly was opened in 2003, in response to increasing numbers of conscripts who fled during military training in Sawa over the nearby border to Sudan. Reportedly, the training in Klima takes place in a hostile environment, without any basic infrastructure and insufficient supplies. Reportedly, the training during the 19th round in 2006 was particularly harsh, causing an increased number of conscripts to flee to neighbouring countries.[1748]

1308. As of 2007, conscripts were also trained at a camp in Me'eter located on the coast of the Northern Red Sea between Massawa and Afabet. Conscripts had to undertake construction work, including the building of hangars, wood houses and the digging of two meters deep holes. Reportedly, they also guard the prisoners, however, several witnesses noted they felt like prisoners themselves.[1749]

1309. The military training camp in Nakfa, located in the mountains in the northern part of the country, is fenced with thorny trees. Although there are some facilities, including stone buildings for the officers, not every conscript is able to get a place to sleep in one of the

[1744] TSH070, TBA083, TAM015, TCDP022, TNR078, TCDP015, TBA080, TNR068, TAM029.
[1745] TSH082.
[1746] TLA022, TLA015.
[1747] TAM032, TNR043, TCDP070, TAM004, TNR046, TNR024, TNR031, TCDP035.
[1748] TSH082, TFM036, S077d, TBA100.
[1749] TSH018, TAM057, TCDP015, TSH004, S046.

tents or manages to take a shower at least once in a while. Occasionally, some conscripts get visits by family members.[1750] Medical support is inadequate,[1751] and reportedly people have died of diarrhoea due to a lack of treatment.[1752]

(iii) Sexual and gender-based violence during military training

1310. Discrimination on the basis of sex is globally prohibited under international human rights law by article 2 of the Convention on the Elimination of Discrimination against Women. Violence against women is a form of gender-based discrimination and discrimination is a major cause of such violence.[1753] Gender-based violence, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under international human rights law is discrimination within the meaning of article 1 of the Convention.[1754] Additionally, violence perpetrated by public authorities breaches the State's obligations under international human rights law.[1755] Accordingly, the Eritrean Government has an obligation to protect women and girls from violence and discrimination and implement measures to address its prevalence within both the private and public spheres.[1756]

1311. When examining the extent of discrimination and violence against women and girls during military training, the Commission is guided by a number of rights critical to the protection of women from violence. These include the right to life, liberty and security of the person; to be free from torture and from cruel, inhuman or degrading treatment or punishment; to be free from slavery and servitude; to equal protection under the law; to equality in marriage and family relations; to an adequate standard of living; to just and favourable conditions of work; and to the highest attainable standard of physical and mental health.[1757]

a. Forced domestic duties and sexual abuse of women and girls in military training

1312. The Commission heard that young women conscripted into national service are discriminated against on the basis of their sex and are at a disproportionate risk of sexual violence from military camp leaders, trainers and other military personnel in the military training camps. The Commission finds that discrimination and violence against women is to such a degree it also constitutes sexual slavery and torture.

i. Forced domestic duties

1313. In the military training camps, many women and girls are forced to perform non-military activities such as cleaning, laundry and coffee preparation for officers in military training centres.[1758] Despite the objective of conscripting both men and women to place

1750 TNR052, TSH038.
1751 TNR052.
1752 TAM025.
1753 CEDAW, General recommendation No. 19 (1992), paras 7 and 11.
1754 Committee on the Elimination of Discrimination against Women general recommendation No. 19, (1992) para. 7.
1755 Ibid, para. 8.
1756 See chapter VI, B, 1, Administration of justice.
1757 These rights are set out in the Universal Declaration of Human Rights, articles 3, 4, 5, 7, 16 and 25; and guaranteed by treaties including the African Charter on Human and Peoples' Rights articles, 2, 3, 5, 6, 15, and 18; the International Covenant on Civil and Political Rights, articles 6, 7, 8, 9, 23, 26 and the International Covenant on Economic, Social and Cultural Rights, articles 7, 11 and 12. See also Committee on the Elimination of Discrimination against Women General recommendation 19, para 7.
1758 TCDP005, TSH086, TFM003, TBA002, TSH081, TNR001, TCDP022, TBA012, TSH031.

them on an equal footing with one another,[1759] men and boys are never asked to perform these tasks.[1760] The forced servile status of women and girls in military training camps is rooted in traditional attitudes by which women are regarded as subordinate to men and perpetuation of stereotyped roles. Some women and girls are lured to perform these duties in the promise of additional foodstuffs such as milk.[1761] Others are forced to perform such duties and risk severe forms of punishment if they refuse.[1762] The Commission finds that such behaviour amounts to discrimination against women. The denial of their rights to non-discrimination and freedom from servitude also creates the conditions of vulnerability to violence and sexual abuse.[1763] The forced servile status is described to be the first step of military training leaders attempting to co-opt the female conscripts for sexual purposes.[1764]

> A young Eritrean woman described to the Commission how traditional practices and discrimination against women manifest in the military training camps: "*Sawa is a reflection of how people view male and female roles in society today. The mantra is that we are all equal, and Sawa is sold in a similar way, there is no male/ female etc., we are all equal. But inside, they don't ask men to clean their clothes, make their tea and coffee*."
>
> A sister of a former conscript forced to perform domestic labour for a military leader within a training camp explained how it can begin: "*When my sister was a conscript, her boss asked her to prepare coffee – that is how it starts. The girls are afraid and they say yes – and then they are asked to cook, and clean, and finally they become theirs.*"
>
> Young male conscript observed in Wi'a military training camp: "*The girls had to do house work for the officers. Each officer had four girls. One of them was his girlfriend, the other three worked. The girls volunteered to work with the officers, because they got better treatment, they got a bed. They didn't volunteer to become the girlfriend. Not all girls worked with the officers. Some girls got pregnant*."[1765]

ii. Rape and other forms of sexual abuse

1314. Sexual abuse of women and girls is an extreme form of violence against women. It violates their rights to be free from discrimination, torture, cruel, inhuman or degrading treatment and the rights to security of the person and can result in long standing, physical, mental and emotional harm.[1766]

1315. The Commission has received a large number of testimonies and submissions relating to the rape and sexual abuse of young women conscripts in military training centres.[1767] Despite the large number of testimonies reporting sexual violence within

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1759 Dan Connell D and Tom Killion, *Historical Dictionary of Eritrea* 2nd ed (2011). p 545.

1760 TSH086, TSH081.

1761 TAM018.

1762 TCDP022, TCDP071, TSH024, TSH022, TSH031.

1763 "In-depth study on all forms of violence against women" (A/61/122/Add.1), para. 65.

1764 TSH086, TCDP022, TSH110, TCDP005, TSH081, TNR045, TSH018, TCDP004, TFM004, TBA005, TNR009, TBA029, TBA091, TAM018.

1765 TBA091.

1766 These rights are guaranteed by treaties including articles, 2, 5, and 18 of the African Charter for Human Rights; articles 7, 9, and 26 of the International Covenant on Civil and Political Rights; article 12 of the International Covenant on Economic, Social and Cultural Rights; and articles 2, 10 and 11 of the Convention on the Elimination of Discrimination against Women.

1767 TSH086, TSH087, TFM003, TBA002, TCDP005, TSH081, TBA001, TSH079, TCDP068, TCDP007, TSH024, TSH022, TSH102, TAM003, TNR045, TSH096, TNR084, TSH018, TCDP004,

military training, the Commission considers that it may have only partially uncovered the full extent of the sexual violence suffered by women and girls in military training due to the cultural barriers and challenges associated with speaking about sexual violence. In light of these factors, the Commission is of the view that rape and other forms of sexual violence are perpetrated with frequency against women in the military training centres. The prevalence of such abuse in Sawa and Wi'a in particular is extremely high, but it is also found in other military training centres.[1768]

A former trainer at Sawa military training centre told the Commission that the sexual abuse of young women in Sawa military training camp was "*normal*."

The Commission also heard from former conscripts that suggested the this practice is pervasive. *"Over 70 per cent of the girls were violated like that. Students are not allowed to go to the officers' rooms, but sometimes the officers ask them to come to their house. The girls cannot say no because they know what will happen in training if they say no. When they enter the room, the officers tell them to take off their clothes and they abuse them. The girls do not report it."*

Another former conscript reported: "*90 per cent of the girls are destroyed. Girls don't even dream about a better life in Eritrea".*

1316. Officers at the training camps select the young women they find attractive when the new conscripts first arrive at the military training centre. They then have the young women allocated to their service or training team, placing the young women under their control.[1769]

A woman conscripted in an early round of military training described the practice of trainers selecting those they found attractive as existing back then. "*Each trainer, pretty much, had a girl serving him. … Most of the pretty girls were selected, they are always. They serve as their maids, they serve coffee, they never go out to do military work. They are their personal slave. It's pretty known by all that they serve these trainers*."

Another former conscript reported the practice of high ranking officers to have newly arrived young girls assigned to their personal service. *"It is commonly the Division leaders, the highest ranks who would do that. All people would go back to their Division at the end of the day. The leaders select girls personally. After six months, they would change her, take a newly arrived. The 11th grade students (16-17 years old) have to pass their last year's exam in Sawa. They take them then. Once a woman is assigned to a General, they stay there do office work, chores, etc. there is no rule, no law. Sometimes when the girls see the car of the General approaching they hide. One of my best friends was a 'an assistant' of the Colonel. He told me that the nickname used to get a girl is 'goat'. Sometimes when newcomers arrive they asked assistants to bring new goats."*

1317. Another method employed by the officials in the military training camps is to instruct assistants to bring a particular young woman to their quarters any time of day or night. Military personnel serving the leader are tasked with collecting the young woman from her sleeping quarters and delivering her to the official.[1770] Young women who are

TFM004, TBA005, TCDP022, TNR009, TBA029, TBA091, TNR001, TNR002, TSH017, TAM018, TSH095, TSH022, TSH031, TSH088, S148, S047.

1768 TCDP007, TNR045, TCDP022.

1769 TSH017, TCDP005, TCDP068, TSH024, TNR009, TBA029, TBA091, TNR001, TAM018, TCDP022, TBA091, TSH075, TCDP004.

1770 TCDP068, TCDP005, TAM018, TCDP004.

collected in this manner have no way of refusing to go to the superior's quarters or protect themselves from being sexually abused.[1771]

> A former trainer at Sawa confirmed the dual method of selection, selecting girls to work in a leader's chambers and sexually abusing them there, or taking young women at night from their rooms. "*They bring girls from the training centre. They take them to their room and they have sex with them, against their will. The girls are crying. I have seen at least 5-6 girls. [Officer's name], who was in charge of the training, was raping them. It was happening at night time. His driver was going in girls' rooms, taking them and then bringing them back. … There is a garrison of girls working with the Colonels who were also abused sexually, and additional girls were taken from the girls' compound.*"
>
> A personal assistant to an official at Wi'a training camp confirmed the practice continued there in the mid-2000s. "*[Officer's name] chose some women for house labour and for sexual intercourse. He would take them to Massawa. I was ordered to bring girls to commanders' rooms. They would give me their names and I would go and collect them. They would ask me to do this anytime of the day. I also had the responsibility to take them back. If they had sexual intercourse with them, the girls would get favours such as being given milk. I was ordered to give them something such as milk, oil and water. I can roughly estimate that there were about 1,200 women in three years. During the one year I was at Wi'a, I brought about one to two girls in a day for a period of five months."*
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> A former military police officer at one of the training centres reported the sexual abuse of conscripts: "*When girls are sent to the training centre, the guards sexually abuse them. [Officer's name] lived there at the camp, he constantly took women from the training centre for sex. Every day a different girl. Many other guards did too. Some are married, virgins etc. – many of the girls become very distressed."*

1318. Young women under the age of 18 years have also been selected by officials in the military training camps for sexual intercourse.[1772]

> On the topic of selection, a former conscript described it as being "a joke" it was so predictable. "*If she is beautiful and young she will be for the top rank. Three to four were serving the colonel. ... A friend from my area was selected by a colonel when she was 16-17 years old*."
>
> A former trainer in a military camp in the 1990s also confirmed that the leaders "*selected the most beautiful girls. They are chosen and then assigned to someone*." He further noted the subjectivity of beauty and the preference of particular leaders, "*[officer's name] abused lots of teenagers*."

iii. Sexual and gender-based violence within a climate of control, coercion and intimidation

1319. The sexual exploitation of women and girls that are forced to perform domestic duties in officials' private quarters and of the women and girls ordered there for the specific purpose of sexual exploitation takes place within an overall environment of control, intimidation and coercion. The national service structure utilises the military hierarchy in which subordinates are conditioned to obey and perform the orders of superiors and failure to follow the orders of a superior results in punishment. The young women are powerless to

[1771] TCDP068, TAM018, TSH018.
[1772] TCDP004, TNR009, TCDP005, TCDP022,

avoid or defend themselves from the sexual predatory behaviour of officials.[1773] In this regard the Commission notes the particular powerlessness of the young women under 18 years.

1320. Within the overall environment of control, the women and girls effectively detained in the quarters of officials are faced with an additional deprivation of liberty to that of regular recruits. The Commission has received reports of officials forcing women and girls into such a service status in an attempt to claim ownership rights and sexual access thereby violating the right to liberty of these young women, forcing them into sexual enslavement.[1774]

> A former young woman conscript explained how the claims of ownership by officials can begin. "*The trainer can come to where you sleep, and they can come while we sleep. He asks us for example to go fetch wood for fire, and then asks a girl to stay. The next thing, you see the girls making coffee and tea for them. They have got their stuff at the dormitory, but most of the time they are hardly there. … There were hundreds of girls in that position*."
>
> Another former conscript explained "*Two to three girls were serving the colonel. Even the lower ranks in charge of 10 people were also served by one or two girls. They were washing clothes, cooking and forcing them to have sex. Some of the women refused and they were making their life very difficult*."
>
> A young woman forced into such a position explained "*Many women are forced to clean the officer's houses, make food and coffee for them. Usually we were divided into teams of about 18-20 people. There are usually four or five women in each team and this is what they have to do, we have to wash their clothes, make their food, do everything for them. Many of the officers use this opportunity to sexually abuse the women, to rape them*."

iv. The use of punishment and fear of punishment

1321. The Commission received reports of young women and girls fearing punishment if they did not submit to orders to serve officials in their private quarters or submit to sexual attacks by officials.[1775] Reports were also received of women and girls being subjected to physical and mental punishment, often amounting to torture for failure to submit to a servile status or sexual abuse.[1776] Persons who try to assist young women to evade an officer's demands, or assist them during punishment for refusing sexual requests are also punished.[1777]

> A former trainer confirmed the practice of punishing the young women who refused the sexual advances of leaders in the training centres. "*If the girl is not willing, they will send her to do hard work, as punishment. … For example, there was one Christian girl named XX … [Officer's name] asked her to be his 'friend' and she refused so he sent her to 'Ruba Sawa', another camp which is very harsh. She was*

[1773] The Special Rapporteur on Torture considers a situation of powerlessness arises when one person exercises total power over another. The Special Rapporteur further considers the element of powerlessness to be decisive in determining when cruel, inhuman and degrading treatment is torture: See the Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Novak , A/HRC/7/3, 15 January 2008, para 28.

[1774] TCDP005, TNR009, TCDP022, TSH086, TSH081, TSH024, TSH018, TCDP004, TFM004, TBA005, TBA029, TBA091, TNR001.

[1775] TCDP005, TCDP022, TSH024, TNR045, TCDP004, TBA005, TNR002.

[1776] TSH031, TSH107, TSH024, TSH022, TCDP004, TCDP022, TSH087.

[1777] TSH031, TSH022, TSH106.

forced to work hard. When she came back … she was told that she spoiled her age and her beauty by being a Christian. They treat girls very badly."

The Commission heard from a man speaking on behalf of his niece, a former conscript who was too traumatised by her experience in military training to speak herself. The young woman was continually pursued by her unit leader for sexual activity. Her consistent refusal resulted in regular beatings and being held in a torture position. *"[Officer's name] asked her to prepare coffee which she reluctantly did, but insisted that she should be treated the same as everyone else. She refused his sexual advances. He used some of the soldiers to beat her with Char'a (a thorny branch from an Acacia tree) and tie her hands behind her. She still has marks from the spikes of the branches and tie marks on her upper arms from being bound so tightly often. In front of him she did not want to show she was in pain, but afterwards cried with pain. She was constantly being tortured, tied, beaten and insulted. One day her arms were tied extremely tight above her elbows. She was in excruciating pain. A fellow student (male) took pity on her and loosed the binds. In the morning the officer came and noticed that the rope was not as tight as he had tied it. He asked her to tell him who loosened it and she refused. He beat her with the Char'a, but she would not reveal who it was."*

1322. The Commission finds that women are at a disproportionate risk of discrimination and violence within the military training camps and are targeted for sexual abuse on account of their gender. The Commission considers the overall circumstances of the military training centres to be situations of control in which conscripts, particularly women and girls are denied their rights creating a vulnerability to violence.[1778] The Commission is of the view that in addition to women and girls being targeted to perform domestic labour in officials' quarters which constitutes an additional deprivation of their liberty, they are also targeted for sexual abuse by officials. Despite the fact that such discrimination is not permitted by the Eritrean domestic law or international human rights law, such behaviour appears to be widespread within the training camps. The State's inability and/or unwillingness to fulfil its due diligence obligations to prevent and address such discrimination and violence against women in the training camps confirms that the practices are a form of persecution of women and girls in this environment.

1323. When rape is committed by a public official at their instigation or with their consent or acquiescence, it constitutes torture if it occurs in a context that includes punishment, intimidation, control or coercion.[1779] The Commission finds that since the overall circumstances of the military training camps involve control, intimidation, coercion and punishment, and the young women within the camps are powerless, the rape of conscripts in this environment by officials amounts to torture. Additionally, the Commission finds the sexual exploitation of conscripts who are forced to perform domestic labour in officials' quarters to amount to sexual slavery.

b. Other forms of discrimination and violence against women in military training

1324. The Commission has received reports of other types of discrimination and violence against women and girls within the military camps. Women and girls have been held back from further studies despite achieving the requisite grades to enable them to pursue their

[1778] Vulnerability to violence is understood as a condition created by the absence or denial of rights: In-depth study on all forms of violence against women (A/61/122/Add.1), para 65.

[1779] The Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, A/HRC/7/3, 15 January 2008. See also the Committee against Torture Communications No. 262/2005 and No. 279/2005.

studies a form of punishment for not submitting to sexual intercourse with leaders, or because a military training leaders has wanted to continue to abuse a conscript.[1780] Women conscripts have had their hair shaven off as punishment for misdemeanours, and others refused sanitary products as a form of punishment.[1781] On at least one occasion, a woman has been prevented from breastfeeding her child after she was forcibly taken in a giffa to a military training camp.[1782] The Commission has also received reports of pregnant women suffering severe trauma to the abdomen inducing a miscarriage or resulting in a forced abortion.[1783] The Commission finds that such actions against women and girls constitute discrimination on the basis of gender. The Commission also finds the actions involving physical harm, including the punishments women and girls are subjected to for refusing the demands of officers they have reason to believe will result in sexual abuse, to be gender-based violence.[1784]

> One woman explained that "*women often "failed" in Sawa because officials want to keep them there and keep them longer."*
>
> A former conscript reported the case of an official shaving a young woman's hair in the military camp as a punishment. "*A young female named XX was given leave for one month, she went to her family but stayed for six weeks. She was then detained in Adersar and her hair was shaved off. [Officer's name] did this. The shaving impacted her psychologically and she became insane, she was sent for medical treatment but her mental health situation did not improve and at the end of the day she was sent home*."
>
> A former conscript in hospital at a military training centre observed several women in the hospital after suffering acts of gender-based violence: "*In the bed next to me there was a woman, but for the first few days she was there the curtain was closed around her and I could not see her but I could hear her crying. After a few days, she began to walk. She told me that she had been taken in on the back of a lorry in a Giffa in [month, year]. She was about 5 months pregnant at the time, and because the road was so bumpy and long to Sawa, she started to bleed on the journey. When she arrived at Sawa, the baby was cut from inside her without her permission. She did not know if the baby was still viable or not before they took the foetus out, they did not give her an option*."
>
> "*Another women had been forced to do elbow-crawling (it is a common punishment in Sawa). She had initially refused to do it because she was pregnant, but the officer told her he did not care and she had to do it. When she did, he stomped on her back, squashing her abdomen. She was brought to the hospital and forced to have an abortion*."

c. Lack of effective complaint procedures

1325. International human rights law stipulates that states have a duty to provide effective complaints procedures for victims of violence, especially victims of sexual and gender-

[1780] TSH011, TSH031, TSH087.
[1781] TSH022, TFM004, TCDP071.
[1782] TSH105. See *supra*.
[1783] TSH105.
[1784] TSH087, TFM004, TSH105.

based violence.[1785] The duty extends to preventing, investigating, punishing, and providing an effective remedy and reparation to victims of violence.[1786]

1326. The Commission has received numerous reports regarding the inability of victims of all types of violence, particularly sexual violence, to report the abuse within the national service structure.[1787] The first barrier faced by victims of sexual violence in the military training camps (and Eritrea generally) is cultural. According to cultural norms, it is not acceptable for a woman or girl to be known to be a victim of sexual violence. Such knowledge could lead to ostracism, inability to marry and other stigma related consequences for the victim.[1788] The second challenge to reporting the sexual and gender-based violence is the involvement of many, including high-ranking officials in the military camps in the abuse. Victims of the sexual and gender-based violence have reported that there is no one to whom they can complain as it is their direct superior abusing them.[1789] The third and most pressing barrier to reporting sexual and gender-based violence within the training camps is the lack of gender-sensitive, effective reporting mechanisms that can trigger impartial investigations of the complaints.[1790] Reporting sexual and gender based violence perpetrated by officials can lead to severe punishment for the complainants, as described above.[1791]

> A victim of such violence explained: "*Not only can we not report it, it is part of our culture not to be able to say this. We are oppressed everywhere. We are oppressed in our homes, in society, in the military. I cannot report it to another officer, because it is my superior doing this to me. I cannot talk about it with other people. If I reported it and the case went to court, the whole neighbourhood would know. Then it would bring shame to the family. No one would marry the girl. No one will marry a raped girl. The officers do it because they know this, they know that no one will report it because of the social shame and self-censorship of women. A woman cannot live in our society and be known to be a rape victim. If anyone reported this, we would be punished. The punishment was very severe, for example, they forced us to carry buckets of water very far, tied arms and legs behind them and left them in the sun. There is no system of reporting. Women just try to avoid it in their own way*."
>
> A former conscript described the dilemma of most young women in military training centres. "*Nothing can be said clearly about sexual and gender-based violence because of the taboo. We knew what was going on. They knew that we knew, but it was in the silence. … Mostly what I see is that they are usually threatened with abuse, it is a weapon used against them*."
>
> A conscript who observed several of his underage girl friends in the military training centre were sexually abused reported: "*The problem is that due to the culture of silence, the girls could not freely tell us about the sexual assaults that they experienced. However, a number of girls were sexually assaulted*."

[1785] The Committee on the Elimination of Discrimination against Women general recommendations No. 19, (1992) and No. 30 (2013); the Human Rights Committee general comment 20 (1992); and the Special Rapporteur on Violence against Women report to the General Assembly, A/66/215.
[1786] For a more comprehensive explanation of this duty see chapter VI, B,1, Administration of justice.
[1787] TSH075, TSH081, TNR002, TAM003, TFM003, TNR084.
[1788] TSH081, TNR002, TAM003, TCDP022.
[1789] TSH081, TNR084.
[1790] TSH075, TSH081, TNR002, TAM003, TNR045, TFM003, TNR084, TCDP004.
[1791] TSH081, TNR002, TAM003, TNR084.

A confidant of a victim explained why the victim confided in her but could not report the abuse she suffered in the military training centre: "*The ones who did this were high-ranked military officers. If it was a normal soldier who did it, they would be punished. Because it was high-ranked people, she could not report it. She has finished her training, and still she could not report it because they were the high-ranked, otherwise they would kill her*."

1327. Complainants and witnesses that have overcome these barriers and risked reprisals for reporting such violations have rarely seen their complaints investigated. The Commission received one report of a low level soldier being detained for 15 days after having been caught in the act of raping a young woman conscript.[1792] However no reports of complaints being investigated by an impartial body or perpetrators being prosecuted have been received. To the contrary, the Commission received several reports of complaints where no investigations or follow-up took place. Reportedly, trainers who have attempted to raise the issue at officers' have been silenced.[1793]Another former trainer who observed some young women make a complaint reported it was not followed up on: "*The girls told [officer's name], who was in charge of Sawa, but he did not do anything*."

1328. In 2006, at Eritrea's first review by the Committee on the Elimination of Discrimination against Women, the Government was asked its plans to address violence against women in the national service.[1794] The Government ignored the question and referred only to the right of women experiencing sexual harassment to complain to the National Eritrean Union of Women (NEUW).[1795] The Government's position that victims of such violence can complain to the NUEW is impractical and ineffective. Conscripts do not have access to members of the NUEW during military training as their freedom of movement is strictly curtailed and NUEW members are not located within the camps. Further, the NUEW does not have a mandate or the resources to investigate or prosecute such cases. It is also unlikely that the NUEW could respond in an impartial manner to complaints of sexual and gender-based violence within the training camps as several senior members of the NUEW are closely connected to military officials, including those in training centres. In 2000, two women reportedly did complain to the NUEW about the discrimination, abuse and humiliation they suffered during military training and in the national service at the hands of high-ranking military officers.[1796] The complaints were made publicaly at a NUEW meeting, yet apparently did not yield a positive result for the women. From the accounts the Commission received, it does not appear that the issues raised were investigated and as the alleged offenders in each scenario remained in office after the meeting it does not appear they were prosecuted or reprimanded.[1797]

One woman complained of the humiliation of being forced to do domestic duties for senior leader related to a prominent NUEW member "*I came here to do national service and not to be humiliated, but your husband has made us his slaves. Washing his clothes… It is your husband who is doing this!*"

A second woman detailed the life of servitude and sexual abuse she was reportedly forced to suffer in the military training centre: *"My dreadful life starts in the morning: I prepare his breakfast, wash his clothes, prepare lunch, prepare coffee ceremony, prepare dinner, and then prepare to be "his wife". I have had this life for*

[1792] TNR045.
[1793] TFM003, TBA002, TCDP068.
[1794] CEDAW/C/SR.709 para 44.
[1795] CEDAW/C/SR.709 para 52.
[1796] TFM004, TBA005.
[1797] TBA005, TFM004.

the last six years." Three days after making this report at the NUEW meeting, the woman reportedly disappeared.

1329. The Eritrean Transitional Penal Code contained a provision that could be used to address the use of violence or cruel or degrading treatment of a superior against an inferior, however, to the Commission's knowledge this has not been utilised to address the sexual violence and discrimination suffered by women and girls in military training centres.[1798] The lack of gender-sensitive complaint procedures, an impartial body that can address the issue and the general lack of rule of law in the country,[1799] leads to such violence and discrimination against women in military training centres being perpetrated in a climate of impunity. The Commission also finds the State's unwillingness and possible inability to stop the violence of women and girls in military training camps targeted on the basis of their gender amounts to a breach of Eritrea's obligations.

d. Consequences of sexual and gender-based violence and discrimination

1330. The sexual and gender-based violence by officials in military training camps is used to humiliate, degrade and harm the physical and mental integrity of women conscripts. It also deprives them of their equal enjoyment, exercise and knowledge of human rights and fundamental freedoms. In Eritrea, the sexual violence results in victims carrying shame and risk ostracism from their communities. The sexual and gender-based violence within the military training camps also leads to a number of significant physical consequences for women and girls, including HIV/Aids,[1800] unwanted pregnancies, abortions[1801] and physical impairment. It places women and girls at further risk of violence and loss of life as a result of the shame and stigma, which is forced upon them.

i. Shame, stigma and ostracism

1331. The Commission received several accounts describing the immense stigma that attaches to victims of sexual violence in Eritrea.[1802] The shame victims feel and stigma that may attach to them if the harm they have suffered is known can result in ostracism from their families and communities. It can place a victim at further risk of violence and even death from a family member who perceives the victim's experience to stain or degrade the family's honour.[1803] The shame and stigma also prevents women and girls from being able to access medical and other services they may need. As a woman's virginity and chastity are highly regarded in much of Eritrea, victims of sexual abuse often consider the most severe consequence as being unable to marry.[1804] Ostracised from her community and without marriage prospects, women are left with few options to survive, the most common ones being to engage in transactional sex or leave the country.[1805]

[1798] Article 305 of the Transitional Penal Code provides: "1. Whosoever threatens a person subject to his orders or of a lower rank, strikes him, uses cruelty or violence towards him, or treats him in a degrading manner, is punishable with simple imprisonment not exceeding six months. 2. Where the offender has made use of a weapon or other dangerous instrument, he is punishable with simple imprisonment not exceeding five years. " The Transitional Penal Code has been replaced by a new Penal Code promulgated by the Eritrean Government on 11 May 2015.

[1799] See chapter VI, B, 1, Administration of justice.

[1800] TSH022, TSH030.

[1801] TCDP004.

[1802] TAM003, TSH081, TSH022, TSH024, TCDP022, TNR002, TSH075, TSH095.

[1803] TSH075, TSH095.

[1804] TSH081.

[1805] TAM003, TCDP022, TAM003, TNR001, TSH088, S148.

A former conscript who observed the prevalence of rape in the military camps explained: "*They would not be accepted by their families or communities… Afterwards so many of them don't have a chance to get married unless they change the city and go where no one knows what happened to them. This would be the case for all of them*."

