



DEFENDDEFENDERS

East and Horn of Africa Human Rights Defenders Project

ERITREA

Submission to the UN Universal Periodic Review

32nd Session of the UPR Working Group

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the East and Horn of Africa Human Rights Defenders Project
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Hassan Shire

Executive Director

executive@defenddefenders.org

+256 772 753 753

Estella Kabachwezi

Senior Advocacy and Research Officer

advocacy@defenddefenders.org

+256 782 360 460

1. Introduction

- a. DefendDefenders (The East and Horn of Africa Human Rights Defenders Project) is a regional civil society organisation established in 2005. It seeks to strengthen the work of human rights defenders (HRDs) throughout the East and Horn of Africa sub-region by reducing their vulnerability to the risk of persecution and by enhancing their capacity to effectively defend human rights. DefendDefenders focuses its work on Burundi, Djibouti, Eritrea, Ethiopia, Kenya, Rwanda, Somalia (together with Somaliland), South Sudan, Sudan, Tanzania and Uganda.
- b. In this submission, DefendDefenders examines Eritrea's implementation of previous recommendations resulting from its review during the second cycle of the Universal Periodic Review (UPR) process in 2014. Specifically, we analyse Eritrea's action with regard to the rights to freedom of association, peaceful assembly and expression, and to the situation of HRDs since 2014. Additionally, this submission will include new developments in the human rights field with regard to the Eritrean Government's cooperation with the United Nations (UN) since 2014.

2. Freedom of opinion and expression

- a. During the second cycle of the UPR, in 2014, the Government of Eritrea received 20 recommendations related to restrictions placed on the right to freedom of opinion and expression, out of which it committed to implement seven.¹
- b. Among other recommendations, Canada urged Eritrea to "take all necessary measures to ensure respect for human rights including the right of freedom of expression as it pertains to the press and other media"² and to "guarantee the right to free expression, opinion, conscience and religion."³ However, Eritrea has yet to live up to its commitment to ensure respect for the right to free expression. The 1997 Constitution, which guarantees freedom of opinion, speech and the media, has never been implemented and violations of these freedoms continue unabated.
- c. In 2015, Eritrea topped the list of the "10 Most Censored Countries" by the Committee to Protect Journalists (CPJ).⁴ From 2016 to 2018, Reporters Without Borders (RSF) has ranked Eritrea in the bottom two (together with the Democratic People's Republic of Korea) of the 180 countries included in its annual World Press Freedom Index. Independent press and private media was effectively shut down in 2001. All domestic media is controlled by the Government, and two out of four Internet service providers prohibit access to sites unapproved by the Government. Persons using Internet cafés are subjected to surveillance. Eritrea periodically jams satellite radio transmissions by opposition groups.

¹ UPR Info, "Database on recommendations," www.upr-info.org/database/ (accessed on 4 July 2018).

² A/HRC/26/13, 122.67 (Canada).

³ A/HRC/26/13, 122.154 (France).

⁴ Committee to Protect Journalists, "10 Most Censored Countries," April 2015, cpj.org/2015/04/10-most-censored-countries.php

- d. The Eritrean Government continues to quash dissenting views and opinions and independent media workers. At the time of writing, at least 15 journalists remain in prison.⁵ Since 2010, at least 32 have gone into exile.⁶
- e. Of the several journalists who are detained, Dawit Isaak, a Swedish-Eritrean national, and Seyoum Tsehay, the former head of the national television, have been detained *incommunicado* since 2001, without access to legal counsel or their family.⁷ It is also believed that seven of the editors and publishers arrested in 2001 following the crackdown on press freedom have died in detention.⁸ On 6 July 2017, the European Parliament adopted a resolution calling for the immediate release of, *inter alia*, Dawit Isaak.⁹
- f. As noted by the UN Commission of Inquiry (CoI) on Eritrea in March 2015, “the Government has curtailed most freedoms, from movement to expression; from religion to association. It has created a condition in which individuals feel that they have hardly any choice with regard to the main decisions in their lives: where to live, what career to pursue, when to marry or who to worship.”¹⁰
- g. Eritrean authorities regularly use intimidation and harassment to clamp down on free expression beyond its borders. For instance, they initiated several libel suits against Dutch newspapers, a radio station, a website, the Dutch Government, and academics who have written or disseminated criticism of the Eritrean Government. Most of these cases have already been rejected, but they have sparked vociferous attacks by social media users defending the Government narrative.¹¹ It remains unclear to what extent, and how many of, these social media users act within a chain of command and how many do it upon their own initiative.
- h. On 19 February 2017, the exiled Eritrean Forum Radio reported that two journalists working for the state-owned Eritrean Radio and Television Agency were jailed on suspicion of attempting to flee the country, which is considered an act of treason by authorities.¹²

⁵ Reporters Sans Frontières, “2016 Press Freedom Barometer,” en.rsf.org/pressfreedom-barometer-journalists-imprisoned.html?annee=2016 (accessed on 29 June 2018).

