



# Request for Suspension of Removals to Eritrea

December 2016

## Summary

The Canadian Council for Refugees (CCR) urges the Minister of Public Safety to impose a moratorium on removals to Eritrea in light of the systematic, widespread and gross human rights violations occurring throughout the country. These violations “pose a generalized risk to the entire civilian population” and therefore make a temporary suspension of removals appropriate under section 230 of the *Immigration and Refugee Protection Regulations*.

Since Eritrea won independence from Ethiopia in 1991, formalized following a referendum with international recognition in 1993, Eritreans have increasingly faced gross violations of their human rights. Eritrea is a state without the rule of law, independent media or civil society institutions.

The grave human rights situation in Eritrea led in 2014 to the UN Human Rights Council establishing a Commission of Inquiry to investigate all alleged human rights abuses in Eritrea.<sup>1</sup> After the Commission submitted its report in 2015, its mandate was renewed for a second year.

In its second report, published in 2016, the UN Commission of Inquiry on human rights in Eritrea concluded that:

“there are reasonable grounds to believe that crimes against humanity have been committed in Eritrea since 1991. Eritrean officials have engaged in a persistent, widespread and systematic attack against the country’s civilian population since 1991. They have committed, and continue to commit, the crimes of enslavement, imprisonment, enforced disappearance, torture, other inhumane acts, persecution, rape and murder.”<sup>2</sup>

After finding in 2015 that some of the reported human rights violations “may constitute crimes against humanity”, in 2016 the Commission removed the doubt and stated that there are reasonable grounds to believe that crimes against humanity have been committed.

The Commission further found that:

“the gross human rights violations it documented in its previous report persist, including arbitrary detention, enforced disappearances, torture, killings, sexual and gender-based violence, discrimination on the basis of religion and ethnicity, and reprisals for the alleged conduct of family members. In addition, many of those subjected to enforced disappearance in the past remain unaccounted for.”<sup>3</sup>

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<sup>1</sup> UN Human Rights Council, [Resolution 26/24](#), 27 June 2014.

<sup>2</sup> UN Human Rights Council, [Detailed findings of the commission of inquiry on human rights in Eritrea](#), 8 June 2016, A/HRC/32/CRP.1, (2016 UNCOI Report), para. 341.

<sup>3</sup> 2016 UNCOI Report, para. 343.

Just recently, the UK Upper Tribunal concluded that most Eritreans forcibly returned face “a real risk of persecution, serious harm or ill-treatment”.<sup>4</sup>

Effective December 2016, the Immigration and Refugee Board of Canada designated Eritrea as a country whose refugee claims are eligible for expedited processing under the *Policy on the Expedited Processing of Refugee Claims by the Refugee Protection Division*.<sup>5</sup> This represents a recognition of the strong basis for refugee claims from Eritrea.

The widespread and serious human rights violations put the whole population at risk. Those forcibly returned are at risk of abuse. A moratorium on deportations to Eritrea from Canada is long overdue.

## Political Situation

Eritrea is a de facto one-party state, where the only party permitted is the ruling People’s Front for Democracy and Justice (PFDJ), formerly called the Eritrean People’s Liberation Front (EPLF).

The 1997 Constitution, which included several civil rights guarantees, was never implemented, leaving the country without an official constitution.<sup>6</sup> There is no functioning legislature. The PFDJ exercises full control over all state institutions. There have been no elections since the country’s independence in 1991.

Throughout the 25 years of Eritrea’s independence, the PFDJ has used arbitrary arrest and detention without trial to crush all perceived or real opposition, silence government critics and punish anyone who refuses to comply with government-imposed restrictions on human rights. The arbitrary arrests and detentions that began immediately after de facto independence on 24 May 1991 have continued to this day.<sup>7</sup>

In 2015, under increased international pressure, the Eritrean government made a series of vague promises to implement reforms, including reforms to the national service program, but has yet to follow through on those promises.<sup>8</sup>

