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**Human Rights Committee****Concluding observations on Eritrea in the absence of its initial report\***

1. In the absence of the initial report by the State party, the Committee considered the situation of civil and political rights under the Covenant in Eritrea at its 3582nd and 3583rd meetings (CCPR/C/SR.3582 and CCPR/C/SR.3583), held in public sessions on 12 and 13 March 2019. In accordance with rule 70, paragraph 1, of the Committee's rules of procedure, the failure of a State party to submit its report under article 40 of the Covenant may lead to an examination in a public session of the measures taken by the State party to give effect to the rights recognized in the Covenant and to adopt concluding observations.
2. At its 3599<sup>th</sup> meeting, held on 25 March 2019, the Committee adopted the following concluding observations.

**A. Introduction**

3. The Covenant came into force for Eritrea on 22 April 2002. The State party was under an obligation to submit its initial report by 22 May 2003. The Committee regrets that the State party has failed to honour its reporting obligations under article 40 of the Covenant and that, despite numerous reminders, the State party has not submitted its initial report.
4. The Committee further regrets that the State party did not send replies to the Committee's list of issues (CCPR/C/ERI/Q/1). The Committee nevertheless expresses appreciation for the opportunity to engage in a constructive dialogue with the State party's delegation on the implementation of the Covenant on 12 and 13 March 2019 and takes note of the oral responses by the delegation and the additional information provided by the State party after the dialogue.

**B. Positive aspects**

5. The Committee notes with appreciation the signing of a Joint Declaration of Peace and Friendship between Eritrea and Ethiopia on 9 July 2018, and of a cooperation agreement between Eritrea, Ethiopia, Djibouti and Somalia on 6 September 2018 on working together to restore peace and stability in the Horn of Africa Region. The Committee also notes the lifting of sanctions imposed against Eritrea by the United Nations Security Council on 14 November 2018. The Committee hopes that the State party will seize these opportunities as the beginning of a new era to build a more peaceful, inclusive and resilient future for the people of Eritrea.
6. The Committee welcomes the ratification of, or accession to, by the State party to the following treaties:

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\* Adopted by the Committee at its 125<sup>th</sup> session (4 to 29 March 2019).

(a) The Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, on 25 September 2014;

(b) The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography and the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, on 16 February 2006.

## C. Principal matters of concern and recommendations

### Constitutional and legal framework within which the Covenant is implemented

7. The Committee is concerned about the fact that the Constitution is not in force in the State party due to the fact that the 1997 Constitution was not implemented, and no other constitution has yet been adopted. This poses a serious challenge to the implementation of the Covenant in the State party. While noting the plans of the State party to draft a new constitution, the Committee regrets lack of clarity about time frame and modalities of such drafting process. The Committee is also seriously concerned about the suspension of the National Assembly since the year 2002. In view of the State party's dualist system, the Committee is further concerned about the lack of information about proper incorporation of the Covenant's rights into national law and of complete lack of information on their enforceability before domestic courts (art. 2).

8. **The State party should, as a matter of urgency, ensure that the 1997 Constitution is put into effect pending its replacement by the new constitution. It should also expedite the constitutional review process, within a clear time frame, and in a transparent and participatory manner. The State party should urgently reconvene the National Assembly so that it may, in line with its mandate, take necessary steps regarding implementation of the Covenant. The State party should ensure that the rights enshrined in the Covenant are fully incorporated into the Constitution and other relevant domestic legislation and take all measures necessary to ensure that all laws, including common, customary and sharia law, are interpreted and applied in full compliance with the Covenant and are enforceable in national courts. It should also make efforts to train all legal professionals, including judges, prosecutors and lawyers, public officials and the public on the rights enshrined in the Covenant and their application.**

9. The Committee is concerned about a lack of access to an effective remedy for victims of violations of rights protected under the Covenant. It is further concerned at an absence of a mechanism to implement decisions of the relevant international human rights bodies. The State party has not yet implemented the decision in *Dawit Isaak v. Republic of Eritrea* (communication 428/12) by the African Commission on Human and Peoples' Rights concerning the 18 journalists who have been arrested on 19 September 2001 (art. 2).

