

Alternative Report Addressing Major Shortcomings in the Fourth and Fifth State Party Reports of Eritrea to the CEDAW Committee

1. Introduction

1. This report is submitted by the Eritrean Law Society (ELS), an independent professional association of Eritrean lawyers, currently operating from exile. Technical assistance in the preparation of this submission has been provided by the International Law and Policy Institute (ILPI).¹ This report can be posted on the CEDAW website for public information purposes.

2. Eritrea lacks an enabling political environment for the advancement of women's rights. This submission addresses the challenges of women's rights in Eritrea in the context of the dire state of human rights violations in the country. In so doing, it also addresses some deliberate misrepresentations, omissions, deficiencies and inaccuracies contained in the Fourth and Fifth State Party Reports (hereafter Reports or State Party Reports) of the Government of Eritrea. The submission shows a very alarming level of human rights crisis in Eritrea, a country, which is silently looming to a level of national and regional catastrophe in which context the issue of women's rights should be understood. In all fundamental areas, such as state institutions supporting democratic accountability, respect to the rule of law, civil society participation, protection of fundamental rights (including women's rights), land and language issues, prison conditions, regional and global relations, and many other pressing national issues, the performance of the Government remains despicable. The achievements in the area of women's rights depicted in the Reports do not correspond to the reality on the ground. This submission provides an alternative narrative, with a view to depicting as complete a picture as possible about the real challenges in Eritrea.

3. It is important to start this submission firstly: by highlighting the fact that on 27 June 2014, Eritrea has become the only third country in the world (next to North Korea and Syria) to be a subject of investigations by a Commission of Inquiry established by the UN Human Rights Council. This tells volumes about the real challenges of human rights in Eritrea. Secondly, almost none of the recommendations adopted by the CEDAW Committee in its 34th Session have been implemented by the Government; the same is true about recommendations adopted in Eritrea's first UPR process in 2009. Third, the fact that the current Reports were not submitted in due time is not a good indicator of a genuine commitment to women's rights. Fourth, in a short submission like this (a maximum of 10 pages), it is practically impossible to comprehensively address the unreliability of all figures, numbers and statistics cited in the State Party Reports. By shedding some lights on one particularly grotesque instance of misrepresentation, this submission will show how untrustworthy the Government Reports are in general. The example discussed is the constitutional crisis in Eritrea, which is never mentioned in the State Party Reports as an issue (as explored in the latter parts of this submission).

2. Methodological Approach

4. At the outset, the following methodological issues need to be clarified. First and foremost, it is important to note that a submission like this cannot be made by Eritrea-based NGOs, as there are no independent civil society organisations (CSOs) in the country. Secondly, it is also important to note that due to the prevailing political situation in the country, it is completely impossible to gather relevant data from within the country. In short, the country is stifled by a complete lack of access by international human rights observers, including any sort of reporting and monitoring of the human

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rights situation from within. Reflecting on this challenge, the UN Special Rapporteur on the Situation of Human Rights in Eritrea notes that the Government continues to refuse to cooperate with independent fact-finding initiatives, thus making it imperative to collate data from alternative sources, such as Eritrean diaspora communities and newly arriving refugees in Eritrea's immediate neighbouring countries.² However, this submission also uses additional information obtained from various reputable sources, such as reports of international rights groups and regional and international adjudicatory bodies, such as UN and AU agencies.

5. For all reasons discussed in this report, Eritrea is far from the margins of a properly functioning state. As a result, this submission adopts a methodology, which fits uniquely to the peculiar political situation in the country. For example, the overall recommendations for improvement rotate mainly around the deep crisis of legitimacy and utter disrespect to the rule of law. These recommendations address major structural problems that should be resolved urgently.