In its second report in 2016, the UN Commission of Inquiry noted the Eritrean government’s “increased engagement with the international community”, but found that “there is no evidence of progress in the field of human rights”<sup>9</sup> and “no improvement in the rule of law.”<sup>10</sup>

Relations have also remained strained with neighbouring countries of Djibouti, Ethiopia and Sudan. Sources of conflict include political tensions and territorial conflicts with Djibouti, political and military tensions with Ethiopia and the risk of rebel group infiltration from neighbouring countries. As such, risks associated to the infiltration of military and rebel groups from neighbouring countries are an important factor in understanding

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<sup>4</sup> Upper Tribunal (Immigration and Asylum Chamber), *MST and Others (national service – risk categories) Eritrea CG* [2016] UKUT 00443 (IAC).

<sup>5</sup> <http://www.irb-cisr.gc.ca/Eng/BoaCom/references/pol/pol/Pages/polRpdSprExpProAcc.aspx>

<sup>6</sup> 2016 UNCOI Report, paras. 170, 177.

<sup>7</sup> Amnesty International, *Twenty Years of Independence but Still no Freedom*, (AFR 04/001/2013), May 2013, p 11.

<sup>8</sup> Human Rights Watch, Eritrea, <https://www.hrw.org/africa/eritrea>.

<sup>9</sup> 2016 UNCOI Report, para. 344.

<sup>10</sup> *Ibid*, para. 342.

the overall sense of insecurity that inhabits Eritrea's borders and has a direct effect on citizens' safety inside the country.

### **Warning to travelers**

The Government of Canada advises against non-essential travel to Eritrea due to the unstable political situation and the ongoing tension between Eritrea and neighbouring countries:

Global Affairs Canada advises against non-essential travel to Eritrea, with the exception of the capital, Asmara. Ongoing tension between Eritrea and neighbouring countries could degenerate into conflict at any time.<sup>11</sup>

The department also advises against all travel to areas within 25 km of border areas of Ethiopia, Sudan and Djibouti. The U.S government has issued similar warnings to travelers "due to the unpredictable security situation along Eritrea's borders and restrictions imposed by local authorities on travel within the country."<sup>12</sup>

### **Human Rights Concerns**

In 2016 the UN Commission of Inquiry on Human Rights in Eritrea found that systematic, widespread and gross human rights violations have been and are being committed by the Government of Eritrea and that there is no accountability for them. The enjoyment of rights and freedoms are severely curtailed in an overall context of a total lack of rule of law.

#### **o Arbitrary arrest and imprisonment**

Large numbers of political prisoners are held in Eritrea in indefinite and incommunicado detention without charge or trial. They include former liberation movement leaders and government ministers, journalists from the private and state media, civil servants and professionals, trade union leaders, members of minority Christian groups, Muslims accused of links with Islamist groups and others suspected of having links with armed opposition groups based in Sudan and Ethiopia, asylum-seekers fleeing military conscription, and members of the armed forces. Some have been detained in secret for over a decade. Countless other individuals have "disappeared" into secret military and security prisons all over Eritrea.

The government systematically engages in arbitrary arrests, where prisoners, rarely knowing the reason for their arrest, are held under deplorable conditions and without access to a lawyer. According to the UN Commission of Inquiry, "in the majority of cases, people are arrested and detained for reasons that are capricious such that no one can possibly identify a law that might have been violated."<sup>13</sup> The judicial system lacks independence and the right to a fair trial is routinely violated: in fact, very few cases are ever brought to trial.<sup>14</sup>

Some of the prisoners are tortured, particularly conscription evaders. Many are held in appalling conditions in metal shipping containers or underground cells, without adequate medical treatment or even adequate food and

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<sup>11</sup> Government of Canada, [Travel advisories: Eritrea](#), last updated 6 December 2016.

<sup>12</sup> U.S. Government, U.S Passports and International Travel, [Eritrea travel warning](#), last updated 26 August 2016

<sup>13</sup> UN Human Rights Council, [Report of the detailed findings of the Commission of Inquiry on Human Rights in Eritrea](#), 5 June 2015, A/HRC/29/CRP.1, (2015 UNCOI Report), para. 770.