One witness described to the Commission he and his friends in an orphanage were sent to military training underage. There, several of his friends were sexually abused and one of whom when decommissioned had no other option but to engage in transactional sex to survive. "*Many of my orphan friends- girls- were underage. When we went to Sawa they were sexually abused. One of them is called XX. She became pregnant after being violated by one of her superiors and she could not do anything. I know that she is still in XX now. She is now a prostitute. This is what became of her*."

ii. Pregnancies as a result of rape and sexual slavery

1332. The most widely reported consequence of sexual abuse of young women conscripts in the training centres is pregnancy.[1806] Girls and women who become pregnant are usually sent home; the officer responsible for the pregnancy denies the baby is his.[1807] Reportedly officers responsible for the pregnancy of a conscript may connive with military doctors to prevent the pregnancy being known.[1808] For many girls and women, the shame of being pregnant outside of marriage, without a father who acknowledges the baby prevents them from returning home to their place of origin.[1809] Instead they are forced to fend for themselves in unknown environments. Some attempt abortions via traditional methods.[1810] Reports of women pregnant from an officer committing suicide or being killed by family members have also been received.[1811] The fear of being found to be pregnant leads to young women conscripts being reluctant to seek medical attention when they suffer pain or problems in the abdomen.[1812] On rare occasions, the responsible officer has provided a safe haven and small business opportunity for the young women he abused and got pregnant.[1813]

A former conscript reported the pregnancy of her sister's friend: "*There were many things you could kind of conclude by observing. There were many girls, not older than 18, that were going back to the capital city pregnant. This happened to a sister of my friend. … They kept her at Sawa until she was six months, so that she did not have an abortion. She got pregnant from her trainer. We met on our second and third month there. When we saw her, she was already pregnant*."

A military police officer who saw the ongoing abuse of female conscripts reported seeing victims moved to safe havens after they became pregnant: "*Girls who become pregnant there are taken to a nearby village, xxx or yyy. Sometimes the colonel or the responsible guard will provide them with accommodation there, other times they are just left there. I have seen a few that stayed in those villages surviving by selling tea and food*."

1806 TBA091, TNR001, TSH081, TCDP022, TCDP005, TSH079, TCDP068, TAM003, TSH018, TCDP004, TNR009, S047, S077k.
1807 TCDP005, TSH081, TCDP068, TSH047, TAM018, TCDP022, TNR001.
1808 TAM018.
1809 TCDP022, TSH075.
1810 TCDP022, TCDP004.
1811 TSH075, TSH095.
1812 TSH096, TSH081.
1813 TSH018, TNR001.

A former conscript explained that some women attempted abortions using traditional methods when they are sent home. "*So many of them were sent home where they performed abortion, the local way. I know some who performed abortion. Most of them would be discharged but they would not be accepted by their families and their communities.*"

iii. Physical and mental harm

1333. The Commission received several reports of women suffering severe physical and mental consequences from the violence they experienced in the military training camps. A common report received was that of women suffering from l*ewit. Lewit* is described to be a condition which causes the sufferer to effectively walk backwards, as she is unable to control her legs and walk in a forward direction. Trembling is also said to accompany the condition. The Commission heard of women suffering from *lewit* in military training centres due to the punishments they had received.[1814] It is likely the condition is caused by psychological suffering. The Commission also heard of women experiencing pain, discomfort and difficulties with reproductive organs as a result of the rape and sexual violence in the military training camps.[1815]

A guest of an officer in the camp observed women suffering from *lewit* for the first time when visiting the Saw military training centre: "*It [seeing lewit] was a shock for me. We had a dinner with the officials who were there in Sawa and the doctor was there. I raised the issue about the bad conditions in which girls were kept and I was told that it was just because they were spoilt. Women get punched when officers think they are faking lewit in order to leave the area. Some of them could not even walk properly, they would look backwards and walk forward. Or they fall while walking. They did not get proper medical attention*."

One witness described seeing several people suffering from physical and mental consequences of their treatment in Sawa: "*There were many people with depression in the hospital, many with hiccups from crying so much, and many with lewit syndrome, when people walk backwards. I saw several women in the hospital walking backwards, it was very distressing for them. Their legs trembled constantly. They were given heavy bags to carry as part of their hospital treatment. Many people laugh at them. They constantly fall down. The officials in Sawa do not consider ailments that begin after arrival in Sawa as something that you may be discharged for. You are just expected to recover*."

Another witness described seeing a friend suffer from *lewit* after being held in the helicopter torture position outside in the sun. "*I have seen some girls who couldn't walk forward after that punishment. They started walking backwards. Some girls had the hiccups for several days, it's a lot to do with psychological aspects of punishment.*"

A former conscript who observed the sexual abuse of many fellow women conscripts told the Commission of the physical harm he saw on some women: "*They were also ill-treated, sometimes beaten. After six months or so they would have scars. Some of them could not even walk properly – I thought they raped them too much. Many have what we call 'Za lemish' trembling and difficulty moving around due to trauma.*"

[1814] TSH005, TSH024, TSH022, TSH074, TSH102, TNR009.
[1815] TSH024, TSH005, TNR009, TCDP022.

(h) Assignment after military training

1334. According to article 8 of the National Service Proclamation, on completing their military training conscripts have the duty to undertake active military service and developmental works in a combat force for 12 months. In practice, after their initial military training, the Government assigns conscripts to continue higher education, to vocational training, to jobs outside of the army or positions within the army, without taking into account the choice of conscripts when making decisions concerning the rest of their adult life.

(i) Higher education

1335. Students who do their military training in Sawa get assignments in line with the marks scored in the matriculation exam. Reportedly, the results of the Eritrean High School Leaving Certificate examination are announced during a concluding ceremony for invited guests and students. However, some students are informed of their results by the local education office during vacation following the military training in Sawa, in close cooperation between the Ministry of Education and the Ministry of Defence, working in parallel to ensure that students are dispatched accordingly.[1816] Students who score the highest results have access to higher education and are enrolled in one of the colleges or are assigned to vocational training.[1817] Testimonies collected by the Commission suggest that this applies to only a small fraction of each round. According to one witness, in 2008, 3,000 out of 14,000 students passed the exam, suspecting that the pass rate is kept low on purpose as there are not enough college places.[1818]

1336. In 2006, the Government of Eritrea officially closed the University of Asmara replacing it with colleges throughout the country.[1819] The main reason for this change, according to the Government, was to make higher education more accessible to students outside of the capital.[1820]

> A former teacher recalled: *"In July 2005, the director of academic affairs called a meeting with the heads of each department of the University of Asmara (…) At the meeting, we were told that the Government had decided that education should be distributed fairly and therefore the University would be closed so that staff could go to all areas of the country to teach as they would set up colleges in various regions. I said at the time: "This does not mean that education is being distributed fairly". They treated us academics as if we could not understand what it was. We were told: "This is a decision of the Government, it is a wise decision. It is best for you to get your stuff ready to be moved."*

1337. Testimonies collected by the Commission suggest that the reform was conducted in a rush, without enough preparation. It impacted the life of both teachers and students forced to relocate without any consideration for their family situation and ties.[1821]

1816 TNR045. TSH032.

1817 "In order to be admitted to higher education applicants must have a General Point Average (GPA) of minimum 2.0. The GPA is calculated from five subjects: Mathematics, English and three other subjects with the highest results. The best students are placed in the most prestigious programmes. Students with lower grades are placed in diploma programmes (HE) or certificate and diploma programmes (vocational)", Norwegian Agency for Quality Assurance in Education (NOKUT), Report on recognition of higher education in Eritrea and Ethiopia, 2013, p. 9.

1818 TBA065, TFM019, TNR074..

1819 TSH007.

1820 TNR045, TSH007, TSH006.

1821 TNR045, TSH006.

A former teacher reported: *"No feasibility studies of the environment were conducted before the colleges were built. Academics were suddenly expected to move or commute long distances."*

A former female teacher recounted as well: *"Many teachers could not go to the new locations … Women were unable to leave their families, but when they said this, the Government responded "You want to be equal to men, go". It was a complete denial of our right to be mothers and wives, of our family rights."*

1338. There is not an official list of colleges in Eritrea, however, testimonies collected by the Commission confirmed reports stating that seven colleges were in place in 2012,[1822] namely the Hamelmalo College of Agriculture; the College of Arts and Social Sciences in Adi Keih; the College of Business and Economics in Halhale; the College of Marine Sciences and Technology in Massawa; the College of Health Sciences in Asmara; the Orota School of Medicine and Dental Medicine in Asmara; the College of Science and College of Engineering in Mai Nefhi; and the Eritrea Institute of Technology (EIT), in Mai-Nefhi. The Law School, which existed in the Asmara University, closed in 2006.[1823] It has reportedly reopened since 2010, within the College of Arts and Social Sciences.[1824]

1339. The best students are sent to Mai Nefhi.[1825] The largest of the seven colleges, the Eritrea Institute of Technology opened into 2006. It is located in the town of Abardae, situated about 12 km southwest of Asmara near the Mai Nefhi dam. The EIT is divided in three colleges: Science, Engineering and Technology, and Education. The Commission collected testimonies from both former teachers and students in Mai Nefhi.[1826]

A former teacher recalled: *"Our first academic year was 2006/2007. There was no equipment, electricity, transportation, telephones. It was difficult for students and staff to stay there and difficult to reach."* The same witness added: *"There are no books or facilities that a university should have. These students see nothing there … When they closed the Asmara University, they emptied the two libraries and put the books into two stores locked and not accessible to the students or anyone."*

A former teacher noted: *"I witnessed the actual physical dismantling of the Asmara University in 2006. The library began to be mutilated. Science books were taken to the new college for science, English books to the college for English, etc. The research library, full of rare books, was packed and locked away … When I started teaching at the college, you could see the whole culture had changed. It was no longer taken seriously. The students could have been top engineers or other things, but suddenly there was no desire for academic achievement. The colleges were not equipped as the university was. The resources were terrible. For example, the chalk was poor, you could not write on the blackboard. We could have got funding from foreign donors for better resources."*

A former student reported: *"Internet was not accessible until 2009. For internet access, you had to follow what the teacher prescribed for internet access. We did not even have time to access other websites due to lack of computers at the university."*

[1822] TBA065, TSH007 ; see also NOKUT.
[1823] TCDP074.
[1824] TLA019.
[1825] TBA065, TAM034
[1826] TCDP074, TSH007, TSH006, TAM034.

1340. Students get assigned by the Government without taking into account their personal choice.[1827]

> *"When you get your GPA [General Point Average] you cannot choose the department or field of studies. I was allocated to engineering and I hated it. I wanted to study economics. In 2007, I applied to the Ministry of Education to change to economics or business studies but I was told the Government needed engineers so I had to study engineering."*

> A woman recounted: *"I went to a business management institute and got a diploma. There was no choice in where I could go."*

> One witness, however, told the Commission that he was able to choose the college. "*After I did my military training as part of 24th round in Sawa, I finished 12th grade and decided to study at the college of arts and social sciences in Adi Keyh, 110 km north of Asmara*."

1341. The Commission also collected testimonies of former students showing the limited quality of teaching in all colleges due to a lack of motivation from both foreign teachers and the students lacking prospects after their studies. [1828]

> A former student in the College of Arts and Social Sciences recounted: *"The school was not good, there was only one Eritrean teacher out of six teachers. All others were from India. Initially, teachers were recruited from Sudan. Now they come from India. They knew that we were not motivated and only gave us the hand-outs. When you know that you cannot have a good job after your studies, you are not motivated. The only job opportunity one has is to become a teacher and earn 900 Nakfa. There was a small library, no internet, only for the teachers to chat, but not for academic research."*

1342. The Commission also found that colleges have militarised structures, are organised like military camps and under military control. They have a dual command, both military and civilian.[1829] As they have not yet been released from the National Service when studying at the colleges, students are still considered conscripts and are required to follow regular military training. [1830]

> A former teacher in Mai Nefhi reported: *"These colleges are military barracks … These students see nothing there. They are only there to be controlled. They have military unit leaders. They go in line to the cafeteria to eat. At 11 pm the lights are turned off. They don't study."*

> Another former student told the Commission: *"Mai Nefhi looked exactly like Sawa camp. There were soldiers surrounding us, there was no freedom of movement. They wake you up in the morning to run, preparing for I do not know what. At the end of each year then you have to go to military training again. When I saw this, I just thought of Sawa."*

> Another former student noted that in Mai Nefhi, changes were introduced after 2009. *"The college was controlled by the military but it was changed after 2009. The military administration left the college because students were complaining that they were not free to move around. For example, in the morning we had to go for a daily run because we were still considered to be soldiers even though we had*

[1827] TNR001, TSH032, TSH043, TBA078.
[1828] TNR046, TBA078.
[1829] TCDP074, TAM011.
[1830] TSH040, TAM015, TCDP008, TCDP074, TFM019, TAM034.

matriculated. The idea was to shape our lives around the military. We were informed that we were still soldiers and that if anything happened, we would still join the military. We could not go out of the college. The college is between 17 and 20 km to Asmara and it is in the middle of nowhere. The college is fenced and at each gate there were soldiers manning the gates. From 2005 to 2008, we were only allowed to go out during vacation. I only went home two times every year, for 15 days after each semester."

(ii) Vocational training

1343. Conscripts who do not score results required to join one of the colleges may get selected for further education or training at one of the institutes for vocational training covering different fields, such as teacher training for primary school teachers, nursing, construction, carpentry or heavy machinery.[1831] Some vocational training courses are directly provided in Sawa.[1832] During this time, they remain members of the army.[1833]

A woman told the Commission: *"I studied in the Teachers' Technology Institute (TTI). I did not get enough points to enter a college. About 100 graduated from Sawa went to TTI. There are technical schools in Sawa. TTI was in Asmara. Those who get between 0.8 to 1.2 or 1.4. go to TTI. I was randomly selected by them to go to TTI. The other possibility was to become a soldier. I studied there for eight months. At TTI, we lived inside the compound where there were dormitories."*

A witness who followed a vocational training on heavy machinery in Sawa reported: *"During the training, we were guarded by soldiers. You cannot do what you want. The vocational training in Sawa lasts one year. We have weekends, but we do manual activities such as picking the trash, fetching firewood. It is compulsory."*

1344. The remaining conscripts are either assigned to non-military tasks outside of the army or military posts with duties and tasks in the army.[1834] The small group of conscripts, who were recruited for military training from a job in the civil administration, may be reassigned to their previous post, albeit often with a lower salary.[1835] Generally, personal choice is not taken into account.[1836] Conscripts who undergo military training in other camps than Sawa do not have a chance to get assigned to one of the colleges but are regularly sent to a post in the army or to non-military tasks outside of the army, or might get additional training, such a para-commando training; also without ever taking into consideration their preferences.[1837]

(iii) Assignment outside of the army

1345. Many conscripts get assigned to jobs outside the army, such as working for a construction company or as a driver in a ministry, without being released or changing their status from military to civilian.[1838] Jobs outside the army are more attractive than those in a military division, as explained by one witness:

[1831] TNR074, TNR074, TNR036, TBA050, TCDP074, TNR045.
[1832] TNR074, TCDP074, TNR074.
[1833] TNR074, TBA050, TNR045, TAM001, TBA083.
[1834] TNR001, TSH043.
[1835] TAM011. See chapter VI, C, 2, Forced labour.
[1836] TAM011, TNR079.
[1837] TCDP023.
[1838] TAM045, TBA034, TBA008. See chapter VI, C, 2, Forced labour

"*As soon as the war was over, and when UNMEE arrived, we were told we would be deployed elsewhere. We had to fill forms and indicate our skills and capacities. We had been recruited when we were under-age, we only knew about the military. Others had skills, for example in construction, they were sent to do construction. They expected to be paid but were used only as labour force. When we filled out the form, it was written everyone would receive a salary according to his/her skills, after trial period. Everyone was hoping for a salary, but they used the time for us to work without paying us. We started asking about salaries but they said it was the same service, whether someone was service with or without a gun in the army, but that there was difference between the soldiers in the army and those working in construction*."

(iv) Service in the army

1346. Conscripts who fail the exam in Sawa or undertake military training elsewhere, and who do not have any specific skills,[1839] are assigned to a military unit, such as the naval force[1840] or Mekanayz units, military units for heavy artillery.[1841] Generally, they are neither given the possibility to repeat the exam[1842] or finish high-school if they were recruited prior to the final school year.[1843] Reportedly, illiterate soldiers get assigned to remote areas.[1844]

According to one former conscript, there are exceptions to this rule. "*After sitting the matriculation exam in Sawa, I did not get the grades to join college and was assigned to Adi Keih as a soldier where I was working as a teacher for the soldiers (for 6th to 8th grades). Some of the students are former freedom fighters and others are conscripts who were not sent to Sawa as they had dropped out of school earlier."*

1347. Often, conscripts are not informed beforehand about their first assignment but simply put on a truck and moved to the relevant military post.[1845]

"They put you in a truck and transfer you to another place. It is the government's system: there is no information that we do this or that. We were put on a big truck with almost 200 people. We were taken to different places. I was taken to a place called Aula. It is only a name. It is the desert where there is a radar place. We were there to guard that radar."

A witness described how conscripts get assigned at the end of the military training. "*I was deployed with Division 32. On the day of deployment, they call names and then you come out, you come in line. They put you on a big truck and you are taken to your posting. My camp, Metkel Abit is not even a town. It is around Gahteley. We first had one or two weeks of rest. After that it was like Wi'a. It was military training. They take you to training so that you do not get rest, so that you do not think. They keep the youth busy in that way*."

Another witness, who was assigned after his military training to a mechanised heavy weapons unit, was informed by the Ministry of Defence at the office in Belezar

[1839] TNR046.
[1840] TAM022, TLA033, TAM028, TLA032.
[1841] TBA100, TNR045, TAM038, TNR024, TNR002, TNR082, TNR044, TSH015, TAM019; See chapter VI, C, 2, Forced labour.
[1842] TAM038.
[1843] TAM032.
[1844] TNR052, TLA037.
[1845] TNR078, TNR081, TNR045.

about his next assignment. "*I was assigned to the 46th mechanised brigade in Assab. Upon arrival, I was told where I would be assigned. When I remember the task I was given, it still gives me a headache. I thought that maybe they would keep us there for a limited period of 18 months. I studied to change my life. I studied because I wanted to be free, to take charge of my life, to be happy. Instead, I was assigned to guard food items. It makes no difference whether you study or not study. My supervisor was someone who had left school after fourth grade.*"

1348. Some conscripts are assigned to work as military trainers in one of the training camps.[1846] Some recruits, including many under-age conscripts,[1847] get assigned for further specialised training.[1848]

1349. A witness was transferred after six months of military training in Sawa for a training course with the Special Forces at the Commando Centre near Sawa. "*With many other under-age recruits, I was trained in military exercise only, which involved long hikes in the mountains near Sawa. For example, for one week you would move around the hills. Some of the other trainees stayed there for four years. After one year, I was transferred back to Sawa for another six months of military training*." Some people refuse to take up their assignment, a rare behaviour which is regularly sanctioned. If people go into hiding and are later arrested, apart from being punished they may lose the possibility of an assignment that is considered to be slightly better than being transferred to a military camp such as Wi'a.[1849]

A witness, who was ordered to join the music corps, refused to do so. "*I did not feel comfortable with joining the band to play propaganda music. When I asked for a salary, I was told that I was going to keep my military salary. I wanted to practice my music profession privately and I was not allowed to. When I refused the request to join the army band, I was arrested and taken to Mai Serwa prison."*

1350. An assignment to a military unit is not attractive, because it implies the most severe restrictions for the individual. Those who are caught when attempting to flee the country are generally re-assigned after a period in detention to join an army division, even if they previously worked as a national service conscript in the administration.[1850]

(i) Life in the military

1351. During active military service, conscripts perform various tasks, some of a purely military character, others related to prison management, policing and internal security. Often, conscripts also have to perform civil tasks, such as working in construction and agriculture. It is very common for Eritreans, who spend their life in the military, to perform both sets of tasks, military and non-military assignments, either interchangeably during the same period of time, or during alternating periods.[1851] Very few conscripts serving in the army perform purely military tasks, such as serving in the logistics department of the army,[1852] transportation staff[1853] or guarding the borders with neighbouring countries.[1854]

1352. Irrespectively of whether conscripts perform purely military functions or a mix of military and non-military assignments, they generally have little prospect of a career in the

[1846] TAM016, TNR001.
[1847] TNR038.
[1848] TLA004, TNR083, TNR038; see also supra.
[1849] TLA037 TNR045, TAM003.
[1850] TSH057, S114.
[1851] See chapter VI, C, 2, Forced labour.
[1852] TBA059.
[1853] Ibid.
[1854] TLA027.

army and remain without ranks.[1855] Initially, after independence former freedom fighters, tagelay in Tigrinya, were appointed as officers, colonels and other ranks. Only these people have been able to climb the steps.[1856] Since then, only new recruits have reportedly been selected for a career in the military.[1857]

1353. It appears that the Government subjects conscripts to deliberately harsh conditions aimed at transmitting the values and the conditions experienced during the struggle. The various aspects of these conditions in the national service are described below, with the exception of severe forms of punishment to which conscripts are regularly subjected, as these are referred to in a separate chapter.[1858]

(i) Living conditions in the army

1354. According to article 22 of the National Service Proclamation, a national shall be provided with food, shelter, clothing and medication during military training or active national service. Furthermore, the Ministry of Defence shall provide free transportation, sport and recreation facilities according to circumstances.

a. Working conditions

1355. Conditions of work are harsh, irrespective of whether the conscripts perform military or non-military tasks, with working hours from early in the morning until before dawn. On Sundays, some are able to take a break from their core tasks. However, they often have to fulfil other duties.[1859]

> A former military trainer described his working conditions in Sawa. "*We were always working, seven days a week. Once the time of the training was finished, we had no time left to ourselves. We had no permission to change the schedule. We had no time to engage in any other activities. In the camp, we had little possibility to socialise. The quarters were of course shared. Mostly what we did was training, 5 a.m. to 7 p.m., in the evening we were kept occupied with other duties."*

b. Food

1356. Similarly to military training, soldiers receive only little and bad quality food. The diet mostly consists of bread, lentils and tea. Once conscripts receive a salary, they try to pool some money to supplement what they are given.[1860]

> A former conscript had observed a shortage of food and water in the army since 2004. He noted that conscripts were given only 13 kilograms of *sorghum* flour per person per month, very small quantities of sugar and lentils (about 200 grams per day); some units received bread, whereas his unit was given *injera*; before 2004, people received about 21 kilograms of *sorghum* flour per person.
>
> A witness explained that once they started receiving a salary of 450 Nakfa, they joined forces. "*We tried to share expenses for food and everything. All they gave us was some flour, but that was it, nothing else, so we came up with idea to shop together. In addition, family members sent cereals. There was no centralised*

[1855] TAM021.
[1856] TBA067.
[1857] TLA008.
[1858] See chapter VI, B, 4, Torture, ill-treatment and punishment.
[1859] TNR041, TNR043, TNR001.
[1860] TSH064, TSH021, TNR043, TLA027, TBA100.

kitchen/food preparation. Even officers had to take care of themselves, but they asked one of us who was a good cook."

c. Accommodation

1357. Most military units move across the country, often being based at military camps that do not have permanent structures. Accordingly, the conscripts often stay in make-shift shelters or share tents.[1861] Officers often enjoy better living conditions, usually constructed by the conscripts.[1862]

A witness described the housing situation in a military camp: "*At the beginning, there was no accommodation for us, so we had to do it alone. We used sticks from the Arkobkoby tree* [palm tree found mostly in the Gash-Barka region] *to build huts*."

Another former conscript added: "*We live in tents and shelters. We made our shelters using tree branches. During the hot season, it attracted the heat, if it was cold it also became cold inside, if there was wind there could be a draught. This is how you live.*"

1358. Reportedly, in some places, conscripts are allowed to wash in nearby streams on a daily basis, in other places the only available water comes from a tank so washing is limited to once a week, or even less if there is a shortage.[1863]

d. Health care

1359. A very basic form of health care is available in some military camps. Some military units have someone, who has undergone some very basic medical training to render first aid and provide very basic medical care. In most camps, there is a shortage of medical supplies and drugs. Those who get seriously ill are often transferred to the nearest hospital.[1864]

A former conscript with some first aid training spoke about his working experience in the military. "*The most frequent cases I dealt with were malaria, diarrhoea and injuries resulting from the beatings after attempts to escape. There were not enough medicines, especially for diarrhoea, whereas for malaria the supplies were almost sufficient. When people die in a military camp, they are buried in the martyr cemetery in the city close to the camp. The bodies are not sent back to the family. The administration informs the family but it takes a very long time, depending on the circumstances*."

Another former conscript with first aid training noted: "*Our unit was in a remote area. There were no cars, only donkeys. I was given training to treat soldiers. I was not given permission to treat civilians. I did not treat anyone who was injured due to ill-treatment in service or detention. I did not like what they did*."

1360. Witnesses described to the Commission the lack of sufficient health care provided to conscripts serving in the army. Conscripts have died of untreated diarrhoea, and those injured do not receive adequate treatment.[1865] In order to be referred to one of the few hospitals in the country, conscripts require an authorisation from their medical unit.[1866]

[1861] TLA027, TSH064, TNR041.
[1862] TBA100, TNR043.
[1863] TLA027.
[1864] TLA027, TLA022, TBA083.
[1865] TLA027, TNR041, TBA057.
[1866] TNR046, TLA033, TSH051.

> A witness, who was brutally beaten on the soles of his feet during detention, was sent to a military hospital after being released to return to his military unit. "*At that military hospital in Dekemhare, there was maybe only one qualified doctor. I had an operation on one leg. I got about one cubic centimetre of anaesthesia because they did not have enough. They do not care how much it hurts and do not care if you die. The doctor wanted to operate on my other leg but I escaped to Assab to see my family, where I stayed almost three months. I was still walking with crutches and going to the hospital every week to get morphine*."

e. Education

1361. Reportedly, basic education is provided to those conscripts who were not sent to Sawa and former freedom fighters in line with the Government's policy that every soldier should at least reach 8th grade.[1867]

> A former conscript, who was assigned to teach soldiers, explained the content of the policy. "*The army provides basic education to those who have dropped out of school as well as those who have never attended school and are illiterate. The latter ones are rounded up by local administrators and sent first to Sawa for their six-month-long military training before they are sent to Adi Keih for their basic education. In Adi Keih, they have classes from 8 a.m. to noon from Monday to Friday. In the afternoon they have further military training, which is also the case for the teachers. Once they finish 8th grade, these conscripts become full time soldiers, without continuing their education beyond 8th grade. They are assigned to military units in the region of Adi Keih. In the three classes in Adi Keih, there were 25 to 35 students per class, only boys. Freedom fighters are obliged to study in Adi Keih to improve their knowledge*."

(ii) Curtailment of freedoms in the army

1362. Conscripts serving in the army are subject to severe restrictions concerning all aspects of their life. Freedom of expression and access to information,[1868] freedom of religion[1869] and movement are severely curtailed, as well as contact with the family and other aspects of their private life.

a. Movement

1363. According to article 17 of the National Service proclamation, the right of Eritrean nationals to travel abroad is closely linked to their duty to take part in national service.[1870] Soldiers are not allowed to travel within the country, except when home leave is granted to visit the family. In this case, *menkesakesi*, a travel permit is issued by the military superior, which indicates the timeframe, as well as the military base and the place of home leave. Upon return, the permit needs to be handed back.[1871]

> A former soldier explained that the route one is allowed to travel during home leave is clearly determined. "*We cannot take a detour from what is written on the leave paper. I just have the right to do stops. If I decided to go beyond my indicated destination, for example in Sanafe, which is 25 km away from my home town, I*

[1867] TLA037.
[1868] See chapter VI, A, 3, Freedoms of opinion, expression, assembly and association.
[1869] See chapter VI, A, 4, Freedom of religion and belief.
[1870] See chapter VI, A, 2, Freedom of movement.
[1871] TNR031, TSH015, TAM033, TNR001.

would get punished. This used to be less tight before 1998, afterwards things changed."

1364. If stopped at a checkpoint, soldiers need to present their leave paper to justify their movements. Those without permission are sent back to their military unit for punishment, sometimes by taking a detour via a detention facility if no direct transportation is available.[1872]

A witness described to the Commission the role of checkpoints. "*The main job of checkpoints is to verify whether people have the pass. We control the movement of weapons from one unit to another unit, whether there is excess of guns. People without permission are sent back to their military unit. If the unit is far, for example from Keren to Assab, we would bring this person to Adi Abeito and they transfer them to Assab. He has to bring someone as a guarantee and can get out of the prison*."

b. Home leave

1365. The arbitrary practice regarding the granting of leave and the possibility to visit the family causes much frustration among conscripts serving in the army.[1873] The Commission has documented cases of conscripts who had their requests for home leave denied repeatedly and were not allowed to see their family over a period of up to ten years.[1874] Many witnesses described arbitrary practices regarding home leave.[1875]

"*For example, when you ask the supervisor for home leave, he shelves it and does not give you a response. You try again and they say they are not sending anyone at that time. They know all of us, namely who likes them and who is staying with them unwillingly. They approve family leave for those that they know are obeying their orders. The only solution for the others is to run away*."

"*In principle, I was entitled to family leave once a year during national service but in practice it depends on the number of soldiers present in the military unit. Leaves are granted in turns and if a conscript does not return from his leave, the others will not be granted leave until he is back*."

A conscript, who was granted family leave in 2007, stayed in the military until his departure in 2014 without getting any permission to visit his family; he asked several times but it was always refused.

1366. Furthermore, requests for leave to attend the wedding or funeral of a close relative are often refused without providing any reasons.[1876]

"There are no known regulations on vacation. Each commander can order the granting of a vacation. It is based on his whim. Two of my relatives got married and two died. I was refused permission to go for the funeral and wedding ceremonies. I was not allowed to go to the wedding ceremony of my own brother. Between 2002 and 2007, I went on vacation once for just one month."

"They do not send you home very often. It could be for a minimum once a year, or every two years. I heard that my mother was hit by the car and was in the hospital,

[1872] TNR079. See chapter VI, A, 2, Freedom of movement.
[1873] TSH015, TAM028, TAM031, TNR001, TLA018, TCDP006.
[1874] TNR043, TLA027, TBA086, TSH017.
[1875] TAM032, TAM033, TSH017, TNR042, TLA018, TLA023.
[1876] TNR031, TAM032, TAM021, TNR041, TAM033.

they refused to give me leave. I went to the battalion officer, they refuse to send me. This is how dictators do it."

"My brother was getting married and I asked for a pass to go and attend the wedding but they refused. I still went to the wedding without a pass. They arrested me at the wedding. I was taken to my unit and punished."