10. **The State party should provide all victims of violations of rights protected under the Covenant with access to an effective remedy and full reparation. It should take immediate measures to implement decisions of the relevant international human rights bodies, including release or trial of the 18 journalists who were the subject of the above-mentioned decision in *Dawit Isaak v. Republic of Eritrea*.**

### National human rights institution

11. The Committee is concerned at the absence of a national human rights institution to monitor human rights in the State party, and the lack of clarity about plans to create one (art. 2).

12. **The State party should establish an independent national human rights institution with a broad human rights protection mandate and adequate human and financial resources, in conformity with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles).**

### **The fight against impunity and past human rights violations**

13. The Committee is concerned about reports of widespread impunity, in particular with respect to serious human rights violations, including alleged cases of enslavement, enforced disappearances, extrajudicial killings, torture and rape, and the absence of prosecutions of alleged perpetrators and the provision of victims with adequate remedies (arts. 2, 6, 7 and 14).

**14. The State party should take all necessary measures to end impunity for perpetrators of human rights violations, in particular the most serious violations, by establishing a transitional justice process for the prosecution of past violations and by systematically conducting prompt, impartial, effective and thorough investigations in order to identify and prosecute and punish those responsible, while ensuring that the victims have access to effective remedies and to full reparation.**

### **Public emergencies**

15. The Committee is concerned that although no state of emergency has been officially proclaimed, the State party applies *de facto* a state of emergency, as stated by the State party's delegation, failing to comply with the basic safeguards of article 4 of the Covenant (art. 4).

**16. The State party should take steps to end as soon as possible the *de facto* state of emergency and ensure that any state of emergency applied on its territory and measures taken in pursuance to it comply with the provisions of article 4 of the Covenant. In accordance with the Committee's general comment No. 29 (2001) on derogations from the Covenant during a state of emergency, the State party should develop legislation containing clear provisions on states of emergency so that the rights protected under article 4 (2) of the Covenant may not be suspended under any circumstances and to ensure that any derogation is consistent with the Covenant.**

### **Counter-terrorism measures**

17. While acknowledging the State party's need to adopt measures to prevent acts of terrorism, the Committee is concerned about allegations that arbitrary detention, torture and extrajudicial killings have been committed against members of the Muslim community as a group for their alleged links with terrorist groups (arts. 2(1), 6, 7 and 26).

**18. The State party should ensure that measures taken to combat terrorism are fully compatible with its obligations under the Covenant and are directed at the suspected perpetrators only. It should refrain from designating any specific community as linked to terrorism.**

### **Non-discrimination and equality between men and women**

19. While noting measures to increase women's representation at the regional level, the Committee is concerned that women are unrepresented in senior government positions and that temporary special measures aimed at ensuring women's representation in legislative and judicial bodies benefited only women affiliated with the political party in power (arts. 2, 3 and 26).

**20. The State party should take all necessary measures to increase women's fair participation in all aspects of public life, in particular their representation at the highest levels of government, legislative bodies and in the judicial system.**

### **Gender-based violence, including domestic violence**

21. While welcoming assurances by the State party that it is addressing harmful practices, such as female genital mutilation, the Committee is concerned that violence against women is widespread and persistent in the State party, including domestic violence and sexual violence in the context of the national service programme. The Committee is further concerned about a lack of comprehensive legislation that explicitly criminalizes all forms of violence against women, including marital rape. The Committee is also concerned that consensual same-sex relationships is criminalized in the State party, which promotes

homophobic attitudes and stigmatize lesbian, gay, bisexual, transgender and intersex persons (arts. 3, 6, 7, 14 and 26).

