



Eritrea's Compliance with the International Covenant on Civil and Political Rights

Submitted by The Advocates for Human Rights

a non-governmental organization in special consultative status since 1996

125th Session of the Human Rights Committee

March 4th–March 29th, 2019

Submitted 4 February 2019

REPORTING ORGANIZATION

The Advocates for Human Rights (“The Advocates”) is a volunteer-based non-governmental organization committed to the impartial promotion and protection of international human rights standards and the rule of law. Established in 1983, The Advocates conducts a range of programs to promote human rights in the United States and around the world, including monitoring and fact finding, direct legal representation, education and training, and publications. The Advocates provides legal representation to asylum-seekers in the Upper Midwest region of the United States, and has represented asylum-seekers from Eritrea for more than 20 years.

I. EXECUTIVE SUMMARY

1. Eritrea acceded to the International Covenant on Civil and Political Rights (ICCPR) in January 2002.¹ Eritrea is therefore obliged to ensure that its policies and practices are in full compliance with the ICCPR. Eritrea has not submitted its initial report to the Committee, and therefore the Committee is conducting this review in the absence of a State Party report.
2. This alternative report focuses on Eritrea's obligations under the ICCPR and specifically addresses arbitrary arrest and detention, the deprivation of liberty without due process, conditions of detention, mandatory national service, and the use of torture in detention centers and national service facilities. It also addresses the arbitrary arrest, detention, and torture of the followers of non-authorized religions.
3. Eritrea remains a militarized authoritarian state. The Eritrean Constitution, ratified in 1997, includes protections for civil liberties, but it has not been implemented.² Judicial mechanisms are enforced arbitrarily, as there is no active legislative branch or independent judiciary.³ Existing accountability mechanisms fail to provide meaningful, effective, independent oversight in areas such as government corruption and military torture.⁴
4. The Eritrean military and the National Security Office are responsible for grave human rights violations. These violations include arbitrary arrest, detention without due process, torture, forced labor, and enforced disappearances.⁵ Systematically, Eritrean forces use torture against detainees, targeting both persons accused of crimes as well as third parties who are accused by association.⁶ Torture, rape, and other cruel, inhuman, or degrading treatments are purposefully and methodically applied in military and detention centers.⁷

II. ERITREA'S COMPLIANCE WITH THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS HAS FALLEN SHORT.

A. The Government of Eritrea systematically engages in torture (List of Issues paragraph 16).

5. The Committee requested that the Eritrean Government "respond to allegations that the use of torture by Eritrean officials has been and remains, both extensive and methodical in civilian and military detention centres."

¹ United Nations Treaty Collection, "Chapter IV Human Rights; International Covenant on Civil and Political Rights," accessed Jan. 15th, 2019, https://treaties.un.org/Pages/ViewDetails.aspx?chapter=4&clang=_en&mtdsg_no=IV-4&src=IND.

² United States Commission on International Religious Freedom, *Annual Report 2018 - Eritrea* (Washington D.C., 2018), https://www.uscirf.gov/sites/default/files/Tier1_ERITREA.pdf.

³ *Ibid.*; Office of the United Nations High Commissioner for Human Rights, "Statement by Ms. Sheila B. Keetharuth, Special Rapporteur on the situation of human rights in Eritrea at the 73rd session of the General Assembly", accessed Jan. 16th, 2019, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23774&LangID=E>.

⁴ *Detailed findings of the commission of inquiry on human rights in Eritrea*, (June 8, 2016), U.N. Doc. A/HRC/32/CRP.1.

⁵ *Report of the commission of inquiry on human rights in Eritrea*, (June 4, 2015), U.N. Doc. A/HRC/29/42.

⁶ *Commission of Inquiry, Detailed findings, supra* note 4.

⁷ *Report of the commission of inquiry, supra* note 5.