⁶ Committee to Protect Journalists, “452 Journalists Forced Into Exile Since 2010,” cpj.org/exile/ (accessed on 29 June 2018).

⁷ DefendDefenders, “HRC31: Individual Interactive Dialogue with the Special Rapporteur on Eritrea (Oral Update),” 14 March 2016, www.defenddefenders.org/2016/03/hrc31-individualinteractive-dialogue-with-the-special-rapporteur-on-eritrea/ (accessed on 29 June 2018).

⁸ Reporters Without Borders, “Eritrea ended media freedom 15 years ago this month,” 21 September 2016, rsf.org/en/news/eritrea-ended-media-freedom-15-years-ago-month (accessed on 29 June 2018).

⁹ Parliament of the European Union, “European Parliament resolution of 6 July 2017 on Eritrea, notably the cases of Abune Antonios and Dawit Isaak,” 6 July 2017, www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2017-0309+0+DOC+XML+V0//EN (accessed on 29 June 2018).

¹⁰ “Oral Update by Mr. Mike Smith, Chair of the Commission of Inquiry on Human Rights in Eritrea at the 28th session of the Human Rights Council”, 16 March 2015, www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15699&LangID=E#sthash.Rrt4FueR.dpuf

¹¹ The Guardian, “How Eritrea is turning to Dutch courts to silence its critics,” 1 March 2016, www.theguardian.com/world/2016/mar/01/how-eritrea-is-turning-to-dutch-courtsto-silence-its-critics

¹² Sudan Tribune, “Eritrea jails journalists working for state-run media,” 19 February 2017, www.sudantribune.com/spip.php?article61694

3. Freedoms of Association and Peaceful Assembly

- a. In the UPR's second cycle, Eritrea received 13 recommendations regarding the rights to freedom of association and peaceful assembly, six of which officially enjoyed the support of the Government.¹³ Mexico urged Eritrea to "harmonize national laws to incorporate the International Covenant on Civil and Political Rights (ICCPR), in particular articles 9, 12, 19, 21."¹⁴ Article 21 of the ICCPR protects the right to peaceful assembly. France asked Eritrea to guarantee, among other rights, freedoms of peaceful assembly and of association.¹⁵ Nonetheless, these recommendations remain unimplemented.
- b. Article 19 of the 1997 Eritrean Constitution enshrines freedoms of conscience, religion, expression of opinion, movement, assembly and organization; however, Eritrean citizens have consistently been denied these rights by the state and the military. And, as mentioned, the Constitution remains unimplemented.
- c. There are currently no functional independent national or international non-governmental organisations (NGOs) operating in Eritrea. The Non-Governmental Organisation Administration Proclamation (2005) places severe restrictions on NGOs, including on the amount of funding which the UN or bilateral agencies can provide, and requires that donor funds flow through the Government.
- d. On 31 October 2017, security forces allegedly dispersed a protest using live ammunition in Asmara.¹⁶ The demonstrations were apparently related to government interference in the administration of the Al Diaa Islamic School, located in the Akria district of Asmara. According to the NGO Human Rights Concern – Eritrea (HRCE), the former director of the school, Haji Musa Mohamed Nur, was arrested on 20 October 2017 after speaking at a community meeting on the Government's plans to seize and close the school down.¹⁷ HRCE also noted that an unknown number of protesters were detained during and after the protest, including young demonstrators ranging from 13 to 15 years old, some of whom were tortured.¹⁸ Videos emerged¹⁹ on social media of a crowd running amid gunfire on Harnet Avenue, close to the President's office. After four months of *incommunicado* detention, Haji Mussa died in detention on 1st March 2018. The Government arrested hundreds of mourners at his funeral, some of whom are still being detained without access to contact their families or lawyers.²⁰

¹³ UPR Info, "Database of recommendations-Eritrea," www.upr-info.org/database/ (accessed on 6 July 2018).

¹⁴ A/HRC/26/13, 122.107 (Mexico).

¹⁵ A/HRC/26/13, 122.154 (France).