**22. The State party should adopt comprehensive legal measures explicitly criminalizing all forms of violence against women, including sexual violence and marital rape. The State party should ensure that (a) cases of violence against women and domestic violence are promptly and thoroughly investigated and that perpetrators are prosecuted and, if convicted, punished with penalties commensurate with the gravity of the offences; (b) victims have access to effective remedies and full reparation. The State party should also decriminalize same-sex relationships between consenting adults and take measures, including policy and public education initiatives, to change societal perceptions of lesbian, gay, bisexual, transgender and intersex persons.**

#### **Right to life**

23. The Committee is concerned about a lack of legal standards and relevant procedures on appropriate use of force and firearms by law enforcement and security forces in the State party. The Committee is concerned about allegations of disproportionate use of force against civilians, such as a reported killing of at least 11 individuals during an incident where young conscripts jumped out of a truck on 3 April 2016 in Asmara, and the alleged use of live ammunition during the dispersal of a protest against government involvement in a Muslim school, on 31 October 2017 in Asmara. The Committee is also concerned about reports of killing or wounding of persons attempting to leave the State party illegally by its security forces at the borders. While the Committee notes the statement of the delegation from the State party that there is a *de facto* moratorium on death penalty, it is concerned that the death penalty remains in the Penal Code and the Government has not instituted an official moratorium on the use of the death penalty, with a view to its abolition (arts. 6 and 12).

**24. The State Party should take measures to effectively prevent and eliminate all forms of excessive use of force by police and security officers, including by (a) adopting appropriate legislation and policies controlling the use of lethal force by law enforcement officials, taking due account of the Committee's general comment no. 36 on the right to life and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials; (b) introducing procedures designed to ensure that law enforcement actions are adequately planned in a manner consistent with the need to minimize the risk they pose to human life, mandatory reporting, review, and investigation of lethal incidents; (c) providing law enforcement personnel with training on the use of force; and (d) ensuring that all instances of excessive use of force are promptly, impartially and effectively investigated and that those responsible are brought to justice. The State party should consider: (a) establishing an official moratorium on the death penalty with a view to abolishing it; and (b) acceding to the Second Optional Protocol to the Covenant, aiming at the abolition of the death penalty.**

#### **Prohibition of torture and other cruel, inhuman or degrading treatment or punishment**

25. The Committee is concerned about allegations of extensive and methodical use of torture in civilian and military detention centres, including reports of torture to punish criticism of the government, practising of religions non-recognised by the government, attempting to leave the State party or failing to perform duties during national military service. The Committee is concerned about non-existence of an independent body to investigate complaints and prevent torture and ill-treatment by law enforcement officials (arts.7 and 10).

**26. The State party should, as a matter of urgency, put an end to the practice of torture and ill-treatment. It should (a) review its laws to ensure that all elements of the crime of torture are prohibited in accordance with article 7 of the Covenant and stipulate sanctions for acts of torture that are commensurate with the gravity of the crime; (b) ensure prompt, thorough and effective investigation of all allegations of torture and ill-treatment, and where appropriate prosecute and punish the perpetrators with penalties commensurate with the gravity of the offence and provide effective remedies for the victims, including rehabilitation; (c) take all measures necessary to prevent torture, including by strengthening the training of judges, prosecutors, the police and military and security forces. The State party should**

**establish an independent mechanism for investigating complaints on torture and ill-treatment by law enforcement officials.**

#### **Enforced disappearances, extrajudicial killings, arbitrary arrest and detention**

27. The Committee is deeply concerned about reports of enforced disappearances and extrajudicial killings allegedly committed by governmental actors, particularly the National Security Office. The Committee is deeply concerned about the reports of widespread arbitrary arrest and detention, including incommunicado detention, failing to meet basic minimum legal safeguards, such as access to a lawyer, medical doctor and right to inform a family, a right to be promptly brought before a judge and a judicial review of detention. The Committee is specifically concerned about allegations of applying arbitrary detention against (a) perceived political dissents, (b) journalists (c) members of religious groups, including 40 Muslim clerics and scholars from the Saho ethnic group, detained since 2008, and Abune Antonios, Patriarch of the Eritrean Orthodox Church, being in house arrest since 2006. The Committee is also concerned about the reports that some unlawfully detained persons have died in detention, including Musa Mohammed Nur, the former director of the Al Dia School in Asmara, who was arrested in October 2017. The Committee is further concerned that the delegation of the State party did not confirm or deny, despite being repeatedly asked to do so, whether the below-mentioned persons held in detention are still alive (arts. 6 and 9).

