


AFRICAN UNION		UNION AFRICAINE
الاتحاد الأفريقي African Commission on Human & Peoples' Rights		UNIÃO AFRICANA Commission Africaine des Droits de l'Homme & des Peuples
No. 31 Bijilo Annex Lay-out, Kombo North District, Western Region, P. O. Box 673, Banjul, The Gambia Tel: (220) 441 05 05 / 441 05 06, Fax: (220) 441 05 04; E-mail: au-banjul@africa-union.org ; Web www.achpr.org		

Consideration of Reports Submitted by States Parties under Article 62 of the African Charter on Human and Peoples' Rights

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

I. INTRODUCTION

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

FINAL

- Ms. Senait Lijam, Member, Executive Board, National Union of Eritrean Women; and
- Mr. Ibrahim Abdu, Legal Services, Ministry of Foreign Affairs.

II. POSITIVE ASPECTS

The Commission:

5. Takes note of the effort made by Eritrea in preparing and presenting its overdue Initial periodic report, in accordance with the provisions of Article 62 of the African Charter;

Ratification of regional and international human rights instruments

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

Civil and Political Rights

Right to Life

7. Welcomes the *de-facto* moratorium on the death penalty for the past ten years;

Police, prisons and conditions of detention

8. Commends the initiatives of the Eritrean Police Force, including introducing Community Policing with the aim of improving public safety, law and order, conducting a weekly regular radio program on civil order, public safety and crime prevention, and issuing a weekly newsletter on crime, prevention and public safety also appears in the official print media;
9. Notes the provision of education programs in prisons, including basic education up to secondary level, computer training and vocational programs in graphics and arts, as well as Arabic language programs which are offered on request;

FINAL

10. Notes the establishment of an in-patient section at the National Referral Hospital in Asmara designated for referral of prisoners;
11. Notes the provision of HIV counselling centres in prison clinics;

Access to and administration of justice

12. Welcomes the opportunity given to Victims to participate in criminal proceedings, with the aim of obtaining redress for the Victims;
13. Welcomes the provision of legal services given to defendants who are hearing impaired;

Rights of refugees, internally displaced persons and migrants

14. Welcomes the establishment of the Immigration and Nationality Department to assist reintegration of Eritrean refugees;
15. Commends the provisions in the Citizenship Proclamation which stipulate that Eritrean citizenship can be acquired by birth, naturalization, adoption and marriage, which is equally applicable to men and women without discrimination;

Economic Social and Cultural Rights

Right to Water

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

Right to Food

17. Takes note of initiative of the Government to address malnutrition including establishing a Steering Committee on national food and nutrition security (FNSC), to improve access to safe, nutritious and affordable food;
18. Commends the establishment of 201 centres by the Government under the Hidri Programme, which sell subsidized food supplies to the public;

Right to Social protection

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

Right to Work

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

FINAL

Right to Health

21. Takes note of the Government's initiatives to ensure access to free primary health, in accordance with the National Health Policy of 2010;
22. Commends the initiative on immunization through the Reach Every District Strategy for immunization, which is implemented in remote areas;
23. Takes notes of the Government's program to eliminate maternal and neonatal tetanus, and the Roll Back Malaria Strategy which has resulted in reduction of malaria morbidity by 90% and a decrease by 86% of the overall mortality due to malaria;

Protection of the rights of persons living with HIV/AIDS

24. Welcomes establishment of the HIV/AIDS Persons Association, which contributes to addressing stigmatization and marginalization of victims;
25. Welcomes the free provision of ARVs to 66% of the estimated eligible cases, by the Ministry of Health;
26. Commends the initiatives of the Government to end mother to child (MTCT) transmission, including integrating prevention services with antenatal care and providing HIV testing to pregnant women;

Right to Education

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

Right to Culture

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

Protection of the rights of women

31. Takes note of the Government initiatives aimed at reducing the maternal mortality ratio (MMR), with the annual rate of reduction MMR for the period 1990 to 2016 estimated at 4.6%;
32. Notes that the Transitional Civil Code protects the right to succession irrespective of gender or age;

FINAL

33. Notes that Article 10(2) of Proclamation No. 86/1996 stipulates that 30% of the seats in the National Assemblies are reserved for women;
34. Welcomes the Eritrean Obstetric Fistula Repair Project, launched in 2002, to address and combat obstetric fistula;