6. A number of assertions made in this report heavily rely on a similar civil society report co-sponsored by ELS and other stakeholders, and submitted to the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) in November 2013. The challenges Eritrea faces in the area of children's rights are very similar to those faced in the area of women's rights. Thus, ELS believes that some of the major arguments used in the ACERWC alternative civil society report are equally relevant in the current submission.³

3. Obligations of the State Party

7. Eritrea is a State Party to CEDAW and several other international treaties focusing on the protection of fundamental rights and freedoms. At national level, the country also has a fairly adequate legislative framework, which (in principle) commits the Government to the protection of fundamental rights, including women's rights. Starting from the unimplemented Constitution of 1997 up to a set of other national laws, the country has a fairly acceptable starting point. With all its shortcomings, the existing legal framework should have served as a stepping-stone to the next level of achievement. However, as will be seen throughout this report, the major challenge is at the implementation level. There is conspicuous lack of political will in implementing the basic pronouncements, which are made by relevant Eritrean laws and international treaties ratified by the country. In order to clearly grasp the real challenges at the ground level, one needs to understand first the prevailing political situation in the country, starting from 1991, but particularly focusing mainly on the last fifteen to sixteen years. In the later period, the country has suffered from a deep crisis of legitimacy and utter disrespect to the rule of law. The real challenges in the area of fundamental rights and freedoms, including women's rights, can only be understood within this context.

8. After gaining de facto independence from Ethiopia in 1991, Eritrea was officially recognized by the international community as an independent state in 1993. Since 1991, the country has been ruled by one and only one political party, the People's Front for Democracy and Justice (PFDJ), formerly known as the Eritrean People's Liberation Front (ELPF). In the first seven years since de facto independence, the country has seen a relatively peaceful political transition to a much-anticipated post-independence democratic political order. This dream was never to be materialized as the country was plunged into a devastating border conflict fought with Ethiopia between 1998 and 2000. Although the border conflict was formally concluded in June 2000, with binding international

² *Report of the Special Rapporteur on the Situation of Human Rights in Eritrea*, Sheila B. Keetharuth, UN Doc.A/HRC/26/45, 13 May 2014 (hereafter Second Keetharuth Report), para 12.

³ ELS does this by thankfully acknowledging the financial support that was provided by the African Union Liaison & Pan Africa Programme Office of Plan International in the preparation of the initial ACERWC civil society report. Due to time constraints, it was not possible to include in the current process all other stakeholders that were involved in initial ACERWC process. The following stakeholders were involved in the previous process: Strategic Initiative for Women in the Horn of Africa (SIHA) and International Commission on Eritrean Refugees (ICER).

arbitral decisions given in 2002 and 2003, for the last fifteen to sixteen years the country has been ruled under unofficial state of emergency. In legal terms, however, there are no valid grounds for the country to be ruled under any form of state of emergency for such a prolonged period of time. This has far-reaching implications on the protection of fundamental rights and freedoms, including women's rights.

9. The challenge exacerbated in September 2001, when the Government was internally challenged by its own reform movement to which the State President and his close confidantes responded by arresting the reformers and unleashing widespread crackdown on fundamental rights and freedoms. Today, as we write this report, Eritrea finds itself in a deep politico-legal crisis, characterized by alarming levels of human rights violations. There is a plethora of literature on this particular issue, ranging from periodic reports by reputable international rights groups such as Amnesty International and Human Rights Watch. There are also landmark judicial and semi-judicial decisions rendered against the Government by AU and UN institutions, which show alarming levels of human rights violations in the country. The following irrefutable facts about Eritrea should serve a good starting point.

4. The Rule of Law and the Crisis of Legitimacy

10. Currently, there is a deep crisis on the state of rule of law in Eritrea. By rule of law, we mean “a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards.”⁴ As noted by the First Keetharuth Report, “the basic tenets of the rule of law are not respected in Eritrea,”⁵ owing to an opaque system of governance, which is also characterized by a situation of *widespread and systematic* human rights violations.

11. Related to the deep rule of law crisis in Eritrea is the deficit of legitimacy. As a matter of factual and legal reality, the Government came to power in 1991 in the form of a transitional/provisional authority. Pursuant to Proclamations No. 23/1992 and No. 37/1993, its tenure has already expired in 1997. In effect, the Government is ruling the country without a clearly defined legal mandate, unilaterally imposing itself on the Eritrean people, particularly after 1997. According to one Eritrean legal expert, this is a situation akin to unconstitutional change of government, a political crisis that requires immediate intervention on the part of the AU, pursuant to the newly framed continental legal infrastructure of the AU.⁶

12. Because of the following characteristically anomalistic features, the case of Eritrea (as compared to many other countries) can be portrayed as “a bizarre example of statehood” in the modern history of nation-states. Indeed, the country displays a combination of the following unusual attributes, all at once, which are not commonly observable in any other nation-state in the world, even in the most “despised” states. As is widely reported,⁷ Eritrea does not have a *working constitution* or *constitutional framework* of whatsoever nature (regardless of a democratic or non-democratic nature); it does not have a *functioning parliament* (regardless of a democratic or non-democratic nature); it

⁴ *Report of the Secretary-General on the Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, UN.Doc, S/2004/616, 23 August 2004, para 6.