<sup>14</sup> *Ibid.*, para. 684-5.

water. According to Human Rights Watch, conditions of detention often amount to cruel, inhuman or degrading treatment or punishment.<sup>15</sup>

○ **Freedom of religion**

In 2002, the government withdrew the registration of minority religious groups, and ordered all unregistered religions to register, to provide details of their members and finances, and to close their places of worship until they were registered. Some minority religious groups reportedly attempted to re-register, but none were successful. Subsequently, only four religious traditions – Sunni Islam and the Orthodox, Catholic and Lutheran churches – have been officially recognized. Thousands of adherents of religions not recognized by the state, including Pentecostals, Evangelical Christians, Jehovah’s Witnesses, and some Muslims, have been arrested for practising their religion.<sup>16</sup>

○ **Freedom of expression**

The Eritrean government owns all the state’s media infrastructures.<sup>17</sup> According to Freedom House rankings for 2015, Eritrea “continues to rank among the most repressive media environments in the world.”<sup>18</sup> The regime has banned private press, jailed journalists and editors and cracked down even on state-sponsored journalists.<sup>19</sup>

According to Reporters Sans Frontières, Eritrea is ranked last out of 180 countries in the *Classement mondial de la liberté de la presse 2016*: it has now been ranked last for eight consecutive years.<sup>20</sup>

As a result of government repression, most independent journalists have left the country. Foreign journalists are not generally allowed in Eritrea. Internet penetration rates are amongst the lowest in the world and the government systematically blocks access to a number of websites making it difficult for Eritreans to obtain access to non-controlled information.<sup>21</sup> According to the International Telecommunications Union, less than one per of the population in 2013 were active internet users.<sup>22</sup>

According to the US Department of State Human Rights Report for 2015:

It was suspected the government monitored some internet communications, including e-mail, without obtaining warrants. EriTel, a government-owned corporation, has a monopoly on land-based internet service provision. [...] Government informants reportedly frequented internet cafes.<sup>23</sup>

As noted by the UNHCR, the lack of freedom of expression compromises our ability to know fully what is happening in Eritrea:

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<sup>15</sup> Human Rights Watch, *World Report 2016 – Eritrea*, 27 January 2016

<sup>16</sup> Amnesty International, *Twenty Years of Independence but Still no Freedom*, (AFR 04/001/2013), May 2013

<sup>17</sup> Human Rights Watch, *World Report 2016 – Eritrea*, 27 January 2016

<sup>18</sup> Freedom House, *Freedom of the Press 2015*

<sup>19</sup> Ibid.

<sup>20</sup> <https://rsf.org/fr/ranking> Reporters Sans Frontières: *Eritrea ended media freedom 15 years ago this month*, 21 September 2016.

<sup>21</sup> U.S Department of State, *Country Reports on Human Rights Practices for 2015, Eritrea*.

<sup>22</sup> International Telecommunications Union, *Cyberwellness profile of Eritrea*, last updated March 2015.

<sup>23</sup> U.S Department of State, *Country Reports on Human Rights Practices for 2015, Eritrea*.

“the access to fully comprehensive information on the situation in Eritrea is limited given the ongoing restrictions on freedom of movement and expression in the country, as evidenced by the virtual absence of independent media, political opposition or civil society.”<sup>24</sup>

The UN Commission of Inquiry found that there is mass surveillance so pervasive that:

“Eritreans live in constant fear that their conduct is or may be monitored by security agents and that information recorded by state agents may be used against them – to arrest them, detain them, torture, disappear or kill them. They therefore engage in self-censorship with regard to most aspects of their lives. [...] The intrusiveness of the spying and surveillance system not only compels individuals to exercise self-restraint in the conduct of their affairs but also largely curtails the exercise of other rights and freedoms such as freedoms of expression, movement, association and assembly. It generates mistrust within families and communities by subjecting people to control and instilling fear in them. In the words of one witness, “When I am in Eritrea, I feel that I cannot even think because I am afraid that people can read my thoughts and I am scared.”<sup>25</sup>