6. Eritrea made a significant step toward acknowledging its human rights obligations with respect to prevention of and accountability for torture by ratifying the Convention Against Torture, but it flatly refuses to acknowledge its responsibility for torture. In 2014, Eritrea acceded, with reservations, to the U.N. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.⁸ Yet reports of torture and other serious human rights abuses enacted by the Eritrean military and national security forces continue.⁹ The government responded to accusations of human rights abuses in a June 2016 press statement through Presidential Adviser H.E. Yemane Gebreab. Through this statement, the government denied these allegations as biased against the government, claimed the government had made progress in advancing human rights, and accused the Commission of Inquiry as deliberately targeting African and developing nations.¹⁰
7. The Committee further requested information about the legislative framework to prevent and combat torture. The Eritrean Penal Code defines torture as “the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under control of the accused; except that torture shall not include pain or suffering reasonably arising only from, inherent in, or incidental to the proper execution of lawful procedures,” and criminalizes torture with a penalty of 25-27 years and in extreme cases, death or life imprisonment.¹¹ There is little application of the legislative framework to prevent and combat torture.¹² The Eritrean government **has not signaled any intent to make the reforms necessary to hold perpetrators of torture and other cruel, inhuman, or degrading treatment accountable.**¹³
8. Torture, rape, and other cruel, inhuman, or degrading punishment is purposefully and methodically applied in military and detention centers.¹⁴ The Advocates has received **numerous firsthand reports of torture and other cruel, inhuman, or degrading treatment by government forces.**¹⁵ Eritrean security forces and other arms of government systematically use torture to silence dissent, extract information, and create fear.¹⁶ Thousands of survivors and victims of torture such as clients of The Advocates have risked their lives fleeing Eritrea, seeking asylum elsewhere; reports of human right abuses come

⁸ United Nations Treaty Collection, “Chapter IV: Human Rights: Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment”, accessed Jan. 15th, 2019, https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-9&chapter=4&lang=en.

⁹ Ibid.

¹⁰ Eritrean – Ministry of Information, “Press Statement by H.E. Mr. Yemane Gebreab,” Jan. 1, 2019, <http://www.shabait.com/news/local-news/21964-press-statement-by-he-mr-yemane-gebreab>.

¹¹ PENAL CODE, art. 108 (Eritrea).

¹² *Report of the commission of inquiry*, supra note 5.

¹³ Abdur Rahman Alfa Shaban, AfricaNews, United Kingdom says no evidence of human rights reform, Oct. 19, 2018, <http://www.africanews.com/2018/10/19/no-evidence-of-human-rights-reforms-in-eritrea-uk/>; Human Rights Watch, Eritrea: Diplomacy Changes, but Political Prisoners Remain, Oct. 3, 2018, <https://www.hrw.org/news/2018/10/03/eritrea-diplomacy-changes-political-prisoners-remain>; Human Rights Watch, World Report 2019: Eritrea, <https://www.hrw.org/world-report/2019/country-chapters/eritrea#>.

¹⁴ *Report of the commission of inquiry*, supra note 5; Interviews conducted by The Advocates (July 2011-September 2018).

¹⁵ Interviews conducted by The Advocates (July 2011-September 2018). The case information presented for this report is based on interviews with asylum seekers from Eritrea conducted by The Advocates for Human Rights between July 2011 and September 2018. Certain details of case information are omitted due to the necessity of protecting the identities of the individuals in the cases mentioned throughout the submission.

¹⁶ *Report of the commission of inquiry*, supra note 5.

primarily from persons in the diaspora and asylum-seekers, as Eritrea remains closed to international organizations.¹⁷

9. Suggested recommendations:

- Publicly acknowledge the Government of Eritrea’s role in committing acts of torture and other human rights abuses, particularly within detention centers.
- Enforce Article 108 of The Penal Code of Eritrea through establishing an independent accountability mechanism to ensure that individuals are not subjected to torture and other inhumane treatment and to ensure that perpetrators are held accountable.
- Establish independent and impartial mechanisms to investigate and prosecute all past allegations of torture, particularly in detention facilities and military centers.

B. The Eritrean Government continues to arbitrarily arrest and detain military and civilian populations without due process (List of Issues paras 18, 19, and 20).

10. The Committee requested that the Eritrean Government “respond to reports about widespread arbitrary arrest and detention, and a lack of due legal process,” and “provide information about the basic safeguards for persons who have been arrested,” as well as about “the structure and competencies of the judiciary” in Eritrea.

11. The Penal Code of Eritrea allows imprisonment as a punishment for all crimes, allowing death penalty as an alternative punishment for Class 1 and Class 2 “Serious Offences” and a fine as an alternative punishment for “Petty Offences.”¹⁸ The code further states that acts “required or authorized by law,” “in respect of public, State or military duties done within the limits permitted by law” and those “reasonably done in exercising the right of correction or discipline,” will not be subject to legal punishment.¹⁹ The Penal Code defines treason as a Class 4 Serious Offence including the provision of information to a foreign entity, the encouragement of disloyalty among those tasked with defense, the sacrifice of Eritrean interests when acting as a representative of the government, and material damage to Eritrea’s defense.²⁰ High Treason, defined as an attack on Eritrea’s government, executive, or sovereignty, is a Class 1 Serious Offence and therefore allows for the death penalty.²¹ Similarly, the law classifies espionage as a Class 4 Serious Offence. The definition penalizes persons who knowingly transmit sensitive information to a foreign power or hostile organization or who benefit those entities politically, diplomatically, militarily, or economically.²² Such conduct is a crime regardless of whether the foreign entity formally recruited the individual. In the context of threatened or enacted war, Espionage is charged as a Class 2 Serious Offence and therefore allows for the death penalty.²³ The Penal Code criminalizes avoidance of military service, as well as assisting or encouraging another person to avoid military service, and encouraging another person

¹⁷ *Report of the Special Rapporteur on the situation of human rights in Eritrea*, (June 25, 2018), U.N. Doc. A/HRC/38/50.