⁵ *Report of the UN Special Rapporteur on the Situation of Human Rights in Eritrea*, UN.Doc. A/HRC/23/53, 28 May 2013 (hereafter First Keetharuth Report), para 35.

⁶ Simon M. Weldehaimanot, “African Law of Coups and the Situation in Eritrea: A Test for the African Union’s Commitment to Democracy,” *Journal of African Law* (2010) 54(2): pp. 232-257.

⁷ See, for example, Kjetil Tronvoll & Daniel R. Mekonnen, *The African Garrison State: Human Rights and Political Development in Eritrea* (Oxford: James Currey, 2014); Daniel R. Mekonnen, “The Abolition of Female Circumcision in Eritrea: Inadequacies of New Legislation,” *African Human Rights Law Journal* (2007) 7(2): pp. 389-411.

does not have *independent judiciary*; it does not have *free press* (even a single privately-owned media outlet); it does not have the slightest semblance of *bureaucratic accountability* or even *officially published national budget*; last but not least, it has never seen *free and fair elections* since its de facto independence in 1991. It is difficult to imagine of any other country in the world, which comprises all of these unusual attributes all at the same time. According to the UN Monitoring Group on Eritrea and Somalia, the only country in Africa that offers a greater contrast with Eritrea is the failed state of Somalia.⁸ This should provide a broader context to the issue of women's rights in Eritrea, which makes a major component of the deep rule of law crisis in the country.

5. Alarming Levels of Human Rights Violations

13. According to conservative estimates, there are 10,000 victims of human rights violations in Eritrea.⁹ According to the UN Human Rights Council, the situation of human rights violations in Eritrea is described as *widespread and systematic* in nature. Violations include cases of:

... arbitrary and extrajudicial executions, enforced disappearances, use of torture, arbitrary and incommunicado detention without recourse to justice, and detention in inhumane and degrading conditions ... severe restrictions on freedom of opinion and expression, freedom of information, freedom of thought, conscience and religion, and freedom of peaceful assembly and association, including the detention of journalists, human rights defenders, political actors, religious leaders and practitioners ... forced conscription of citizens for indefinite periods of national service, which could amount to forced labour, the alleged coercion of minors into the military and the mining industry, as well as the intimidation and detention of family members of those suspected of evading national service in Eritrea ... shoot-to-kill practice employed on the borders of Eritrea to stop Eritrean citizens seeking to flee their country ...¹⁰

14. The UN Human Rights Council notes that these violations are “a cause for grave concern to the extent that they may reveal *a consistent pattern of gross and reliably attested violations of human rights*.”¹¹ Similarly, based on first-hand information collected from Eritreans, the First Keetharuth Report confirms that the violations cited by the UN Human Rights Council are indeed perpetrated by the Government of Eritrea.¹² It should be noted these violations could be fairly described as having reached the level of crimes against humanity. Although the above-cited reports do not use the term “crimes against humanity” explicitly, the situation depicted in the documents is undoubtedly akin to a situation of crimes against humanity. This is clear at least from the usage of the twin words of *widespread and systematic* by the UN Human Rights Council. As is generally understood, these two terms make part and parcel of the trademark phraseology in the crimes against humanity literature.¹³ It should be noted that in previous four separate occasions, the Eritrean Government was also found to be in violation of its international law obligations by arbitrarily arresting a score of high-ranking government officials and journalists of the free press who all remained in detention without trial for the last thirteen years. These semi-judicial decisions were given in two different occasions by the African Commission on Human People's Rights, and in two other separate occasions by the UN Working Group on Arbitrary Detention.¹⁴ The Government is known for its persistent refusal of access

⁸ *Report of the Monitoring Group on Somalia and Eritrea, Pursuant to UN Security Council Resolutions 751 (1992) and 1907 (2009)*, UN.Doc. S/2011/433, 18 July 2011, p. 11.

⁹ Amnesty International, *Eritrea: Twenty Years of Independence, but still no Freedom*, 2013, p. 14.

¹⁰ UN Human Rights Council Resolution 21/1, UN Doc.A/HRC/RES/21/1, 27 September 2012.