Protection of the rights of children

35. Takes note of the National Policy on Children, in addition to the Working Group led by the Ministry of Labour and Human Welfare, which oversees implementation of the Convention of the Rights of the Child and the African Charter for the Rights and Welfare of the Child;
36. Notes that Article 607 of the Transitional Civil Code stipulates that the legal age of marriage is 18 years old, and that underage marriage is an offence and a ground for dissolution of the marriage;
37. Welcomes the criminalization of female genital mutilation (FGM) under Proclamation 148/2007, in addition to the establishment of 548 anti-FGM Committees nationwide;
38. Welcomes the reduction of FGM, noting that the practice which affected 89% of girls under the age of 5 in 1995, dropped to 5% by 2016;

Protection of the rights of persons with disabilities

39. Takes note of the National Policy on Persons with Disabilities, which ensures the implementation of equal rights and opportunities, which regulates the roles and responsibilities of all actors in advancing the rights and welfare of persons with disabilities,
40. Commends the loan scheme by the Ministry of Labour and Human Welfare which assists persons with disabilities start income-generating activities for gainful employment;
41. Appreciates the efforts to provide transportation for students with disabilities to attend school, such as the 'Donkey for School' project;
42. Commends provision of full medical care to 7,000 war-disabled persons with severe disabilities including their families.

Protection of the Environment

43. Commends the ban on the use of plastic bags, through Legal Notice 63/2002, and the provision of local alternatives as a means to end plastic pollution;
44. Welcomes the conduction of environmental impact assessments prior to the commencement of any extractive activity.

FINAL

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

45. Eritrea was involved in a border dispute with its neighbour Ethiopia from 1998 to 2000. On 18 June 2000, the Governments of Eritrea and Ethiopia signed the Cessation of Hostilities Agreement (CHA) and on 12 December 2000 the Algiers Peace Agreement was signed. However, the border dispute caused internal displacement of approximately 90,000 civilians, in addition to destruction of houses, places of worship and schools, among others. As a result, in addition to the destabilising effect of the conflict, nation building and provision and access to essential basic services, such as health facilities and schools, was hindered for a long time.
46. As a result of the hostilities with Ethiopia, civil and political rights and freedoms were severely restricted, including the rights to association and assembly, freedom of expression and information, movement, among others. Additionally, Presidential and legislative elections were indefinitely suspended, denying Eritrean citizens the right to participate freely in the government and to freely chose representatives, in accordance with the provisions of the law. The Constitution was also suspended and the process of reviewing the constitution is incomplete.
47. Another factor restricting the enjoyment of human rights is the indefinite nature of the country's National Service, which is an exception to forced labour under the Labour Proclamation and the definition of labour in the Penal Code. The practical effect of the indefinite extension of the period served in the National Service, is that conscripts can be required to serve for decades or, in some cases, indefinitely.

IV. AREAS OF CONCERN

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

Ratification and domestication of regional and international instruments

49. No information has been provided on the domestication and incorporation of the African Charter, and other regional and international human rights instruments;
50. Eritrea is a State Party to only two regional human rights instruments;
51. The non-ratification of several relevant regional human rights instruments, including:
 - The OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, 1974;
 - The Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (the Court Protocol), 2004;

FINAL

- The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the Maputo Protocol), 2005;
- The African Union Convention on Preventing and Combating Corruption, 2006;
- The African Youth Charter, 2009;
- The African Charter on Democracy, Elections and Governance, 2012;
- The African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (the Kampala Convention), 2012;
- The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa;
- The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa;

52. The non-ratification of several relevant international human rights instruments, including:

- The Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, 1989;
- The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990;
- The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 2002;
- The International Convention for the Protection of all Persons from Enforced Disappearance, 2006;
- The Convention on the Rights of Persons with Disabilities, 2006; and
- The Optional Protocol to the Convention on the Rights of Persons with Disabilities, 2006;
- The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, 2008;

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

53. The current laws do not stipulate the rights which cannot be limited under any circumstances, even in emergency situations;