¹⁶ DW, "Rare protests reported in Eritrea with 28 deaths," 1 November 2017, www.dw.com/en/rare-protests-reported-in-eritrea-with-28-deaths/a-41200325

¹⁷ Asmarino Independent, "Eritrea : A short account of the events that took place in Asmara this afternoon," 1 November 2017, www.asmarino.com/news/4971-eritrea-a-short-account-of-the-events-that-took-place-in-asmara-this-afternoon

¹⁸ Human Rights Concern – Eritrea, "Eritrean Children Arrested, Tortured and Hospitalised in the Aftermath of Protests," 15 November 2017, hrc-eritrea.org/eritrean-children-arrested-tortured-and-hospitalised-in-the-aftermath-of-protests/

¹⁹ ASSANA, "VOICE OF ASSENNA: Another video of the People's Demonstration in Asmara," 31 October 2017, www.youtube.com/watch?time_continue=1&v=X4RZhuxH2yE

²⁰ OHCHR, "Eritrea: UN expert says more arrests, detentions after elderly school chief dies in custody," 14 March 2018, www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22823&LangID=E

4. The Situation of Human Rights Defenders (HRDs)

- a. In the second UPR cycle, Eritrea received four recommendations related to the protection of HRDs, journalists and civil society organisations (CSOs), and accepted to implement two of them²¹. Belgium recommended that Eritrea ensures that any physical or moral harm against journalists or HRDs is investigated and the perpetrators duly prosecuted.²² Tunisia requested Eritrea to ensure a conducive climate for the work of HRDs, civil society activists and journalists.²³
- b. The operating environment in the country remains extremely harsh, forcing many Eritreans to flee the country, out of fear, in particular, of being conscripted into indefinite national service. Heavy surveillance coupled with arbitrary arrests and detention without access to a lawyer or court ensures that dissenting opinions against the state are discouraged and quashed.²⁴ The Eritrean Government possesses wide-reaching surveillance capabilities that have been used to monitor the population both inside the country and within the diaspora, in particular in European countries. This has created an atmosphere of intense fear that has prevented many Eritreans from engaging on human rights related issues.
- c. Eritrea has a long history of arbitrarily detaining opposition members, journalists and dissenters. The 11 government officials, 10 journalists and other dissidents who were arrested in September 2001 are yet to be released, and journalists Dawit Isaak, Dawit Habtemichael, Mattewos Habteab and Wedi Itay may have died in custody,²⁵ though reports of their deaths are unconfirmed by the Government.
- d. While public gatherings are rare, when they do occur, peaceful protesters are met with arrest and detention. In January 2015, a local town protest was met with repression. Participants were arrested and detained in military prison. Some protesters were shot.²⁶ Similarly, student protests in Asmara in October 2017 were suppressed with live ammunition. HRDs are silenced and at constant risk of being detained without due process or respect for basic rights of the defence and fair trial guarantees.
- e. HRDs in exile are also at risk. Often, diaspora activists have to deal with security threats to their friends and family in Eritrea, a form of reprisal that is related to “guilt by association.” In its detailed report of June 2016, the UN CoI noted that several witnesses mentioned that their families had faced threats, arbitrary detention and disappearance “for the alleged wrongs of one family member.”²⁷

²¹ See footnote 12 above.

²² A/HRC/26/13, 122.152 (Norway).

²³ A/HRC/26/13, 122.168 (Tunisia).

²⁴ Human Rights Council, “Report of the commission of inquiry on human rights in Eritrea”, 4 June 2015 (A/HRC/29/42), p. 6.

²⁵ Amnesty International, “Eritrea: Immediately and unconditionally release prisoners of conscience”, 21 June 2016, www.amnesty.org/en/latest/news/2016/06/eritrea-immediately-and-unconditionally-release-prisoners-of-conscience/ (accessed on 29 June 2018).

²⁶ Human Rights Council, “Detailed findings of the commission of enquiry on human rights in Eritrea”, 8 June 2016 (A/HRC/32/CRP.1), para 143.

²⁷ Human Rights Council, “Detailed findings of the commission of enquiry on human rights in Eritrea”, 8 June 2016 (A/HRC/32/CRP.1), para 278.