¹¹ *Ibid* [emphasis added].

¹² First Keetharuth Report, para 42.

¹³ Antonio Cassese, *International Criminal Law* (Oxford University Press, 2003) p. 64.

¹⁴ *Mahmoud Sherifo et al v Eritrea*, UN Working Group on Arbitrary Detention, UN.Doc E/CN4/2003/8/Add1, 54 (2002), 5 March 2002; UN Working Group on Arbitrary Detention, Opinion No 23/2007, adopted on 27 November 2007; *Liesbeth Zegveld and Mussie Ephrem v The Government of Eritrea*, ACHPR, Communication

to AU and UN independent observers. Thus far, the following UN special procedures mandate holders have been denied permission to visit the country: special rapporteur on the promotion and protection of the right to freedom of opinion and expression (in 2003 & 2005); special rapporteur on freedom of religion or belief (in 2005); special rapporteur on the right to food (in 2005); special rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (in 2005, 2007, and 2010); special rapporteur on extrajudicial, summary or arbitrary executions (in 2010); special rapporteur on the situation of human rights in Eritrea (in 2013 and 2014).¹⁵

6. The State of Fundamental Rights and Freedoms

15. In theory, fundamental rights and freedoms are adequately defined in different Eritrean laws, such as the unimplemented 1997, and Eritrea's transitional codes, which were inherited from Ethiopia in 1991, with some amendments that were implemented by Proclamations No. 1 to No. 8 of 1991 (as promulgated in the *Gazette of Eritrean Laws*). In this regard, the efficacy and relevance of the 1997 Constitution of Eritrea requires a little more analysis, because anomalously the constitution remains unimplemented in spite of its ratification. This makes Eritrea the only country in the world without a working constitution or a functioning constitutional framework. This issue is part and parcel of the rule of law and legitimacy crisis in Eritrea. As such, it has dire consequences on the promotion of women's rights. In relation to this issue, it is important to decipher some latest premeditated tactics of the Government aimed at concealing this deep-rooted constitutional crisis in the country.

16. Until recently, the fact that the 1997 Constitution remains unimplemented has never been contested by the Government itself. The constitutional crisis is adequately explored by a plethora of reports from different sources, becoming a most embarrassing issue to the Government. In response to a growing international censorship, the Government is resorting to a typical tactical manoeuvre, which depicts a situation where the Eritrean Constitution of 1997 is actually implemented (or is in force). This dishonest ploy is clearly observable in the Reports in which the Government makes frequent references to the provisions of the 1997 Constitution as if the constitution is implemented or in force.

17. It should be noted that since the advent of the 1998-2000 border conflict with Ethiopia, the Government has persistently stated, in different times and contexts, that the implementation of the 1997 Constitution was postponed indefinitely due to "persistent" threats posed by the so-called "border conflict" with Ethiopia. In its latest pronouncements, however, the Government changed a position only tactically and begun to cite provisions of the 1997 Constitution as if the constitution was in force. In actual sense, the 1997 Constitution has remained unimplemented. In fact, on 24 May 2014, the Eritrean President has made a surprise announcement saying that the Government is soon to embark on a constitution drafting process, admitting (albeit indirectly) that the 1997 Constitution was actually not in force at the time when he made the speech.¹⁶ This contradicts every statement in the State Party Reports about the efficacy of the 1997 Constitution. As such, it comes as the best example in supporting the claim that the Government indeed makes many other deliberate misrepresentations throughout the Reports. It appears that Eritrea's State Party Reports are written by authors who are unable or unwilling to differentiate the fundamental difference between the interest of the Eritrean nation-state as a permanent entity and that of the government or the ruling party as a temporary entity.

18. As far as the protection of fundamental rights and freedoms, including women's rights, are concerned, the 1997 Constitution has no practical relevance. Its relevance will be felt only after the government formally promulgates, in the *Eritrean Gazette of Laws*, that the Constitution is formally

No 250/2002, 19th Activity Report of the ACHPR; *Article 19 v Eritrea*, ACHPR, Communication No 275/2003, 22nd Activity Report of the ACHPR, Annex II.

¹⁵ First Keetharuth Report, para 31.