54. The lack of:

- (i) Clarity on whether the Constitution (1997) is still in force and the delay in the finalization and adoption of the revised Constitution following the process which started in 2015;
- (ii) Mainstreaming of human rights in the domestic legal system, in addition to the fact there is no Ministry specifically designated to ensure that the promotion and protection of human rights is mainstreamed throughout the Government's policies and programs;
- (iii) An independent national institution entrusted with the promotion and protection of the rights and freedoms guaranteed by the African Charter;

FINAL

- (iv) A recent census on the population in the country, which would guide the formulation of policies and programs on the protection of human rights in the country;

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

- 55. The death penalty is retained in the Transitional Penal Code of Eritrea;
- 56. The lack of specific legislation criminalizing extra-judicial killings;
- 57. The situation of deaths in the prisons or other places of detentions;
- 58. The reported deaths of members of the Jehovah Witness faith in detention;

Prohibition of torture, cruel, inhuman and degrading treatment

- 59. It is noted in the Report that torture is not condoned in the domestic laws and is punishable by law, however no information is provided on the exact legal provisions which prohibit torture, or the existence of a law defining and criminalizing torture;
- 60. No information is provided of statistics on the number of cases of torture reported, investigated and prosecuted;
- 61. There is no independent institution mandated to conduct investigations on allegations of torture;
- 62. The absence of information on independent investigations on the reports of torture committed on persons in detention;

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

- 63. The absence of information in the Report on the following:
 - (i) The total number of prisons and other centres of detention in the country;
 - (ii) The total prison population in the country, in addition to the number of remand prisoners verses convicted persons, female and male prisoners, in addition to juvenile prisoners;
 - (iii) The number of prisoners currently sentenced to capital punishment, in light of the information provided that the "death penalty is exceptionally applied for criminal offences that entail capital punishment;"
 - (iv) The number of meals each prisoners receives daily, and whether the meals meet international standards;
 - (v) The percentage of the prison population with HIV/AIDS, and whether these prisoners have free access to ARVs;
 - (vi) The total number of prison officials, in addition to the number of female officers;
 - (vii) Training specifically related to human rights provided to law enforcement agencies, including the Eritrean Police Force, the Eritrea Correctional and Rehabilitation

FINAL

- Services and the Community Police, in addition to whether the Prison Services Regulation contains provisions on human rights and the rights of detained persons;
- (viii) Whether Government has a condom distribution program in prisons, as a way to curb the HIV/AIDS epidemic;
- (ix) The Ministry responsible for overseeing the Eritrea Correctional and Rehabilitation Services;

- 64. There is no independent institution mandated to conduct unannounced visits to prisons and other places of detention;
- 65. Lack of access by family members to prisoners held in incommunicado detention.

Access to and administration of justice

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

Independence and training of Judges

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

Freedom of conscience and religion

FINAL

74. The lack of clarity on the Ministry which monitors implementation of Proclamation 73/1995, which details “the operation of new faiths, with funding from external sources;”
75. The lack of provisions in the Proclamation provide for recourse to appeal to the Courts for religious groups whose applications for registration are denied;
76. The forfeiture of citizenship rights of followers of Jehovah Witness faith, in response to their refusal to vote in the 1993 independence referendum, exposing them to *de facto* statelessness;

Freedom of information and expression

77. The lack of clarity on the existence of a law which expressly provides for the right to access information;
78. The restriction on freedom of expression in the Penal Code which criminalizes defamation;
79. There is no private media in the country in accordance with the Press Proclamation 90/1996 which stipulates that ownership of television and radio is reserved for the Government;
80. There is no independent regulatory body which exercises powers in the areas of broadcast or telecommunications regulation;
81. The restricted access to telephone SIM cards;
82. The heavy restriction of the Internet, with limited access to the Internet throughout the country;

Freedom of association and assembly

83. The lack of information on the existence and total number of independent civil society organizations (CSOs) operating in the country, distinguished from the ‘national organizations’ mentioned in the Report;
84. Insufficient information on the process of registration for non-governmental organizations under Legal Notice No 5 of 1992, including whether there is recourse to appeal for organizations whose application is denied;
85. The lack of information on the criteria and requirements for holding a peaceful assembly;