## Military Service

Eritreans are subject to indefinite conscription into National Service. By law since 1995, every adult Eritrean must undertake an 18 month period of National Service. However, in practice, conscription has been extended indefinitely for a significant proportion of conscripts.<sup>26</sup>

Girls and women are frequently subject to sexual violence in military training camps. The UN Commission of Inquiry found that because “the sexual violence by officers in the training camps and army occurs within an environment of control, intimidation, coercion and punishment, where the women are powerless, it amounts to torture. Additionally the enforced domestic service of women and girls in these camps who are also sexually abused amounts to sexual slavery.”<sup>27</sup>

During their indefinite service, conscripts are subjected to forced labour, working in a wide range of economic activities, including private PFDJ-controlled and State-owned interests.<sup>28</sup>

Some sources indicate that conscription applies often to children in the final years of high school and seniors of up to 67 years of age. According to Human Rights Watch, “Most Eritreans begin military training as part of the last year of high school, but children as young as 15 are sometimes conscripted.”<sup>29</sup> Amnesty International reports that since 2013, older men have been re-conscripted into the ‘People’s Army’, sent for training and

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<sup>24</sup> UN High Commissioner for Refugees, *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Eritrea*, 20 April 2011, HCR/EG/ERT/11/01 (UNHCR Guidelines).

<sup>25</sup> 2015 UNCOI Report, para. 366.

<sup>26</sup> Amnesty International, *Eritrea: Just deserters: Why indefinite National Service in Eritrea has created a generation of refugees*, Revised edition. 1 August 2016, AFR 64/4794/2016.

<sup>27</sup> 2015 UNCOI Report, para. 1390.

<sup>28</sup> 2015 UNCOI Report, para. 1403-1418.

<sup>29</sup> Human Rights Watch, *World Report 2016 – Eritrea*, 27 January 2016.

then assigned non-military duties for which no pay is given. Some older women are also reportedly conscripted.<sup>30</sup>

In late 2014, the Eritrean government promised to return to the mandated 18 month military service. This led some European countries, including Great Britain and Denmark, to deny refugee claims of Eritreans fleeing under these circumstances. However, research by Amnesty International the following year showed that there had been no discernible changes in practice.<sup>31</sup> In February 2016 the Government of Eritrea confirmed that there are no plans to limit national service to the statutory 18 months.<sup>32</sup>

Any attempt to flee the system is punishable by imprisonment, usually in harsh conditions and without access to a lawyer or a trial. Anyone of draft age leaving the country without permission is perceived to be a deserter, risking imprisonment in often inhumane conditions, as well as forced labour and torture. The UNHCR finds that draft evaders and deserters are often subject to torture, and notes that “the punishment for desertion or evasion is so severe and disproportionate such as to amount to persecution.”<sup>33</sup> Family members of deserters are also subject to retaliation.<sup>34</sup>

## Crimes against humanity

In its first report in 2015, the UN Commission of Inquiry found that the Government of Eritrea and the PFDJ have adopted “totalitarian practices aimed at perpetuating their power”. These include the systematic violation of the right of citizens to participate in public affairs, the absence of the rule of law, and a wholesale disregard for the right to liberty and security of Eritrean citizens. More specifically, Eritrean officials were found to have committed the acts of enslavement, imprisonment, enforced disappearance, torture, reprisals as other inhumane acts, persecution, rape and murder.<sup>35</sup>

In their second report, published in 2016, the Commission enters into a detailed analysis and concludes that “there are reasonable grounds to believe that crimes against humanity have been committed in Eritrea since 1991. Eritrean officials have engaged in a persistent, widespread and systematic attack against the country’s civilian population since 1991. They have committed, and continue to commit, the crimes of enslavement, imprisonment, enforced disappearance, torture, other inhumane acts, persecution, rape and murder.”<sup>36</sup> These crimes have been and are being committed against the whole civilian population of Eritrea:

Because State officials have relied so extensively on the commission of the crimes to establish, consolidate and maintain total control over the Eritrean population, the Commission has determined that they have engaged in a widespread and systematic attack against the civilian population of Eritrea since May 1991 which remains ongoing.<sup>37</sup>

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<sup>30</sup> Amnesty International, *Eritrea: Just deserters: Why indefinite National Service in Eritrea has created a generation of refugees*, Revised edition. 1 August 2016, AFR 64/4794/2016.