¹⁶ Shabait.com, "President Isaias Afewerki's speech on the occasion of the 23rd Independence day celebrations," 24 May 2014, <http://www.shabait.com/news/local-news/171116-president-isaias-afewerkis-speech-on-the-occasion-of-the-23rd-independence-day-celebrations>.

implemented, and following this only if courts are also given full power to implement the provisions of the Constitution pertaining to fundamental rights and freedoms (in other words, the Bill of Rights). Related to this issue, is the state of the Eritrean Judiciary, which is one of the weakest state institutions in the country. The Eritrean Judiciary suffered a major blow after the President of the High Court (the highest court of the nation at that time) was unceremoniously dismissed from office by the State President in August 2001, after he publicly criticised undue interference of the executive branch in the judicial branch. Since then, the Eritrean Judiciary exists only in name without meaningful power in restraining abuse of government power in all matters pertaining to the protection of fundamental rights.

7. Civil Society Participation

19. Governments are leading role players in the protection and promotion of fundamental rights. However, experience shows that governments alone cannot achieve this huge task meaningfully. That is why active civil society participation is widely regarded as one of the major factors for a successful approach in the promotion of women's rights promotion. The logic in this regard is self-explanatory: what governments miss out, can be complemented by active civil society participation. The Eritrean experience in this regard is typically desolate.

20. The best example in elaborating this challenge is the very preparation of this submission. In a normal situation, this submission should have been prepared by a CSOs based in Eritrea. Instead, it is submitted by ELS, an exiled Eritrean CSO. This was due to the absence of a single independent CSO working in the area of women's rights inside Eritrea. The last remaining CSOs and/or international NGOs working in Eritrea were expelled in about 2005, when the government implemented a notorious anti-CSO policy. The only so-called CSOs that come closer to the issue of women's rights are the National Union of Eritrean Women (NUEW) and the National Union of Eritrea Youth and Students (NUEYS). As is generally known, these Unions are the women's and the youth's leagues of the ruling party, PFDJ. As such, they are not independent CSOs in the conventional sense of the term. In dominant CSO discourse, they are actually GONGOs (government-operated non-governmental organisations), which masquerade as CSOs to pay lip service to the government's rhetoric on civil society participation. It is due to the absence of a single independent CSO working in the area of women's rights that the availability of aggregate or disaggregate data from within Eritrea was extremely difficult in the preparation of this submission.

8. Disintegration of the Eritrean Family

21. In its laws and official policy, the Government formally recognises the family as the fundamental unit of the society. Theoretically, this is commendable. The problem, as highlighted throughout this submission, is again on how this policy is implemented at the ground level. The family as the fundamental unit of the Eritrean society is disintegrating in alarming scale. The core problem in this regard is the increased level of militarisation in the country. In Eritrea, every adult member of the society (men and women) are continuously conscripted in the army under the government's controversial "national service programme," which is not limited by time and scope. When it started, the policy of conscription was limited to a maximum of 18 months. With time, the policy degenerated to a form of indefinitely military conscription without formal pay. Military conscription has intensified in the aftermath of the 1998-2000 border conflict with Ethiopia, even when there is no imminent danger of aggression from Ethiopia, as would be justifiable under the relevant provisions of international law governing the conduct of armed hostilities.

22. Although in a different context, in January 2013 a senior Eritrean Government official admitted that: "As a national service participant as well as a member of the reserve and regular army,

almost every able-bodied person in Eritrea is armed.”¹⁷ As a result, Eritrea has now excessive levels of militarisation per capita, comparable only to few exceptional instances in the world (such as North Korea). According to conservative estimates, the level of military mobilization in Eritrea goes up to 25% of the total population, constituting a minimum of 600,000 people falling directly under the control of the military machinery. According to the International Crisis Group (ICG), a society can function properly only up to the level of 10% of military mobilisation.¹⁸ When this maximum limit is exceeded, a society ceases to function normally. Sociologists describe this as a peculiar situation of “anomie,” where it becomes impossible for the entire society, including its fundamental unit, the family, to fulfil basic human needs. This leads to a huge societal disorder, and that is exactly what is happening in Eritrea.¹⁹