1367. It also appears that leave to attend one's own wedding is not systematically granted.[1877]

"If you are a soldier, you are watched all the time. Families arrange the marriage, because the men are in the military and cannot choose a wife, they have no opportunity to meet someone. The family has to assist with organising and funding the wedding ceremony. A soldier needs a permission to get married to attend the ceremony of his own wedding."

"We requested leave, but they did not grant any leave. Some had not been able to return for four years. One year later, I received a letter from my family proposing I should get married on a given date. I asked the leader to get leave, but he initially refused. I was granted leave only later and returned home and got married in January 2011."

A conscript, who stayed in the army for about eleven years, decided in June 2001 to get married. "*I had a wedding date and I told them that I wanted to go back and get married. They refused to let me go. When I asked for a reason, they said that this was not the time for marriages. I went to my unit leader and told him that I was going to go anyway without permission. My unit leader went to his superior and he called for me. I was granted permission only five days prior to my wedding. My wife was pregnant at that time and I could not leave her alone. So I decided to stay until the birth of my child. I decided to stay for six months. During that time, I had to buy a pass to move around which was being sold for 1,000 Nakfa and it lasted for just a month*."

1368. As indicated, leave without permission or overstaying leave is among the most common reasons for conscripts to get detained and harshly punished.[1878]

"*After four years, in January 2014, they sent me to visit my family for the first time. The military is afraid that the soldiers may escape during their leave. I overstayed. The members of my unit came and arrested and detained me.*"

"I was punished because I had asked to go see my family and it had been refused but I went anyway. After about three months, they caught me. Every year, during harvest time, I would leave Sawa without permission to help my family and then they would put me in prison. I have been punished six or seven times."

1369. During their free time, conscripts may be permitted to leave the military base to go into town. Permission is usually granted orally on an individual basis.[1879] Reportedly, even those conscripts who have family in nearby villages are not allowed to visit them outside of regular home leave.[1880]

1877 TCDP006, TLA018, TNR001, TBA095, TBA086, TAM075.
1878 See chapter VI, B, 3, Detention.
1879 TNR043.
1880 TNR045.

1370. The Commission heard from conscripts who, as a punishment, were prohibited to leave the camp for a short visit to the nearby town.[1881]

> *"After being imprisoned, they do not treat you like others. For example, on the rest day, you are not allowed to join the others who go to town to have a coffee for entertainment. When we were inside Assab city, the guards would stay very close to us. When you go downtown, it was by their oral permission.*"

A former conscript was punished by his commanders for having visited a mosque during Ramadan to eat. "*We were held for three days, and when I returned to my unit I was banned from going anywhere after 6 p.m. We were told we there for national service, not religious service*."

1371. Most conscripts are deployed to locations far away from the place where their families live, which makes it difficult to maintain any meaningful contact with their loved ones.[1882]

> One witness told the Commission: "*I did not get married in Eritrea because effectively I would be living separately from my wife because of the limited number of vacations*."

1372. Maintaining contact with family and loved ones is also hampered by the fact that conscripts are not entitled to purchase a mobile phone and can only call from a public phone if there is one in a nearby village and if they get permission to leave the military camp.[1883]

> *"If you wanted to call home, you would have to go to town. However, you would have to ask for permission. In any case, the salary was not enough to call home*."

1373. Soldiers can stay in contact with their families by written correspondence.[1884] Yet, the correspondence can be monitored, as noted by witnesses:

> *"When you get a letter from the family, it does not go directly to you. They read it before giving it to you. We asked for a reason. They said they had some people to arrest. They want to know what they are up to. They checked everyone's letters, first by the platoon commander, followed by the camp commander, and then the battalion commander. Only at the end, they give the letter to you. They say they have their way of conducting this, this is their job. You are told to keep quiet*."

> *"The only contact with the family is by letter. If you write a letter, they tell you to bring it to them, first they read it and then they send it. When you get a letter from your family, they read it and give it to you*."

(iii) Death as a consequence of conditions in the army

1374. Conscripts have lost their lives because of harsh conditions during military training and national service in the army.[1885] Conscripts have also died due to exhaustion during military training, as well as to untreated diarrhoea.[1886]

1881 TNR043, TSH083.
1882 TBA083, TSH069, TAM031.
1883 TNR045, TCDP008, TAM033, TLA018, TLA027, TSH017, TLA027. See chapter VI, A, 3, Freedoms of opinion, expression, assembly and association.
1884 TLA023, TNR042, TNR043.
1885 TCDP070.
1886 TCDP002, TNR081, TAM025, TBA035, TAM029.

A student, who was sent for military training in Gahteley in 2000 described the death of several conscripts due to the conditions during the training. "*All students were there, they collected us from universities, colleges, and schools. We were 25,000 students. There was nothing, we slept on the ground under the trees. The commanders had tents. I know that many people died because of thirst, there was no water. The Minister of Justice came to visit. I do not remember her name. She said that they were worried about the situation and acknowledged that nine people had died, but more might have died*."

A former conscript, who was taken for additional military training in Mogorayb, a very hot region, witnessed how another conscript died during an exercise. "*The place was very hot and we had to carry 250 bullets and five litres of water. My friend was running and fell. When we tried to give him some water, the trainers told us to continue running. He was taken to hospital where he was injected with glucose but he died*."

1375. The Commission has collected testimony pointing to a pattern of suicides of conscripts during military training and in the army.[1887]

A former trainer stated that several conscripts have committed suicide in Sawa. "*In every round there were many who committed suicide. There is no investigation into these deaths, irrespective of what caused the death; it could be for neglect or suicide. When we find a dead body, we inform our superior and they bury them in the martyrs' ground*."

A witness, who did his military training in 2008, noted: "*People died in Sawa. Some people hang themselves. Two people did this when I was there. One died and the other one was saved. The one who was saved was imprisoned in Sixth Brigade prison*."

A former conscript, who was trained in Sawa in 2012, reported: "*I saw someone who killed himself- he cut his wrists. I also heard that there are others who hanged themselves especially during the 24th round. I hear this was very bloody*."

"One of the colleagues had stayed for two years without being able to visit his family and finally committed suicide."

A former conscript described the military training in Adi Rosso. "*During this week we walked over 300 km, we could not sleep. We had to find our own food. Three people in my unit died that week. One was bitten by a snake. Two suicided, one with a bomb we were given, the other shot himself, he was a well-known football player and could not handle the situation. People that suicide are considered a disgrace so they do not permit anyone to bury or mourn them. I think the guards buried them*."

(iv) SGBV in the army

1376. In addition to the treatment and punishment endured by all conscripts in the army, women and girls are at a disproportionate risk of discrimination and sexual violence. The discrimination and sexual violence many women experience in the military training camps also occurs within the army, however the prevalence is estimated to be to a lesser extent for various reasons. The Commission bases its findings on sexual and gender-based discrimination and violence in the army on the human rights obligations outlined in above in the section on SGBV in military training camps.

[1887] TAM045, TCDP077, TAM046, TLA027, TNR001, TAM039, TAM038, TBA057, TSH082.

(v) Allocation of women to military units

1377. Former conscripts, trainers and guards at military training camps have described how the young women are inspected upon arrival at the training camps by military unit leaders who then note the persons whom they would like allocated to their unit at the end of the six months of military training.[1888] As with all conscripts, the young women are unable to refuse their allocation, and in most cases may be unaware the reason for their allocation.[1889]

> A former solider serving his national service in the army for over 15 years reported his observations of women being selected for military units at the time they entered the training camps: "*When women are in the military training* [in the first six months], *officers go and look at them. They choose the ones they find attractive and make note of their name. When they are finished with their military training the officers ensure the ones they have selected are allocated to them. This is common knowledge. The officers even talk about it as their right. I believe all of these women are sexually abused."*
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> Another witness reported to the Commission: "*In the national service, officers and generals take the beautiful women to their camp. After a month they give the girl/ woman to someone else. They cannot report it to the police or anyone in the military*."

(vi) Sexual abuse of women conscripts and fear of punishment for refusing sexual advances

1378. In the army, as with in the military training camps, women are often placed in servile positions to military leaders, forced to cook, clean and perform other domestic duties. As with the occurrence of such forced domestic labour in the military training camps, the women selected for these tasks have little way of avoiding them and military leaders use the opportunity of having women in their quarters to sexually abuse them.[1890]

> A former soldier of 11 years in the army described the sexual abuse of women in the military as being "very normal". "*These kinds of things were very normal in the military. ... They can use women to cook for them and wash their clothes. Any woman who is in the Division can be called and sexually abused. This is common. I have women friends who told me that. If they are working for them, they sleep with them. If I had a problem, I would ask this woman to talk to the officer*."
>
> Another former conscript explained how the most senior officers routinely had the most beautiful women assigned to them. "*I saw that the bosses had the most beautiful women in their offices. The girls told me that the bosses used them for everything, wives, maids."*

1379. Unlike in military training camps, in the army, men and women conscripts are not separated. The Commission received one report of the sexual abuse of a woman conscript by a male peer in a military camp.[1891] According to the witness, such abuse would only be possible with the knowledge and consent of higher-ranking officers.[1892] The non-segregation of women and men enables relationships to form potentially providing a level of protection to women from sexual violence that is not available in the gender-segregated military training camps. These relationships can also lead to marriage and pregnancies for

1888 TCDP005, TCDP004, TSH017.
1889 TSH017, TCDP005, TCDP004, TSH075, TSH095.
1890 TSH017, TSH086, TBA029, TSH024, TSH095, TSH077, TCDP071, TBA012, TNR032, TSH030, TSH075, TSH022, S077k.
1891 TCDP071.
1892 TCDP071.

many conscripts, providing a way to leave the army. Women are a minority within the army on arrival and it is estimated that their numbers continue to decrease within the army at a faster rate than that of men, as they can legitimately leave for reasons of marriage and motherhood.

1380. Refusal to submit to the sexual advances of a military leader can lead to punishment. Punishment can range from being forbidden to access sanitary supplies or water to wash during menstruation, refusal of leave entitlements and infliction of physical punishments, death being the most extreme.[1893] During the border conflict with Ethiopia, women who refused sexual advances of their superiors were reportedly also sent to the frontline.[1894] Reports indicate that sexual violence by Eritrean military leaders of Eritrean women conscripts was common during the conflict.[1895]

> The sister of a woman forced to cook and clean in an officers' quarters reported her sister's punishment for refusing to submit to sexual intercourse with the officer: "*My sister refused and as a punishment she was forbidden from ever visiting her family – others girls would go home*."
>
> A longstanding soldier reported: "*When we went to the officers' houses we would see girls from the national service there. They were there to cook, clean for the officer; the officers' also sexually abused the girls/women. I spoke to one girl, and asked why she did this, she said 'if I don't I would be killed'.*"
>
> A doctor caring for the injured during the Ethiopian border clashes reported that sexual abuse of women conscripts was very common during the conflict. The doctor saw many women who had been, or were being pressured to submit to sexual activity with military leaders. "*In 1998 I saw a lot of sexual abuse of women while I was based at xx hospital. A beautiful young girl who was very well respected because she showed a lot bravery in the fighting, was killed by a colonel because she refused to have sex with him. Another young woman was assigned as an assistant to the colonel. The colonel asked her for sex and she refused several times. He threatened her with his gun, saying 'if you don't have sex with me I will kill you, I am asking you with the blood of the martyrs'. He didn't kill her but he tortured her and she came to me."*
>
> A separate report of the death of woman in the military for refusing sexual abuse detailed: "*xx was assigned in our military unit in 1999. She used to say she was a mother of two, and she was not meant to be conscripted. She also claimed her husband was killed in the war. She asked to be released because she was a mother of two. No one listened to her plea. Amidst this, [officer's name] was trying to make her is sexual partner but she refused. One day she was found dead. The official explanation give was: "she died accidentally" by what is called* berari tiyt *['warning shots' or 'friendly fire' (lit. flying bullets)]. But in reality, she was killed by four bullets. In an accidental bullet discharge, a person is not killed accidentally by four bullets but by one. The killer is believed to be [the same officer], who was not happy about the victim's refusal of his request of sexual favours."*

1381. The Commission has also received reports of women self-maiming and killing themselves as an alternative to submitting to sexual abuse from leaders or suffering

[1893] TSH017, TSH022, TSH024, TCDP071, TSH030.
[1894] TSH024, TCDP071.
[1895] TSH075, TSH030, TBA012, TSH024, TSH017, S077K.

punishment for refusing.[1896] The availability of guns in the military facilitates this option.[1897]

> The doctor referred to above also witnessed women who had harmed themselves in an attempt to avoid sexual abuse in the military. "*Another officer asked a woman to sleep with him many times and she refused. He gave her an ultimatum that 'if you do not come at 7 pm tonight I will kill you'. To avoid this she shot herself in the thigh. When she came to hospital she told me what had happened and I was annoyed. Many others gave in. Because I was their doctor, many women confided their experiences in me."*
>
> A woman sent to the frontlines during the conflict with Ethiopia for refusing sex with a military leader is also reported to have died by suicide. "*A girl in our neighbourhood was asked by her boss for sexual intercourse and she refused. The boss as punishment sent her to the fighting areas and she died by suicide.*"

1382. Victims of sexual violence face the social and practical problems outlined above.[1898] Reports of pregnancy, HIV/Aids transmission in addition to the social stigmatisation and isolation felt by victims of sexual abuse have been received.[1899] For some women, the sexual abuse they suffered within the military caused such shame, stigma, pain and suffering leading to their death. Reports of suicide by victims and killings by family members unable to accept the shame have been received.[1900] The difficulty in obtaining formal papers certifying release and the effective unending nature of the national service exacerbate this problem as women who have left due to pregnancy are often not legitimately exempted from finishing their service.[1901]

> One woman who spoke with the Commission explained that the sexual abuse she suffered from an official in the military did not end when she left after becoming pregnant with their child. She was later recalled by the officer who she believes subsequently caused her lover to be disappeared. "*When the war started, I was called back to the military in 1998. I had a baby in 1999 from an unwanted relationship with an officer. In 2003, his military unit moved from xx to my home place where I stayed with my baby. In 2003, the officer called me back into the military to stay with him. I became pregnant again, so he had to release me. The father of the second child was another person I loved, who was also in the military. Since then, I have never seen this person again. I know many other women who have a similar story. I am only an example. I have no news about him. I was not able to inquire about him."*
>
> Another veteran who observed these experiences reported, "*Some die by suicide after becoming pregnant. If they have poor parents they feel there is no hope for them, that they cannot raise the child or survive not to mention the shame and stigma*." Women killed by family members unable to accept the victim's experience of sexual abuse is reportedly not uncommon. "*Many women are forced to have sex. If they become pregnant, their families don't accept it. In some cultures they beat her and kill her. When they do, they just saying things like,* 'I was cleaning the gun, killing her was an accident'."

1896 TSH030, TSH075, TSH024.
1897 TSH075.
1898 TSH075; See *supra*.
1899 TSH022, TSH030, TSH107.
1900 TSH075, TSH095.
1901 TSH095, TBA012, TSH075, TSH095, TSH107.

A doctor stationed in the border area reported to the Commission the rate of HIV transmission had increased because of the sexual abuse within the military: "*The authorities and the circumstances forced many women to become sex slaves. People were not interested in hearing about STDS and HIV transmission because they believed they would die in the war before AIDS could kill them. A large number of people became infected because of the sexual exploitation that occurred during the conflict*."

(j) Principal findings

1383. The Commission considers that the practices documented in the context of national service, starting with the enrolment of conscripts, conditions and treatment during military training and service, up to the lack of formal release from national service demonstrate patterns of systematic human rights violations. The Commission believes that these violations are imputable to the Government of Eritrea, which has established and endorsed these practices carried out by military officers of the Eritrean Armed Forces. In addition, the Commission considers that the lack of investigation, prosecution and punishment by the Government of Eritrea of those practices or violations that result from individual initiatives constitute a breach of its obligation of due diligence under international human rights law.[1902]

1384. The Commission considers that the firced conscription of children below 18 into national service constitutes a violation of the right of the child not be forcibly enrolled in armed forces. The Government also violates this obligation by forcing students below the age of 18 to attend the last year of high school and sit for the final exam at the *Warsai Yikealo* Secondary School which includes military training. The Commission also expresses its concern with regard to the use of children during the conflict with Ethiopia from 1998 to 2000 and recalls that Eritrea should not involve children in armed conflict.

1385. The Commission considers that the militarisation of the education system with the introduction of a final high-school year at the *Warsai Yikealo* Secondary School constitutes a violation of the right to education, as the quality of studies and kind of activities offered in this institution are not directed to the full development of the students' personality and their dignity.

1386. The Commission considers that the widespread practice of *giffas*, which are conducted randomly, in an indiscriminate manner and often with excessive force, constitutes a violation the right to liberty and security of the person. Furthermore, persons who are forcibly taken during a *giffa* are denied their right to challenge the legality of their recruitment and related deprivation of liberty. The killing of a person in the context of g*iffa* as a result of the excessive use of force constitutes a violation of the right to life, which is imputable to the Government of Eritrea, as *giffas* are carried out by State officials in their official capacity. When these *giffas* include the forced entrance and search of private homes, they also constitute a violation of the right to privacy.

1387. The Commission further concludes that the absence of alternative forms of national service for conscientious objectors is a violation of the right to freedom of thought, conscience and religion. The mandatory conscription of persons with disabilities for active military training and service instead of civil service as provided under national law, whenever it prevents them to access medical services and the attention they require, constitutes a violation of their right to the highest attainable standard of physical and mental health. The inclusion and participation of persons with disabilities into society on an equal

[1902] Art. 2 (3) of ICCPR.

footing with others should take into account their special needs that should be adequately accommodated.

1388. The Commission further considers that violence during military training in the army amounting to torture cannot be justified, neither by military imperatives of introducing and maintaining military discipline, subordination and unconditional obedience, nor by the requirements of preparing recruits during military training for combat by simulating conditions on the battlefield and subjecting them to extreme hardship. The Commission considers that those forms of punishment that involve conscripts being subjected to constrained positions for hours and beatings inflicted intentionally by superiors to cause severe pain with the objective to punish conscripts during military training and service amount to torture. Furthermore, the Commission considers that the other forms of punishment of conscripts, when not amounting to torture, such as picking rocks in the heat, whether for disciplinary reasons or arbitrary motives, often amount to cruel, inhumane, and degrading punishment.

1389. The Commission finds that in Eritrea, the detention of persons who try to avoid or flee from national service is arbitrary and as such it constitutes a violation of the right to liberty as it never results of a decision by a court of law. Treatment of apprehended draft evaders and deserters during detention often amounts to torture, cruel, inhumane or degrading punishment.

1390. The Commission finds sexual violence against women and girls to be widespread and notorious in the military training camps. Further, as the sexual violence by officers in the training camps and army occurs within an environment of control, intimidation, coercion and punishment, where the women are powerless, it amounts to torture. Additionally the enforced domestic service of women and girls in these camps who are also sexually abused amounts to sexual slavery. The Commission considers that these violations of the rights of women and girls are a further example of the Government of Eritrea's failure of its due diligence obligations to protect, prevent, punish and remedy acts of violence against women. The Commission finds that these violations of women's rights also occur within the military to a lesser extent mainly due to the fewer numbers of women in the military.

1391. The Commission further concludes that the conditions of national service characterised by conscripts' lack of adequate food, access to water, access to hygienic facilities and adequate accommodation during military training and service constitute cruel, inhuman or degrading treatment.

1392. The lack of adequate access to medical services, which may result in death or severe disabilities or psychological and physiological consequences on conscripts, constitute a violation of the right to the highest attainable standard of physical and mental health. Where these lead to death of conscripts, they also amount to a violation of the right to life.

1393. The Commission considers that the system of national service as it is currently implemented in Eritrea compels most of the citizens to spend their adult life as conscripts with severe restrictions on the enjoyment of their fundamental rights, in particular the right to freedom of religion, expression and movement, which are not reasonable, proportional and necessary in the interest of national defence. In particular, the prohibition for conscripts to practice their belief in any manner constitutes a violation of their right to freedom of religion.

1394. While the rights of conscripts to privacy, family life and just and favourable conditions of work may be restricted in the context of national service, the Commission considers that the denial of leave for several years and the restrictions imposed to conscripts for communicating with relatives resulting in a lack of contact with the family constitutes restrictions that are not proportional, reasonable and necessary in the interest of national

defence. Thus, the Commission finds that these restrictions constitute a violation of conscripts' right to privacy and family life.

1395. While the conscription of citizens into national service is a prerogative of sovereign States that can require that individuals contribute to the national defence of the State for a certain period of time, this should not result in the complete denial of the individuals' freedoms and rights. The Commission considers that national service for an indefinite period of time, which results in some persons being conscripted for up to 17 years or even more, is a complex phenomenon that is unprecedented and that can be legally described only by violations of several human rights norms. The indefinite conscription as practiced in Eritrea infringes the right to liberty and security, the right to be treated with humanity and inherent dignity of the human person while deprived of liberty, the right to be recognized everywhere as a person before the law, the right not to be subjected to forced labour and the right to gain ones living by work freely chosen or accepted.

1396. The Commission finds that by conscripting them into an indefinite period of national service, the Government reduces its citizens to mere duty-bearers, negating their role as right-holders who enjoy individual rights and freedoms recognized under international human right law. The Government of Eritrea refuses to treat its citizens as human beings with rights, dignity and a free will. While the Government relies on alleged national defence interests to justify its position, the Commission finds that in practice, most conscripts are assigned to non-military duties.[1903] This practice invalidates the claim that the current national service system in Eritrea is necessary for the national defence.

1397. The Commission concludes that the indefinite duration of national service; its terrible conditions and treatment including arbitrary detention, torture, sexual and gender-based violence, forced labour, absence of leave and the ludicrous pay; the implications this has on the possibility of any individual to form a family, have a family life and to have favourable conditions of work, make national service an institution where slavery-like practices occur.

2. Forced labour

1398. Forced or compulsory labour is defined as any work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.[1904] Under international human rights law, all persons have the right to be free from forced labour.[1905] Eritrea being a party to the international instruments prohibiting forced labour,[1906] the Eritrean Government has the obligation to suppress the use of forced labour or compulsory labour in all its forms, prevent any new occurrence and prosecute perpetrators of forced labour. [1907]

(a) Forced labour in the context of national service

1399. In some specific circumstances, some work or services may be exacted from individuals by the State authorities without amounting to forced labour. These cases are forms of compulsory labour authorized under international and human rights law: work exacted in virtue of compulsory military service, work which forms part of the normal civic

[1903] See chapter VI, C, 2, Forced labour.
[1904] Art. 2 (1) of the 1930 Forced Labour Convention.
[1905] Right enshrined in art. 8 (3) of ICCPR and art. 2(2) of the 1930 Forced Labour Convention.
[1906] The 1930 Forced Labour Convention, the 1957 Abolition of Forced Labour Convention and art. 8 (3) of ICCPR, art. 6 ICESCR, art. 5 of ACHPR.
[1907] Art. 1 (1) of the 1930 Forced Labour Convention.

obligations of the citizens, work as a consequence of a conviction in a court of law, work in cases of emergency, and minor communal services.[1908]

1400. Under the exception of compulsory national service, the Eritrean authorities can only exact work from conscripts that is of a "purely military character",[1909] provided that it is not a form of "punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system".[1910] Furthermore, the Eritrean Government cannot force any of its citizens to work as "a method of mobilising and using labour for purposes of economic development."[1911]

1401. The scope and type of work that may be imposed during national service are not defined under international human right law. However, the following fields may be considered not to be of purely military character and/or to be aiming to contribute to the development of the country;[1912] therefore, conscripts should not be forced to work in any of these fields:

agriculture;

industries connected with the production or the extraction of raw materials, manufacturing industries;

public works and building operations, which have no military character or purpose (i.e. they are not military infrastructures or for the primary or exclusive use for military purposes);

transport and handling of items, which are not military in character or purpose, (i.e. rifles, uniforms, military equipment, or other items used primarily or exclusively for military purposes);

commercial business, arts and crafts;

domestic service;

public utility services (water, gas, electricity) that are not intended primarily or exclusively for military purposes.

(i) Development-oriented forced labour exacted from conscripts in the army

1402. In accordance with the objective of the national service in Eritrea stated in Proclamation No.82/1994 "to … create a new generation characterized by the love of work and discipline, which is ready to participate and serve in the reconstruction of the nation, to develop and enforce the economy of the nation by investing in development work of our people as a potential wealth, to develop professional capacity and physical fitness …",[1913] the Eritrean authorities use conscripts in the army to build roads and bridges, conduct reforestation, soil and water conservation projects, as well as agricultural work to improve

[1908] Art. 2 (2) of the 1930 Forced labour Convention. Compulsory work of prisoners is also one of the exemption, see Chapter VI, B, 3, Detention.

[1909] Art. 2(2) (a), 2 (2) (d) and (e) of the 1930 Forced Labour Convention. Compulsory work of prisoners is also one of the exemption, see Chapter VI, B, 3, Detention.

[1910] Article 1 (a) of the Abolition of Forced Labour Convention of 1957.

[1911] Article 1 (b) of the Abolition of Forced Labour Convention of 1957.

[1912] See article 50 of the Geneva Convention relative to the treatment of prisoners of war, which provides the type of work that may be required from prisoners of war and which, generally speaking, should not be of a military character.

[1913] Art. 5 of Proclamation No. 82/1995.

food security. The Eritrean Government claims that such compulsory labour is authorized under international law, as it falls within the exception of the military service.[1914]

1403. Conscripts in the army are frequently and regularly obliged, as part of their routine assignments, to perform labour that is oriented to contribute to the development of the country. Such assignments are usually not made on an individual basis. Generally, it is a whole military unit that is temporarily allocated to work on a specific project. Thus, it does not seem that these assignnments are conceived or perceived as a form of punishment. In fact, these types of deployment are so widespread that former conscripts describe them as the "usual military tasks" in Eritrea. Periods of non-military labour usually - but not always - alternate with periods of military training or military assignments, such as border patrols, construction of trenches at the border, or guarding military camps.

> As a former conscript summarised, "*I was in the military for 12 years. We used to collect stones, collect firewood, build roads, etc. I was never in a battle, never guarded a border or a building*."[1915]

a. Forced labour in construction

1404. In April 2006, the Government of Eritrea ordered all private companies and individual contractors working in the construction field to close within 10 days.[1916] Since then, construction has been a State monopoly and only public companies and those owned by the PFDJ, such as Segen Construction or ROADAB, are entitled to undertake construction work. Any foreign firm has to hire Segen or another public company to build any infrastructure it requires to carry out its activities. In practice, these public construction companies rely primarily on the quasi-free work of conscripts.

1405. It is permissible under international human rights law for some conscripts to perform their national service in military "engineering or similar units" and in such capacity to be assigned to the building of roads and bridges.[1917] However, the Commission documented that entire military units are temporarily seconded or put at the disposal of public companies to perform heavy manual construction work. In addition, engineers are assigned to work for public companies as part of their national civil service,[1918] rather than to military engineering units. Conscripts are used to build houses and offices within military camps,[1919] public buildings, such as schools, clinics and governmental offices,[1920] and public infrastructure projects, such as roads, water reservoirs and dams.[1921]

> A former conscript recalled: "*While in the military, I worked as a builder. I built houses, schools, roads, and dams in the Tessenei area and Keren. For each project, we would move with around 10 to 20 soldiers to a place, stay there for two or three months until the job was done, and return to the base. I did not get any extra money. The work is directed by engineers from Asmara.*"
>
> Another one stated: "*I was a soldier for 17 years ... First, I was sent to Sawa, then I was assigned to a military unit that moved to many different places, including Assab, Ohmajher, and other locations around Asmara. I was a simple soldier,*

1914 See ILO, Direct request to Eritrea, 2010 and ILO, CEACR-2014-O-ERI-En.
1915 TSH064.
1916 See chapter IV, D, Economic and development context.
1917 See ILC.101/III/1B.docx, para. 275.
1918 TLA014, TBA101, TBA100. See chapter VI, C, 1, Life in the national service.
1919 TBA071,TBA086, TLA017.
1920 TNR043, TBA095, TBA101.
1921 TSH017, TCDP006, TBA095, TLA026.

working to build dams and some irrigation places. My military unit also constructed the new road between Asmara and Massawa going through Dogali, which is built on an escarpment. My unit worked for two years (from 2003 to 2004) on this road that we built from scratch. ... We worked alongside the government company (ROADAB), which only employs people doing their national civil service."

1406. The Commission heard evidence that very often conscripts are also sent to construct houses allegedly for the Government which are then allocated to its members or rented to rich people.[1922]

A conscript forced to work in construction told the Commission that: "*In Massawa we were building a big palace. It is for the Government, we do not know exactly for whom. Those who were assigned there were those who have proficiency as masons. Other people were there from the military as assistants. Everyone is military.*"

One conscript assigned to work for the Segen Construction company explained: "*We constructed buildings for those living outside the country. They pay the Government to have their house built by Segen. We lived in temporary housing at the Segen camp. We constructed houses between Sembel and Kushet; they were given to people living abroad. Now the construction is almost completed. The diaspora families rent them out or let their relatives live in them.*"

1407. Furthermore, it seems conscripts are frequently used to build private houses and buildings for the exclusive benefit of private individuals, often high-ranking military officers.[1923]

A former conscript recalled that: "*In Assab, in Rahayta, there is a local leader of the Afar people. The government asked us to build a house for him. When I was there, we were a battalion consisting of 400 soldiers*."

A witness reported: "*I had a friend in the army who was a colonel who had a villa in a suburb of Asmara. When my friend left to join the armed struggle in the mid-1970s, he had barely completed high school. When he and his contingent entered Asmara triumphantly, he had neither money nor education. He relied mostly on unpaid labour from members of the national service and financial favour from Government to build his dream villa*."