28. **The State party should (a) ensure prompt, impartial and thorough investigations of all allegations and complaints concerning enforced disappearances and extrajudicial killings; (b) ensure that perpetrators are prosecuted and, if convicted, punished with appropriate sanctions and ensure that the victims are provided with full reparation, including satisfaction and guarantees of non-repetition; and (c) clarify the fate or whereabouts of disappeared persons and ensure that their relatives are informed about the progress and the results of investigations. In particular, it should promptly make public the whereabouts of the 18 journalists detained since 19 September 2001, mentioned in paragraph 9 above; 11 former top officials of the People’s Front for Democracy and Justice (PFDJ), known as “the G15”, detained since 18 September 2001, and former Minister of Finance, Berhane Abrehe, and his wife, Almaz Habtemariam, detained respectively since 17 September 2018 and January 2018. The State party should ensure that (a) all persons deprived of their liberty are only detained in official places of detention and are provided with all legal safeguards, including an access to a lawyer, medical doctor and a family member, and that they are brought promptly before a judge; (b) allegations of unlawful detention are promptly investigated and that the perpetrators are brought to justice; (c) victims of arbitrary and unlawful detention are promptly released and provided with access to an effective remedy and full reparation. The State party should, as a matter of urgency, inform the relatives of the persons in detention about their whereabouts.**

#### **Conditions of detention**

29. The Committee regrets lack of data pertaining to the prison population, and the number of detention facilities, both official and unofficial, in the State party. The Committee is concerned about reports of over-incarceration and over-crowding, poor hygiene, inadequate nutrition and water supply, lack of health care in detention facilities. It is further concerned about reported use of underground cells and shipping containers to detain prisoners, including in Adi Abeto, Alla, Dhlak Kebir, Mai Edaga, Mai Serwa, Sawa and Wi’a. The Committee is concerned about allegations of high number of deaths in custody, lack of information or explanation provided to relatives and an absence of any investigation into the circumstances of such deaths. It is also concerned about a lack of access of independent monitoring groups to prison facilities (arts. 6, 7 and 10).

30. **The State party should take measures to improve detention conditions by (a) adopting practical measures to reduce overcrowding, including through the promotion of alternatives to detention; (b) ensuring that persons in detention are treated with humanity and dignity, in accordance with the Standard Minimum Rules for Treatment of Prisoners (Nelson Mandela Rules); (c) allowing for independent monitoring of detention facilities; and (d) considering accession to the Optional Protocol to the**

**Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The State party should investigate all inmate deaths promptly and thoroughly, prosecute and, where appropriate, punish those responsible and grant full reparation to victims' families.**

#### **The right to a fair trial and the independence of the judiciary**

31. The Committee is concerned about the lack of independence of the judiciary, including absence of a transparent procedure of appointment and dismissal of judges and the fact that many judges are military officers without proper legal training. The Committee is also concerned that military courts have jurisdiction in cases involving civilians and about the absence of a right to appeal decisions of the military courts. The Committee is concerned about the Special Court, which is not part of the ordinary judicial system, and which derives its powers from the Ministry of Defence and has its jurisdiction extended to general criminal cases. The Committee is concerned about a lack of basic guarantees of fair trial before the Special Court, including no right to a legal representative, to defence, to appeal, absence of a public hearing and public decisions. The Committee regrets that the Supreme Court, provided for by the Constitution, has not been established (art.14).