9. The Sad State of Social Services

23. The Government prides itself of registering marvellous levels of achievement in the area of health and basic welfare, including in Millennium Development Goals (MDGs). Enigmatically, some of these purported achievements are also regurgitated by external sources, which find themselves in stark contradiction with reports coming from other credible sources, such as UNDP and UNHCR. In a country, whose population is fleeing in a mass exodus, it is difficult to imagine a measurable degree of progress in any of the MDGs, and particularly in the area of health and basic welfare. According to the most cited indicator of human welfare, UNDP’s *Human Development Index* (HDI), in 2013 Eritrea scored an index of 0.351, ranking 181 from 187 countries assessed by the report. This score places Eritrea not only in the category of “low human development” countries, but also far below the regional average for sub-Saharan Africa. According to UNDP, the index for sub-Saharan Africa as a region has risen from 0.366 in 1980 to 0.475 in 2013.²⁰ This means that in 2013 Eritrea was still below the average achievement sub-Saharan Africa as a region has achieved in 1980. Seen against this background, the Government’s claims cannot be taken on face value.

24. In all major areas pertaining to good governance, democratic accountability and the provision of basic social services, the Government portrays exceptionally poor levels of achievement. The following sample international rankings and surveys are illustrative in this regard. In the 2012 *Global Hunger Index*, Eritrea ranked 78 out of 79 countries assessed by the report.²¹ In the 2012 *Global Press Freedom Rankings*, Eritrea was designated the worst country in Africa (ranked 49 out of 49 assessed by the report). In the same report, it was ranked 194 in the world out of 197 assessed. In this regard, it was surpassed only by Uzbekistan, Turkmenistan and North Korea.²² According to *Parade*, in 2011, Eritrea’s President was ranked the second worst dictator in the world, preceded only by that of North Korea, corresponding to the claim that the country has now effectively become the North Korea of Africa.²³ The 2011 *Mo Ibrahim Index of African Governance* ranks Eritrea 47 out of sub-Saharan Africa’s 53 countries.²⁴ For many years, including in its 2012 ranking, Reporters Without Borders has ranked Eritrea as the last in the world in media freedom (179 out of 179 countries assessed).²⁵ For the International Press Institute, Eritrea is one of the world’s most brutal suppressors of independent

¹⁷ Girma Asemerom (Eritrean Ambassador to the AU), Press Release in Relation to the Failed Coup D’état of 21 January 2013.

¹⁸ International Crisis Group, “Eritrea: The Siege State,” 2010, p. 13.

¹⁹ Abdulakader S. Mohammad and Nicole Hirt, “‘Dreams Don’t Come True in Eritrea’: Anomie and Family Disintegration due to the Structural Militarization of Society,” *Journal of Modern African Studies* (2013) 51(1), pp. 139-168.

²⁰ *Human Development Index* 2013, <http://hdr.undp.org/en/reports/global/hdr2013/>.

²¹ *Global Hunger Index* 2012, <http://www.ifpri.org/sites/default/files/publications/ghi12.pdf>.

²² *Global Press Freedom Rankings*, <http://www.freedomhouse.org/sites/default/files/Global%20and%20Regional%20Press%20Freedom%20Rankings.pdf>.

²³ *The World’s Worst Dictators*, <http://www.parade.com/dictators/index.html>.

²⁴ *Mo Ibrahim Index of African Governance* 2008, <http://www.moibrahimfoundation.org/index-2008/index.asp>.

²⁵ *Worldwide Press Freedom Index* 2012, http://en.rsf.org/IMG/CLASSEMENT_2012/C_GENERAL_ANG.pdf.

reporting,²⁶ and for the Committee to Project Journalists Eritrea is Africa's leading suppressor of media freedom and the world's fourth worst jailer of journalists.²⁷ In the *Bertelsmann Foundation Transformation Index* (BTI) of 2012 Eritrea is ranked 126 out of 128 countries in terms excessive levels of militarization.²⁸ The list on the Government's poor level of performance is endless.

10. Militarised Education and Underage Conscription

25. Since around 2002, the Government has implemented a new educational policy, which requires all high school students, including girls, to enrol for their final year in the so-called Warsai-Yikealo School, which is part and parcel of the notorious Sawa Military Training Centre. Once enrolled in this "school," students are regimented under strict military discipline, where the status of a soldier immediately replaces that of a student. Under this scheme, the Government is continuously conscripting underage children in violation of its obligations emanating both from the Convention on the Right of the Child (CRC). In a very silent process, which is far from a situation of an armed conflict, Eritrea has become a child-unfriendly state in Africa.