1408. Conscripts also appear to carry out construction work for the benefit of businesses, including foreign companies. [1924]

A conscript explained: "*In Assab we were building a hotel where the Government hosts, for example, members of the [foreign delegations]. It is a hotel, like Kempinski. We do not know to whom owns that hotel. You do not think about that.*"

Another one added: "*I was assigned to work for a construction company in Massawa. I was working for a Korean construction company [x]. I was still working for the Government. I was just assigned to work with a Korean company…. I worked for [x] for one year.*"

b. Forced labour at the Bisha mine

1409. The Commission collected evidence that forced labour occurred in the context of the development and exploitation of the Bisha mine, 150 km west of Asmara, which to date is

[1922] TNR041.
[1923] TNR030, TBA050, TNR041, S017, TCDP009.
[1924] TNR037, TAM024.

the only mine in operation in Eritrea. The mine started the extraction of gold in February 2011 and switched to copper extraction in 2012. The Bisha Mining Shareholders Corporation (BMSC), which operates the mine, is 60 per cent owned by the Canadian company, Nevsun, and 40 per cent by the State-owned Eritrean National Mining Corporation (ENAMCO). BMSC hired Senet, a South African company, as a sub-contractor to build the infrastructure needed to start the extraction. Even though BMSC and Senet were able to directly employ foreign workers and some Eritreans who had been released to perform technical and skilled functions,[1925] they were required by the Eritrean Government to hire Segen and other Eritrean public companies[1926] to carry out all of the unskilled labour and basic construction work.

1410. Work at the Bisha mine site started in September 2008. Segen was the main Eritrean public company involved in the site work. It sent some skilled workers to Bisha, including engineers, carpenters and safety officers, as well as unskilled manual labourers. Even though Segen tried to conceal their status, the majority of Segen's "workers" were in fact conscripts performing their national service. Engineers and other skilled staff worked directly for Segen under the civil national service scheme, while the majority of labourers were conscripts whose military units were put at the disposal of Segen by the army. Work assigned to conscripts included building the transport infrastructure to access the site, housing compounds for BMSC and Senet staff a few kilometres away from the mine, and all of the mine infrastructure.[1927]

> As recounted by a former conscript sent to work at the Bisha mine with his military unit: "*In February 2010, we all had to go to Bisha. We did not get any details, we were only told to go to Bisha. I don't know how many we were, but it was the whole military division. I was part of a team to do construction, we were building houses. They kept us working in the construction site. They would not tell us what we were doing, but sometimes we heard we were building the offices or living or changing quarters. We just guessed what it was for. Most of the superiors came with us. We were under the control of our direct commanding officers; the commanding officer of the brigade gave orders to our superiors. Before we went to Bisha, they briefed us that we were not to reveal our identity as soldiers. We wore civilian clothes and working uniforms. In my company, Segen, there were Eritreans and Indians. In Mereb and Senet, there were different nationalities, including white people, many Eritreans and foreigners. We were not allowed to talk to them. The structure at the mine was hard to understand. They kept it that way deliberately. However, after talking among us, we understood that the agreement between the Segen CEO and our commanders was that Segen would pay 21 USD per day per worker, but we only received 450 Nakfa per month. I think there was an official agreement and an informal agreement. We continued our life, as in the military base, the salary was paid by the officers*".
>
> A former worker at the Bisha mine explained: "*The Segen people were doing the harder work and all the heavy duty, including driving big construction trucks, which are Chinese and of bad quality - they often break down or cause accidents and the drivers were injured – but nobody cared. They transported the heavy material, constructed roads, etc... they had only lentils to eat, no proper clothes, no security*

[1925] TNR026.

[1926] Some other Eritrean public companies such as Gedem, Enda 74 and Mereb, were also contracted by BMSC to provide various services and perform different kinds of work, but the Commission could not confirm what were the exact distribution of responsibilities between all these public companies and the status of their workers even if it was also alleged that they were using conscripts.

[1927] TBA100, TBA101, TBA059, TNR026, TSH001, S090, TSH035.

equipment. If they worked on Sunday, they only had special food and meat as compensation. The Segen workers are all soldiers doing their national service. They were assigned to the Bisha mine on and off, depending on the needs. But they were not required to do the extraction of the gold itself. For the extraction, the Bisha mine had its own workers. Around Bisha, there were several military units surrounding the mine to ensure its safety. On the mining site, some Segen workers had guns and guarded the mine. They were in charge of security."

1411. It is reported that even the few skilled Eritrean workers who were employed by Segen outside of the national service scheme - people who were "disabled or otherwise damaged and discharged from national service" were sent to work at Bisha without being consulted.[1928] In 2010, as the deadline to begin mine operations in February 2011 approached, hundreds of additional conscripts were reportedly sent to work at the Bisha site.[1929] It was also reported that because of the pressure to complete the construction on time, some elders and even former freedom fighters were recalled to work at the Bisha mine under the national service scheme.[1930]

A former freedom fighter explained: "*All disabled military members were called up for duty to work on a construction site. My right eye was severely injured during fighting in Sudan, and after I returned to Eritrea a rock was thrown at it blinding me permanently. But I was summoned to the site. The construction site I worked on was for a Canadian company.*"

1412. Furthermore, testimonies collected by the Commission showed that some conscripts were used by Segen to construct the underground network of tunnels for future mining operations.[1931] Compulsory work in underground mines is totally prohibited under international law and cannot be exacted from anyone in any circumstances.[1932]

A former Segen employee, who worked at the Bisha mine but was not a conscript, explained: "*I left when the company started to exploit the mine. Until then, we built up the whole structure, the soldiers and us. We built the tunnels to be opened, the tubes to be inserted, we used tunnels as supporting meters, filled them with sand, worked with construction, metal. Everyone was working to create the mining site. … The soldiers also worked underground and dug tunnels etc. The soldiers and we did the hard and harsh work. We had the machinery, and we were taught how to use the machinery, but the work was also done by hand.*"

c. Forced labour in agriculture

1413. The use of conscript labour is also prevalent in the agricultural sector; according to a number of testimonies, it is often carried out for private interests. Conscripts are frequently sent to work with their military unit in fields and farms, which are owned by the Government, high ranking military officers or private individuals.[1933] Each year, they spend several weeks or months in a row working in the fields. While the conscripts are working hard to grow vegetables and crops, they are not entitled to use a portion to augment their

[1928] TBA101.
[1929] TBA100, and see Human Rights Watch, « Hear no evil, Forced labour and corporate responsibility in the mining sector in Eritrea », 2013, p. 17.
[1930] TBA100, TSH001, TBA101.
[1931] TBA101, TSH035.
[1932] Art. 21 of the 1930 Forced Labour Convention.
[1933] TNR033, TLA017, TNR030, TCDP006, TFM021, TBA005, TLA023.

own meagre food rations of tea, bread and lentils. All of the produce is taken by the owner of the farm.[1934]

> "*After the war, I was not released although I asked for it many times. They said the war could start again any time, you have to be on stand-by. I was sent to do agricultural work in Tsorona. The agricultural fields belong to my unit leader*."

> "*Later my military unit was assigned to a place called Mai Duma. … There is a private farm belonging to military leaders. They have cattle; they grow sorghum and dagusa [*a kind of millet*]. They sold some of these things but we did not know where they took them to. The whole unit of around 400 to 500 people was working at this farm. We were being fed bread and my salary never changed. I worked at this farm for one year.*"

> "*I did the same work for five years as a soldier in Sawa. They brought you to fields to harvest tomatoes, onions, etc. You were not allowed to eat the vegetables; if you did either they took it from your wage or they imprisoned you. The name of the farm is Afhimbol industry. It is a big plantation, they sold the produce to Italians ... Once, we went there for six months to harvest vegetables.*"

1414. Usually, these assignments to construction and agriculture work do not require any specific skill. Conscripts may regularly alternate between these types of work and military assignments, depending on the needs of the moment. Conscripts have no say in the work they are assigned to.[1935]

> A former conscript, who spent 11 years in national service and constantly rotated between his regular work as a military finance officer and agricultural and construction work, explained: "*In one month, I worked nine days in the finance office to process the salaries of soldiers. The rest of the month, there was no work in the finance office. If there was a need, you could be called upon to help with work in agriculture or construction. Construction work was road maintenance. For agriculture, it was producing green pepper and tomatoes. The gardens belonged to officials.*"

d. Forced labour in specialised fields

1415. Besides unskilled assignments in construction and agriculture, some conscripts perform more technical or specialised assignments, usually on a full-time basis. They do not change work assignment or alternate between working periods and periods of military exercises. [1936]

> A former conscript explained: "*There are carpentry and metal work workshops in the army. The national service members do it and they sell it. They make cupboards, beds, drawers, etc. I was writing reports about how much they did.*"

> Another one stated: "*After one year and a half doing construction work in Wi'a, they sent me back to Sawa because I was gifted to work with wood. In Sawa, I worked with wood. I built chairs and furniture for the school and the offices. I started to receive a salary of 45 Nakfa per month. I worked in Sawa for eight months. Then I was moved to Asmara to the Sembel Wood Work Factory. I knew how to work the wood from my childhood. Some colleagues moved with me. We were 78, of whom 19 were sent to Sembel. … All staff in Sembel were soldiers*."

[1934] TNR031, TBA081, TAM029, TCDP014.
[1935] TNR031.
[1936] TNRP038, TNR079, TBA071.

> And another one recalled: "*I was assigned to the fishery activity … We used boats for fishing and sold the fish for the military. The profit was for the military. It was for the Major General … who headed all western region military bases. I do not know exactly for the other boats, but I know that for my boat we could sell almost 200 kg at 20 Nakfa every day. There were six boats. There was a finance person for the military, we were giving the money to that person. There were no receipts for the sales of these catches.*"

(ii) Other forms of forced labour exacted from conscripts

1416. While career military personnel may be assigned to tasks of a non-purely military character, it is prohibited to assign such work to conscripts as part of their compulsory national service. [1937] However, the Commission heard that conscripts were compelled to serve as policemen, prison guards, military teachers, trainers, and nurses.

a. Forced labour of military teachers and nurses

1417. Some conscripts are assigned after their military training to work as teachers and nurses within military units.[1938] Their situation differs from the one of conscripts serving as teachers, doctors and nurses within the civil service. Unlike the latter, they are considered to be full-time soldiers and do not have the "privileges" of a civilian life.[1939]

> A man who served for 15 years as a nurse in a military unit told the Commission: "*Before 1999, I had a bar. In 1999, I was asked to be a soldier for only one month. I went to Sawa for the military training, then I was trained as a medical nurse for three months in Ala. I continued to be a soldier until I escaped in December 2014. … I was a medical nurse for the soldiers. I never had any rest. I was mainly based in a military camp with 1,000 soldiers. I am not a medical doctor, but I was acting like one as I was the only medical personnel there*."

b. Forced labour of police and national security officers

1418. Conscripts can also be assigned to perform tasks related to police, immigration[1940] and national security. These tasks may include, among others, guarding prisoners and/or serving as intelligence officers to spy on their neighbours.[1941]

> A former conscript who worked as police officer explained: "*They put me in the police department without any training. … Assignment to police and security department was hated by everybody. It was not voluntary for myself. I worked as a police officer for two years.*"
>
> Another former conscript told the Commission that as part of his national service he was assigned to work as a prison guard reported: "*I was guarding a prison of the national security, which is a secret prison for terrorists and people accused of corruption. It is underground, just below a normal house. I was assigned at the gate with eight other guards and I did not speak to the detainees. Only four other guards were communicating with them.*"

[1937] See ILC.101/III/1B.docx, para. 276.
[1938] TLA036, TLA037, TLA022 and TAM028
[1939] TLA022, see also *infra*.
[1940] In Eritrea, the immigration office is part of the National Security Office.
[1941] TBA001, TBA074, TFM030, TCDP012, TNR079, TLA004,TSH083, TCP034, TNR022, TNR024, TBA083, TAM014.

This was confirmed by another former conscript: "*After the police training I was a police officer, a guard in a civilian prison. My tasks involved being a guard inside the prison, to check food, to take prisoners to washrooms, to take them to court, or arrest people.*"

A former conscript recalled that as part of his national service: "*I was sent to the intelligence unit because my parents were freedom fighters and my father martyred. They thought they could trust me. All the people in the intelligence unit were children of former freedom fighters. I was sent as a spy to a locality near Eiraeiro with the mission to arrest people who were there to look for gold.*"

(iii) Forced labour exacted from conscripts in civil service

1419. Proclamation No. 82/1995 provides that people who are considered to be unfit for military activities but who do not have a permanent disability that would exempt them from national service should be assigned to perform work of a civilian nature within a public or governmental entity for 18 months as an alternative to the active military service.[1942] However, in practice, conscripts assigned to civilian work during their national service are not considered unfit for military activities but rather persons with higher education or specific skills.[1943] The civil service has developed, without any legal grounds, into a *de facto* form of national service that parallels the active military service. Thus, working conditions, criteria and terms of reference for the civil service are not regulated by law and may vary depending on the period, the location or the field of work. Nevertheless, general patterns and practice were identified by the Commission through numerous testimonies collected from former conscripts assigned to civil service.[1944]

1420. Under international human rights law, in countries with mandatory national service, conscripts may only be assigned to perform work of civilian character if it is considered to be an alternative service for conscientious objectors. In such case, civil assignment is considered to be a privilege granted to individuals upon specific request and as a means to respecting their freedom of thought, conscience and religion.[1945] However, in Eritrea, civil service is not offered to conscientious objectors, who are punished for their refusal to serve.[1946] Civil service may be authorised in a system where national service is only optional.

1421. The Commission heard evidence that conscripts are forced to work in a wide range of civilian assignments that they do not choose, neither the field of activity nor the location. During their civil service, even if conscripts are officially assigned to work under the authority of various other ministries or public companies, they remain conscripts and as such their "career" continues to be managed by the Ministry of Defence. The Ministry can change their assignment and is the sole authority competent to release them after several years of service.[1947]

A former conscript stated: "*After my graduation I did not have a right to choose my career path. I was assigned to be a teacher by the Government. Myself as an*

[1942] Art. 13 of Proclamation No. 82/1995.

[1943] See chapter VI, C, 1, National service.

[1944] For the ease of reference, hereinafter the assignment of conscripts during national service to perform work of civilian character is called "civil service" to be distinguished from the active "military service". Civil and military services constitute the two main elements of the national service in Eritrea.

[1945] See ILC.101/III/1B.docx, para. 275.

[1946] See chapter VI, A, 3, Freedom of religion and belief.

[1947] TAM034. See also chapter VI, C, 1, national service.

electronic engineer I could not do whatever I wanted with my life after college. I could not leave teaching to open my own electronics company. My career life was under the control of the Government. The young generation has no hope."

1422. The criteria for assigning young graduates within the civil service and the identity of the authority, which makes that decision are not known. Reportedly, the ministers themselves are sometimes not fully informed beforehand on the number of conscripts they will receive or the rationale for these assignments.[1948]

As explained by a former conscript: "*I thought that as a law graduate, I would be assigned to the Ministry of Justice. It seems that the Minister of Justice was thinking the same and she was surprised to learn that several law students were assigned to other ministries. She called each graduate to ask why they were not assigned to the Ministry of Justice*."

1423. The Commission heard that many conscripts, irrespectively of their fields of study, are assigned as teachers under the Ministry of Education, in addition to those who specifically studied to become teachers. Supposedly, this is due to the need for teachers remaining high throughout the country. This is especially the case for the Warsai Yikealo Secondary School in Sawa, where almost 500 teachers are needed, and from which a significant number escape each year.[1949] Teaching assignments may be limited to one or two years, or for a longer period. Several former conscripts assigned as teachers recalled:

"*I studied mechanical engineering, I graduated in 2005. Before graduation and doing my national service in a ministry, I went to Sawa for military training. As teachers assigned to teach in Sawa refused to go there, they asked me to be a teacher there for one year, so I taught physics*."

"*I completed the geography diploma after two years. I was assigned as a teacher, they decide where I had to work. I taught history for one year at the junior and secondary school in a village near Keren. If you do not teach you will not be graduated. You have to do university service for one year. I was paid 400 Nakfa per month, it was not enough for me*."

A young female conscript who graduated in civil engineering explained: "*I was not assigned as a civil engineer but as a teacher in a village in the countryside. I stayed almost two years in this village where I was teaching physics to 9th to 11th grade students. However, students at the school were not ready to study so I was demoralised. They did not listen to the teacher as they only thought about fleeing the country and crossing the border. They thought that it was not necessary to study because educated persons could not work in their profession, like myself.*"

1424. If they are not assigned as teachers, new graduates are usually assigned to work as conscripts in their field of study within the public administration, including the Office of the President, various ministries and public companies such as Segen Construction. The Ministry of Information uses conscripts as journalists and cameramen.[1950] Graduates of the law school may serve in the Ministry of Justice and also as judges. Graduates of the medical school serve as doctors and nurses.[1951]

As explained by a former conscript: "*Out of 20 law students, the two best ones were assigned to the Office of the President, some to the Ministry of Finance, some to the*

[1948] TLA042.
[1949] TNR074, TLA014, TLA039, TNR046, TAM015.
[1950] TCDP033.
[1951] S119, TSH040,TAM004,TLA042.

Ministry of Interior Affairs, some to the Office of the Attorney-General, a few for a public company belonging to the Government and the rest to the Ministry of Justice."

Another former law student told the Commission: "*Like most Eritrean youth, I was also forcibly conscripted to national service and served a total of more than five years. And, like most of my law classmates and colleagues, my work as a judge was part of national service*." Subsequently, he fled.

A former conscript, who worked eight years as a journalist, recalled "*I studied journalism and mass communications. I was a journalist and I was assigned to the Ministry of Information but I was still under the command of the military … I was required to write about development and nothing else. I had to say only good things about the country*."

A former doctor reported: "*I graduated as a doctor and started a job in a civilian hospital*."

1425. Artists and athletes are also obliged to perform national service, usually within their areas of expertise. Artists may be assigned to the military artistic units within the army or may be required to perform civil service and have a career in parallel to their national service. Athletes may enjoy fictive civil service assignments to ministries, administration or public companies, but in reality continue to focus on practising and competing in their sport.[1952]

A former Eritrean athlete explained: "*The athletes are officially assigned to different public companies, ministries and military units, to which they officially report in order to get their travel permits. However, in reality they are only doing their sport. In Asmara, athletes do not have to do any other task besides their sport practice. However, in smaller cities, in addition to sport practice, conscripts have to do some community work such as water preservation. Some athletes from the bigger clubs are paid by the club, but not many. All the other ones only get the 150 Nakfa per month of the national service.*"

Another one stated: "*I could have a free life in Asmara while playing sport. I got 600 Nakfa a month for practicing and playing sport*."

An artist recounted: "*After my military training, I started to work for the cultural affairs department of the ruling party. I received 145 Nakfa per month as part of my national service. I worked as a musician and singer. I was singing at national holidays, festivals, to entertain the army, touring the camps*."

(iv) Working conditions during forced labour

1426. The length and the conditions of work for conscripts, including wages, working hours, place of assignment, leave time and rest days do not per se constitute elements of forced labour. But the open-ended nature of national service[1953] and the often harsh working and living conditions of conscripts subjected to forced labour have a significant impact on their enjoyment of some rights,[1954] including safe and healthy working conditions,[1955] the

[1952] TSH033, TLA041, TBA091.
[1953] See chapter VI, C, 1, national service.
[1954] Ibid.
[1955] At. 7 (b) of ICESCR.

right to security,[1956] integrity of the person,[1957] and the highest attainable standard of physical and mental health.[1958]

1427. The working and living conditions of conscripts assigned to perform non-military work within military units, such as military nurses and teachers, are usually similar to the conditions of conscripts performing military tasks.[1959] The Commission was not able to gather sufficient information on the working conditions of conscripts working as police or national security officers to further comment on them. The Commission was able to document the conditions of service of conscripts in the army who are forced to work in development-oriented activities, including at the Bisha mine, as well as those of conscripts assigned to civil service.

a. Working conditions in development-oriented forced labour

1428. The Commission finds that working conditions of conscripts assigned to construction and agricultural works are often harsh, similar to the conditions in the army.[1960] Except for the amount of their remuneration, the work that may be exacted from conscripts, including maximum working hours and entitlement to leave and rest days does not seem to be regulated. Thus, working conditions may vary between different places and periods of time. Nevertheless, the Commission had sufficient information to conclude that many conscripts work long hours, sometimes up to 10 or 12 hours per day,[1961] and often in extremely difficult conditions. While some are entitled to one day or half a day of rest per week, others have no regular rest day. Leave to visit families is scarce. At best, conscripts are granted a few weeks of leave every two or three years at the whim of the officers.[1962]

> A former conscript forced to work in construction and agriculture in addition to military duties summarised: "*There is no limitation with the work of the military. You are always on stand-by. I was not having rest.*".
>
> A former conscript also forced to do construction work explained "*You start at 5 a.m. and finish at 11 a.m., without having breakfast. They serve both lunch and breakfast at 11 a.m. Then you continue until 6 p.m. until it gets dark*."
>
> Another one confirmed: "*From sunset to sundown, I worked in the plantation. The climatic change was extreme for me from where I grew up. The heat was unbearable. After two years of service, they gave me only one month leave.*"

1429. Conscripts do intensive manual work in extreme conditions without adequate food and safe drinking water. The food, consisting of lentils and bread, is of poor quality and not adequate for the physical effort required of the conscripts. They are obliged to live in military camps or with their military unit. When the unit moves from one place to another, they have to stay in temporary accommodation and huts that they have to build themselves. They live in poor sanitary conditions. Overall, conditions are so bad that they can seriously affect the physical and mental health of conscripts.[1963]

> A former conscript assigned during his military service to work as a farmer recalled that, "*in a village between the Ethiopian border and Assab … it was very hot, the*

[1956] Art. 9 of ICCPR, art. 6 ACHPR.
[1957] Art. 4 ACHPR.
[1958] Art.12 of ICESCR; art. 16 of ACHPR.
[1959] See chapter VI, C, 1, National service.
[1960] Ibid.
[1961] TCP006, TAM024, TNR038, TBA086.
[1962] TNR031, S077dd, TBA081,TNR043, TBA071.
[1963] TSH082, TSH085, TBA086.

water came from Ethiopia, it never rained. We were about 30 soldiers. We did not have enough water to drink."

As explained by a former conscript assigned to construction work at the Wi'a military camp: "*It was very intensive work, the climate was harsh. We worked all day long, every day. There were no days off. The food was terrible. People started to die. I do not know the exact reasons. A lot of people had night blindness, swollen legs and knees. It was very common to see people paralysed. Diarrhoea was the main problem. There was no medical treatment. There was no sanitation. There was a river about one km away where we could wash our clothes and bodies on Sundays and get drinking water.*"

A former conscript also explained the impact that such conditions may have on young conscripts. "*The whole 24th round of Sawa went to a farm after the training. We constructed some structures on the farm. … One of my friends committed suicide there because the work was too tough.*"

1430. Usually the work exacted from conscripts is manual and unskilled. They are not provided with adequate tools or equipment, nor even basic safety gear. [1964]

A former conscript who was doing construction work and directed a unit of 179 persons confirmed that they did not have any safety equipment and only one tool for digging. Fortunately, there were no accidents.

A former conscript, who built private houses, reported: "*There was one guy who fell from the building. His head was injured. There are security briefings. If you were injured you were treated. If you were injured, and you said you have not recovered, they concluded that you were lying to avoid working.*"

1431. All conscripts in the army are paid between 150 and 500 Nakfas per month.[1965] Conscripts assigned to physical tasks do not get additional remuneration for their work, including when the work is undertaken for the benefit of a private individual, or a foreign company that pays the Government for providing manpower. The exact terms for the use of conscripts provided by the Government to foreign companies or other private entities are not known. However, the Commission collected testimonies showing that the amounts disbursed by foreign companies through the Government to remunerate workers are kept by the Government, which continues paying low wages to conscripts. [1966]

As described by a former conscript: "*The Government retained my salary and gave me pocket money. The company would give 2,500 Nakfa and I would receive 150 Nakfa per month and then 450 Nakfa.*"

1432. The wages paid to conscripts in the army are far below the subsistence level in Eritrea. The wages of conscripts are too low to buy enough food to supplement their poor military rations, let alone support a family. The only advantage of conscripts in the army is that as they are obliged to live with their military units rent-free in camps, albeit in often poor conditions.

[1964] TLA028, TNR068, TBA095.

[1965] See TNR038, TNR037, TBA081, TCDP004. The Commission understands that since 2002, during their military training, conscripts get officially remunerated 100 Nakfa as wages, plus 45 Nakfa as food-related allowance for a total of 145 Nakfa per month (around 9.5 USD). During their national service, Conscripts in the army officially get remunerated 450 Nakfa as wages and 45 Nakfa as food-related allowance, for a total of 495 per month (33 USD approximately). Before 2002, they were officially remunerated 95 Nakfa (50 +45) per month (6 USD) and 195 Nakfa (150 +45) per month (13 USD), respectively. For the remuneration of conscripts in civil service see infra.

[1966] TCDP004.

1433. It appears that the pay actually received by each conscript varies because of arbitrary "taxes," "deductions" and penalties retained by their commanders. However, some bonuses may be added to the basic salary for conscripts who manage to obtain promotions in rank. The kind of work performed by conscripts is not reflected in the amount of their salary. In addition, the payment of salaries is not always regular and is sometimes withheld as a form of punishment.[1967] This was explained by several conscripts.[1968]

> "*I was earning 450 Nakfa per month, but this was not all given to me; they said that some of it was tax for those whose family members died during the war. So they took away 350 Nakfa*."
>
> "*During the initial six months, I got nothing. After one year, I got 90 Nakfa per month, from which 50 Nakfa were deducted for food, five for sports, five for the PFDJ ruling party, so you received actually 40 Nakfa. After military service: 600 Nakfa per month, but after deductions, you actually received 450 Nakfa*."
>
> "*I was paid 50 Nakfa a month, as a soldier. Sometimes they did not pay us for six months, and they would not pay the arrears.*"
>
> "*I was doing my military training in Wi'a until 2009 as a soldier. For the first 18 months, I was only paid 50 Nakfa per month, but 40 Nakfa were retained for food supplies. After 18 months, as of 2011, I received 656 Nakfa. The salary rises only for officers.*"
>
> "*Regular soldiers received 400 Nakfa per month. If you had additional military grades, you might get additional 150 Nakfa. In construction, they received the same salary*."
>
> "*I worked on the border with Sudan. Five persons of my unit had escaped. I was punished for their escape and did not receive four months of my salary*."

1434. Given the meagre salaries, many conscripts look for opportunities to earn extra money by working on the side. Some manage to have an additional job in the vicinity of their military camp, others use the time they are able to spend at their family home to take odd jobs. After being released from detention, a conscript got permission to work privately for two months before re-joining his military unit, enabling him to buy food for his family, which did not have enough to eat.[1969]

> "*I always had odd jobs to support my family. I was trying to get on with my life and worked in a private company for an additional salary. This was before the private licences were withdrawn. This is what everyone does. Most young men in the military look for a job to gain money when they receive a one-month rest period. After the end of leave period, most continue working for some time, even if they know they can be punished*."
>
> A former conscript, who realised during his home leave that his family was struggling, tried to earn some extra money. "*My family's situation was very bad. My father was fired from his job and I had five younger brothers at school needing exercise books, clothes etc. I could not leave them and return to the military unit after one month only. I tried to work, knowing I would risk punishment. It is impossible to search for a job and hide at the same time. I tried to work with a Government commission as a football referee. I was paid 80 Nakfa per game. It was only on Sundays but I could be lucky and get three games on a Sunday*."

[1967] TLA008, TBA008,TBA028, TBA057,TFM014, TAM029, TBA071, TNR072.
[1968] TAM029,TBA071, TNR072,TBA057, TBA008,TBA028, TBA072, TCDP014, TNR053, TCP052.
[1969] TSH057,TAM028, TBA101.

b. Working conditions at the Bisha mine

1435. The Commission heard of the bad and abusive working conditions experienced by conscripts and "free" employees used by Segen Construction to build the Bisha mine between 2008 and 2011. Even more unacceptable was the drastic difference in treatment on the same site between the Segen Construction "workers," in particular the conscripts, and the employees of BSMC and Senet.

1436. The working and living conditions of workers directly hired by BSMC and Senet during the construction of the mining site were reported to be of an acceptable international standard. They were provided with the necessary safety equipment such as industrial gloves, hard hats, goggles, steel-toed boots, and safety belts. They lived in modern and comfortable houses in compounds built by the Segen Construction "workers," a few kilometres from the mining site.[1970]

> For example, a former employee of Senet recalled: "*My task was mainly to build the residential buildings for workers at the mine and in particular supervising the construction of a water distribution network. I was paid 7,000 Nakfas per month. We worked from 5 a.m. to 12 a.m. and them from 2 p.m. to 6 p.m. Usually we did not work on weekends, but if we did, we were paid more and could get 10,000 Nakfas per month … We had adequate conditions of living, there was an entertainment centre, prayers in Arabic and Tigrinya for both Muslims and Christians. There was good food, even if it was foreign frozen food, and good working conditions: good uniforms and security equipment, we had a security briefing before any new work, etc.*"

1437. By contrast, the Segen "free" employees and the conscripts from the army put at the disposal of Segen did not benefit from the same kind of safety equipment. They had to work long daytime hours doing hard, manual labour followed by regular night shifts guarding the camp.[1971]

> A former Segen employee recalled: "*Every morning at 6:30, the groups to be sent inside the mine were given a security briefing and how to use the material. … Segen did not always respect the agreement with Nevsun. Sometimes they did not observe the security rules. We did not always have the necessary security gear. The main boss said: "We fought under fire in the mountains, we need to satisfy the foreign companies but we do not need the security gear", while little boys of 18 and 19 years were going inside the mine. … We looked at the safety gear of the foreigners, it was all highly professional, supposed for all of us, with shoes made for people working in mines for protection against electric shocks. But the military boys had no gear, some had plastic shoes … We were expected to risk our lives*."
>
> A former freedom fighter confirmed: "*Every day we were lectured about safety issues but never provided with safety equipment. It was tough work and working in the heat was very difficult. For example, there was thick black plastic on the ground that was very painful to step on.*"
>
> A witness explained that conscripts working at the Bisha mine "*were supposed to do double work; new activities, constructions, anything that was needed during the day, and during the night they had to stay with the military and guard the place. It was too much work and they wanted to rest.*"

[1970] TNR026, TLA043.
[1971] TBA101, TSH001.