**32. The State party should take efforts to ensure and protect the full independence and impartiality of the judiciary and guarantee that it can carry out its judicial functions without any form of pressure or interference. The State party should (a) establish transparent and objective appointment and dismissal procedures of judges; (b) allocate additional human and financial resources to the judicial system, including providing judges and prosecutors with proper legal education and training; (c) ensure that military courts have jurisdictions only in cases involving military personnel; (d) provide for a right to a fair trial in all stages of judicial procedure, including the right to a defence and an appeal; (e) abolish the Special Court; and (f) establish the Supreme Court in accordance with the Constitution.**

#### **Freedom of movement and trafficking in persons**

33. The Committee is concerned about restrictions on the right to freedom of movement in the State party, including restrictions of the right to leave the country, stipulated in the National Service Proclamation 82/1995. It is concerned about allegations that persons moving without permits within the State party or trying to leave it are subjected to arbitrary arrest and detention. It is further concerned about allegations of so called shoot-to-kill or shoot-to-wound policies that have been applied against persons trying to cross the borders illegally. It is further concerned that, due to severe travel restrictions, including exit permits, persons attempting to leave the State party are compelled to resort to clandestine alternatives, which may make them vulnerable to smuggling and trafficking in persons. While the Committee notes the efforts to combat trafficking in persons mentioned during the dialogue, it regrets the lack of specific information about investigations, prosecutions, or the identification and protection of any victim of trafficking (art. 8 and 12).

**34. The State party should ensure freedom of movement, including the right to leave the country, by repealing all restrictions incompatible with article 12 of the Covenant. It should ensure that persons trying to leave the State party are not subject to arbitrary arrest and detention for exercising their right to freedom of movement, and under no circumstances are subject to shooting for crossing the border illegally. The State party should intensify its efforts to prevent, combat and punish trafficking in persons and to punish those responsible, as well as to identify victims and provide them with full reparation and appropriate protection and assistance.**

#### **Freedom of thought, conscience and religion**

35. The Committee is concerned about reports of severe restrictions of freedom of thought, conscience and religion in the State party. It is concerned that all religious groups, except Orthodox, Catholic, Protestant and Islam, are barred from exercising their freedom of religion owing to refusal of their registration by the State party, including due to receipt of funds from external sources. The Committee is concerned about allegations of arrest and detention of persons practising religions non-recognized by the State party. The Committee is concerned

about reported persecution of Jehovah's Witnesses who were stripped of their citizenship rights, following their alleged refusal to vote in 1993 referendum and many of whom have been reportedly arrested and detained because of their conscientious objection to the military service (arts. 9 and 18).

**36. The State party should guarantee the effective exercise of freedom of religion and belief and refrain from any action that may restrict it beyond the narrowly construed restrictions permitted under article 18 of the Covenant. It should bring its legislation and practices into conformity with article 18 of the Covenant and investigate all acts of undue interference with the freedom of religion of religious communities. It should release all persons arrested or detained for exercising their freedom of religion, including Jehovah's Witnesses.**

#### **Military and national service programme**

37. The Committee is concerned that the length of the national service, which, initially stipulated by the National Service Proclamation No. 82/1995 for the period of 18 months, has been extended by a mandatory national service programme called the "Warsai Yikealo Development Campaign" for an indefinite period. It is further concerned that indefinite duration of military/civil service reportedly remains one of the main causes for the departure of Eritreans from the State party. It is also concerned about allegations that national service conscripts are deployed for labour in various posts, including mining and construction plants owned by private companies, while receiving no or very little salary. The Committee is further concerned that the State party does not recognize a right to conscientious objection to military service and does not provide for alternative military service (arts. 6, 8 and 18).

**38. The State party should limit the length of mandatory military and national service to a maximum period of 18 months, in accordance with international standards. It should ensure the legal recognition of conscientious objection to military service and provide for alternative service of a civilian nature for conscientious objectors. It should also refrain from subjecting persons in military service to activities that may amount to forced labour.**

#### **Freedom of expression**

39. The Committee is concerned about particularly severe restrictions on freedom of expression in the State party. The Committee is concerned about reports of ongoing harassment, arrest and detention of persons for merely expressing their opinion, including political figures, journalists, religious and community leaders. The Committee is further concerned that access to information is restricted since the withdrawal of licences of all independent newspapers in 2001, and ongoing censorship and government control of media (art. 19).