26. The militarization of education needs to be seen in the context of the long history of coerced military conscription in Eritrea, which also has a direct relationship with the dire situation of underage military conscription in the country. As is generally known, Eritrea has a long history of armed conflicts, dating back at least to the advent of Italian colonialism in 1890. As a result, the Eritrean society, including its underage children, have been coercively conscripted by different political forces in different historical context. Even during the much-celebrated liberation struggle of Eritrea (1961-1991), Eritrean liberation movements (including the government in power) were recruiting underage children, with varying degrees of severity. The country has seen only a short respite of 7 years (1991-1998), during which it was briefly spared from armed hostilities. In the aftermath of the 1998-2000 border conflict with Ethiopia, disturbing trends of underage military conscription have been seen in the country.

27. The pervasiveness of this problem is clearer in no other incident than in the twenty-first round of recruitment of the national service programme (NSP), which took place between 20 August 2007 and 8 February 2008. According to a leaked government statistics,²⁹ there were a total of 9938 forced conscripts in the twenty-first round of recruitment. From this, 3516 were underage children, constituting 35% of the total number of conscripts in the same round. There were 1911 male underage conscripts and 1599 female underage conscripts. All in all, there were 4324 female conscripts, constituting 43% of the total number of conscripts. For instance, in the twenty-second round of the NSP, which concluded in June 2009, official government sources indicated that 40% of the conscripts comprised female conscripts. Further details in the form of disaggregated data were not readily available on this particular round and the total number of conscripts of this round was not yet known. Nonetheless, in a speech at the graduation ceremony, the State President admitted that the majority of participants of the twenty-second round were born in the post-independence era, implying that at the time of conscription all such recruits were actually underage children.³⁰

²⁶ *World Press Freedom Review* 2007, http://www.freemedia.at/cms/ipi/freedom_detail.html?country=/KW0001/KW0006/KW0154.

²⁷ *Committee to Protect Journalists*, <http://cpj.org/reports/2012/06/journalists-in-exile-2012-crisis-in-east-africa.php#more>.

²⁸ *Bertelsmann Foundation Transformation Index* (BTI) 2012, http://www.bertelsmann-stiftung.de/cps/rde/xchg/bst_engl/hs.xsl/publikationen_111896.htm.

²⁹ The source of this information is a leaked Tigrinya report, originally published by www.assena.com, a news site operated by an exiled Eritrean journalist, Amanuel Iyasu. An English translation of the report was later used in the preparation of the 2012 Report of Child Soldiers International, *Case Study Eritrea: Widespread Conscription of Children Goes Unchecked*, http://www.child-soldiers.org/global_report_reader.php?id=562.

³⁰ Shabait.com, 'Participants of 22nd Round National Service Graduate', <http://allafrica.com/stories/200906291030.html>, 28 June 2009.

11. The Refugee Crisis

28. In spite of its small population size, Eritrea has in recent years produced disproportionately large number of refugees. By end of 2008, for example, Eritrea was ranked the second-highest refugee producing country in the world in absolute numbers. At that moment, Eritrea produced 62,700 new asylum seekers around the world, according to official UNHCR data.³¹ In such figures, often times Eritrea competes with failed or chaotic states, such as Somalia, Iraq and Syria, which in any case also have much bigger populations than Eritrea. While there are fluctuations on the monthly or yearly refugee outflow, the trend has not changed in significant proportion. In the last ten years, Eritrea has always remained among the top refugee-producing countries in the world. At the time of submitting this report, around 4000 Eritreans are fleeing every month to immediate neighbouring countries, Ethiopia and Sudan.³² Anecdotal sources now indicate that the total number of people who live in the *Eritrean diaspora* may have well outstripped those who reside inside *Eritrea proper*. Prompted by such unfolding demographic catastrophe the UN Special Rapporteur on the Situation of Human Rights in Eritrea warns: “If the trend continues, Eritrea will soon be a country without people inside.”³³ A considerable number in the new wave of Eritrean refugees is that of unaccompanied underage children, including girls.³⁴ This particular problem requires urgent intervention in terms of providing immediate humanitarian support to the most vulnerable. As highlighted by a recent call made by four Eritrean Catholic Bishops, Eritrea is facing an existential threat of extinction. In the words of the bishops: “it is not just the continuous outflow, and hence the depletion, of the people on its own that is worrying us, but the fact that we are heading towards *extinction* as a result ...”³⁵ This against this, which is a reflection of the deep socio-political crisis in the country, it is not difficult to understand that the Reports of the Government do not objectively reflect the real challenges at the ground level.