1438. As a consequence of the lack of safety equipment for conscripts and other Segen workers, as well as inadequate construction materials, many accidents, some of them fatal, reportedly occurred during construction of the mining site.[1972]

> A former Segen employee recalled: "*There were many accidents in Bisha, more than I want to remember. It is one of the hottest parts of the world, 50 degrees Celsius. People were sick of pressure. Some died, they were not able to breathe. Others had no uniforms and suffered from chemical burns on the face, hands and body; they did not receive any medical care. A friend was working while oxygen was limited and he died because of it. Furthermore, there was an old man who should not even have been there given his age. He did not have appropriate shoes, and the electric tubes were not wired well. There was liquid on the floor He slipped and was electrocuted*."

1439. Conscripts were living in their own compound 4 kilometres from the mining site. It was a makeshift camp made of flimsy materials. They did not have real lodgings, but only tents or huts they had to build themselves. They were vulnerable to sand storms of the desert, with no protection from the extreme daytime temperatures and cold nights. They worked long hours and were paid between 450 Nakfa per month for army conscripts and 1,500 Nakfa per month for educated conscripts assigned to Segen as part of their civil service.[1973] Nobody was paid for overtime work. They were transported by truck twice per day from the compound to the mining site. They were not fed enough and the poor sanitary conditions of the makeshift camp made them vulnerable to diseases. The "free" workers employed by Segen shared the same living conditions as the conscripts.[1974]

> As further detailed by a former conscript assigned to do construction work at Bisha as of February 2010: *"We started working at 7 a.m. and continued, except for a one-hour lunch break, until 6 p.m. The food distributed three times a day was bad and insufficient -- in the morning, black bread with tea, lunch and dinner, boiled lentils, no spice. It was not much different from what was obtained at the military base. Our resting quarters were 15 minutes away from the working site. Superiors always escorted us. We slept on the ground, no proper building had been prepared for us. There were only first-aid trainees who had come with us and took care of basic injuries. They had only one type of pill, which had no effect. Only the commanding officers got proper health care. I was very sick, I had bloody diarrhoea. Many had that sickness. They just gave us the same pill without telling us what to do with it and what it was. When I was sick, I was allowed to stay at home for four days, during which I slept in the first-aid unit camp. But others had to work while they were sick. Four days were not enough to recover. It was very hot."*
>
> Another confirmed: *"We all slept in tents. The houses we had built were for Nevsun foreign workers from Tanzania, the Philippines and Canada. They slept in high-standard quarters, which we had built. They were like houses in Europe. Those released and the soldiers slept in tents exposed to the extreme temperatures and changing climate. We always slept on the floor. In fact, we did not even have tents, only what we found. We used branches and built something. We often got sick. There was not enough nutrition, no additional aid. We raised money between us to buy food. If someone got sick and had to sleep for five days, the wages for this period*

[1972] TBA101.

[1973] The Commission understands that the Segen employees were paid more, around 3,000 [200 USD approximately] or 4,000 Nakfa [266 USD approximately].

[1974] TBA100, TBA101, TNR026.

were deducted from his salary. If someone got sick, he was always given tablets against malaria, no matter which sickness."

A former Senet worker told the Commission that those working for Segen *"stayed in a separate compound, mainly made of tents in the desert area. Some of the Segen workers who had been there for a long time had small houses made of zinc or wood."*

As reported by a witness, such dramatic differences in treatment and salaries created frustration among Segen "workers" and gave rise to tensions with other workers, despite the fact that they had very limited interaction: *"We avoided going out of the compound outside of working hours because the region was not safe. There were rumours that it was a territory where jihadists were active and that some attacks could happen and the mine could be one of the targets. The soldiers guarding the camp, and especially the Segen employees in charge of the security, were known to be "trigger happy" and to shoot at people easily. I did not go to other compounds, the one for Segen employees, for example. It was not highly recommended and I avoided it... There was no contact outside working hours with Segen people. It was the same thing for foreigners working at the mine. They did not have many relationships or contacts with the Segen people. In addition, as the foreigners' salaries are very high and paid in US dollars, it created tension between Segen people and foreigners, who were mainly from India and Bangladesh. Segen people were also angry towards the Government that allowed this as they thought there was an agreement between the Government of Eritrea and their governments. The foreigners in charge of Senet had their say about which employee to keep and for how long. However, it was obvious there was tension between the foreigners and the Eritrean authorities and it was not clear who was in control."*

c. General conditions in civil service

1440. General conditions for conscripts assigned to perform work of a civil nature are quite different from those of national service in the army. Shortly after finishing their studies, graduates get their first civil assignment, which can last up to two years. It is referred to as the "university service" or "pre-national service." During the university service, they are paid on average 450 Nakfa per month.[1975]

1441. After this first phase, conscripts generally continue their civil service in their initial assignment. A few are authorised to change their posting. Conscripts are now "in service" and are paid only 150 Nakfa per month by the Ministry of Defence. The length of this phase varies and can last from six months to a few years.[1976]

As explained by a former conscript, after one year of university service: *"I had to start the national service. The pay during the national service was 150 Nakfa per month. They wanted me to continue in Keren, but I asked to be sent to Senafe so that I could live in my house and not rent. They refused, unless I have got someone to exchange assignment with me. I could not find someone*."

Another former conscript said: *"I graduated towards the end of 2008 in aircraft technology and I was assigned to be a teacher. They told me that if I taught for two years, as service to my country, they would give me another job in line with my qualifications. But they did not keep their promise."*

[1975] See TNR046, TLA042.
[1976] TLA042, TAM015, TAM011, TNR046.

1442. After this period of service, conscripts enter the "mobilisation phase," which is usually open-ended in accordance with the *Warsai Yikealo* Development Campaign. They continue the job they had "in service," but are now paid slightly more, between 450 and 700 Nakfa per month. The amount received by each conscript depends on "taxes", deductions and extra allowances given by the governmental entity or institution employing them.[1977] After six to eight years of "mobilisation" in civil service,[1978] conscripts may request to be released. Reportedly, this demobilisation procedure takes at least six months, during which they are no longer paid. If they manage to be "demobilised," they are not "released" from their work. They are still expected to continue their job but are paid around 1,400 Nakfa per month and may even receive a lump sum of 4,800 Nakfa for their "reintegration."[1979]

> One of the people interviewed explained: *"After my graduation, I was assigned to a construction company in Asmara that belongs to Segen, the party company, as part of national service. I was doing the design of canals, metal structures and machine installation. My salary was only 50 dollars per month. After a while, I was released from national service but obliged to stay to work with Segen."*
>
> A witness had been issued with a certificate of completion of national service but was recalled prior to the 1998-2000 war with Ethiopia. After the war, he had to serve in the army for another eleven years before being moved to the National Insurance Corporation of Eritrea (NIC). "*They said I was discharged, but I was not allowed to leave the country and if anything happened I could be again recalled. I was given a card with my number and name. They were fooling people by implying that they were releasing the soldiers, but in fact they did not. During the day, I had to work for the NIC, and during the evening I was working at my parents' [small business]. After a training course, my boss decided to hire me even though I was not exactly released. Before I did my course, I was earning 1,000 Nakfa and a regular salary of 3,000 Nakfa afterwards*."

1443. Conditions in civil service are perceived to be far better than in the army because conscripts may lead a civilian life. They have regular office working hours. Outside working hours, their time is free and they usually have at least part of the weekend off. Only those conscripts assigned to certain public companies or ministries are reportedly requested to work during weekends.[1980] However, it seems that it is the exception rather than the rule. Conscripts are free to live with their families, may attend religious services outside of working hours and can get married without restriction or prior authorisation. Some may get annual leave, but others have none. Conscripts in civil service are, however, subjected to the same restrictions on movement as those in the army. Their travel permits are limited to their area of service. They must obtain special permits to travel outside their areas, for example to visit relatives.[1981]

1444. Unlike conscripts in the army, those in civil service are not provided with any food or accommodation by the Government.[1982] As their salaries are below the subsistence level, they face severe financial difficulties. This is particularly difficult for those assigned in

1977 TCDP033, TNR053, TNR074.

1978 This means after a minimum of 10 years working in civil service, not taking into account the periods of military training in Sawa and during studies at the technical colleges.

1979 TMA075, TLA042, TLA014, TCDP035, TLA036.

1980 TCDP033.

1981 S119, TAM039, TLA041, TAM034.

1982 Food and accommodation provided in the army are not adequate. See chapter VI.C, 1, National service.

Asmara, where a single room costs a minimum of 500 Nakfa per month. Some conscripts raised this issue directly with the Government, but it fell on deaf ears. The Government only provides accommodation for conscripts in civil service based in remote areas or for those who are former freedom fighters.[1983] Consequently, conscripts have to rely on accommodation or financial support from relatives, find a second job or "just need to be creative."[1984] Former conscripts assigned to civil service told the Commission about their difficulties.[1985]

> *"After Sawa, I was sent to the Mai Nefhi College and took a diploma in social science. After graduation, I was assigned to be a teacher in Mendefera to teach in a junior school. I asked for a transfer to my home town, Assab, because I would not be able to survive in another city with the 560 Nakfa I was to receive. My request was refused."*

> A former conscript who served for five years as a judge explained: *"I never received a salary other than very small pocket money from the Ministry of Defence through the Ministry of Justice. I lived under harsh and challenging conditions. No government food, housing or transportation was provided to supplement the pocket money. Therefore, I always relied on financial assistance from family members and friends from time to time."*

> A medical doctor also forced to work under the national service scheme stated: *"I was paid 441 Nakfa per month. I could not tolerate the economic situation. I did not have a house, nor even a change of clothes. I asked the hospital for a small room or more pay. The hospital director told me: "You are not a special man, all young Eritreans live like this."*

1445. As a rule, it is illegal to have extra or parallel work outside the official civil service assignment. In practice, it seems that some supervisors of conscripts close their eyes to such practices.[1986] It is reported, however, that extra work for international NGOs is authorised by the Government, as it offers additional means to monitor and control their activities.[1987]

d. Punishment during forced labour

1446. Conscripts in the army are frequently subjected to punishment in connection with the labour exacted from them, that amounts to torture.[1988]

1447. Unlike those in the army, conscripts in civil service are usually not subjected to harsh punishment in the course of their work. When they leave work without authorisation, they are treated differently from conscripts in the army. Frequently, conscripts in civil service just stop going to work or are regularly absent because they are engaged in side activities to earn some income.[1989] The level of conscript absenteeism in civil service is high, particularly in public administrations and certain ministries, where only Ministers are reportedly present. It usually takes a few months before the missing conscripts are chased down by the administration. This might be due to the lack of capacity within the bureaucracy, as well as a certain tolerance by supervisors who allow conscripts to earn some extra money. During the first months of absence, the absentees' salaries are withheld.

1983 TLA036, TCDP033.
1984 TCD033, S119,TNR053, TLA041.
1985 S119, TSH040, TSH057.
1986 TLA041, TCDP033.
1987 TLA036.
1988 See Chapter VI, B, 4, Torture, ill-treatment and punishment.
1989 TBA101, TAM204.

If only absent for a few months, conscripts generally receive only light punishment, or none at all when they resume work. However, if they are absent for more than a few months, they are usually sent to prison for some time before resuming work.[1990]

> A former conscript forced to serve as teacher said: *"I stopped teaching. I stayed in Senafe for one year. They did not come to look for me because I was under the Ministry of Education. They have less resources to send people around."*
>
> Another former conscript assigned to work for the public administration explained: *"At one point, I stopped going to work and started to work on my own, I did it for three or four months before my chief came to my home and asked me to come back. [I did not]. I was later arrested by the police then I was brought to Track B prison. I was held underground for four months … My chief had me released after four months. I went back to work."*

1448. An additional form of punishment for conscripts in civil service is to be transferred or threatened with transfer to a military unit.[1991]

> A former conscript stated: *"After I was released, I was told I would not go back to the Ministry of Education because I [had] tried to leave the country. I was sent to the regiment of the military."*
>
> Another conscript assigned to work as medical doctor explained: *"I decided to stop working. When I was travelling, the bus I was on was stopped and I was asked for my travel papers. I told them I had stopped working at the hospital one year ago because I had not been paid.… They did not care what my reason was. The military officers took me off the bus. I was put in a small room and they called someone from the Ministry of Health. I was given two choices: to go back to the hospital on the same conditions or go to the military and join the border war."*

(b) Forced labour in the context of the People's Army

(i) The People's Army

1449. About three years ago, the Government started to arm civilians and recruit them into the People's Army, *Hizbawi Serawit* in Tigrinya (literally: population soldiers). The People's Army undertakes various duties, from guarding public sites to contributing to development projects. The process, which started in 2012, is ongoing.[1992] The Commission is not aware of any official Government document that would outline the policy.

1450. Everyone who is not actually serving in the army is a potential recruit for the People's Army, including those who are currently in the national service.[1993] People who have been released from national service due to health problems or their age are nevertheless obliged to join the People's Army.[1994] Although several witnesses noted that women are exempted from serving in the People's Army,[1995] the Commission has heard testimonies about women having had to join.[1996]

1990 TLA019, TNR046, TLA004, TSH057.
1991 TSH040, TSH057.
1992 TBA067, TAM034, TBA089, TAM071, TBA090.
1993 TLA022, TLA015, TAM034, TLA019.
1994 TBA071, TCDP035, TLA013, TBA091, TSH021, TSH109, TBA067.
1995 TBA067.
1996 TCDP035, TLA013, TBA061.

1451. Reportedly, there are people in their 40s who have to join the People's Army.[1997] However, the majority are people in their 50s and older, some even up to the age of 70.[1998] The 85-year-old parents of a witness however, did not have to join.[1999]

> A witness noted that his 72-year-old father who had been released from the army at the age of 54 was called into the People's Army in January 2015. Since then, he had to carry a weapon.
>
> A witness explained that his father had to join the People's Army in 2014, despite a medical condition that did not even allow him to lift a light object, let alone a gun.[2000] "*In early January 2015, my 68-year-old father, who had done his national service, was taken to Badme to train for the military. He has not yet returned. My mother is alone now. Before my father went, he was ill with malaria, so he was taking medicine and I told him to go to Asmara to get better medicine. Before he could get it, he was taken.*"
>
> Another witness explained that in his village, guns were distributed in 2012. "*They gave us Kalashnikovs, we had to be guards. You are registered with the administration in your neighbourhood. The administrators in each neighbourhood called for a meeting. They told us: as of now, you will be given a gun, everyone between 18 and 60 years, including teachers and doctors, even former fighters. Even if you are medically exempted, you have to have a gun, except those working in the president's office. Women and men had to get guns. For men, it is worse; if men refuse, they take you to prison, they arrest you. If the woman is pregnant, has a baby or wants to marry, she can get around it.*"

a. Recruitment procedure

1452. People are informed of their obligation to report to the People's Army by an announcement during a public meeting at the local level,[2001] or through written communication to the individual.[2002]

> A former local administrator noted that in May 2012, he received an order to gather the people in his village: "*During the meeting, a truck arrived. We did not know why they had brought the truck. There were guns in the truck. Everyone below 75 had to take a gun, Kalashnikov. They had a list with names of those who should get a gun. There were no men younger than 50, those were in the military or had fled. In our village, they gave guns only to men. In other villages, they might have given guns also to women.*"
>
> According to another witness, everyone in the zoba is being called to join, but only men. "*There is a structure. The community leader is handing down the order. They give you a piece of paper with your name, asking you to come to attend the training. When I rejected it, the soldiers of the zone sent civilians with guns to pick me up*."

1453. The People's Army is organised either by local administrative zone or by profession.[2003] For example, teachers have been recruited and trained jointly.[2004]

1997 TBA067, TLA014.
1998 TBA067, TAM071, TAM014, TNR078, TAM034, TSH021, TBA065, TBA090, TBA091.
1999 TBA089.
2000 TBA065.
2001 TLA013, TLA019, TBA084.
2002 TLA010, TBA084, TLA014, TBA061.
2003 TLA013, TLA014, TLA019.

A former teacher was called via announcement by the police. "They said that everyone in the country should have a gun and be part of the city People's Army, including training. The recruitment is made via announcement to the population during public meetings, in my case a meeting with all the teachers and city officials."

Another former teacher was asked to join the People's Army when he was in his village. "*All the teachers were asked by the school director to go to the nearby city and to fill the forms to join the People's Army. In the form, they asked details about the family, level of education, etc. Then, all the teachers returned to the village and waited for summer for getting the military training, Other professions took the military training immediately. However, during summer 2013, the teachers went on vacation as usual without the military training being organised*."

1454. A government official, usually a former fighter at the zoba level, is in charge of the recruitment, training and organisation of the People's Army. [2005]

b. Military training

1455. Generally, people have to undertake a military training prior to their assignment, which can be a one-time event stretching over a few weeks[2006] or continuous training repeated at regular intervals.[2007] Others have not been trained at all.[2008]

A witness, who had to join the People's Army at the age of 54, was sent to Molqui, 15 km south of his home village, for a two-month military training which involved marching, shooting and other activities.

A witness was picked up during a giffa and sent for military training to join the People's Army. "*I told them I was civilian. They sent me to Himberti, 26 km south of Asmara, a new compound of the People's Army for military training with the People's Army. Every zone has its own military training, so you do the training in your zone with the People's Army. You only go to Sawa for school; when you do the military training there or in Wi'a, you will be sent to military divisions afterwards. If you are in your zone, you remain in your zone. Those from [one] zoba … are kept in their zone for military training, as they would have better chances to cross the border if moved to a region closer to the border."*

A witness, who was sent to join the People's Army after being detained, was trained in Gergera. *"We were not part of a round, we belonged to the People's Army, which exists in each zoba... In the zobas, there are military training centres. When the generals started fighting, every zoba established its own military training. Legally, the members of the People's Army are not full soldiers, only additional soldiers. For four months, we were trained in military marching, shooting of guns etc."*

Another witness explained that his father had to undergo military training similar to what he had experienced in Sawa. *"The training took place once a week over a period of six months. On Sundays, he had to go to the military field or the schools or playgrounds from 5 a.m. to 9 a.m. Sometimes he did not want to go to the training, but had to go for our sake, we are five children."*

[2004] TLA010, TLA039.
[2005] TLA013, TBA084, TBA064.
[2006] TNR054, TNR066, TBA060, TBA061, TAM034.
[2007] TLA010, TLA013, TBA064, TBA067.
[2008] TLA039, TBA060, TBA064, TBA071, TBA084.

c. Arming

1456. Everyone who joins the People's Army is given a gun with two magazines containing about 30 bullets.[2009] Generally, the guns are handed over during the military training,[2010] but at times also without any training.[2011] This arming of the civilian population means that many households in Eritrea now have several guns.[2012]

A witness noted that people who had fled the military and left their units also received Kalashnikovs. *"My daughter had a gun, so had my son, and me. In total, we had three Kalashnikovs in the house. My kids had gone to Sawa, after the death of my mother. My daughter was released from the army, but she received a Kalashnikov from the zone. My son escaped from his military unit. When he arrived in my home, the zoba officials gave him a Kalashnikov. He was not reported to the army; they do not talk to each other."*

Another witness, whose father was given a gun in 2012, stated that on average each house in Eritrea has four guns. *"Each gun is given with two magazines containing ammunition. Each magazine has about 30 bullets. My 65-year-old father is a driver, who was not in the military. He was given a two-month military course, which is meant for old people. After the training, he was asked to be a watchman for a bank and police station in addition to his normal job as a driver."*

"In every house there are many guns because they are part of the People's Army. People who want go for a drink after work simply leave their guns outside on their bike or ask children to take care of it."

A witness, who had been given a gun without military training, noted: *"When you are given a gun, you are given a paper that says that you are a member of that division and that you have a gun. I had a teacher ID card*."

A former local administrator noted that every six months, he had to verify the number of guns distributed. People had to travel to the sub-zonal capital, some for up to eight hours.

1457. The rationale for establishing the People's Army has not been communicated to the population. However, many suspect that it is an effort to address the gap created by the large numbers of young people fleeing the country and increasing numbers of defections.[2013] It has also created fear among the population that a new border clash with a neighbouring country is imminent.[2014]

The following testimony is an example of many similar thoughts expressed by other witnesses: *"The young people were absent. There were no men below the age of 50, the others were in the military or had fled. … When there were enough people, we were not asked to guard. But once the young generation started leaving, they did not have enough people and had to call older people. … There are no young people left in the villages. The work is done by the old people or by the pupils, who have to work in the fields and carry stones. Generally, there are few people left. Men and women flee in equal numbers. Our village is close to the border. Only old people are left in Eritrea. Those taken for military service never come back. People do not get*

2009 TAM034, TAM011.
2010 TNR052, TLA039.
2011 TNR053.
2012 TAM034, TBA061, TBA084, TBA095, TNR053.
2013 TAM014, TBA067, TBA095, TLA019.
2014 TLA014, TBA084.

released. I have never seen any young person from my village having been released, only those who are disabled and can't work anymore. Women who get pregnant may get demobilised if they are married with someone in a high position. In our village, the teachers were national service conscripts, but from other parts of the country."

1458. Ironically, the forced recruitment into the People's Army has turned into an additional push factor for the older generation, with many people deciding to flee once they get called to join.[2015]

1459. As often happens in Eritrea, the Peoples' Army was created about three years ago without a legal basis, in disregard of the principle of legality.

(ii) Forced labour undertaken by members of the People's Army

1460. The most frequent tasks that members of the People's Army are requested to perform are security and police duties, such as patrolling the streets, guarding buildings, neighbourhoods or the border.[2016] These assignments are imposed on conscripts in civil service in addition to their official work. The members of the People's Army do not receive any remuneration for their work,[2017] let alone compensation for the work they are prevented from doing on their own fields.[2018]

One witness stated: *"In 2014, my father had to join the militia despite his blood pressure and an injured arm. He cannot hold even a bag, let alone a gun … He has to guard the street once every nine days. With other members of militia, he is supposed to work like police.*"

A former member of the People's Army stated: *"Every night and day we were guarding the neighbourhood. We did not understand against whom we had to protect, and what.*"

A witness explained that *"the militia just guards the city and patrols inside the city or guards some buildings. It is no longer the police that ensure the security of the city during the night. It is the militia. During the day, you see the police in the streets, not during the night.*"

A former conscript recalled: *"The hospital staff were expected to guard the hospital at night in addition to their day duties. I ignored the order … I did not think I could work two jobs at the same time*."

A witness stated that his father had to join the People's Army to guard the area. He added: *"There is no one that they can guard from, they are old."*

1461. The security assignments of the People's Army include the conduct of giffas and the search for conscripts who have overstayed their leave or left the service without authorisation.[2019] Members of the People's Army may even be assigned to supplement prison guards, as explained by several witnesses to the Commission. [2020]

"We were ordered to guard the hospitals, the schools, the prison and the checkpoints, set up to catch people who tried to flee. Depending on the military leader, we also had to guard the prison, if he had a shortage of soldiers. The task of

[2015] TAM011, TNR053, TBA060, TBA067,.
[2016] TBA061, TBA064, TBA065, TBA078,T BA089, TBA090, TLA013, TLA019, TNR078, TAM034.
[2017] TBA061, TBA064, TBA067, TLA013, TBA091.
[2018] TBA060, TBA061, TBA065, TBA089, TLA019, TNR066, TSH040.
[2019] TBA086, TLA022, TBA091.
[2020] TBA084, TLA010, TLA033.

guarding was divided between three villages. Each village had to work for one week. I was assigned to guard the school, in addition to my job as administrator. We were not paid for guarding."

"Members of the People's militia have weekly small military exercises and used to collect the people who tried to escape like me."

"Militia is responsible for the security of the area, mainly in the night, doing police and military work. It took over the role of the police, which is not present in the streets. It also conducts giffas, sometimes with the help of the police. However, the militia has the main role in the conduct of giffas."

1462. However, it was reported to the Commission that the People's Army's assignments are not limited to security duties and that its members may be involved in soil and water conservation projects usually carried out by local residents under the "communal service programme".[2021] As explained by witnesses:[2022]

"Militia members work at airports, gas stations, offices of the government, in addition to their normal work. There is no additional payment for the work done with the militia."

"Those who are in the militia are not part of the Army. Everyone in the country, except children, are either in the national service or in the Peoples' Militia. From 18 years old to 50 you are in the national service. … Women and persons with disabilities discharged from the national service would be involved in the militia. You are asked to do periodic patrolling in localities, to get involved in reforestation, cleaning town, construction, etc. They ask whatever they like – it is free labour.… One day we were asked to go to Gergera, a dam 40 km south of Asmara. We were asked to work there for seven days. … You are asked to patrol twice a week, get involved in reforestation activities once a week, cleaning once a week. Whenever they needed it, they asked you to work for free."

1463. There is no doubt for the Commission that the enrolment in the People's Army and the work and service done are not provided voluntarily by the members but under the threat of a penalty. People who do not respond to the call are picked up individually and forced to join. Those who resist risk being sent to prison.[2023] Those who refuse to join are punished by being imprisoned, or through the cancellation of their coupons or the withdrawal of their business licences.[2024]

A witness recounted: *"The administrator of the village approached me and told me to take a gun, but I refused. After I refused to take a gun, they took me to the prison in Barentu, Prima Country, and detained me. I was only released after six months when I accepted to take a gun."*

A pastor, who rejected to join the People's Army told the Commission*:"They sent civilians with guns to pick me up, they sent the soldiers of the zone. They took me to the ThirdPpolice Station in Asmara and detained me. In prison, they asked me why I refused to pick up a gun, suggesting it would be good for me, as I would be able to protect my house and my life. I was forced to accept, I had no choice."*

A doctor at the Orotta hospital reported that the staff was asked to guard the hospital at night in addition to their day duties. *"I ignored the order, and did not go to the*

[2021] See *infra*.
[2022] TLA013, TCDP035.
[2023] TBA061, TLA010, TLA013, TCDP035.
[2024] TSH040, TLA013, TBA060, TBA061, TBA067, TCD035.

training. The hospital's finance officer, also responsible for military attendance, and the administration officer asked me why I would not train. I told them I did not support the idea, I did not think I could work two jobs at the same time. Three days later, three strangers, all men, called me from the emergency department. They were wearing civilian clothes, I suspected they were from the national security agency. They told me to get in the car, and took me to Adi Abeito prison."

1464. People are also threatened that their coupons[2025] or licences will be withdrawn if they refuse to participate in the People's Army, as well as their pass permits.[2026]

As explained by a witness:*"If you did not join the militia, they revoked the coupons for the family, including the coupons for the gas for household. In addition to the national service requirement, the mandatory membership of the militia is required for administrative procedures as they ask for the coupons which indicate that you have joined the militia. A number is registered on a computer database. It indicates if you are part of the People's Army and if you have done your national service. Coupons are not required for accessing the hospital but are needed for all other administrative procedures."*

A former villager recalled *"They called me to join the People's Army. I had to go, otherwise the licence from our neighbourhood administration would have been withdrawn"*

Another witnesses stated: *"If you do not go, you are detained. You do not receive your coupons ."*

1465. Under international human rights law, such kind of compulsory work exacted from any person is a form of forced labour, which is prohibited unless it falls within one of the few recognised exceptions. It is not claimed or reported that the People's Army membership is part of the national service. On the contrary, it is separate from membership of the army.[2027] It involves persons who are above military age according to Eritrean law and conscripts who are already serving in civil service as part of their mandatory national service. The work exacted from the members is not of purely military character. Therefore, it does not fall in the exception of the mandatory military service.

1466. Minor communal service may be exacted from the general population only if the work undertaken is exceptional and is primarily a maintenance work and erection of buildings intended to improve the social conditions of the community.[2028] Such work should be made in the direct interest of the community and be designed and undertaken in consultation with the community or its representatives. Compulsory work within the Peoples' Army may fall under the minor community service exception only if it complies with the following elements:[2029]

- The scope of the project undertaken under the minor communal service is limited to the needs of and benefits to the local community requested to undertake the work. It should not be a project benefiting the population at regional or national level;

[2025] See supra. See also chapter, VI, A, 1, Surveillance of the population in violation of the right to privacy.

[2026] TCDP035, TBA060, TLA013,TLA014, TLA019, TNR053.

[2027] The People's Army is even considered to have been established by the President as a possible counter force to the army.

[2028] For examples small schools, medical consultation and treatment rooms.

[2029] See ILO, Forced labour in Myanmar (493-502).

- The project involves a low number of workers for a limited number of working days. Minor community service cannot be required from individuals more than a few days per year;
- The conditions of work should not be burdensome for the community workers, i.e. the work should be undertaken close to their village and during decent working hours and it should not be of an afflictive nature.

1467. Another exception under international law that allows exacting a compulsory service from some citizens is if it is "normal civil obligations of citizens." The normal civil obligations of citizens include the compulsory juror duty, the mandatory assistance to persons in danger, assistance in the enforcement of law and order in cases of flagrant violation,[2030] compulsory fire service or financial contribution which is payable in lieu of service, obligation to conduct free medical examinations, and obligation to participate in medical emergency service. In fact, the criteria which serve to delimit the concept of compulsory labour include the notion of what is in the normal course of business.[2031]

1468. The last exception under international law is when compulsory labour is required in a situation of emergency, "that is to say in the event of war or of a calamity or threatened calamity such as fire, flood, famine, earthquake, violent epidemic or epizootic diseases, invasion by animal, insect or vegetable pests, and in general any circumstances that would endanger the existence or the well-being of the whole or part of the population." The Commission is not aware of any such situation of emergency in the last few years that would have justified the establishment of the People's Army. In any case, by definition, such situations of emergency are limited in time and compulsory labour cannot be exacted beyond the critical and genuine phase of emergency.[2032]

(c) Forced labour in the context of development programmes

1469. Since the independence of the country, the Eritrean Government has launched several development programmes to reconstruct the country devastated by the war and develop it from a social and economic perspective. The cornerstone of this development policy was the launch of the Warsai Yikealo Development Campaign in 2002, which has complemented the previous development policies of the Government and further mobilised significant parts of the Eritrean population to work on development projects throughout the country.

1470. According to these development policies, school children in 9th grade and above[2033] are mobilised under the Mahtot programme established in 1994 by the Ministry of Education. They are obliged to work during their summer holidays in various development projects. Furthermore, most of the 12th grade students who are studying at the Warsai Yikealo Secondary School in Sawa are obliged to work in agricultural fields during their last year of high school studies in addition to their military training and studies.