<sup>31</sup> Ibid.

<sup>32</sup> 2016 UNCOI Report, 2016, para. 83.

<sup>33</sup> UNHCR guidelines, page 11.

<sup>34</sup> 2015 UNCOI Report, para. 746.

<sup>35</sup> 2016 UNCOI Report, para 185-186.

<sup>36</sup> Ibid, para. 341.

<sup>37</sup> Ibid, para. 188.

## Restrictions on freedom of movement

The government strictly controls the movement of its citizens inside and outside of Eritrea.

The UN Commission of Inquiry found that there is a system of travel passes or permits, accompanied by checkpoints operating all over Eritrea, which together ensure surveillance of the population. The travel pass, which the Commission heard most people need in order to be able to move within the country, entitles the holder to move within a defined area, including crossing checkpoints en route to their destination.<sup>38</sup>

The movement of citizens outside the country is even more strictly controlled and very few Eritreans can leave the country legally. According to the Commission, “Eritrea is one of the few countries which impose severe restrictions on citizens’ departure from the country. [...] The authorities operate a strict system for the issuance of travel documents and border control, in parallel with other arrangements in place for the general control and monitoring of conscripts and civilians.”<sup>39</sup>

The Commission also summarized the situation for most Eritreans as follows:

Eritreans are very rarely ever released entirely from military/national service. Those who remain conscripts or members of the “Peoples’ Army” or “reserve army” are ineligible for the exit visas, which would allow Eritreans to leave their country legally. In addition, conscripts within military service have their movement within Eritrea heavily proscribed. On military service, a former conscript explained that “people cannot move as they want, they are just like prisoners”.<sup>40</sup>

There are no clear rules about who may be issued an exit visa, but certain patterns have been established by observation. The UK Upper Tribunal recently concluded that the following are likely to be the categories of people who might legally leave the country with an exit visa:

- (i) Men aged over 54
- (ii) Women aged over 47
- (iii) Children aged under five (with some scope for adolescents in family reunification cases)
- (iv) People exempt from national service on medical grounds
- (v) People travelling abroad for medical treatment
- (vi) People travelling abroad for studies or for a conference
- (vii) Business and sportsmen
- (viii) Former freedom fighters (Tegadelti) and their family members
- (ix) Authority representatives in leading positions and their family members.<sup>41</sup>

Even for persons who might qualify under one of these categories, there are significant hurdles: delays, need for bribes and refusals. Obtaining an exit visa is not a guarantee that the person will be able to leave: travelers are

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<sup>38</sup> 2015 UNCOI Report, para. 353.

<sup>39</sup> 2015 UNCOI Report, para. 400.

<sup>40</sup> 2016 UNCOI Report, para. 213.

<sup>41</sup> *MST and Others (national service – risk categories) Eritrea* CG [2016] UKUT 00443 (IAC), 7 Oct. 2016, *Country guidance*, para. 4. [2016] UKUT 443.

often stopped at ports of exit and some have been arrested despite the fact they had the proper documentation.<sup>42</sup>

In light of these barriers, the UK Upper Tribunal concludes that “most Eritreans who have left Eritrea since 1991 have done so illegally.”<sup>43</sup>

The Eritrean government also restricts the entry and movement of non-nationals within the country. Foreigners, including UN staff and diplomats, are not allowed to travel outside Asmara without prior government approval.<sup>44</sup>

## Eritreans escaping as refugees

The widespread violations of rights in Eritrea have led to a mass exodus of refugees in the past several decades and the country remains a major source of refugees in the world. According to UNHCR 2015 data, Eritrea ranked ninth among source countries of refugees, with 411,300 Eritreans registered with UNHCR, representing only a portion of the Eritreans who have fled the country.<sup>45</sup>