**40. The State party should take all measures necessary to guarantee the enjoyment of freedom of opinion and expression in all their forms, in accordance with article 19 of the Covenant. Any restriction should comply with the strict requirements of article 19 (3), as further developed in the Committee's general comment No. 34 (2011) on the freedoms of opinion and expression, including the strict tests of necessity and proportionality. The State party should (a) put an end to harassment, arrest and detention of persons for expressing their opinion, including criticising the government; (b) immediately release all persons detained for exercising their right to freedom of opinion; (c) allow journalist and media workers to operate freely and independently; and (d) permit the establishment and operation of private media institutions and services.**

#### **Freedom of assembly and association**

41. The Committee is concerned about severe restrictions of freedom of assembly and association placed on independent human rights defenders and civil society organizations. It is concerned that Proclamation 145/2005 limits the operation of civil society organizations only to relief and rehabilitation organizations and that civil society organizations can implement projects only in partnership with government ministries (arts. 21 and 22).

42. **The State party should take all necessary steps, including legislative measures, to ensure that all individuals and political parties fully enjoy the right to peaceful assembly and freedom of association in practice and to ensure that all restrictions on the exercise of these rights comply with the strict conditions laid down in the Covenant.**

#### **Protection of minors**

43. The Committee is concerned that all high school students, boys and girls, must enrol for their twelfth grade at the Sawa Military Training Center, where they undergo stringent military training. The Committee is also concerned that many students drop out of school, and some of them flee the country, to avoid such enrolment. The Committee is further concerned about reports of alleged forced underage recruitment, including through the practice of round-ups (*giffa*), and allegation of violence against children, including sexual violence, including at the Sawa Military Training Center (arts. 7 and 24).

44. **The State party should (a) discontinue the forced enrolment of high school students at the Sawa Military Training Center and ensure that students in the twelfth grade have the option to receive education at civilian high schools; (b) ensure that all alleged perpetrators of violence against children, including sexual violence, in particular at the Sawa Military Training Center, are prosecuted and, if convicted, punished with appropriate sanctions, and that victims have an access to an effective remedy and full reparation; (c) ensure strict compliance with the minimum age of recruitment for military service of 18 years.**

#### **Participation in public affairs and the right to vote and to be elected**

45. While noting the holding of regional elections, the Committee is concerned that national elections have not been held in the State party since 1997, and that the National Assembly has been suspended. The Committee is further concerned that the current political system in the State party does not allow for pluralism and the participation of citizens in public affairs (art. 25).

46. **The State party should bring its electoral legal framework into compliance with the Covenant, including with article 25, by (a) holding national elections that allow for political pluralism; (b) refraining from arbitrarily denying registration to opposition political parties and preventing their participation in elections; (c) ensuring freedom of genuine and pluralistic political debate; and (d) revising legal and practical limitations on the right to stand for election and on the right to vote, with a view to ensuring compatibility with the Covenant.**

### **D. Dissemination and follow-up**

47. **The State party should widely disseminate the Covenant and the present concluding observations with a view to raising awareness of the rights enshrined in the Covenant among the judicial, legislative and administrative authorities, civil society and non-governmental organizations operating in the country and the general public.**

48. **The Committee requests the State party to submit its initial report by 26 March 2021 and to include in that report specific up-to-date information on the implementation of the recommendations made in the present concluding observations and of the Covenant as a whole, in particular on paragraphs 8 (constitutional and legal framework), 28 (enforced disappearances, extrajudicial killings, arbitrary arrest and detention) and 38 (military and national service programme) in accordance with the rule 75, paragraph 1, of the Committee's rules of procedure. The Committee also requests the State party, in preparing the report, to broadly consult civil society and non-governmental organizations operating in the country. In accordance with General Assembly resolution 68/268, the word limit for the report is 31,800 words.**