2030 Lars Thomann, *Steps to compliance with international labour standards, the International Labour Organization and the Abolition of Forced Labour*, Bremen International Graduate School of Social Science, 2008, p. 193.

2031 See Council of Europe, Guide on article 4 of the Convention, prohibition of slavery and forced labour, p. 11.

2032 See ILO, Giving globalization a human face, ILC.101/III/1b. docx, para. 280.

2033 Therefore it concerns children who are at least 14 years since students start school at 6.

(i) The Mahtot students' summer work programme

1471. Under international human rights law, Eritrea should "recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development".[2034] Under the Convention on the Rights of the Child, a child means every human being below 18 years old.[2035] International standards of child labour only allow children above 14 to work, provided that such work is not likely to jeopardise their physical, mental or moral health, safety or morals.[2036]

1472. The Eritrean Government presents the Mahtot programme as a kind of vocational training included in the education curriculum. It is entirely organised and implemented by the Government. This programme promotes soil and water conservation, afforestation, maintenance, electricity and at the same time develops the ethics of work within the young generations and exposes them to persons of other ethnic backgrounds with the purpose to strengthen national unity.[2037] As part of their tasks, children are required to contribute to projects in agriculture, including cotton picking and maintenance of agricultural terraces as well as projects of environmental protection or to dig irrigation ditches or canals. The types of work and working conditions under the Mahtot programmes are not regulated by law and therefore vary according to time and place. [2038]

> A former student recalled: "*I started at 16 doing the Mahtot during the school summertime. We were doing road maintenance and helping parents who have lost their children to cultivate their fields. I once did it in Mendefera at the Ilabari camps. We worked from 7 a.m. to 11 a.m. After that, we went back to our place*."
>
> A young boy who was obliged to do the Mahtot recalled: "*They call it development programme. It is cutting unwanted trees, building terraces etc. They allocate you to different places: some in the village, and others in the town. If they allocate you to a town, it is usually to sanitary programme and cleaning. If it is to villages, it is usually digging the ground, watering the trees and plants. Because I looked like a kid, they allocated me to the town. Because the annual rainfall was too low, they asked us to collect stones, dig grounds, grow and water the plants. These are government-supported agriculture [activities]*."
>
> Another one further explained to the commission: "*The work consisted in planting plants and marking the lands for irrigation. I did it for five weeks from 8 a.m. until 10 a.m. I could stay at home with my parents. At the end of the five weeks they gave me 36 Nakfa. Every day there were calls for attendance by the director of the school, if someone played truant he was forced to work in the school*."

1473. While it seems that under the Mahtot programme children are required to work only a couple of hours per day and may stay in their villages and even receive a symbolic remuneration at the end of the summer,[2039] the Mahtot programme is nevertheless problematic from a human rights perspective. The children's work is not driven by poverty

[2034] Art. 32 of CRC.

[2035] Article 1 of CRC. As recognised also under Eritrean law . See First report of Eritrea to the Committee on the Rights of Child, CRC/C/41.Add.12, para. 65.).

[2036] Art. 3 (1) of the ILO Convention No. 138 on the minimum age for admission to employment and work. Such hazardous work would include working with dangerous substances, agents or processes (including ionising radiations), work requiring the lifting of heavy weights and underground work.

[2037] CRC/C/ERI/3, para. 313.

[2038] TLA038, TNR031, TNR074.

[2039] TNR031, TNR074, TAM034, TNR046, TLA038.

or aiming at providing support to the family members, as it is usually the case with situations of child labour. It is reported that children are compelled to work under the threat of being denied the right to continue their studies.[2040] The work carried out by children and projects undertaken under the Mahtot programme do not fall under the scope of minor communal projects, which should only meet the needs of and benefit the local community requested to undertake the work and have a limited number of workers involved for not more than a few days per year. Usually, work on roads, dams, canals and irrigation projects are considered to be out of the scope of minor communal services authorised under international human rights law.[2041]

(ii) Forced labour at the Warsai Yikealo Secondary School in Sawa

1474. The 12th grade students at the Warsai Yikealo Secondary School in Sawa are compelled to perform agricultural work in addition to their academic studies and their military training. They are usually sent to work in difficult conditions at the farms owned by the government such as the Alighider farm or the Molhober farm in Afhimbol that belongs to the Sawa-Afhimbol Agro-Industry. The Molhober farm, which is managed by a military officer, produces various types of vegetables, fruits and crops that are sold in the market as a means to achieve food security in Eritrea.[2042] The students may be sent there to work for several weeks or months in a row at the end or in the middle of the 12th grade studies. They may also be sent there regularly for shorter periods of time, sometimes half a day or several hours in the middle of the night. In the absence of legislation regulating the work of students, it is not certain whether such work is considered to be part of the Mahtot programme or just falls under the global Warsai Yikealo Development Campaign.[2043] Anyway, as explained by former students, they are obliged to carry out this agricultural work as any other order given to them while in Sawa, [2044] otherwise they would be subjected harsh punishment.[2045]

> A former student recounted: "*I was in Sawa for the 12th grade high school. After we finished the school, they asked us to work for Mahtot. I worked for four months in the Afhimbol agriculture project after the matriculation exam. The whole division was sent there. You have to build your own hut. We worked there for four months without pocket money. It is a government farm. There is no information about the project and where the harvest and profit are taken*."
>
> Another former student explained what happened at the end of the studies: "*In Sawa, we were waiting to be deployed to national service, they took us to farms like Molhober. At 5 a.m., they summoned us by whistle. If you did not come, they beat you. We were working in the fields until 6 p.m. We planted onions and weeded. After one month, we harvested tomatoes and green peppers. We even worked on Sunday without any rest. … We did that for three months. For two months we worked without resting every day of the week. At long last, they allowed us to rest on Sunday. When I was in Molhober, they did not pay us*."

[2040] TNR031.
[2041] See ILO, Forced labour in Myanmar (501).
[2042] See announcement made on 10 July 2010 on the website of the Ministry of Information of Eritrea "Sawa-Afhimbol Agro-Industry Expanding Activities", available on http://allafrica.com/stories/201008020173.html, visited on 2 May 2015.
[2043] TNR001, TNR045,TNR046, TNR0074, TNR079,TAM038, TAM039, TCDP006.
[2044] TNR001, TNR045, TNR046, TNR079, TCDP006.
[2045] See chapter VI, C, 1, National service

A former student with a medical condition told the Commission: "*When we were students, they used to take us to military farms to weed, harvest and dig. It was in Sawa. You have to work for the government during free time. Molhober is the name of the farm, it is in Afhimbol. Nobody can avoid it, if you do not have doctor's prescription or are disabled, you cannot refuse. I had health problems so I had a paper from the doctor. However, they took me there by force*."

A former student explained that "in the middle of the training in Sawa in 1998 they brought us to Alighider for free labour for one month. We had to harvest the whole day, during 12 hours from 6 a.m. to 6 p.m."

A former trainer at the Sawa military camp explained in more detail: "*When I was a trainee, there was no such thing. The first round in Sawa had to collect cotton. When I become a trainer, we went to various farms, including Alighider, where I went with my trainees. ... Usually it took about two months, considering the enormity of the work that we were asked to do. We stopped the training and did that. ... At the farms, some trainers had up to 150 people to look after. What my supervisor gave me was a task such as the number of hectares to harvest in a certain time. The work was demanding.*"

1475. The working and living conditions of the 12th grade students during these periods of mandatory agricultural work are not suitable or satisfactory for students.[2046]

A former trainer reported: *"If we were lucky, we were given a few tents. We organised the tents as medical room or for cooking because it is very important to have those in a covered space. For the rest, we did as we could. If we had some sheets, we used them to sleep on the ground. If it was the period of warm time and there was no rain, we could sleep on the ground and we used some plastic bags to put on the top. Sometimes we were lucky and if the field was near a school and it was summertime, we used the school. If it was big enough we could sleep inside. If it was a small school, we used it as a kitchen and medical areas. During the day, if it was raining we waited and did the farming work only during sunny time. This is mainly how we lived during those two months. The superiors had their own quarters …. The trainees could not refuse to work. We, the trainers, were also treated the same way as our trainees. As much as they could not say no, we could not either … We just had to comply with the orders. There was no possibility of choosing or saying no. When we went back to our camp, we did not take any of the harvest with us. We only brought back the materials. I did not know to whom the harvest belonged and where it went."*

1476. Furthermore, it was reported to the Commission that sometimes graduating students at technical colleges are required to work during their summer break.

A former student stated that "*When we were in the Mai Nefhi College, sometimes they took us to work in dams, in Tessenei near the Sudan*."

(iii) Communal service programme

1477. In its 2010 report to the Committee of Experts of the International Labour Organisation, the Eritrean Government stated that a communal service programme was implemented in Eritrea for 19 years in accordance with the exception provided under the Forced Labour Convention that authorises compulsory labour for minor communal services. It explained that the compulsory work concerned small scale projects of micro-

[2046] TNR001, TFM019.

dams, roads and forestation undertaken in consultation with members of the community. However, as noted by the ILO Committee of Experts, no further details were provided on the consultation procedure or the projects or the legal basis for this programme.[2047]

1478. The Commission did not gather additional information on this communal service programme through testimonies in the course of its investigation. However, in light of the official information provided by the Eritrean Ministry of Information on its official website on the soil and water conservation projects carried out by communities and village residents, the Commission remains concerned that such projects could amount to forced labour in violation of human rights law. The projects undertaken do not seem to fall under the exception of minor communal work authorised under international human rights law. The Commission recalls that work on roads, railways, bridges, dams, power stations, canals, irrigation projects, airports, electricity lines, museums, palaces, monasteries, telecommunication, villages, regular schools and clinics, construction of toilets and cleaning assignment were considered to be out of the scope of minor community services authorised under international human rights law.[2048] But this is not the case in Eritrea.

1479. For example, within only one month, the following postings were made on the official website of the Ministry of Information of Eritrea, which were illustrated by pictures showing mainly women and even children engaged in manual work:[2049]

> On 2 April 2015: "The inhabitants of Embeito area, Gala-Nefhi sub-zone, are undertaking soil and water conservation campaign before the onset of the rainy season in which youths are demonstrating active participation. Mr. Tekle Woldeselasie, Administrator of the area, pointed out that the inhabitants are taking active participation in land restoration as part of the soil and water conservation activities being carried out across the country. He expressed appreciation for the material and labour input by the community. The participants of the campaign stated that the scheme is aimed at combating desertification and raise farm output through the construction of terraces and water diversion canals. Community awareness as regards the significance of the campaign is impressive, they added."[2050]
>
> On 7 April 2015: "Mr. Tesfalem Gebremeskel, Administrator of Auhne area in Adi Keih sub-zone, said that the local inhabitants are carrying out soil and water conservation campaign, as well as renovation of dirt road. He stated that the participants of the undertakings are working on daily basis in areas affected by erosion. The participants of the campaign noted the significance of soil and water conservation in boosting production, and that the ongoing activities are aimed at restoring soil fertility in spots eroded by flood ahead of the onset of the rainy season, and thereby raise farm output. Auhne Administrative area lies about 10 Km. north-east of Adi Keih town." [2051]
>
> On 10 April 2015: "The inhabitants of Birkito area in Segeneiti sub-zone are undertaking soil and water conservation activities on farmlands ahead of the onset of the rainy season. The citizens in the locality indicated that they have been engaging in the construction of water diversion canals and terraces above a micro-dam since January. The Administrator of the area, Mr. Mebrahtom Tesfamichael, said that the

[2047] ILO CEACR, Direct request to Eritrea, adopted in 2010, published in the 100th ILC session of 2011.
[2048] See ILO, Forced labour in Myanmar (501).
[2049] www.shabait.com. Visited on 3 May 2015.
[2050] http://www.shabait.com/news/local-news/19527-inhabitants-of-embeito-undertake-soil-and-water-conservation-campaign.
[2051] http://www.shabait.com/news/local-news/19568-auhne-inhabitants-undertake-soil-and-water-conservation-campaign.

community, in collaboration with members of the People's Army, have renovated dirt road linking their village with the Asmara-Adi Keih route, in addition to soil and water conservation undertakings. He also stated that over 1,000 land plots have so far been covered within the scheme. Birkito, located about 25Km. east of Segeneiti, and is inhabited by 270 individuals." [2052]

On 11 April 2015: "The inhabitants of Mendefera-Aret area in Adi Keih sub-zone are engaged in the construction of water pond through mobilizing financial and labour input. The Administrator of the area, Mr. Seid Mohammed, pointed out that the pond is under construction at an expenditure of 300 thousand Nakfa with a view to meeting water supply demand both for humans and livestock. He also stated that the local inhabitants have been carrying out soil and water conservation activities in areas eroded through rainfall. The community members said that the used to travel kilometres to fetch water and expressed conviction that the new facility would make significant contribution in alleviating the problem. Mendefera-Aret, lies some 12km North-east of Adi Keih sub-zone." [2053]

On 13 April 2015: "Wide-ranging soil and water conservation activities are in progress in Adi Keih sub-zone. The task undertaken during the past three months in 54 villages involved the construction of terraces, water catchment devices, land levelling and road repair, among others. According to Mr. Rezene Fisehaye, head of economic developments in the sub-zone, a total of 70 thousand nationals took part in the development undertaking." [2054]

On 19 April 2015: "The residents of Habero sub-zone have constructed 500 kilometres terraces and water diversion schemes in a popular water and soil conservation campaign. The popular campaign has been conducted in the administrative areas of Afaiu, Aritai, Filfile, Gelet, Habero and Hbero Tselim and Tsaida, aimed at to make use of the water flowing through the Anseba River for irrigation farming." [2055]

(d) Forced labour in detention

1480. Compulsory labour during imprisonment is one of the exceptions authorised under international law, according to which work or service may be exacted from a person as a consequence of a conviction in a court of law.[2056] This exception covers compulsory work during imprisonment as a result of a conviction and compulsory work imposed as an alternative sentence to imprisonment. Compulsory labour in the context of detention can only be carried out under the supervision and control of a public authority. The detainee cannot "be hired to, or placed at the disposal of private individuals, companies or associations".[2057] These two conditions are cumulative.[2058]

[2052] http://www.shabait.com/news/local-news/19593-birkito-inhabitants-undertake-soil-and-water-conservation-activities.

[2053] http://www.shabait.com/news/local-news/19600-inhabitants-of-mendefera-aret-engage-in-construction-of-water-pond.

[2054] http://www.shabait.com/news/local-news/19612-adi-keih-sub-zone-soil-and-water-conservation-activities-in-progress.

[2055] http://www.shabait.com/news/local-news/19657-residents-of-habero-sub-zone-construct-500-km-terraces-and-water-diversion-schemes.

[2056] Art. 2 (2) (c) of the Forced Labour Convention, 1930. See also art. 8 (3) (c)(i) of ICCPR.

[2057] Art. 2 (2) (c) of the Forced Labour Convention.

[2058] ILC.101/III/1B. docx, para. 278.

1481. Accordingly, work during imprisonment may be required of prisoners who have been convicted, as it is seen as a tool for their future reintegration in the society.[2059] Under Eritrean law, persons convicted and sentenced to time in prison, are under an obligation to work.[2060] While the Eritrean Government indicated in its report to the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) that the draft Penal Code – in preparation since 1997 and not yet in force – guarantees that "prisoners are not hired to, or placed at the disposal of private individuals, companies or associations", it failed to provide further information on the exact or current provisions governing the work of prisoners and detainees.[2061]

1482. Detainees, i.e. people placed in detention pending their trial, may be offered the opportunity to work but should not be obliged to do so.[2062] To ensure that detainees agree to work without any kind of coercion, their formal consent should be in writing.[2063] Their acceptance or refusal to work should have no consequence on their regime of detention, including possible loss of privileges or rights, otherwise it would constitute a form of coercion. If detainees voluntarily offer themselves to work, they should be paid and be able to leave the employment at any time.[2064]

1483. The kind of work assigned to prisoners and detainees should take into account their physical and mental fitness. Further safeguards regulating prison labour are that work should be of a useful nature and should keep prisoners actively employed for a normal working day. Vocational training should be proposed as far as possible. Working conditions should be similar from the working conditions outside prisons or detention centres. Prisoners should receive equitable remuneration.[2065]

1484. A further condition regulating the work of the persons deprived of their liberty is that the work must not be of an "afflictive nature".[2066] This means that work exacted from prisoners should not be an additional form of punishment but a tool for their future rehabilitation and reintegration within the society. Work should not be of severe nature, cause pain or be degrading and meaningless. However, imprisonment with "hard labour" is not prohibited as a form of punishment for certain crimes[2067] but it has to be specifically prescribed by a court of law as the result of a conviction.[2068]

1485. As it is generally prohibited to impose forced or compulsory labour "as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system",[2069] political prisoners[2070] must be free

[2059] Rule 71 (2) of the Standard Minimum Rules for the Treatment of Prisoners, 1955. The work during detention following a conviction may be included in the sentence or just be included in the penitentiary system of the country.

[2060] Art. 110 of the Transitional Penal Code of Eritrea, which was replaced by a new Penal Code promulgated by the Government on 11 May 2015.

[2061] See CEACR, Direct request to Eritrea under the Forced Labour Convention, adopted in 2010 and published during 100th ILC session in 2011, and Direct request to Eritrea 2014/85 (CEACR-2014-R-029-ERI-En).

[2062] Rule 89 of the Standard Minimum Rules for the Treatment of Prisoners, 1955.

[2063] ILC.101/III/1B. docx, para. 279.

[2064] ILC.101/III/1B.docx, at para. 270-271.

[2065] Rules 71 to 76 of the Standard Minimum Rules for the Treatment of Prisoners.

[2066] Rule 71 of the Standard Minimum Rules for the Treatment of Prisoners.

[2067] Art. 8 (3) (b) of ICCPR.

[2068] All procedural safeguards and rights related to fair trial should have been ensured during these proceedings leading to the conviction and the imposition of the sentence of hard labour.

[2069] Article 1 (a) and (b) of the 1957 Abolition of Forced Labour Convention.

from any form of prison labour imposed on common law prisoners and logically they must not be required to perform any hard labour as a form of punishment.[2071] However, these prisoners may voluntarily offer themselves for work, in a similar manner to non-convicted detainees.

1486. Since forced labour is prohibited as "a method of mobilising and using labour for purposes of economic development of the country",[2072] prisoners in general cannot be forced to work as a contribution to the economic development of the country.

1487. A single case where a prison sentence was commuted into labour was brought to the attention of the Commission.[2073] All others cases of prison labour documented by the Commission occurred in the context of detention and not as a commutation of sentence.

1488. Most of the persons in detention in Eritrea are not convicts. In addition, there is no differential treatment between detainees and prisoners, including prison labour. Non-convicted detainees are regularly compelled to work during their detention, usually during the last stage of their detention.[2074] The detainees or prisoners compelled to work during their detention are not paid for their work.[2075]

1489. The Commission heard evidence that detainees,[2076] like conscripts in the army, are forced to work in "development-oriented" activities such as construction and agriculture.[2077] In some instances, detainees and conscripts work together on a given project. Detainees are sometimes assigned to build the prison in which they will be detained. [2078]

> A former detainee at Aderser prison, who was arrested for attempting to avoid national service around 2004, explained: *"The types of work that we were undertaking were:*
>
> - *collecting stones and transporting them to the building sites;*
> - *loading and offloading food supplies and construction materials such as cement: the loading and offloading of cement was the worst thing we had to experience because our bodies were wet with sweat, the cement dust become cement paste and then solidifies making cement pellets on our body including our heads. This was aggravated by the lack of water to wash our bodies. We had to wait until the next Sunday to wash our bodies and clothes. Sometimes water was made available to wash only our hands, feet and faces after work;*

2070 For ease of reference the terminology "Political prisoners" refers to all prisoners sentenced for having peacefully expressed political or ideological views, including through the press and other media or while exercising their freedom of assembly and association. It does not cover violent acts or crimes, incitement to violence or hatred committed for political reasons.

2071 See CEACR, Observation 2014/85 on the 1957 Abolition of Forced Labour Convention (CEACR-2014-o-105-ERI-En.

2072 Article 1 (a) and (b) of the 1957 Abolition of Forced Labour Convention.

2073 TLA036.

2074 See chapter VI, B, 3, Detention.

2075 TSH004, TSH026, TBA057.

2076 For ease of reference and in light of the lack of difference of treatment between prisoners and detainees and the fact that most persons deprived of their liberty are detainees, only the term "detainee" will be used in this chapter. It will also cover the "prisoners" who may be subjected to prison labour.

2077 For construction: S037, S050, S075, TBA044, TSH004, TSH019, TSH026, TSH033; for agriculture: S075, S077t, So77y, S143i, TCDP027, TCDP032, TAM064, TBA034, TBA044, TBA057, TBA066, TBA078, TBA085, TBA100, TLA018, TNR012, TFM021.

2078 S075, TSH004, TSH026.

- *constructing of buildings in which we were engaged in mixing cement, sand and gravel and supplying it to the masonry workers/builders*
- *toilet digging and construction: the experts in the design and construction of the toilets were the Sudanese prisoners of war. The Sudanese were also experts in making stools that is made up of wood and rope made from palm leaves. The prison guards and officers benefited by forcing the Sudanese prisoners of war to make them some stools for their private use*."

A former detainee who was accused of being a smuggler reported: *"At the end of June 2012 … I was taken to Hashferay prison in the Anseba region. … I stayed there for more than two months. It was a new facility so we were working to build it (digging out underground rooms, bringing rocks, etc.)."*

A former detainee who was kept at the Darsal detention centre around 2010, accused of helping smugglers, indicated: *"I was in Darsal for three months and 20 days because I constantly refused to confess to anything. I was forced to work digging holes and building walls during the day, from Monday to Friday. I was not paid."*

1490. As in national service, detainees are forced to work in construction and fields for the benefit of the Government, public companies, but also private individuals, often high ranking military officers owning farms or businesses like the 'Asmara Flowers' company based in Mai Serwa.[2079]

A former detainee arrested for trying to leave the country in 2004 recalled that while detained in Alla prison, he was taken out of the prison to undertake construction work: "*In the first experience, I spent eight months in Selae Daero working in a projects site of the Segen Construction Company (a company owned by the ruling party). In another instance, I spent ten months of hard labour in Chegarit, under extremely harsh circumstances. It was a government owned commercial agriculture farm*."

A man who was detained for trying to flee the country explained: "*At Gelalo prison, during six months, we were forced to build a big hotel. We were forced to work every day, there was no rest day. We received just bread and lentils. We slept in the prison, we (more than 700 people) were escorted to and from the site and prison each day. It was very hot, about 45 degrees. … We finished the hotel within 6 months, in February 2005*."

A former detainee in Mai Serwa prison, arrested for being evangelist, explained: *"During the day, we farmed for a company called 'Asmara Flowers'. We worked from 8 a.m. to 11 a.m. and from 2 p.m. to 5 p.m. This is a government owned farm. One or two persons from the prison camps brought us ther,e but then we were under the control of the national service people working for 'Asmara Flowers'. In this farm, there were national service persons, civilians, and detainees. … During that time, I was too weak and could not cope with the hard labour. … After one year in Mai Serwa they selected some people to go to Bet Gergsh to help construct new buildings. Afterwards, they brought them back to Adi Nefas for farming again with 'Asmara Flowers'.*"

A former detainee at the Prima Country prison indicated: "*Sometimes we worked in a farm and we were not given lunch or dinner. In the farm we cultivated onions and vegetables for the leaders of the military who sold them.*"

[2079] S037, TSH019, TCDP027, TCDP032, TBA066, TBA078.

1491. The Commission found that in the early 2000s, many detainees were sent to the Zara prison, located 500 km from Asmara and 100 km north of Afabet in the Sahel, where they were compelled to dig gold in poor conditions.[2080] This prison was a temporary one, created around 2000 as an open air prison, without buildings and not even a fence. It seems that it was established in the middle of nowhere with the only purpose of using detainees to extract gold. [2081]

> A former conscript, who was detained in Zara for taking unauthorised leave to visit his family during national service, recalled: "*The temperature was about 40 degrees and we were forced to dig and look for gold close to the prison. We worked from 6 a.m. until 12 p.m. and then from 3 p.m. to 6 p.m. every day. I did this for the one year and two months I was imprisoned. There were about 1,400 detainees.*"
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> A former conscript, who was rounded up during a giffa while he had formal authorisation to be on leave and was still sent to Zara, explained: "*It is a desert, only mountains, no people, nothing there. We built covers to protect ourselves from the desert. The officer in charge said: 'You are here to work'. We asked: 'For what reason?' He replied: 'I just have information that you are prisoners and you need a job.' There was a gold mine, no machine, just pickaxes and shovels. We had to put soil in buckets and load them on trucks. When we arrived, they gave us all the same clothes and shaved our head. There were not enough blades. We had to use one blade for two persons. ... We had to work from 7 a.m. to 11 a.m. Our camp was about two km away from the mine. We had breakfast at 11 a.m. The food was ok, we were given two slices of bread and one cup of tea. We could rest until 2 o'clock, and then we worked again from 2 to 6 o'clock. There were more than 2,000 people divided into three camps.*"
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> A former guard who was assigned at the Zara prison shortly after its opening reported: "*There were 5,000 prisoners. ... They could not escape because it is far away. There are no villages around, only very few small settlements. It is not convenient for people to live there. There was gold. The prisoners worked there in the mountains. The prison was created by circling an area. The prison personnel had a house made of trees. The prisoners only had a wooden roof, the rest was open. When it was night was coming, we took them to a different place. They slept 200 yards away on the stones in the mountain. ... There is no fence but no one can run away from there. You have to walk for at least three days to come to a settlement, so there is no water, no food. You cannot escape.*"

1492. Detainees are also compelled to carry out various other kinds of activity.[2082] They can be used as porters to unload ships which have docked at the port,[2083] be sent to construct dams,[2084] to work in brick, metal or refinery factories,[2085] or in bakeries,[2086] depending on the current needs for free labour.

> A former detainee in Me'eter prison, who was arrested for attempting to flee the country ahead of his enrolment in the national service, explained "*We were forced to*

[2080] TAM026, TBA049, TCDP023. The Commission does not know if this gold extraction site is still operating or has been closed.
[2081] TCDP032, TAM026, TBA049.
[2082] TSH033.
[2083] TBA047, TLA032, TSH026.
[2084] TCDP002, TCDP031, TNR022.
[2085] TLA018, S077e.
[2086] TSH019.

work, from digging foundations to unloading trucks. Every morning soldiers came and took the number of prisoners they needed for the work."

In 2002, a former detainee who was arrested for being a born-again Christian, and was kept in Gahteley prison not far from Massawa, stated: "*Sometimes, we went to Massawa when big ships came. They brought food. We had to unload these ships. It was a punishment. We had to work, but we were not paid.*"

A former conscript, who was caught while trying to flee the country and was detained for three years and half in the prison of the Massawa naval base, recalled: "*In this prison, I worked in the garden or sometimes in the naval base when ships arrived from Yemen to unload the shipment. We worked without any equipment, not even clothes or shoes. I was working from 8 a.m. to 12 p.m., then from 3 p.m. to 6 p.m. We worked every day when there was work but, if there was no work to do, we would not work for few days.*"

A former detainee accused of being a smuggler explained: "*In August 2012, I was sent to Massawa. Although still in detention, we slept in an old palace. The prisoners slept on the top floor, the soldiers on the bottom floor. We had to unload boats that arrived at the port. … One leader from the 61st brigade … took the money. We were not paid.*"

A former conscript explained what happened to his father after he left Eritrea in 2006: "*When I left, the Government asked my father to pay 50,000 Nakfa. He was arrested and taken to prison in Tsorona where he stayed for nine months. … In Tsorona, my father was asked to work to construct a dam.*"

A former conscript who was sent to the Hashferay prison in 2012 because his supervisor believed he was thinking of escaping stated: "*In the morning at 6 a.m. we went to an open area for toilet and then we worked the whole day until 5 p.m. You had to carry big stones to build a dam and water pipes. Women do not work at the dam. They just stay in the compound. The old and infirm would not work, only the ones who were fit would work. There were disabled persons working in the compound but not at the dam. We had a break of 15 minutes for breakfast and lunch.*"

1493. The work required of detainees is usually heavy manual and unskilled work that is carried out in extreme conditions. In many instances it is of an afflictive nature as detainees are compelled to perform meaningless and endless tasks or the tasks are of such nature that they are in effect a form of punishment.[2087]

A former guard in Dekemhare prison recalled that the detainees "*work like slaves in road building, in digging mountains and breaking stones, working bare-footed so as not to escape*". He also explained that at one point he was himself detained in Alla prison for coming back late from leave and had to work as a form of punishment: "*From 8 a.m. to 12 a.m. I had to dig a hole in the ground of two metres by one metre. Then I would receive a cup of tea and one slice of bread. … Then I had to go up on the mountain to break stones and the next day I had to carry them back to the prison from 1 p.m. to 6 p.m. I worked during 87 days doing the same routine*."

A former detainee at the Tehadasso prison recalled: "*Some prisoners did labour: collecting stones that they break into pieces. They needed the stones to expand the compound. Sometimes they give you a spade for digging in the ground. They make*

[2087] S075, S077b, S143i, TCDP026, TCDP036, TCDP071, TNR072, TSH025, TFM035.

you dig a hole in the hard ground: length one meter, depth two meters. After you finish, they ask you to fill the hole."

Another one stated "*I was sent to Go'igne, a detention centre near Barentu. People in this detention centre did in meaningless manual labour, digging holes, filling in holes, cutting trees. They also made coal by burning trees with rocks in the holes. The sergeants take the coal home for their personal use*."

A former conscript who was detained in Aderser prison for unauthorised absence recalled: "*At one point, I was taken to Molhober farm for hard labour. We worked in a commercial farm owned by Operational Command One. This was punishment imposed on certain categories of prisoners. We harvested about 80 quintals of teff* [a kind of cereal]."