¹⁸ PENAL CODE, art. 65 (Eritrea).

¹⁹ *Id.* art. 32.

²⁰ *Id.* art. 112.

²¹ *Id.* art. 113.

²² *Id.* art. 114.

²³ *Id.* art. 115.

to refuse a military order.²⁴ The punishment for this behavior escalates to a Class 6 Serious Offence when performed during a military emergency.²⁵

12. Eritrean forces systematically use arrest and detention without cause, as well as other forms of deprivation of liberty, as tools to exert control over the population. Eritreans report arbitrary accusations of treason and espionage, charges which cover a variety of perceived actions, including alleged desertion, unauthorized movement or absence, insubordination and asking “inappropriate” questions.²⁶ Without clear and independent legislative or judicial mechanisms, the accused are unable to defend themselves against these charges.

13. Suggested recommendations:

- Reform the Penal Code of Eritrea to prohibit arbitrary arrest and detention without due process, and ensure that individuals who are arrested have access to a legal counsel from the moment of arrest and at all times during interrogation, and ensure the right to a fair trial.
- Ensure that no individual is arrested or detained on the basis of political opinion or on the basis of affiliation with individuals who are alleged to have committed crimes.
- Ensure that provisions in the Penal Code allowing for the imposition of the death penalty limit it to acts which constitute intentional killings, consistent with Article 6(2) of the Covenant.

C. Detainees are subjected to ill-treatment and dangerous conditions (List of Issues para. 21).

14. The Committee requested information on prison conditions and “on the mechanisms in place to monitor conditions of detention and to investigate allegations of torture and ill-treatment.”

15. Article 73 of the Eritrean Penal Code stipulates that the courts supervise detention facilities and have to ensure humane treatment of detainees.²⁷ The Eritrean Government has not established or implemented any mechanisms to ensure human treatment of detainees in prisons and military camps. Detention centers are not accessible for any international observers, including special procedures mandate-holders, and the government has not provided data on the number of detainees or detention facilities.²⁸ Poor recordkeeping and lack of government oversight of detention facilities prevents detainees from reporting mistreatment, torture, and other abuses.²⁹

16. Prison conditions include ill-treatment and lack of access to basic needs such as food, water, and health care.³⁰ In some cases, these conditions are fatal. Prison officials do not typically announce official causes of death,³¹ but detention centers are overcrowded and

²⁴ *Id.* art. 119.

²⁵ *Id.* art. 120.

²⁶ *Report of the commission of inquiry, supra* note 5.

²⁷ PENAL CODE, art. 73 (Eritrea).

²⁸ Human Rights Watch, *Human Rights Situation in Eritrea: Submission to the African Commission on Human and Peoples' Rights*, Maria Burnett (New York: Human Rights Watch, Apr. 2018), 1; *Report of the Special Rapporteur, supra* note 17.

²⁹ *Report of the Special Rapporteur, supra* note 17.

³⁰ Human Rights Watch, *Human Rights Situation in Eritrea, supra* note 28, at 5.

³¹ *Report of the Special Rapporteur, supra* note 17.

fail to provide detainees with basic resources.³² Detainees are often subject to extreme temperatures and other dangerous conditions, often for extended periods of time, and are forced into overcrowded cells and shipping containers. These facilities do not provide access to health care, adequate nutrition, or hygienic washing, bathing, and toileting facilities.³³ Families, and often the detainees themselves, are prevented from knowing where individuals are detained; some are not even made aware of the reasons for their detention.³⁴

17. Gender-based violence commonly occurs in detention facilities. Pregnant women and new mothers are physically assaulted.³⁵ Women lack access to basic resources, including not being provided with necessary sanitary products.³⁶

18. Suggested recommendations:

- Immediately grant international observers free and unfettered access to all detention centers.
- Collect and publish data on the number of detainees as well as the number and causes of fatalities in detention centers.
- Implement transparent and impartial accountability mechanisms to allow detainees to lodge complaints and to hold individuals accountable for inhumane treatment of detainees.