## Diaspora tax

The Eritrean government continues to enforce a 2% ‘development tax’ on diaspora (i.e. Eritreans living outside of the country). This practice was condemned by a resolution of the UN Security Council in 2011.<sup>46</sup> Following this resolution, Canada expelled an Eritrean diplomat, apparently because of continued attempts to solicit payment of the tax by Eritreans in Canada.<sup>47</sup>

It has been widely reported that those who refuse to pay are subject to threats, intimidation and coercion. Family members in Eritrea can be targeted, if individuals do not pay the tax.<sup>48</sup> In 2015, it was reported that police in the UK were investigating allegations of threats and intimidation of Eritreans to force payment.<sup>49</sup>

## Forced Return to Eritrea

In October 2016, Sheila Keetharuth, a member of the UN Commission of Inquiry on Human Rights in Eritrea, urged States not to forcibly return citizens to Eritrea. While presenting the panel’s final report, Ms Keetharuth stressed that the findings of the Commission “underscore that it is not safe to forcibly return those who have left Eritrea.” She noted that the Commission’s first report documented that individuals forcibly repatriated, with a few exceptions, have been arrested, detained and subjected to ill-treatment and torture.<sup>50</sup>

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<sup>42</sup> 2015 UNCOI Report, para. 405–413.

<sup>43</sup> [2016] UKUT 443, para. 5.

<sup>44</sup> Government of Canada, [Travel advisories: Eritrea](#), last updated 6 December 2016.

<sup>45</sup> United Nations High Commissioner for Refugees, *Global Trends, Forced Displacement in 2015*.

<sup>46</sup> UN Security Council, [Resolution 2023 \(2011\)](#), 5 December 2011.

<sup>47</sup> CBC, [“Eritrean diplomat ordered out of Canada after ‘tax’ on ex-pats”](#), Meagan Fitzpatrick, 29 May 2013.

<sup>48</sup> UN Security Council, [Resolution 2023 \(2011\)](#), 5 December 2011.

<sup>49</sup> The Guardian, [“Diaspora tax for Eritreans living in UK investigated by Metropolitan police”](#), Sam Jones, 9 June 2015

<sup>50</sup> UN News Service, [“UN expert panel cites crimes against humanity committed by Eritrean authorities dating back 25 years”](#), 28 October 2016.

The Commission reported on the “regret form” that must be signed by individuals who have left the country irregularly (which is the case for most) and who want to regularize their status with the Eritrean authorities in order to receive consular services. By signing the “Immigration and Citizenship Services Request Form”, individuals are stating that they “regret having committed an offence by not completing the national service” and are “ready to accept appropriate punishment in due course”. As the Commission notes, “such procedure seems to provide a blank cheque to the Government to punish persons outside of judicial proceedings and safeguards.”<sup>51</sup>

The Commission also found that Eritreans voluntarily returning to their country “may face arbitrary arrest, in particular if they are perceived as having associated with opposition movements abroad.”<sup>52</sup>

The UNHCR Guidelines note that “Eritreans who are forcibly returned, or who return voluntarily, will be subject to conscription in the military service if they satisfy the age criteria and are medically fit.” They also state that “Individuals of draft age, who left Eritrea illegally, may be perceived as draft evader upon return, irrespective of whether they have completed active national service or have been demobilized.”<sup>53</sup>

The Commission of Inquiry records some accounts of the fate of those forcibly returned and concludes:

Individuals forcefully repatriated are inevitably considered as having left the country unlawfully, and are consequently regarded as serious offenders, but also as “traitors.” A common pattern of treatment of returnees is their arrest upon arrival in Eritrea. They are questioned about the circumstances of their escape, whether they received help to leave the country, how the flight was funded, whether they contact [sic] with opposition groups based abroad, etc. Returnees are systematically ill-treated to the point of torture during the interrogation phase.<sup>54</sup>