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

86. Absence of information on a national policy to reduce migration and encourage the return of Eritrean diaspora;

FINAL

87. Severe restrictions on movement of citizens, in particular conscripted youth whose freedom of movement inside and out of the country is heavily curtailed, contrary to Article 12(1) of the Charter;
88. The requirement for an exit visa for Eritreans who wish to leave the country, with children under the age of five (5) not eligible to be issued an exit visa;
89. The lack of an appeal process for persons denied the exit visa;

Right to participate freely in Government

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

Economic, Social and Cultural Rights

94. The lack of information on the allocation of the national budget to key sectors, such as health and education;
95. Absence of information on whether economic and social rights are justiciable in the national courts;
96. The information provided in the Report that almost 20.5% in rural areas do not have access to potable water;

Right to property

97. The lack of information on:
 - (i) The Government Ministry or institution responsible for ensuring access to housing;
 - (ii) The Government institution responsible for monitoring implementation of the Land Proclamation;

Right to work

98. The lack of information on the unemployment rate, and crucially the youth unemployment rate which is a major concern in several African countries;
99. The provision in the Labour Proclamation No. 118/2001 which permits a child aged 14 years to enter into a contract of employment;

FINAL

100. Absence of information on the *Warsay Yikealo Development Campaign*, specifically whether participation is mandatory and has the effect of extending the compulsory national service with very little or no pay;

Right to health

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

Protection of the rights of persons living with HIV/AIDS

102. The lack of information on:

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

Right to education

103. The Government's policy of mandating the participation of all secondary students at the Sawa Education and Training Centre;
104. The lack of information on the Government institution which monitors the programs at the Sawa Education and Training Centre, and whether there is a human rights based approach to the training provided at this facility;
105. Absence of information on whether students who are not assigned to colleges on completion of the secondary school exam have to remain in National Service indefinitely;

Protection of the rights of women

106. Absence of information on legislation on women's rights, or a Family Code;
107. Out of 18 Ministers, only 3 are women;
108. The lack of clarity on the role, function and independence of the National Union of Eritrean Women (NUEW), given the information in the Report that "NUEW also acts on behalf of the Government of the State of Eritrea on women affairs and is mandated to represent the government and Eritrean women in national, regional and international forum;"

Protection of the rights of children

109. The lack of legislation specifically on promotion and protection of the rights of the child;

FINAL

Rights of persons with disabilities and older persons

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

Extractive industries, the environment and human rights violations

112. The lack of information on:
 - (i) The role and responsibility of the Eritrean National Mining Corporation;
 - (ii) The consultation and participation process for communities living in areas which were expropriated, from which concessions were granted to 23 companies;
 - (iii) The extent to which international labour standards are enforced in the mining areas;
 - (iv) Whether a percentage of the proceeds from the extracted resources are invested in the region where it is extracted;
 - (v) Whether judicial or non-judicial grievance mechanisms exist, to ensure redress for violations committed by the companies in the extractive industry;

Protection of the rights of indigenous populations

113. Absence of information in the Report related to indigenous populations in Eritrea;
114. The lack of information on the existence of a Government institution, law or policy to ensure protection of the rights of indigenous populations;

Protection of human rights defenders

115. There is no law which recognizes the status of human rights defenders, and ensures protection of their rights, in addition to protection of their family members;

Information not provided in the Report

116. The lack of information on the total number of members of the National Service who have been demobilized during the reporting period;
117. The absence of gender disaggregated data, in addition to information on the representation of women in decision making positions in Government, at the local level, in addition to other areas such as the armed forces;

Implementation of the Commission's Recommendations

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

Submission of Periodic Reports

FINAL

119. While participation of national civic organizations in the preparation of the Periodic Report is noted, no information is provided on the specific civil society organizations which participated in its preparation, including independent faith based organizations and women's organizations;

V. Recommendations

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

Ratification and domestication of international instruments

- i. Ensure the domestication of the African Charter within the domestic legal system;
- ii. Endeavour to sign and ratify all regional human rights instruments, to ensure promotion and protection of the rights enshrined therein;
- iii. Expedite the ratification and domestication of all relevant regional and international human rights instruments;
- iv. Make the declaration under Article 34(6) of the Court Protocol accepting the jurisdiction of the Court to hear cases brought by individuals and NGOs;