D. The government of Eritrea severely restricts freedom of movement beyond the country's borders (List of Issues para. 22).

19. The Committee requested “information about limitations on the freedom of movement, especially in relation to the national service, including the right to leave and freely return to” Eritrea.

20. Eritreans ages 5 to 50 years are prohibited from leaving the country.³⁷ The government inconsistently and arbitrarily denies passport and exit visa applications.³⁸ Amnesty International reports that individuals living in Eritrea who attempt to leave “are subject to arbitrary detention.”³⁹ Many attempt to flee Eritrea to avoid military conscription, religious persecution, and other forms of state-sanctioned human rights abuses; their ability to leave the country is “severely restricted” by authorities.⁴⁰ The government has at times enforced a “shoot to kill” policy targeting people who attempt to leave the country, especially people who attempt to cross the border with Ethiopia.⁴¹

³² Ibid.

³³ Ibid.

³⁴ *Report of the Special Rapporteur, supra* note 17.

³⁵ *Commission of Inquiry, Detailed findings, supra* note 4.

³⁶ Ibid.

³⁷ Amnesty International, *Amnesty International Report 2017/18: The State of the World's Human Rights*, (London: Amnesty International Ltd, Feb. 2018), 160.

³⁸ U.S. Department of State, *Country Reports on Human Rights Practices for 2017: Eritrea*, (Washington D.C.: Bureau of Democracy, Human Rights and Labor), 11.

³⁹ Amnesty International, *Amnesty International Report 2017/18, supra* note 37, at 160.

⁴⁰ *Id.*, at 159.

⁴¹ Human Rights Watch, *Human Rights Situation in Eritrea, supra* note 28, at 6; Amnesty International, *Amnesty International Report 2017/18: The State of the World's Human Rights*, (London: Amnesty International Ltd, Feb. 2018), 160.

21. The Eritrean Government has a policy of mandatory detention of people who try to leave the country illegally in evasion of military service and does not attempt to reintegrate them back into society.⁴² In 2016, Sudanese authorities caught and returned 400 Eritreans who attempted to leave the country illegally; they were detained upon their return to Eritrea and no credible reports have been made of their release.⁴³ People caught attempting to leave the country are arrested and held until they pay large fines; those who are unable to pay are detained indefinitely.⁴⁴ Individuals associated with Eritreans who have fled the country—often to evade military service—face reprisals, harassment, fines, and detention.⁴⁵
22. Despite the risks associated with leaving the country, a significant number of people attempt to flee in order to escape human rights abuses. Tens of thousands of individuals are reported to leave the country each year. In 2015, 47,025 Eritreans applied for asylum in Europe; unknown numbers escaped elsewhere, or did not seek asylum, or were caught in their attempts to flee.⁴⁶
23. Suggested recommendations:
- Reform Article 119 of the Penal Code to ensure that all individuals, including individuals in military service, have the right to freedom of movement both within and outside of Eritrea’s borders, and eliminate all criminal penalties for leaving the country.
 - Immediately cease the use of lethal force against persons crossing or attempting to cross the border.

E. The Eritrean government imposes harsh restriction on the freedom of assembly for unauthorized religions (List of Issues para. 25).

24. The Committee requested that the government respond to “allegations of discrimination on the grounds of religion” and “provide information on the number of people detained on charges of practicing a non-authorized religion or on other grounds related to religion.”
25. The Eritrean government seeks to control religious life at all levels, limiting the actions of religious groups and persecuting people who choose to worship through a religious body not registered with the State. Since 2002, all religious communities have been ordered to register with the Office of Religious Affairs, yet no applications have been processed or accepted since this process was implemented.⁴⁷ The only authorized religions are the Coptic Orthodox Church of Eritrea, the Roman Catholic Church, Sunni Islam, and the Evangelical (Lutheran-affiliated) Church of Eritrea; the activities and structures of these denominations are subject to government control.⁴⁸ All other religious groups are banned.
26. Members of banned, unauthorized religions groups who meet in small private groups are at risk of arrest, detention, and torture. Individuals and organizations have reported

⁴² PENAL CODE, art. 119 (Eritrea).

⁴³ Human Rights Watch, *World Report 2018: Eritrea*, accessed Jan. 8, 2019, <https://www.hrw.org/world-report/2018/country-chapters/eritrea>.

⁴⁴ Amnesty International, *Amnesty International Report 2017/18*, *supra* note 37, at 160.

⁴⁵ *Report of the commission of inquiry*, *supra* note 5.

⁴⁶ *Commission of Inquiry, Detailed findings*, *supra* note 4.