After interrogation, returnees are detained in harsh conditions and subject to forced labour. The Commission heard of detention periods ranging from eight months to three years.<sup>55</sup> Furthermore, returnees in detention were not provided with an opportunity to contact their families, nor were detainees informed of the length of their detention.<sup>56</sup>

Although there are widespread and persistent concerns about the mistreatment of persons forcibly returned to Eritrea, the lack of freedom of expression and general repression in the country means that it is impossible to properly research and document the fates of those returned. A Human Rights Watch representative quoted by the UK Upper Tribunal in a 2011 ruling explained the situation as follows:

There is much anecdotal evidence of people being detained and tortured or mistreated upon return to Eritrea but such cases are extremely hard to document because of the impossibility of doing research inside Eritrea, the extremely secretive nature of the prison network in Eritrea, the paranoia of the citizens remaining there and the surveillance by the state of most communication

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<sup>51</sup> 2015 UNCOI Report, para. 442.

<sup>52</sup> *Ibid.*, para. 444.

<sup>53</sup> UNHCR Guidelines, pages 10 and 16.

<sup>54</sup> 2015 UNCOI Report, para. 431.

<sup>55</sup> *Ibid.*, para. 432-3.

<sup>56</sup> *Ibid.*, para. 435.

with the outside world. A lack of public record of violations of persons who have been returned should in no way be taken to mean that persons returned to Eritrea are not at risk. The presumption should be very much the other way around: anyone returned to Eritrea is at a very high risk of mistreatment and torture in our view.<sup>57</sup>

The lack of available information on the fate of returnees, and the likelihood of detention and questioning were also confirmed by the British Embassy in Eritrea, as articulated in letters written in 2010 and 2011, also reported by the UK Upper Tribunal:

Their general tenor was to say that although the Eritrean authorities operate a ‘shoot to kill’ policy on their borders to seek to deter or stop those attempting to leave, it was difficult to say what action if any would be taken against those returning who were found to have left illegally; it seemed dependent on circumstances and age. As regards failed asylum seekers, this was a “grey area” as “there is little experience of failed asylum seekers”. The Eritrean authorities had said no action would be taken except against those who had committed a criminal offence, but given that it was an offence to leave the country illegally, returnees would be liable to detention and questioning: “Some have been released without further action but those who have not undertaken military service could be sent to a military training camp. Some have been fined and some detained.”<sup>58</sup>

In its most recent judgment on the matter of returns to Eritrea, the UK Upper Tribunal determined that most Eritreans of or approaching draft age will be perceived on return as a draft evader or deserter and face “a real risk of persecution, serious harm or ill-treatment” if sent back. The tribunal rejected the argument that Eritreans could protect themselves by signing a letter of “regret” and paying the diaspora tax:

A person who is likely to be perceived as a deserter/evader will not be able to avoid exposure to such real risk merely by showing they have paid (or are willing to pay) the diaspora tax and/have signed (or are willing to sign) the letter of regret.<sup>59</sup>

The tribunal also found that even if such a person avoids detention and ill-treatment, “it is likely that he or she will be assigned to perform (further) national service”, which it finds is likely to amount to treatment contrary to Articles 3 and 4 of the European Convention on Human Rights.<sup>60</sup>

It is worth noting that the UK Upper Tribunal observed that there is little European jurisprudence on returning Eritreans, commenting that this may be because of “the policy adopted by most EU governments of not enforcing returns.”<sup>61</sup>

In a Response to Information Request, the Research Directorate of the Immigration and Refugee Board of Canada reports that a senior research fellow at the German Institute of Global and Area Studies with relevant specialization and knowledge stated that:

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<sup>57</sup> *MO (illegal exit – risk on return) Eritrea CG [2011] UKUT 00190 (IAC)*, May 2011, para 46.

<sup>58</sup> *Ibid.*, para. 51.

<sup>59</sup> [2016] UKUT 443, *Country Guidance*, para. 7.