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

- v. Take urgent action to ensure that the existing laws specifically provide for human rights which cannot be limited under any circumstances even emergency situations, including the following: the right to equality before the law; the right not to be discriminated against; the right to life; the right not to be deprived of liberty without due process of law;
- vi. Take urgent measures on the following:
 - (a) Expedite the process of revising the Constitution in a transparent and participatory manner;
 - (b) Ensure that human rights are mainstreamed in the domestic legal system, including through inclusion of a Bill of Rights in the revised Constitution, and consider appointing a member of Government in charge of human rights in the country;
 - (c) Establish an independent mechanism, such as a National Human Rights Institution, with functions specifically dedicated to the promotion and protection of human rights, in compliance with the Principles relating to the Status of National Institutions (the Paris Principles);
 - (d) Conduct a national census urgently, which will provide crucial data on the country's population, including key vulnerable groups, and which will guide the elaboration and development of the Government's policies and programs;

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

FINAL

- vii. Abolish the death penalty in law, and commute all prisoners sentenced to capital punishment to life imprisonment;
- viii. Enact legislation which specifically criminalises extra-judicial killings;
- ix. Conduct prompt investigation of the deaths which have occurred in places of detention, taking into consideration that *“Where a person dies in State custody, there is a presumption of State responsibility and the burden of proof rests upon the State to prove otherwise through a prompt, impartial, thorough and transparent investigation carried out by an independent body,”* as stated in the Commission’s **General Comment No. 3 on the African Charter on Human and Peoples’ Rights: The Right to Life**;
- x. Conduct prompt investigation of the reported deaths in detention of members of the Jehovah Witness, and provide information in the next Report on the outcome of the investigations;

Prohibition of torture and cruel, inhuman and degrading treatment

- xi. Enact specific legislation which defines, prohibits and criminalizes torture, in accordance with international standards;
- xii. Provide statistics in the next Report on the number of cases of torture reported, investigated and prosecuted;
- xiii. Ensure the establishment of an accessible and fully independent mechanism to which all persons can report allegations of torture;
- xiv. Take immediate and urgent measures to conduct investigations on the reports of torture committed in places of detention, including ensuring prosecution of perpetrators and provision of redress to the victims or their families;

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

- xv. In the next Report, ensure that the following information is provided:
 - (a) The total number of prisons and other places of detention in the country;
 - (b) The total number of the prison population, in addition to disaggregating the information according to the number of remand prisoners, convicted persons, female and male prisoners, in addition to juvenile prisoners;
 - (c) The total number of prisoners currently sentenced to capital punishment;
 - (d) The number of meals each prisoners receives daily, including whether the meals meet international standards;
 - (e) The total number of the prison population with HIV/AIDS, in addition to information on the access to ARVs for the entire prison population with HIV/AIDS;
 - (f) The total number of prison officials, including the number of female officers;

FINAL

- (g) Training conducted to all law enforcement personnel on human rights, including the **Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa** (the Robben Island Guidelines), the **Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa** (the Luanda Guidelines), the **UN Standard Minimum Rules for the Treatment of Prisoners**, among others;
 - (h) The provision of condoms in prisons, to prevent the spread of HIV/AIDS in prisons;
 - (i) The Ministry responsible for overseeing the Eritrea Correctional and Rehabilitation Services;
- xvi. Appoint an independent institution with the mandate to conduct unannounced visits to all places of detention;
- xvii. Take urgent and immediate measures to ensure that prisoners held in incommunicado detention are granted access to their family members;

Access to and administration of justice

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

Independence and training of Judges

- xxiii. Establish an independent Judicial Service Commission mandated with the appointment of judges, and enact a law which specifies the independence of the

FINAL

Judiciary from other branches of Government, and which ensures security of tenure of Judges;

- xxiv. Ensure that judges appointed to the Community Courts, the Military Courts and the Special Court have prior training and legal experience;
- xxv. Appoint an institution responsible for providing training programs for all judicial officers, including the judges of the Community Courts, the Military Courts and the Special Courts, and further ensure that the training programs include components on human rights, making reference the African Charter, the Commission's **Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa**, among others;