⁴⁷ U.S. Commission on International Religious Freedom, *Annual Report 2018 - Eritrea*, (Washington D.C., 2018), https://www.uscirtf.gov/sites/default/files/Tier1_ERITREA.pdf.

⁴⁸ Amnesty International, *Amnesty International Report 2017/18*, *supra* note 37, at 160; United States Commission on International Religious Freedom, *supra* note 47.

violations of the rights to freedoms of assembly and expression as government forces arrest leaders and members of targeted religious.⁴⁹ Several clients of The Advocates reported being **targeted, detained, interrogated, and tortured on charges of practicing a non-authorized religion.**⁵⁰ As a result, members of these religious communities live in fear of being caught engaging in worship or other religious activities.

27. All forms of religious practice, including possession of religious texts, are forbidden for those performing military service. If caught, individuals are frequently imprisoned and are tortured or subject to other cruel, inhumane, or degrading treatment.⁵¹

28. Suggested recommendations:

- Lift all registration requirements for religious organizations and all restrictions on freedom of assembly for all religious groups.
- Ensure that all persons engaging in military service are authorized to possess religious texts.

F. Ill-treatment and human rights abuses are common in forced military service (List of Issues para. 26).

29. The Committee requested information on Eritrea’s military and national service programs and requested that the government “respond to allegations that the prolonged military service is de facto indefinite.” The Committee further requested information about the number of deaths that have occurred during training for military and national service and about “an independent system of monitoring military and national service training centres.”

30. Avoiding military service is criminalized in The Penal Code of Eritrea. The Penal Code punishes with a Class 9 military service interference charge any person who avoids military service, assists or encourages another person to do so, or encourages another to refuse a military order.⁵² The punishment for this behavior escalates to a Class 6 Serious Offence when performed during war, a military emergency, or general mobilization.⁵³

31. Military service often lasts for an indefinite time. Compulsory national service for all Eritrean citizens ages 18-50 was instituted by Proclamation on National Service No. 82/1995.⁵⁴ Under this proclamation, all eligible Eritreans must perform 18 months total of active national service.⁵⁵ The Eritrean Government used the 1998-2000 war with Ethiopia as a pretext to continue extending periods of mandatory “national service” beyond the stated 18-month period, and also as a pretext for other domestic policies which require

⁴⁹ *Report of the commission of inquiry, supra* note 5; Office of the United Nations High Commissioner for Human Rights, “Statement by Ms. Sheila B. Keetharuth, Special Rapporteur on the situation of human rights in Eritrea at the 73rd session of the General Assembly”, accessed Jan. 16th, 2019, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23774&LangID=E>.

⁵⁰ Interviews conducted by The Advocates (July 2011-September 2018).

⁵¹ *Report of the Special Rapporteur, supra* note 17.

⁵² PENAL CODE, art. 119 (Eritrea).

⁵³ *Id.* art. 120.

⁵⁴ PROCLAMATION No. 82/1995, arts. 1, 4, 6 (Eritrea).

⁵⁵ *Id.* art. 8.

citizens to perform work for the State.⁵⁶ Former national service conscripts report serving for longer than 18 months—some for over a decade.⁵⁷ Students must spend their final year of schooling at the Sawa Military Training Center, which provides military training rather than educational instruction. Students have reported a system of severe conditions and inhuman treatment, and the forced conscription of people under the age of 18.⁵⁸ Upon entering regular military service, food rations are small, living conditions are cramped and exposed to the elements, and medical care is dangerously unsophisticated.⁵⁹

32. Clients of The Advocates confirm that Eritreans are subjected to compulsory service and that individuals engaging in compulsory military service are subjected to harsh conditions, forced labor, and other human rights violations.

33. Suggested recommendations:

- Reform Article 119 of The Penal Code of Eritrea and decriminalize avoidance of military service.
- Establish and implement an independent accountability mechanisms to ensure that no person is compelled to serve longer than the legal requirement.
- Institute and promulgate information about a program for conscientious objection to military or national service.

⁵⁶ Human Rights Watch, “World Report 2018: Eritrea”, accessed Jan. 8, 2019, <https://www.hrw.org/world-report/2018/country-chapters/eritrea>; Human Rights Council, *Report of the commission of inquiry on human rights in Eritrea*, 12-13.

⁵⁷ Amnesty International, *Amnesty International Report 2017/18*, *supra* note 37, at 160.

⁵⁸ Amnesty International, *Just Deserters: Why Indefinite National Service in Eritrea has Created a Generation of Refugees* (London: Amnesty International, Dec. 2015), 20.

⁵⁹ Human Rights Watch, *Human Rights Situation in Eritrea*, *supra* note 28, at 5.