1494. In particular, it was reported that the students arrested in 2001 for protesting against the governmental policy to establish the summer students work programme,[2088] were subjected to hard labour as a form of collective punishment during their detention in Wi'a and Gelalo prisons. [2089]

One of them who was sent to Gelalo prison recounted: "*We were told we would start working two days after we arrived in Gelalo. Not long after, we had to wake up at 4:30 a.m. We had to walk for two hours to get to the work place, which was fetching rocks from the surrounding areas. About twenty students used to collect twelve cubic meters of rocks and go back to the detention camp after an hour walk. The objective of the 'work', which is nothing but hard labour, was to punish the students by exhaustion, for the simple reason that the job could have been performed by a single heavy machinery at once. In fact, the job was done previously by such machinery. There were students who became sick because of the exhaustion and extreme levels of heat (Wi'a and Gelalo are some of the most inhospitable places in Eritrea). As a result of the harsh living conditions, two students died while in detention.*"

1495. The working conditions of detainees are usually harsh since they work long hours without adequate equipment, and even without shoes, which are often forbidden in order to prevent escapes. They work in extremely hot temperatures and without enough food or access to safe drinking water. In many instances, the working conditions themselves are such that they bear severe consequences on the mental and physical health of the detainees, some of them even dying as a result of a combination of exhaustion, poor sanitary conditions and unsatisfactory conditions of work.[2090]

A former detainee at the Halhal prison, arrested for "thinking" of escaping, who was forced to work in the fields, explained: "*For more than one year we worked without shoes. Even if it took us one hour to go to work, we were not allowed to wear shoes. They were afraid that we could run away*."

A former conscript who was sent to the Hashferay prison recalled "*Food was not sufficient; there were people sick in our cell with diarrhoea, malaria, headaches … There was a special place for sick people with diarrhoea but nobody wanted to go there. There is insufficent medicine. … Two persons died when I was there, one of diarrhoea and other of malaria.*"

A man gave an account of his aged father who was forced to participate in the building of a dam while in detention: "*In Tsorona, my father was asked to work to*

[2088] See chapter VI, A, 1, Freedoms of opinion, expression, assembly and association
[2089] S077b.
[2090] S037, S077e, TBA057, TBA078, TCP002, TCDP023, TCDP031, TFM035, TAM064.

construct a dam. He was 63 years old and had to work 10 hours per day, each day, in difficult conditions. Many people died."

A former detainee in Nakura prison recalled the working conditions in prison. "*We worked in metal works, labour section for refineries. We were being given two slices of bread per day as our food. We did not take shower for three months. We got used to each other's smells. It was the guards who told us that we smelled badly. … In August 2003, we were denied clean water to drink and we complained. It was between 40 to 50 degrees centigrade. We had no other options than to drink the dirty water contained in the refinery tanks full of rust. I immediately felt sick in my kidneys and I fainted. Many others got sick, too*."

A former detainee at the Gelalo prison indicated: "*Work was to collect stones that were everywhere in a mound, and then the soldiers came and took them by car to another place. Gelalo is the hottest place in Eritrea. In six months, a lot of people died*."

A former detainee who was forced to work in the fields recalled: "*Chegarit is in the western low lands of Eritrea. It is known for its swampy environment, which is a hub of plasmodium falciparum, the cause of the most dangerous form of malaria. I know two people who have died in this place, and many were sent to the referral hospital in Keren after reaching critical stages*".

1496. Detainees are often subjected to ill-treatment or cruel forms of punishment during forced labour or in connection with it. For example, detainees who are hungry and forced to work in the fields and harvest vegetables are severely punished if they attempt to eat the vegetables they produce.[2091]

A former detainee in an open air place of detention recalled: "*We have no shoes and they do that because it would make it harder for us to run away. Food is provided once a day. If they decide it is a day for punishment they tie you up to a tree and leave you there as long as they want. Sometimes for six hours, this happened to me, I specifically remember three times. We start working at first light. Supervisors of the prison or of the unit may decide that someone has to be detained on that day. The supervisors of the prison either use us for labour or punish us. When you go to work in the field, if you are too tired to work because you are hungry and fall down, they punish you by tying you or by reducing your food rations. They try to find reasons to punish you but sometimes they do things that would lead them to punish you, e.g. they reduce the rations, which they know would make you tired and then they punish you because you cannot work.*"

A former detainee in Hashferay prison explained that, when you are told to work, "*if you say no, you are punished. If you say 'I don't want to work today' you will be punished. You receive military punishment. For instance you have to roll on the ground while they beat you with a stick; they tie you up in the helicopter position for one and half to two hours*."

A witness reported that in Me'eter prison "*everybody is beaten. Usually when people are taken to work they are beaten to force them to go.*"

A former detainee indicated "*In Halhal prison, there are agricultural fields, and I had to work. I was harvesting crops. I had to work all day except for a lunch break of two hours. The prison is built of concrete. You were not allowed to eat the*

[2091] S077e, , TFM021, TFM035, TCDP026, TCDP031, TCDP036, TSH033, TSH036, TBA085.

vegetables. If you tried to eat some onions, they punished you in front of everyone. You were tied and beaten."

Another person detained at Thombia prison recalled: "*During the day we were taken to work in the fields of the military. I was very hungry all the time. One day, I ate a small tomato to quench my thirst. The soldiers saw me and they hit me severely. I had to spit the tomato out*."

1497. Though, the prison conditions are so bad that detainees are sometimes happy to be sent to work as it may offer them temporary relief from their confinement in overcrowded cells and allow them to get fresh air or get some spare food.[2092]

A former guard at the Aderser prison explained: "*During the day we asked detainees to work. Any unit from that region could ask for labour. They could come here and take some people from there. For instance, to collect wood or build houses for the soldiers. They carried stones for houses and they were very happy to work because they could go outside and get fresh air*."

A former detainee of a prison in Assab stated: "*Sometimes if a boat arrived, we run to the port to help. But this was not often. In these cases, we were very happy because we could steal food, such as tomatoes from the ships. We threw them into the water, and at the end of the work we would take them and eat them.*"

(e) Principal findings

1498. Several thousands of girls and boys are enrolled each year in national service and are deprived of their right to decide in which professional field and where they want to work for all their adult life. During their service, most of them are compelled to perform permanently or temporarily non-military work and "development-oriented" work, and thus are subjected to forced labour for an open-ended period of time. The Commission is concerned that most of the conscripts in the army and all the conscripts in civil service are subjected to forced labour and are exploited by the Government of Eritrea for years and even decades without any hope of an end to this abuse, except by deserting and/or escaping the country and putting themselves at risk of suffering additional human rights violations if they are caught by the Eritrean authorities.

1499. The Commission also finds that the working and living conditions of conscripts who are subjected to forced labour constitute additional human rights violations, in particular violations of economic and social rights, such as the right to work in just and favourable conditions, right to adequate housing, right to the highest attainable standard of health and access to health care.

1500. Furthermore, the Commission concludes that forcing conscripts in the army to perform work considered dangerous and without adequate safety equipment or training constitutes a separate violation of international human rights law, such as the right to safe and healthy working conditions, the right to security, right to highest attainable standards of physical and mental health.

1501. The Commission is also of the view that there is a pattern of torture, inhuman, cruel or degrading treatment or punishment of conscripts in the Army in connection with the labour they are forced to perform.

1502. The Commission finds that many Eritreans are also subjected to forced labour outside of the national service. When they are children in high school, they are forced to

[2092] TLA018, TCP032, TCDP071.

work during their summer vacations under the Mahtot programme. During their last year of high school at the Warsai Yikealo Secondary School in Sawa, they are forced to work intensively in the fields and in farms in addition to military training and academic studies. Even elderly Eritreans, who are not of national service age or who are disabled, are subjected to forced labour in the context of their forced recruitment in the People's Army, as these assignments are not part of compulsory national service, are not a minor communal service or a normal civil obligations and they do not take place in the context of a genuine emergency.

1503. Conscripts, students and elders have all been forced to do work under the threat of penalty and often harsh punishment. In the light of the overall situation of coercion of the population in Eritrea, none of them considered that they could refuse their work assignment.

1504. While the Commission is not in a position to determine that the inhabitants involved in the communal service programme were compelled to work in all these soil and water conservation projects, their wide scale as they include construction of dams, canals, ponds, kilometres of terraces, and the huge number of persons involved, and number of working days, clearly demonstrates that they are not minor communal services that may justify the exaction of compulsory work from villagers. Therefore, the Eritrean Government has the obligation to ensure that any person involved in one of these projects is not compelled to do so under threat of sanction by the local administrators, as this would constitute a form of forced labour prohibited under international human rights law. It should particularly ensure that no child is forcibly recruited in such projects.

1505. Furthermore, the Commission finds that the labour exacted from persons deprived of liberty by the Eritrean Government constitutes a form of forced labour prohibited under international human rights law as it is usually exacted from non-convicted detainees who are not paid, the labour is assigned to detainees without taking into account their physical and mental fitness, and is often of an afflictive nature. In addition, it finds that the conditions of prison labour constitute additional and separate human rights violations, such as violation of the right not to be subjected to cruel, inhuman or degrading treatment or punishment.

1506. Finally, the Commission stresses that any improvement of the infrastructures, economic development and increase in food production in Eritrea that may have been obtained through the work exacted from high school students, conscripts, elderly people, and detainees are the result of forced labour, a practice similar to slavery in its effects,[2093] which is prohibited under international human rights law.

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**

[2093] Forced labour is recognised as a practice similar but distinct to slavery, the two practices should remain distinct because forced labour does not include the concept of ownership that is the crucial constitutive element of slavery. However, "it is clear that the practice imposes a similar degree of 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.

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 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;

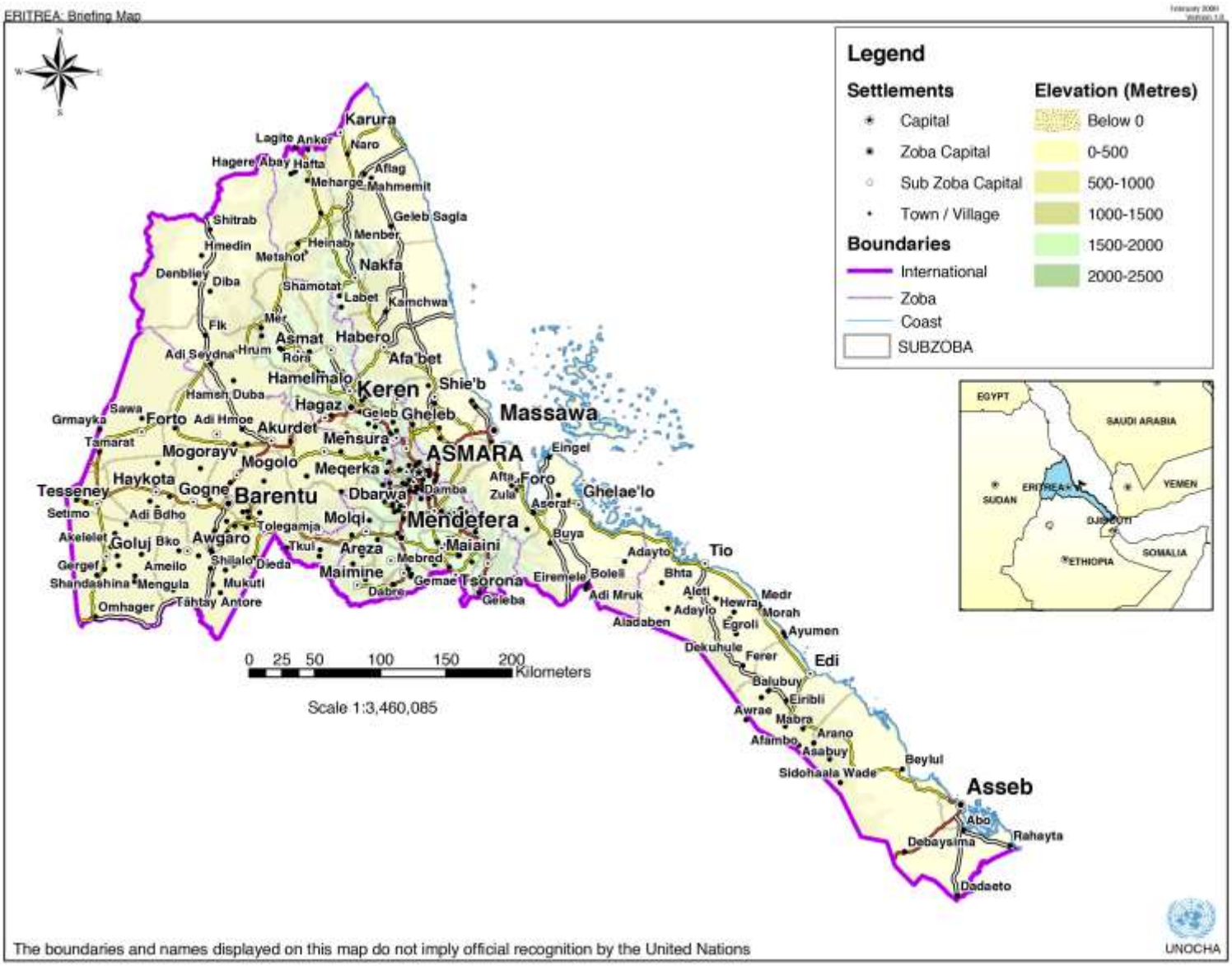
(d) Request OHCHR to increase attention and resources to the situation of human rights in Eritrea by enhancing engagement with the Government with the aim of implementing the present recommendations, as well as those made during the universal periodic review and by other human rights mechanisms.

Annexes

Annex I

[English only]

Map of Eritrea



Annex II

[English only]

Composition of the Government of Eritrea as of 3 June 2015[2094]

Minister of Agriculture: Mr. Arefaine Berhe

Minister of Defence: vacant. Major General Philipos Woldeyohannes, Chief of Staff of the Eritrean Defences Forces since 2014, is reported to be acting Minister of Defence.

Minister of Education: Mr. Semere Russom.

Minister of Energy and Mines: Major General Sebhat Ephrem (appointed in June 2014, formerly Minister of Defence).

Minister of Finance and Development: Mr. Berhane Habtemariam.

Minister of Foreign Affairs: Mr. Osman Saleh Mohammed.

Minister of Health: Ms. Amna Nur-Hussein.

Minister of Information: Mr. Yemane Gebre Meskel (also reported to be the Director of the Office of the President).

Minister of Justice: Ms. Fozia Hashim.

Minister of Labour and Welfare: Mr. Kahsai Gebrehiwet.

Minister of Land, Water and Environment: Mr. Tesfai Gebreselassie

Minister of Maritime Resources and Fisheries: Mr. Tewolde Kelati.

Minister of Tourism: Ms. Askalu Menkerios.

Minister of Trade and Industry: Mr. Nusredim Ali Bekit.

Minister of Transport and Communications: Mr. Tesfaselasie Berhane.

Minister of Local Governments: Mr. Woldedmichael Abraha.

[2094] This list is not exhaustive since there is no official list of Ministries in Eritrea. It is in alphabetical order and does not suggest any order of importance.

Annex III

[English only]

List of Proclamations enacted by the Government of Eritrea[2095]

Proclamation No. 9/1991 establishing the Gazette of Eritrean Law.

Proclamation No. 11/1991 on national service (repelled by the subsequent Proclamation No. 82/1995).

Proclamation No. 21/1992 on citizenship.

Proclamation No. 23/1992 to establish the Provisional Government of Eritrea.

Proclamation No. 24/1992 to regulate the issuing of travel documents, entry and exit visa from Eritrea, and to control residence permits of foreigners in Eritrea (completed by Regulation of travel documents and immigration no. 4/1992).

Proclamation No. 25/1992 to establish village courts.

Proclamation No. 30/1993 to establish a Food Board.

Proclamation No. 36/1993 to control drugs, medical supplies, cosmetics and sanitary items.

Proclamation No. 37/1993 amending proclamation no. 23/1992 about the structure of the Government.

Proclamation No. 52/1994 amending proclamation no. 37/1993 about the structure of the Government.

Proclamation No. 55/1994 to establish a Constitutional Commission.

Proclamation No. 58/1994 to reform the system of land tenure in Eritrea, to determine the manner of expropriating land for purposes of development and national reconstruction, and to determine the powers and duties of the Land Commission.

Proclamation No. 73/1995 to legally standardize and articulate religious institutions and activities.

Proclamation No. 82/1995 on national service.

Proclamation No. 85/1996 to establish the Special Court.

Proclamation No. 86/1996 for the establishment of regional administration (including the six administrative regions).

Proclamation No. 88/1996 to regulate the law practice.

Proclamation No. 90/1996 on the press.

Proclamation No. 104/1998 on fisheries.

Proclamation No. 111/2000 on land transport.

Proclamation No. 112/2000 on customs.

Proclamation No. 115/2001 to establish free zones and the Eritrean Free Zones Authority.

[2095] This list is not exhaustive. It contains only those proclamations that the Commission was able to identify, however it was not able to access all of those listed.

Proclamation No. 118/2001 on labour.

Proclamation No. 122/2002 to establish the Eritrean Science and Technology Development Agency.

Proclamation No. 127/2002 to provide for the registration of foreigners who reside, work or engage in business in Eritrea.

Proclamation No. 129/2003 to establish the National Drought Relief Committee.

Proclamation No. 130/2003 on civil aviation.

Proclamation No. 132/2003 to establish community courts.

Proclamation No. 135/2003 to establish the national pension scheme.

Proclamation No. 136/2003 to establish the public sector pension scheme.

Proclamation No. 137/2003 to establish the martyrs' survivors benefit scheme.

Proclamation No 143/2004 on tobacco control.

Proclamation No. 145/2005 to determine the administration of non-governmental organizations.

Proclamation No. 148/2005 to establish the Massawa and Assab Port Authority.

Proclamation No. 155/2006 on forestry and wildlife conservation and development.

Proclamation No. 156/2006 on plant quarantine.

Proclamation No. 158/2007 on female circumcision abolition.

Proclamation No. 167/2012 to amend the jurisdiction of the Eritrean courts.

Proclamation No. 171/2012 to establish a National Agency to promote the participation of Eritreans in the ownership of public enterprises (adopted in December 2012).

Proclamation No. 173/2013 pertaining to the opening of foreign currency deposit accounts, domestic commercial transaction and/or contract, currency, remittance and exchange and the declaration of currency of travellers arriving into or departing from Eritrea.

Annex IV

[English only]

List of the main customary laws in Eritrea[2096]

The customary law of the Adkeme Melgae, codified in 1936 in Tigrinya, applies to the residents of the former province of Seraye who are the descendant of the twins Adkeme and Melgae.

The customary code of Habsulus Nay Gebrekristos Nay Deqqiteshim was proclaimed in 1909. It applies to the descendants of Atoshim who are mostly living in Asmara.

The customary code Enda Fgray Waela Seleste Tsimaro was allegedly written in 1221 and applies to the Timiza Seraye community who lives at the border of the former provinces of Akkele Guzai and Seraye.

The customary law of the Adgna Tegeleba was codified in 1937 in Tigrinya and applies to the residents of the former province of Akkele Guzai, both Christians and Muslims.

The customary law of the Logo Chiwa was initially codified in 1492 and revised several times since then, including in 1910 to be translated in Tigrinya. It was also revised in 1918 and in 1946. It governs both the Loggo Chiwa and the Kebesa Chiwa communities who are living in certain parts of the former Hamassien and Seraye provinces (south and south east of Asmara), both Christians and Muslims.

The customary code of Dembezan was written in 1918 and governs the Dembezan communities who live in 16 villages north of Asmara. It was revised several times until 1977.

The customary law of the Karneshm was codified in 1918 in Tigrinya. It applies to the Karneshm community that lives north of Asmara known as the Northern sea coast.

The customary law of the Sehartn Lamzan Weqertn Damban was codified in 1918. It applies to the Seharti, Lamza, Weqerti and Damba communities living in the same region south of Asmara.

The customary law of the Shewate Anseba Zemat Tahtay codified in 1918 in Tigrinya applies to the people living in the Anseba river basin at the north and northwest of Asmara.

The customary code of the Mense'a tribes from the Tigre ethnic group and is called Fithi Mehari of Mensa'e. It was codified in 1913 in Tigre by a Swedish Pastor, Karl Gustav Rödden, after ten years of meticulous research. It governs both Christians and Muslims groups.

The customary code of the Saho ethnic group is called lqanun Alauruf LilMuslumin Akkel Guzai Leliqebae AlSaho. It was codified in Arabic in 1943 and applies to the Muslims inhabitants of the Akkele Guzai former province.

The customary code of the Ben-Amir tribes is called Alqanun Alauruf Liqebael AlBeniAmir. It was codified in 1958 and applies to the Amir Tribes from the Tigre ethnic group in the Gash Berka region.

[2096] For more details,see Muluberhan Berhe Hagos, *Customary versus modern laws of Eritrea on gender equality* (Atlas Graphic Printers, Asmara, February 2014), p. 13-31.

The customary law of the Sahel Tribes was codified in 1958 in Arabic in the Alqanun Alauruf Liqebael AlSahel Al'am. It applies to the 24 tribes from the Tigre ethnic group who were living in the former Sahel province.

The customary code of the Maria Tribes is called Alqanun Alauruf Liqebael AlMariatain and applies to the two tribes of the Black and Red Maria tribes, which are both from the Tigre ethnic group. It was first codified in 1977 and published in 1989.

The customary code of the Eritrean Afar ethnic group is called Bur Eli Med'a, and its current version was codified in 1973.

The customary law of the Bilen was codified in 2005 and governs the three Bilen kinfolks and both Christians and Muslims communities.

The customary code of Enga'na, S'rat Atsmi Harmaz, which governs the Enga'na community living the former Akkele Ghuzai province, was put in writing but has never been formally proclaimed.

The customary law of the Kunama, Nara, Reshaida and Hidareb is not codified but orally remembered and administered consistently.

Annex V

[English only]

List of places of detention identified by the Commission of Inquiry

Detention facilities in Eritrea documented by the Commission of Inquiry

1. First Police Station
2. Second Police Station
3. Third Police Station
4. Fourth Police Station
5. Fifth Police Station
6. Sixth Police Station
7. Abi Adi
8. Aderser
9. Adi Abeito
10. Adi Imer
11. Adi Keih
12. Adi Nefas
13. Adi Quala
14. Afabet
15. Agip
16. Agordat
17. Ala
18. Arag
19. Assab
20. Baharia
21. Barentu Military Intelligence Unit
22. Barentu Military Unit
23. Barentu Police Station
24. Barentu Prima Country
25. Barentu Secret Prison House
26. Dahlak Kebir
27. Darsal
28. Debarwa
29. Dekemhare
30. Dengolo
31. Dugona
32. Eiraeiro
33. Gahteley
34. Gedem
35. Gelalo
36. Gergera
37. Haddis Ma'askar
38. Hagaz
39. Halhal
40. Hashferay

41. Idaga Arbi
42. Karshele
43. Keren
44. Mai Duma
45. Mai Edaga
46. Mai Nefhi
47. Mai Serwa
48. Mai Temenay
49. Massawa
50. Me'eter
51. Mendefera
52. Nakfa
53. Nakura
54. Sawa
55. Segeneti
56. Sembel
57. Senafe
58. Serejeka
59. Sheila Tessenei
60. Tehadasso
61. Tessenei
62. Track B
63. Track C
64. Tsetser
65. Tsorona
66. Under Tessenei
67. Wi'a
68. Zara

Additional detention facilities reported in the course of the investigation

1. Aba Shawal Police Station
2. Aboy Regum
3. Ali Giddeh
4. Asha Golgol
5. Auna Wato
6. Baleko
7. Dahrotay
8. Duarwa
9. Edaga Arbi
10. Eila Ber'ed
11. Embatkala
12. Garage Fenkel
13. Ginda Police Station
14. Glas
15. Golij
16. Go'igne
17. Jufa
18. Keru
19. Kiloma
20. Klima
21. Kudo-Felasi

22. Metkelabet
23. Shilalo
24. Taba Stifanos
25. Tsererat
26. Villagio Prison House
27. Teio

Annex VI

[English only]

Satellite images of Sawa, Wi'a and Mai Serwa provided by the United Nations Institute for Training and Research's Operational Satellite Applications Programme UNOSAT

unitar UNOSAT

Production Date: 03/06/2015
Version 1.0
Activation Number: CE20150120ERI

UNOSAT REPORT IN SUPPORT OF OHCHR COMMISSION OF INQUIRY ON HUMAN RIGHTS IN ERITREA

Satellite Imagery Based Activity Analysis

Sawa Military Camp, 6th Brigade Prison, Eritrea 3 April 2015 DigitalGlobe Imagery

Center Coordinates: 36°59'26.16"E 15°41'8.24"N

This report was produced by UNITAR-UNOSAT in response to questions from OHCHR Commission of Inquiry on Human Rights in Eritrea concerning the location and operational status of alleged prisons in the country.

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Satellite Data (1) : WorldView-1/2
Imagery Dates: 3 April 2015, 4 November 2014, 11 December 2010, 28 December 2010, and 2 September 2009.
Resolution: 50 cm
Copyright: DigitalGlobe
Sources: European Space Imaging

Satellite Data (2): Pleiades
Imagery Dates: 26 May 2015
Resolution: 50 cm
Copyright: © CNES (2015), Distribution AIRBUS DS
Source: GeoStore - Airbus Defence and Space

Road Data : Google Map Maker / OSM / ESRI
Other Data: USGS, UNCS, NASA, NGA
Analysis : UNITAR / UNOSAT
Production: UNITAR / UNOSAT
Analysis conducted with ArcGIS v10.2
Coordinate System: World Robinson

The depiction and use of boundaries, geographic names and related data shown here are not warranted to be error-free nor do they imply official endorsement or acceptance by the United Nations. UNOSAT is a program of the United Nations Institute for Training and Research (UNITAR), providing satellite imagery and related geographic information, research and analysis to UN humanitarian and development agencies and their implementing partners.

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LEGEND

Camp Accommodation and Schools

Warrior Mikado Secondary School

Accommodation of Consortium

Detention Facilities

6th Brigade Prison

Enda Safa Prison

Mountain West 6th Brigade Prison

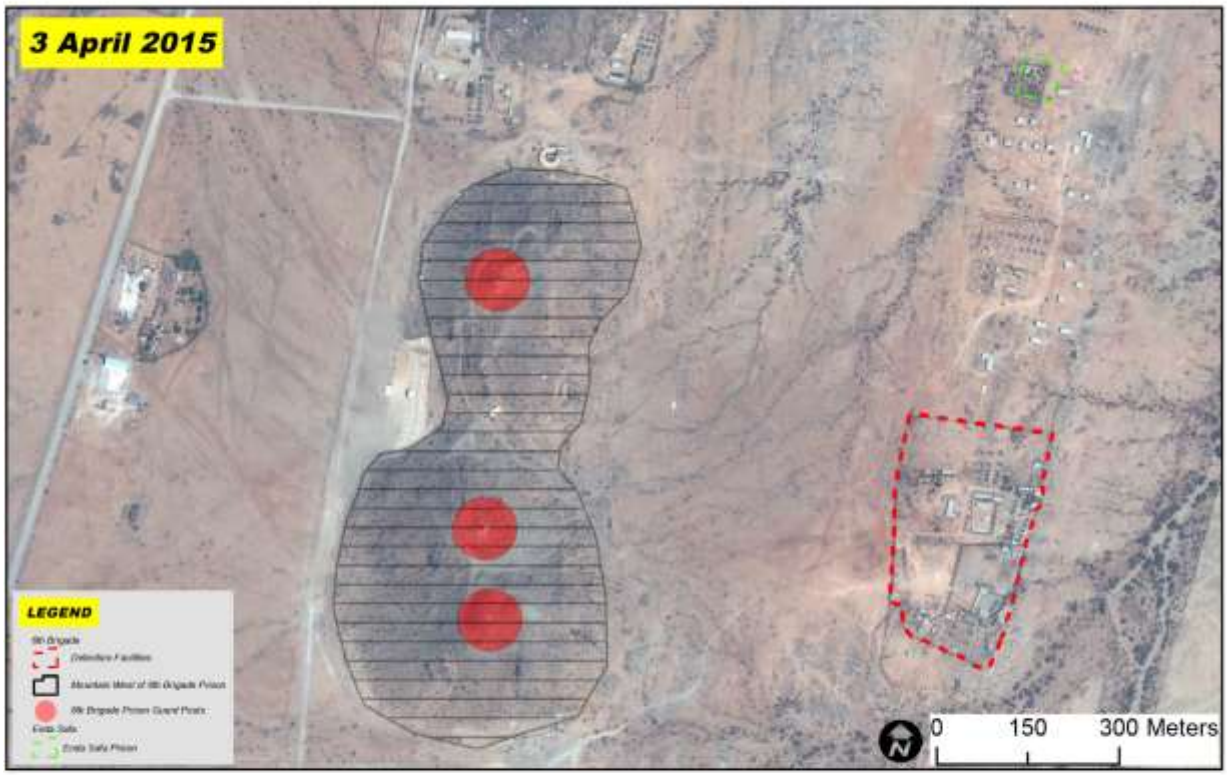
6th Brigade Prison Guard Pouch

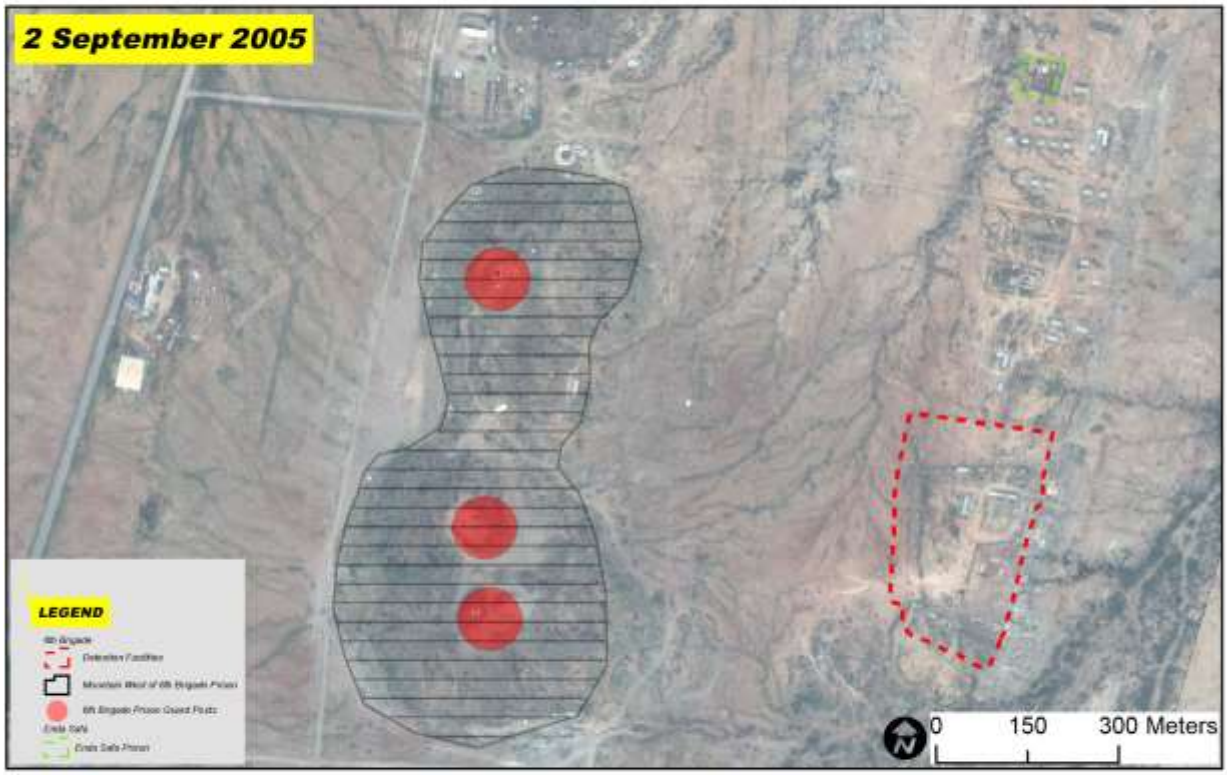
Map Scale for A4: 1:22,000

0 100 200 400 800 Meters

The depiction and use of boundaries, geographic names and related data shown here are not warranted to be error-free nor do they imply official endorsement or acceptance by the United Nations. UNOSAT is a program of the United Nations Institute for Training and Research (UNITAR), providing satellite imagery and related geographic information, research and analysis to UN humanitarian and development agencies and their implementing partners.