Freedom of conscience and religion

- xxvi. Appoint a Minister to monitor implementation of Proclamation 73/1995, in addition to ensuring the right to appeal for religious groups which are denied registration;
- xxvii. Amend the provisions of the Proclamation to ensure the right to appeal to the Courts, for religious groups whose applications for registration are denied;
- xxviii. Ensure that followers of the Jehovah Witness faith retain their citizenship rights in accordance with the Citizenship Proclamation No. 21/1992 which provides that "Eritrean citizenship can be acquired by birth, by naturalization, by adoption and by marriage, without discrimination;"

Freedom of expression and access to information

- xxix. Ensure enactment of a law which provides for the right to access information, in accordance with international standards and as elaborated in the Commission's **Model Law on Access to Information in Africa**;
- xxx. Amend the provisions of the Penal Code which criminalize defamation, in accordance with the Commission's **Resolution on Repealing Criminal Defamation Laws in Africa** which calls on "*States Parties to repeal criminal defamation laws or insult laws which impede freedom of speech;*"
- xxxi. Amend the provisions of the Press Proclamation 90/1996 to allow the operation of private media in accordance with the Commission's **Declaration of Principles on Freedom of Expression in Africa** which provides in Principle V(1) that "*States shall encourage a diverse, independent private broadcasting sector. A State monopoly over broadcasting is not compatible with the right to freedom of expression;*"
- xxxii. Establish a public authority which exercises powers in the areas of broadcast or telecommunications regulation, which should be independent and adequately protected against interference, particularly of a political or economic nature;

FINAL

xxxiii. Ensure unrestricted access to telephone SIM cards to all persons residing in Eritrea's territory without discrimination;

xxxiv. Take measures to ensure unrestricted access to the Internet throughout the country;

Freedom of association and assembly

xxxv. In the next Report include the names and functions of independent civil society organizations which are operating in the country;

xxxvi. Ensure that the provisions of the regulatory framework for the registration of non-governmental organizations, that is Legal Notice No 5 of 1992, are in accordance with international standards on freedom of association, including the Commission's **Guidelines on Freedom of Association and Assembly**;

xxxvii. Enact a legislative and regulatory framework which governs the right to assemble, in accordance with international standards, including the Commission's **Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa**;

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

xxxviii. Develop a national policy on migration which, *inter alia*, aims to reduce migration from the country and encourage the return of Eritrean diaspora;

xxxix. Urgently revise all restrictions to ensure free and unrestricted of movement of all Eritreans, including the right of movement of youth both inside and out of the country;

xl. Urgently revise the policy requiring an exit visa for Eritreans who wish to leave the country, and specifically amend the policy to exempt children under the age of five (5) from requiring an exit visa;

xli. Establish an appeal process for all persons denied the exit visa, in addition to recourse to legal appeal in Court;

Right to participate freely in Government

xlii. In the next Report provide information on the status of the National Assembly;

xliii. Urgently consider holding national Presidential and legislative elections;

xliv. Revise the restrictions which hinder the formation of opposition political parties;

xlv. Enact legislation governing registration, regulation and funding of political parties;

Economic, Social and Cultural Rights

xlvi. In the next Periodic Report provide information on the allocation of the national budget to key sectors, such as health and education;

FINAL

- xlvi. In the next Periodic Report indicate whether economic and social rights are justiciable in the national courts;
- xlvi. Take the necessary measures to ensure access to potable water, specifically targeting the rural areas;

Right to property

- xlix. In the next Report provide information on the following:
 - (a) The role and function of the Government institution which is mandated to ensure access to adequate housing;
 - (b) The Government institution responsible for monitoring implementation of the Labour Proclamation;

The right to work

- i. In the next Periodic Report provide information on the unemployment rate, in addition to the youth unemployment rate;
- ii. Revise the provisions of the Labour Proclamation No. 118/2001 to restrict children aged 14 years from entering into a contract of employment;
- iii. In the next Periodic Report, provide information on the following elements of the *Warsay Yikealo Development Campaign*:
 - (a) The Government institution which oversees the program;
 - (b) The mandate and work done by the program;
 - (c) The recruitment process for participation in the program, and whether the program is mandatory;
 - (d) The amount of remuneration for participation in the program;
 - (e) Mechanisms in place to ensure that participants in the *Warsay Yikealo Development Campaign* are not subjected to forced labour, and information of investigations which have been conducted on reported cases;