12. Recommendations

29. Governments are leading role players in all areas pertaining to the promotion and protection of fundamental rights and freedoms, including women’s rights. Without the presence of a rule of law-abiding government that respects the fundamental rights and freedoms of its citizens, it is difficult to think of a situation, where serious work can be done in the advancement women’s rights. The major problem in Eritrea is the deep crisis of legitimacy and the flagrant disrespect to the tenets of rule of law. All other measures that can be envisaged for an improved achievement in the area of women’s rights would not have meaningful effect without addressing the core of the political crisis in the country.

30. In light of the above observations, ELS believes that the following recommendations are of paramount importance for the advancement of women’s rights in Eritrea.

- a) The foremost step that has to be taken is mending the structural politico-legal crisis in the country, which at its core shall include full restoration of the primacy of the rule of law. The

³¹ UNHCR, *Global Trends: Refugees, Asylum Seekers, Returnees, Internally Displaced and Stateless Persons* (2009), p. 16.

³² UNIFEED Interview with Sheila Keetharuth, <http://www.unmultimedia.org/tv/unifeed/2014/06/geneva-eritrea-human-rights/>, 19 June 2014.

³³ Times of Israel, “Nearly 4,000 Flee Eritrea Each month, says UN,” <http://www.timesofisrael.com/nearly-4000-flee-eritrea-each-month-says-un/>, 20 June 2014.

³⁴ Elsa Chyrum, “Unaccompanied Eritrean Refugee Children in Ethiopia,” https://www.youtube.com/watch?v=_aTcPm1Mezw, 13 February 2014.

³⁵ “Where is Your Brother,” Pastoral Letter of the Catholic Bishops of Eritrea, 25 May 2014, p. 14 [emphasis added]. A Tigrinya version of the letter is available here: <http://asmarino.com/alewuna/2093-the-most-daring-message-to-come-out-of-eritrea->. English translation is available here: <http://amecea.blogspot.no/2014/06/eritrea-nuncio-for-eritrea-appointed.html>. Related to this issue is the challenge of human trafficking, which cannot adequately explored in the current submission for limitations of space.

establishment of a transparent, accountable and legitimate system of governance is a top priority for Eritrea. To this end, the Eritrean Government shall immediately implement the 1997 Constitution by formally promulgating in the *Eritrean Gazette of Laws* a definite date when the constitution shall effectively come into force.

- b) Eritrea does not have a functioning parliament or a legitimate representative of the people. The closest that comes to this was the Transitional National Assembly (Parliament) of Eritrea, which has never been convened since February 2002. The government shall immediately reconvene the Parliament with a view to drawing a clearly defined roadmap for transition to democratic order. This process shall ensure an all-inclusive consultation with, and involvement of, all Eritrean political forces (including exiled stakeholders).
- c) The independence and impartiality of the Eritrean Judiciary shall be fully restored by re-establishing the judicial branch with adequate resources and requisite judicial independence.
- d) The Government shall also take other ancillary measures aimed at transitioning the nation, step by step, to a full-fledged democratic order. Such measures shall include: the immediate discontinuance of the comprehensive, coercive and unlimited military conscription, including enrolment of underage children at the Sawa Military Training Centre, which is disguised as Warasai Yikealo School.
- e) Unconditional release of all political, religious and other prisoners is one of the prerequisite factors for the establishment of accountable, transparent and legitimate political order in Eritrea. Without such basic commitments, all other efforts on the promotion of women's rights (irrespective of how well-intended they may appear) will not have any meaningful effect. As a sign of good gesture towards a rule of law-abiding system of governance, the Government shall immediately release all who have been incarcerated for many years without having a day in a court of law.
- f) Regarding the dire situation of unaccompanied underage Eritrean refugees in neighbouring countries, international actors shall take immediate humanitarian action in order to alleviate the suffering of these vulnerable children.
- g) Side by side with the fulfilment of the pre-requisite steps identified in the above items, the establishment of an independent public institution shall be established with specific mandates on the advancement of women's rights.
- h) Last but not last, the CEDAW Committee shall adopt a resolution asking the Government of Eritrea to provide its with a clearly defined timeline within which the above recommendations have to be implemented.