6th Brigade and Enda Safa Prisons at Sawa





According to multiple eyewitness accounts, the 6th Brigade Prison, is located east of the military camp (map page 1). Former inmates depict the location of the detention facility East of the hill where guard posts are used to control movement in and out of the installation. UNOSAT satellite imagery based analysis identified the location and main features of this facilities inside the fenced perimeter that are being used to detain prisoners. Furthermore, UNOSAT assesses that the 6th Brigade Prison seems to be operational. Imagery between 2005 and 2015 shows construction activity not only inside the prison facility, but across the military camp.

Service Layer Credits: © 2015 DigitalGlobe © 2015 GeoEye Earthstar Geographics SIO © 2015 Microsoft Corporation

Enda Safa Detention Facility at Sawa

Enda Safa detention facility is located East of Sawa military camp and approximately 550 meters north of the 6th Brigade detention facility. UNOSAT satellite imagery based analysis identified the location and main features of this facility inside the fenced perimeter. The presence of a vehicle outside the fenced perimeter in the imagery collected on 3 April 2015 indicates that the compound is still in use. Since 2005, the perimeter of the compound has increased, and the fence has been reinforced.

Wi'a Military Training Camp and Detention Facilities
9 March 2015
Dry Riverbed
Distance: 1.2 km from detention center
Possible Cemetery
Distance: 1.5 km from detention center
N
LEGEND
Possible Cemetery
Dry Riverbed
Map Scale for A4: 1:9,000
Meters
0 25 50 100 150 200 250
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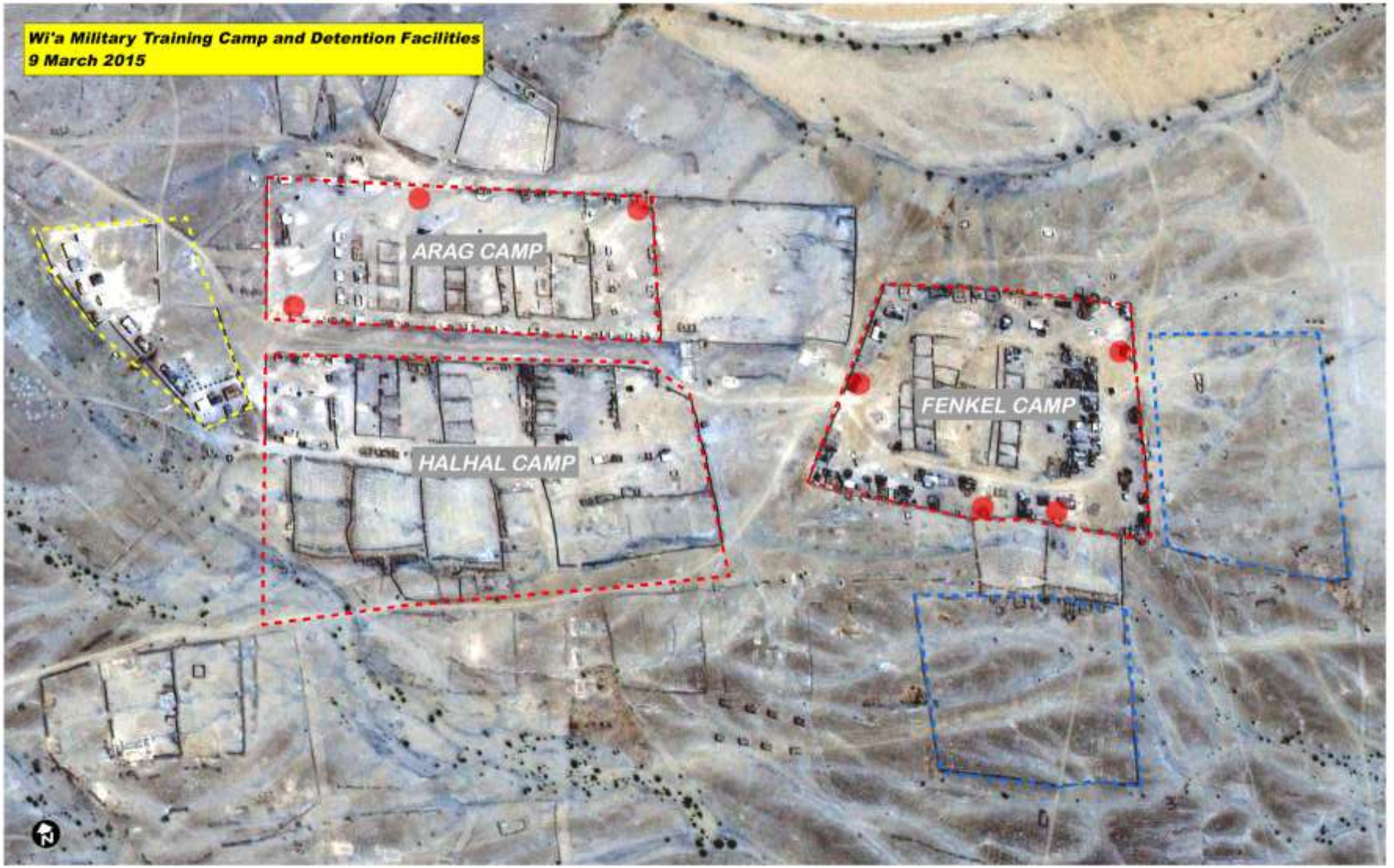
Wi'a Military Training Camp and Detention Facilities
9 March 2015
ARAG CAMP
HALHAL CAMP
FENKEL CAMP
LEGEND
Guard Posts
Camps
Offices and Detention Facilities
Military Training Area
Map Scale for A4: 1:3,600
Meters
0 10 20 40 60 80 100
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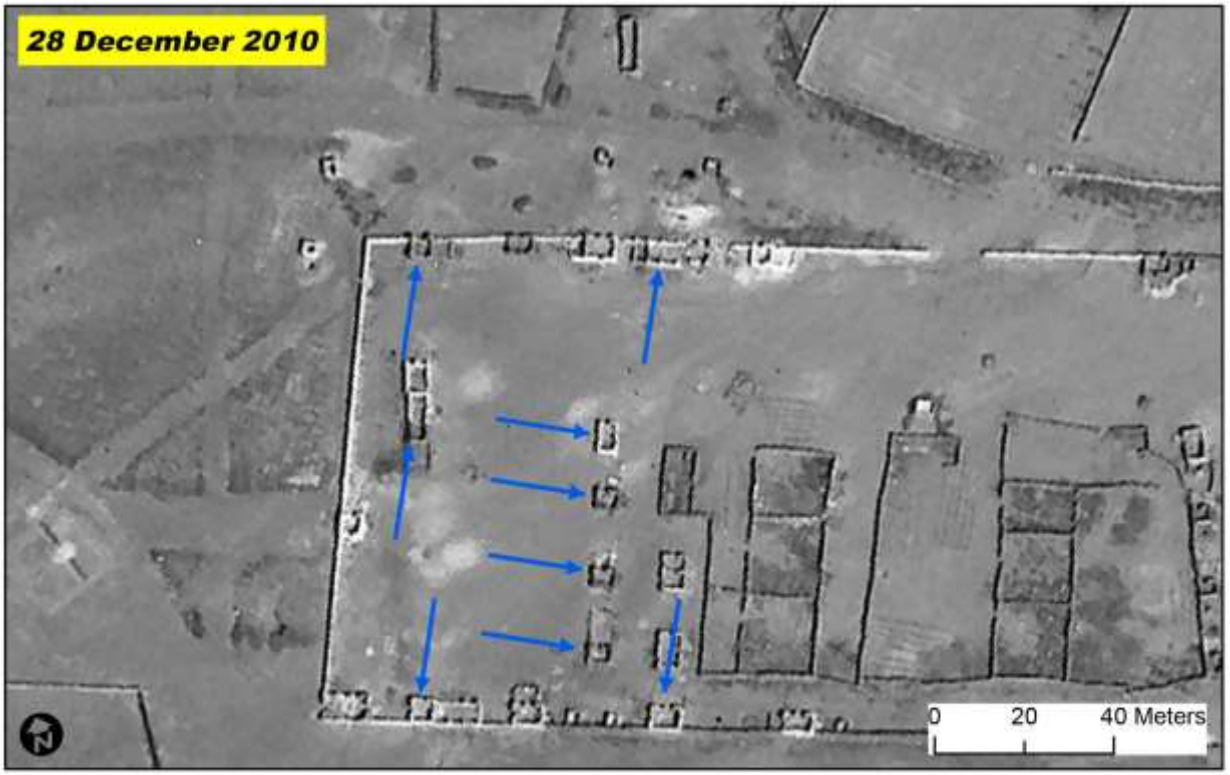
A/HRC/29/CRP.

Wi'a Change Detection



4' *According to multiple eyewitness accounts, Wi'a was abandoned in 2009 after a meningitis outbreak. UNOSAT satellite imagery-based change detection analysis identified nine buildings with new roofs in imagery from 2015. Imagery from 9 March 2015 shows nine previously roofless buildings, as seen on imagery from 28 December 2010 (blue arrows), with new roofs. This is a clear indication of activity between 2010 and 2015. Additionally, UNOSAT identified a possible graveyard used to bury the dead and the dry riverbed purportedly used by inmates to wash (see Figure 2).*

Mai Serwa Detention Facilities Overview Map
26 May 2015
LEGEND
Possible Zinc Hangars
Possible Metal Containers
Map Scale for A4: 1:800
Meters
0 5 10 20
The depiction and use of boundaries, geographic names and related data shown here are not warranted to be error-free nor do they imply official endorsement or acceptance by the United Nations. UNOSAT is a program of the United Nations Institute for Training and Research (UNITAR), providing satellite imagery and related geographic information, research and analysis to UN humanitarian and development agencies and their implementing partners.

Mai Serwa Detention Facility

Mai Serwa is a detention facility located approximately 8 km northwest of the city of Asmara. UNOSAT satellite imagery-based analysis identified the location and main features of this facility. According to witnesses, the detention facility has various types of cells. Witnesses reported the existence of metal containers, two underground trucks containers and several zinc hangars of about 25 square meters. Imagery collected on 31 July 2010 shows the presence of a total of 28 structures that are possibly metal containers. Imagery also shows a total of 14 different structures that match the description as zinc hangars. As of 26 May 2015 the number of possible metal containers remains similar, approximately 26, although their distribution has changed. The possible hangars are still visible by 26 May 2015.

This is a preliminary assessment and has not yet been validated in the field. Please send feedback to UNITAR/UNOSAT at the contact information below.

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Annex VII

[English only]

Immigration and Citizenship Services Request Form that Eritreans abroad have to sign if they want to get official documents from Eritrean consulates

Immigration and Citizenship Services Request Form

1. Full Name ..... Gender .....
2. Full Name as shown in Passport .....
3. Village of origin ..... 4. Date of Birth .....
5. Eritrean ID No. ..... Issued at .....
6. Mother's Name .....
7. Unit/Work you had before you left the country .....
8. Reason you left the country .....

.....

9. Place/Border used to leave the country .....
10. Date you left .....
11. Countries you have been after you left the country and the dates you entered these countries

.....

12. Whose country entry documents did you use to enter these countries?

.....

13. Your job in the current country of residence

.....

14. Current address: Country ..... City .....
15. National obligations fulfilled after you left the country .....

.....

I, whose name is written above, confirm that previously given personal information is true; and that I regret having committed an offence by not completing the national service and am ready to accept appropriate punishment in due course.

Signature ..... Date .....

Annex VIII

[English only]

Additional bibliography

The history of Eritrea:

Assefaw Bariagaber, *Eritrea: Challenges and crisis of a new state* (London: WRITENET, 2006).

Dan Connel and Tom Killion, *Historical Dictionary of Eritrea*, 2nd ed. (The Carecrow Press, Inc, 2011).

Dan Connel, *Building a New Nation: 1984-2002* (Rea Sea Press, Inc., 2004).

Dan Connel, *Taking on the Superpowers: 1976-1982* (Rea Sea Press, Inc., 2003).

Dan Connel, *Rethinking Revolution: New Strategies for Democracy & Social Justice* (The Rea Sea Press, Inc., 2001).

Dan Connel, *Against All Odds: A Chronicle of the Eritrean Revolution* (Rea Sea Press, Inc., 1993).

Daniel R. Mekonnen and Simon M. Weldehaimanotb, *Transitional Constitutionalism: Comparing the Eritrean And South African Experience* (working paper, ANCL-RADC Annual Conference – 'The Internationalisation of Constitutional Law' Rabat, Morocco, 2-5 February 2011).

Debessay Hedru, Eritrea: Transition to dictatorship, 1991–2003 (Review of African Political Economy No. 30, 2003).

Gaim Kibreab, *Eritrea: A Dream Deferred* (Woodbridge, James Currey, Eastern African Series, Uppsala, Nordiska Afrikainstitutet, 2009).

Gaim Kibreab, *Critical reflections on the Eritrean war of independence* (Lawrenceville, NJ: Red Sea Press, 2008).

Haggai Erlich, *Ras Alula and the scramble for Africa. A political biography: Ethiopia and Eritrea1875–1897* (Lawrenceville, NJ: Red Sea Press, 1996).

James Firebrace and Stuart Holland, *Never Kneel Down. Drought, development and liberation in Eritrea* (Nottingham: Spokesman, 1987).

Kjetil Tronvoll, *The process of nation-building in post-war Eritrea: Created from below or directed from above?* (Journal of Modern African Studies No. 36, 1998).

Kidane Mengisteab and Yohannes Okbazghi, Anatomy of an African tragedy: Political economic and foreign policy crisis in post-independence Eritrea (Trenton, NJ: Red Sea Press, 2005).

Lionel Cliffe and Basil Davidson (Eds.), *The long struggle of Eritrea for independence and constructive peace* (Nottingham: Spokesman, 1988).

Ruth Iyob, *The Eritrean struggle for independence. Domination, resistance, nationalism 1941–1993* (Cambridge: Cambridge University Press, 1995).

Sara Rich Dorman, *Eritrea's Nation and State-building: Re-assessing the impact of 'the struggle* (Presented at the Conference on Globalisation and Self-Determination, London, 4 April 2003).

Siegfried Pausewang and Astrid Surkhe (Eds.), *Tghe Referendum on Independence for Eritrea* (Oslo: Norwegian Institute of Human Rights, University of Oslo, 1993).

Stuart Munro-Hay, *Aksum: An African Civilisation of Late Antiquity* (British Library Cataloguing in Publication Data Munro-Hay, 1947- 1991).

Tekeste Negash, *Italian colonialism in Eritrea, 1882–1941* (Policies, praxis and impact, Uppsala Department of History, Uppsala University, 1987).

Tekeste. Negash, *Eritrea and Ethiopia. The federal experience* (Uppsala: Nordic Africa Institute, 1997).

Tekle M. Woldemikael, *Postliberation Eritrea* (Africa Today, Vol. 60, No. 2, 2013).

Yohannes Gebremedhin, *The challenges of a society in transition* (Trenton, NJ: Red Sea Press, 2004.

The political context:

David Pool, *From guerrillas to government: The Eritrean People's Liberation Front* (Oxford: James Currey, 2001).

Lyda, Favali and Roy Pateman, *Blood, Land, and Sex. Legal and political pluralism in Eritrea* (Bloomington and Indianapolis: Indiana University Press, 2003).

Martin Plaut, *The birth of the Eritrean reform movement* (Review of African Political Economy29:119-124, 2002).

Petros B. Ogbazghi. *Personal Rule in Africa: The Case of Eritrea* (African Studies Quarterly Volume 12, Issue 2, 2011).

International Crisis Group, *Eritrea: Scenarios for Future Transition* (Africa Report N°200, 28 March 2013).

International Crisis Group, *Eritrea: The Siege State* (Africa Report N°163, 21 Sep 2010).

Jason Warnera, *Eritrea's military unprofessionalism and US security assistance in the Horn of Africa* (Department of African and African American Studies, Harvard University, Cambridge, MA, USA, 2014).

Richard Reid, *The Politics of Silence: Interpreting Stasis in Contemporary Eritrea* (Department of History, School of Oriental and African Studies, London, UK, 2009).

Victoria Bernal, *Civil Society and Cyberspace: Reflections on Dehai, Asmarino, and Awate* (Africa Today, Vol. 60, No. 2, Special Issue: Postliberation Eritrea pp. 21-36, 2013).

Foreign and international relations of Eritrea:

Berouk Mesfin, *The Eritrea-Djibouti border dispute* (Institute for Security Studies, 2008).

Caroline Richelle, *Eritrea's Foreign Relations* (Europe External Policy Advisers (EEPA) Occasional Paper No. 3, March 2010).

International Crisis Group, *Beyond the Fragile Peace between Ethiopia and Eritrea: Averting New War* (Africa Report N°141, 17 June 2008).

International Crisis Group, *Ethiopia and Eritrea: Stopping the Slide to War* (Africa Briefing N°48, 5 Nov 2007).

International Crisis Group, *Ethiopia and Eritrea: Preventing War* (Africa Report N°101, 22 Dec 2005).

International Crisis Group, *Ethiopia and Eritrea: War or Peace?* (Africa Report N°68, 24 Sep 2003).

Jason Mosley. *Eritrea and Ethiopia: Beyond the Impasse* (Gatham House, Africa Programme, April 2014).

Jennifer Riggan, *In Between Nations: Ethiopian-Born Eritreans, Liminality, and War* (Political and Legal Anthropology Review, 2011).

Patrick Gilkes and Martin Plaut, *The War between Ethiopia and Eritrea* (Foreign Policy in Focus, vol. 5, no. 25, 2000).

Patrick Gilkes and Martin Plaut, *War in the Horn: The Conflict between Eritrea and Ethiopia* (Royal Institute of International Affairs, 1999).

Reports of the Monitoring Group on Somalia and Eritrea submitted in accordance with resolution 2111 (2013): https://www.un.org/sc/committees/.

Richard Reid, *Old Problems in New Conflicts: Some Observations on Eritrea and its Relations with Tigray*, from Liberation Struggle to Inter-State War (Africa, vol. 73, No. 3, pp. 369-401, 2003).

Richard Reid, *Eritrea's External Relations: Understanding its Regional and Foreign Policy* (Chatham House, 2009).

Tekeste Negash and Kjetil Tronvoll, *Brothers at war: Making sense of the Eritrean-Ethiopian war* (Oxford and Athens: James Currey and Ohio University Press, 2000).

Tekie Fessehatzion, *Eritrea and Ethiopia: From Conflict to Cooperation to Conflict* (Lawrenceville, NJ: Red Sea Press, 1999).

Tesfatsion Medhanie, *Constitution-making, legitimacy and regional integration: An approach to Eritrea's predicament and relations with Ethiopia* (DIIPER Research Series Working Paper. pp. 36. Aalborg: Aalborg University, 2008).

Migration and human trafficking of Eritreans:

Assefaw Bariagaber, *Globalisation, Imitation Behaviour, and Refugees from Eritrea* (Africa Today, Vol. 60, No. 2, Special Issue: Postliberation Eritrea, 2013).

Dan Connell, *Refugees, Ransoms and Revolt: An Update on Eritrea* (in Middle East Research and Information Project, 2013).

Dan Connell, *Escaping Eritrea: Why They Flee and What They Face* (Up Front Report, 2012).

Daniel R. Mekonnen and Meron Estefanos, *From Sawa to the Sinai Desert: The Eritrean Tragedy of Human Trafficking* (Eritrean Law Society, 2011).

Human Rights Watch, *"I Wanted to Lie Down and Die": Trafficking and Torture of Eritreans in Sudan and Egypt* (2014).

Human Rights Watch, *Make Their Lives Miserable": Israel's Coercion of Eritrean and Sudanese. Asylum Seekers to Leave Israel* (2014).

Hélène Thiollet, *Refugees and Migrants from Eritrea to the Arab World: The Cases of Sudan, Yemen and Saudi Arabia 1991-2007* (Paper Prepared for the Migration and Refugee Movements in the Middle East and North Africa, The Forced Migration & Refugee Studies Program, The American University in Cairo, Egypt, 23-25October 2007).

International Crisis Group, *Eritrea: Ending the Exodus?* (Africa Briefing N°100, 8 August 2014).

Karen Jacobsen, Sara Robinson and Laurie Lijnders, *Ransom, Collaborators, Corruption: Sinai Trafficking and Transnational Networks. A Case Study of the Eritrean Migration System from Eritrea to Israel* (Tufts University, 2013).

Mirjam van Reisen, Meron Estefanos and Conny Rijken, *Human Trafficking in the Sinai: Refugees between life and death* (Brussels/Tilburg, 2012).

The Women's Refugee Commission, *Young and Astray: An Assessment of Factors Driving the Movement of Unaccompanied Children and Adolescents from Eritrea into Ethiopia, Sudan and Beyond* (May 2013).

The Eritrean diaspora:

Amanda Poole, *Ransoms, Remittances, and Refugees: The Gatekeeper State in Eritrea* (Africa Today, Vol. 60, No. 2, Special Issue: Postliberation Eritrea, 2013).

Bettina Conrad, *A culture of War and a Culture of Exile* (Young Eritreans in Germany and their Relations to Eritrea. Revue européenne des migrations internationals, vol. 22 - n°1, 2006).

David Bozzini, *La griffe de l'État érythréen : surveillance et mobilisation des migrants érythréens en Suisse et aux Pays-Bas* (Commission de recherche Université de Neuchâtel, 2012).

Donovan Kavish, *Extending sovereign reach into diaspora: Croatia and Eritrea in comparative perspective* (2014).

Kjetil Tronvoll, Goitom Gebreluel and Niels Jacob Harbitz, *The Eritrean Diaspora: An agent for change in Eritrea?* (International Law and Policy Institute, 2013).

Philipp Eyer, Régine Schweizer, *Les diasporas somalienne et érythréenne en Suisse* (Office fédéral des migrations, 2010).

The legal and judicial framework of Eritrea:

Aberra Jembere, *Legal History of Ethiopia 1434–1974: Some aspects of substantive and procedural laws* (Rotterdam and Leiden: Erasmus Universiteit and Afrika-Studiecentrum, 1998).

Bereket Habte Selassie, *Creating a Constitution for Eritrea* (Journal of Democracy 9:164-174, 1998).

Omar M. Keika and Ghidewon A. Asmerom, *Eritrean Customary Laws and the Constitution*. Dehai Constitution Discussion.

Rich Richard A. Rosen, *Theory in practice: Code drafting in Eritrea* (North Carolina Journal of International Law and Commercial Regulations 27:67-93, 2001).

Richard A. Rosen, *Constitutional process, constitutionalism, and the Eritrean experience* (1999 North Carolina Journal of International Law & Commercial Regulation Inc., 1999).

Simon M Weldehaimanot and Daniel R. Mekonnen, *The Nebulous Law-making Process in Eritrea* (Journal of African Law, 53, 2, 2009).

Simon M. Weldehaimanot, *The status and fate of the Eritrean Constitution* (African Human Rights Journal, 2008).

Zemhret Yohannes, *Nation-building and constitution-making in Eritrea* (Eritrean Studies Review 1:155-165, 1996).

The human rights situation in Eritrea:

Africa Watch, *Freedom of Expression and Ethnic Discrimination in the Educational System: Past and Future* (1993).

Amnesty International, *Eritrea: 20 years of independence but still no freedom* (2013).

Amnesty international, *Eritrea: Religious persecution* (2005).

Amnesty International, *Eritrea: "You have no rights to ask" Government resists scrutiny on human rights* (2004).

Amnesty International, *Eritrea: Arbitrary detention of government critics and journalists* (2002).

Annie O'Reilly, *Eritrea's National Service Program: The Human Rights – Human Trafficking Perspective* (De Paul Rule of Law Journal, International Human Rights Law Institute, 2010).

Article 19, *Eritrea: A Nation Silenced* (Country report, 2013).

Cecilia M. Bailliet, *Examining Sexual Violence in the Military Within the Context of Eritrean Asylum Claims Presented in Norway* (International Journal of Refugee Law, 2007).

Christian Solidarity Worldwide. *Eritrea: Sexual Violence against Female Army Conscripts* (2008).

Daniel R. Mekonnen and Mirjam van Reisen. *The Role of Women in Post-Conflict Transformation in the Horn of Africa: A Case Study of Eritrea* (Paper submitted to the 10th Annual International Horn of Africa Conference on "The Role of Women in Promoting Peace and Development in the Horn of Africa, 23-25 September 2011, Lund, Sweden).

Daniel R. Mekonnen and Selam Kidane, *The Troubled Relationship of State and Religion in Eritrea* (2013).

Daniel R. Mekonnen and Mirjam van Reisen, *Religious persecution in Eritrea and the role of the European Union in tackling the challenge* (Paper presented at the ESF-LiU Conference on Religion, Gender and Human Rights: Challenges for Multicultural and Democratic Societies, Scandic Linköping Vast, Sweden, 2011).

Daniel R. Mekonnen and J.L. Pretorius. *Prosecuting the main perpetrators of international crimes in Eritrea: Possibilities under international law* (Journal for Juridical Science 33(2): 76-108, 2008).

Daniel R. Mekonnen, *Transitional Justice: Framing a Model for Eritrea* (VDM Publishing: Saarbrucken/Germany, 2009).

David Bozzini, *Low-tech Surveillance and the Despotic State in Eritrea* (Surveillance Studies Network, 2014).

David Bozzini, *The Fines and the Spies: Fears of State Surveillance in Eritrea and in the Diaspora* (Manchester University, 2012).

David Bozzini, *En état de siège: Ethnographie de la mobilisation nationale et de la surveillance en Érythrée* (Faculté des Lettres et Sciences Humaines, Institut d'ethnologie, Université de Neuchâtel, 2011).

David Bozzini, *National Service and State Structures in Eritrea*, presentation by to the Swiss Federal Office for Migration on 16 February 2012.

Elijah M. Brown, *Eritrea: Twenty Years of Ongoing Repression* (Baptist World Alliance, 2013).

Europe External Policy Advisors (EEPA), *Joining up EU and US policy towards Eritrea and the Horn for the Promotion of Democracy and Human Rights* (Report of the meeting organised on 9-10 November 2009).

Gaim Kibreab, *The Open-Ended Eritrean National Service: The Driver of Forced Migration, Paper for the European Asylum Support Office Practical Cooperation Meeting on Eritrea* (15-16 October 2014, Valleta, Malta).

Gaim Kibreab, *The national service/Warsai Yikealo. Development Campaign and forced migration in post-independence Eritrea* (International Development, Emergencies, and Refugee Studies (IDEARS), London South Bank University, London, UK, 2013).

Gaim Kibreab, *Forced labour in Eritrea* (Journal of Modern African Studies 47:41-72, 2009).

Human Rights Watch, *Hear no evil: Forced labour and corporate responsibility in Eritrea's mining sector* (2013).

Human Rights Watch, *Ten Long Years: A briefing on Eritrea's Missing Political Prisoners* (2011).

Human Rights Watch, *Service for Life, State Repression and Indefinite Conscription in Eritrea* (2009).

Kjetil Tronvoll and Daniel R. Mekonnen. 2014. The African Garrison State: Human Rights and Political Development in Eritrea.

Kjetil Tronvoll, *The Lasting Struggle for Freedom in Eritrea: Human Rights and Political Development, 1991-2009* (Oslo Centre for human rights, 2009).

LKL International Consulting Inc., *Human rights impact assessment of the Bisha mine in Eritrea* (April 2014).

Nicole Hirt and Abdulkader Saleh Mohammad, *Dreams don't come true in Eritrea': anomie and family disintegration due to the structural militarisation of society* (The Journal of Modern African Studies, Volume 51, Issue 01, pp 139 – 168, March 2013).

Overseas development Institute, *Progress in health in Eritrea: Cost-effective inter-sectorial interventions and a long-term perspective* (2011).

Mirjam van Reisen and Daniel R. Mekonnen, *New Spaces for Women in Transitional Justice in Eritrea and Zimbabwe* (2011).

Tricia Redeker Hepner. *Transnational political and legal dimensions of emergent Eritrean human rights movements* (Migration Studies Working Paper Series #36 Forced Migration Studies Programme, University of the Witwatersrand, 2007).