Right to health

- liii. Ensure provision of free or subsidized family planning services;

Protection of the rights of persons living with HIV/AIDS

- liv. In the next Report include information on the following:
 - (a) The national institution mandated to coordinate the country's interventions to combat HIV/AIDS;
 - (b) The policy or program mandated to ensure free ARVs to all citizens with HIV/AIDS, in addition to key vulnerable groups including sex workers and MSM;

Right to education

FINAL

- iv. Revise the mandatory participation of all secondary students at the Sawa Education and Training Centre;
- lvi. Ensure the appointment of a Government institution to monitor the programs at the Sawa Education and Training Centre, and take the necessary measures to include a human rights based approach to the training provided at this facility;
- lvii. Put mechanisms in place to ensure that students who complete the secondary school exam are able to join alternative institutions of higher education, such as vocational training centres, to ensure that students do not have to remain in the National Service indefinitely;

Protection of the rights of women

- lviii. Consider enacting legislation for the promotion and protection of the rights of women, in addition to a Family Code;
- lix. Ensure that the allocation of positions to Ministers takes into account the need for representation by women, and ensure representation of women in decision making positions at all levels in Government;
- lx. In the next Report, clarify the role and mandate of the National Union of Eritrean Women (NUEW), and encourage the formation of independent civil society organizations which promote and protect the rights of women;

Protection of the rights children

- lxi. Enact legislation which provides for promotion and protection of the rights of the child;

The rights of persons with disabilities and older persons

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

Extractive industries, the environment and human rights violations

- lxiv. Include the following information in the next Report:
 - (a) Clarify the role and responsibility of the Eritrean National Mining Corporation;
 - (b) Measures put in place to ensure the free, prior and informed consent of all communities living in areas where extractive industries are to be carried out before initiating any extractive processes, as envisaged in the **State Reporting Guidelines and Principles on Articles 21 and 24 of the African Charter relating to Extractive Industries, Human Rights and the Environment**;
 - (c) The measures put in place to ensure that international labour standards are strictly enforced in the mining areas;

FINAL

- (d) The percentage of the proceeds from the extracted resources which are invested in the region where resources are extracted;
- (e) The existence of a judicial or non-judicial grievance mechanisms to ensure redress for violations committed by the companies in the extractive industry, including adequate compensation and support for affected communities;

Protection of the rights of indigenous populations

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

Protection of human rights defenders

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

Information not provided in the Report

- lxviii. Provide information on the total number of members of the National Service who have been demobilized during the reporting period;
- lxix. Take the necessary measures to establish mechanisms for generating accurate statistical data on relevant issues, including information on vulnerable and marginalized groups, in addition to gender disaggregated data and information on the representation of women in decision making positions in Government, and include current statistics in the next Report;

Implementation of the Commission's Recommendations

- lxx. Take immediate action to implement the Commission's decisions and provide information on the measures put in place to implement the recommendations issued in the following Communications;
 - (a) **Communication 275/03: Article 19 v. Eritrea** in which the Commission called on the State to: "Release or bring to a speedy and fair trial the 18 Journalists (including Mr Dawit Isaak) detained since September 2001 and to lift the ban on the press; grant detainees immediate access to their families and legal representatives; and take appropriate measures to ensure payment of compensation to the detainees;"
 - (b) **Communication 250/02: Liesbeth Zegveld and Mussie Ephrem v. Eritrea** in which the Commission urged the State of Eritrea to: "Order the immediate release of the 11 detainees, namely, Petros Solomon, Ogbe Abraha, Haile Woldetensae, Mahmud Ahmed Sheriffo, Berhane Ghebre Eghzabiher, Astier Feshation, Saleh

FINAL

Kekya, Hamid Himid, Estifanos Seyoum, Germano Nati, and Beraki Ghebre Selassie; and Recommends that the State of Eritrea compensates the above-mentioned persons;”

Submission of Periodic Reports

- lxxi. Ensure the participation of independent civil society organizations, including faith based organizations and women’s organizations, in the preparation of the next Periodic Report submitted to the Commission, in addition to including this information in the Report;
- lxxii. Inform the Commission on the measures which have been taken to implement the recommendations of the present Concluding Observations in the next Report.

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