5. International cooperation

- a. Despite the Government's refusal to grant UN experts access to the country, the latter have been able to document systematic, widespread and gross human rights violations over the years. According to the Chairman of the CoI, Mike Smith, "the many violations in Eritrea are of a scope and scale seldom seen anywhere else in today's world" and "a culture of impunity is firmly entrenched throughout the country."²⁸ In light of its findings on the systematic, widespread and gross violations committed, some of which may amount to crimes against humanity,²⁹ the CoI urged referral of the Eritrean situation to the International Criminal Court (ICC).³⁰
- b. Eritrea remains one of the least-cooperating states on the international scene. Since the mandate of the Special Rapporteur (SR) on the situation of human rights in Eritrea was established, in 2012, the Government has consistently denied the mandate-holder access to its territory. At the March 2018 enhanced interactive dialogue on its situation, Eritrea was not present to take the floor as the concerned country, which amounted to a *de facto* boycott of the debate. This was not an isolated incident, but part of a pattern.
- c. At the time of writing, pending visit requests by UN special procedures included requests from the Special Rapporteurs on torture and other cruel, inhuman or degrading treatment or punishment (2005; reminders sent in 2007 and 2010); freedom of religion or belief (2004; reminders sent in 2005 and 2006); extrajudicial, summary or arbitrary executions (2010); the right to food (2003); and freedom of opinion and expression (2003; reminders sent in 2005 and 2015).
- d. However, Eritrea has not contented itself with refusing to cooperate with UN human rights bodies and mechanisms; it has also attacked the Human Rights Council and its mechanisms, sometimes descending at a personal level against appointed experts and officials. For instance, Eritrea referred to the CoI as "ignorant" and motivated by "a sinister political agenda," calling its first report "a travesty of justice."³¹ It has also deliberately attacked, threatened and stigmatised HRDs, CSOs and UN experts, including the SR and members of the CoI. In June 2015, as the latter travelled to Geneva to present their initial findings, they were followed by pro-Government protesters. As the Commission's Chairperson put it: "We had the opportunity to experience, in a token way, [a campaign of intimidation] in Geneva, where we were followed in the streets and in our hotels and vilified in blogs online where the words of our report have been twisted and misquoted." He added: "Of course this is trivial compared to the day to day experience of people in Eritrea itself, but it is indicative of a determination on the part of the authorities to control anyone they perceive as a critic."³²

²⁸ www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16139&LangID=E

²⁹ www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20067&LangID=E

³⁰ www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20779&LangID=E

³¹ www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16136&LangID=E;

www.reuters.com/article/us-eritrea-un/police-in-geneva-guard-u-n-investigators-into-eritreas-human-rights-after-threats-idUSKBN0P427S20150624

³² www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16731&LangID=E

- e. In April 2018, after submitting its first-ever report to the African Commission on Human and Peoples' Rights (ACHPR), Eritrea was reviewed by the latter at its 62nd session, which was held in Nouakchott, Mauritania. While the submission of a report was in itself a positive step, the Eritrean Government was unable to meaningfully address any of the 70 questions raised by ACHPR commissioners.

6. Recommendations to the Government of Eritrea

- a. DefendDefenders urges the Government of Eritrea to adhere to human rights standards as set out in the ICCPR, the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the African Charter of Human and Peoples' Rights, *inter alia*.
- b. Eritrea should immediately implement the 1997 Constitution to set out the structures of the Government and outline corresponding powers and responsibilities. If implemented, the Constitution sets out a foundation for the protection of fundamental rights and freedoms.
- c. Eritrea should extend a standing invitation to all special procedure mandate-holders so they can visit, monitor and report on the relevant human rights issues. It should allow access, as a matter of priority, to the SR on the situation of human rights in Eritrea, whose mandate was renewed at the 38th session of the UN Human Rights Council and implement the recommendations contained in the SR's last report to the Council (A/HRC/38/50, paras. 110-131).

6.1 Regarding freedom of expression

- d. Unconditionally release all journalists and HRDs who have been arbitrarily detained for expressing opinions that are not in line with the Government's views.
- e. Review existing legislation and amend it to bring it in line with international standards and strengthen protection of the right to freedom of expression and opinion.

6.2 Regarding freedoms of association and peaceful assembly

- f. Hold to account, in fair trials, members of security forces who applied excessive force causing injury and deaths during protests.
- g. Review existing legislation and amend it to bring it in line with international standards and strengthen the protection of the rights to freedom of association and peaceful assembly.

6.3 Regarding HRDs

- h. Immediately bring all human rights violations, including those committed against HRDs, documented by the Special Rapporteur and the CoI on human rights in Eritrea, to an end.
- i. Release all prisoners of conscience and provide them with adequate remedies, including full rehabilitation.
- j. Immediately set up an independent oversight and complaint mechanism to investigate and review cases on persons detained arbitrarily and denied access to their lawyers or families.

6.4 Regarding cooperation with the UN human rights system

- k. Desist from any attack against UN officials and experts.
- l. Allow the SR on Eritrea unfettered access to the country, including to training camps and detention facilities.
- m. Respond positively to pending visit requests by special procedure mandate-holders.