

# **Judicial Devitalisation and Suppression of Freedom of Expression in Eritrea**

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# Introduction

- This presentation addresses two major areas of concern:
- 1) The problem of judicial devitalisation (as presented by the stakeholder report of the Eritrean Law Society), and
- 2) The problem of suppression of the right to freedom of expression (as presented by a joint stakeholder report of PEN International, PEN Eritrea and Committee to Project Journalists)
- There has never been genuine national consultation about UPR recommendations in particular with independent CSOs, which are non-existent in the country
- The most important new development since the last review is: the establishment of the UN COI and the publication of its two major reports (saying that there are reasonable grounds for a conclusion of crimes against humanity)

# **PART I:**

## **Judicial Devitalisation**

- Eritrea suffers from a pervasive crisis of constitutionalism and lack of democratic accountability, characterised by a conspicuous absence of a working constitution and a functioning parliament
- Since independence, Eritrea never had an independent judiciary that can meaningfully defend and protect the enjoyment of fundamental rights and freedoms, as well as restrain capricious government authority

## Judicial Devitalisation (cont'd)

- Eritrean ordinary courts are relegated to adjudicating on trivial civil and criminal matters that do not involve substantive human rights issues, such as the issue of *habeas corpus*
- Cases that are generally considered by the government as “politically sensitive” are never brought to the attention of ordinary courts – prompting the UN COI to conclude that “there is no genuine prospect of” holding to account perpetrators of grave human rights violations in the country (First COI Report, paras. 40, 47, 55 and 80)

## Landmark Court Judgment from Canada

“... there is evidence on the record ... that corroborates the plaintiffs’ expressed fears that they cannot return to Eritrea and obtain a fair trial against Nevsun in that forum. This evidence also corroborates<sup>[SEP]</sup>... that the plaintiffs would not receive a fair trial in Eritrea and that any judge hearing the case and who ruled in their favour would place his or her career and personal safety in jeopardy.”

*Araya v. Nevsun Resources Ltd.* 2016 BCSC  
1856, para. 284

## **PART II**


### **Suppression of Freedom of Expression**

- There is a continued and troubling practice of incommunicado detention of writers and journalists in Eritrea (many of whom remain in detention without trial for more than 17 years)
- Eritrea remains the largest prison of journalists in Africa and the most censored country in the world
- In word, Eritrea has accepted several recommendations from its previous UPR reviews
- In practice, it has implemented none, in particular those related to the continued practice of incommunicado detention & suppression of freedom of expression

# Suppression of Freedom of Expression

- Torture and other cruel, inhuman or degrading treatment or punishment are rampant, giving rise to a strong conclusion by the UN COI that the government is committing violations in a widespread and systematic manner (crimes against humanity): Second COI Report, p. 1, paras. 59-95
- Eritrea is a party to several regional & international treaties that impose obligations to respect the fundamental right to freedom of expression (these obligations are flagrantly violated)
- The latest example in this regard is the fate of Mr. Berhane A. Kidane (the former Minister of Finance), who was subjected to incommunicado detention after he published a book (simply exercising his right to freedom of expression)

# Decision from the ACHPR

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

Ref: ACHPR/PROVM/ERI/704/18/16.89/18  
Date: 29 October 2018

H.E. Mr. Isaias Afwerki  
President of the State of Eritrea  
Office of the President, State House  
Asmara  
The State of Eritrea

Your Excellency,

**SUBJECT: REQUEST FOR PROVISIONAL MEASURES UNDER RULE 98 OF THE RULES OF PROCEDURE OF THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS**

In my capacity as the Chairperson of the African Commission on Human and Peoples' Rights (the Commission), I have the honour to present to Your Excellency's kind attention a Complaint brought against the State of Eritrea (the Respondent State), in accordance with Article 55 of the African Charter on Human and Peoples' Rights (the African Charter).

The Complaint was lodged by Solomon Weldekirstos and Eritrean Law Society (the Complainants) on behalf of Mr. Berhane Abrehe Kidane (the Victim). The Complaint has been seized by the Commission and registered as **Communication 704/18 – Berhane Abrehe Kidane (represented by Solomon Weldekirstos and Eritrean Law Society) v. The State of Eritrea.**

Your Excellency, the Complainants submit that the Victim is a 73-year-old citizen of the Respondent State and the former Minister of International Development and Finance of the same State.

They assert that on 17 September 2018 the Victim was approached by security agents of the Respondent State and was taken to an undisclosed location. They submit that he had been unlawfully detained and subjected to incommunicado detention. The Complainants submit that the Victim's whereabouts remain unknown, and he had not been brought before a court of law, nor has he been allowed to contact his family, a doctor, or lawyer of his choice. Furthermore, they assert that no official account has been given of his predicament.



# Recommendations

- Implement the 1997 Constitution, or adopt a new constitution in a democratic and participatory process
- Reinstate the Eritrean National Assembly (the transitional parliament)
- Restore the independence and impartiality of the judiciary
- Release immediately and unconditionally all disappeared/imprisoned journalists, writers, and political prisoners, or bring them to a court of law (respect the right to freedom of expression)
- Take other symbolic, measurable & time-bound steps that bolster transition to a full-fledged democratic order (immediate release of prisoners is one example)
- Fully cooperate with special procedures mandate holders of the UN, in particular the Special Rapporteur on the situation of human rights in Eritrea