<sup>60</sup> *Ibid.*

<sup>61</sup> *Ibid.*, para. 24.

Those who left Eritrea in recent years (after the introduction of the open-ended national service in 2002) and claimed asylum because they fled from the atrocities of the current regime must fear arrest, torture and conscription into the military where they are facing abuse and forced labour.<sup>62</sup>

A Human Rights Watch representative indicated to the IRB Research Directorate that:

Returnees who are involved in anything political, are speaking out against the Eritrean Government, refuse to pay the 2% income tax and sign the letter of apology, or are eligible for military service will be detained upon their return to Eritrea, in a variety of locations and prisons, including underground containers, shipping containers and cells. Following detention they will generally be released into military conscription. An example was given of a family who had been living in Sudan as “registered refugees” and who returned to Eritrea in 2014. Upon their return, they were arrested and detained; “the son of the family indicated that he was questioned about why the family left Eritrea, he was accused of spying, was “made to stay in awkward, painful positions” and had “the bottoms of his feet ... beaten with a stick.”<sup>63</sup>

In its recent study of indefinite national service in Eritrea, Amnesty International concluded similarly that those forcibly returned to Eritrea risk arbitrary detention:

People caught attempting to flee the country are arrested and arbitrarily detained without charge or trial for months. This practice must be taken as an indication of the likely treatment of failed asylum seekers forcibly returned to Eritrea. To return someone to Eritrea is to hand that person over to the authorities who would have arrested and detained the person if caught in the attempt of leaving. It must therefore be concluded that there is a high likelihood that anyone of approximately National Service age who is returned to Eritrea, would be subject to arbitrary detention without charge and face possible torture to extract information on how and with whom they left the country. It is possible that some would avoid such a fate, but as the implementation of punishments is arbitrary, the risk must be considered to apply in every case. There would be a high likelihood that the individual would then be conscripted or returned to National Service, which, if extended indefinitely, is in itself a human rights violation and exposes conscripts to a host of other human rights violations.<sup>64</sup>

In May 2016, 313 Eritreans were deported from Sudan back to Eritrea. The UN Commission of Inquiry had evidence from corroborated witnesses who reported that the Eritrean authorities registered the returnees’ identities prior to removal. According to the witnesses:

“upon arrival in Eritrea, the returnees were arrested and detained. They further indicated that those who were in the national service, prior to leaving the country, were detained at Adi Abeito prison on the outskirts of Asmara, and that those who had not yet undergone military training are

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<sup>62</sup> Immigration and Refugee Board of Canada, Research Directorate, *Eritrea: Situation of people returning to the country after they either spent time abroad, claimed refugee status, or were seeking asylum (September 2014-June 2015)*, 18 November 2015, ERI105226.E.

<sup>63</sup> Ibid.

<sup>64</sup> Amnesty International (AI), *Eritrea: Just deserters: Why indefinite National Service in Eritrea has created a generation of refugees*, Revised edition. 1 August 2016, Index number: AFR 64/4794/.

currently detained elsewhere, including in Tessenei and Hashferay, apparently awaiting transfer to military training centres. Some family members in Eritrea were able to obtain information about detained individuals through informal means, and not because they were officially notified about the detentions or permitted to visit the detainees.”<sup>65</sup>

## Conclusion

Violations of human rights in Eritrea are systematic, profound and longstanding. The population as a whole is subject to mass surveillance. There is no rule of law. Almost all citizens, apart from the very young and very old, are actually or potentially subject to indefinite military service, including forced labour. Almost all Eritreans who flee the country have had to leave irregularly and may be considered traitors on that basis. If forcibly returned they face the risk of being detained and subjected to torture or other ill-treatment, including on the basis that they may have applied for asylum. They may also be subject to military service under harsh conditions and forced labour.

The lack of free expression and movement in Eritrea means that it is difficult if not impossible to research fully the fate of those forcibly returned to Eritrea. This only reinforces the arguments in favour of suspending removals to the country.

The CCR recommends that Canada suspend removals to Eritrea.

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<sup>65</sup> 2016 UNCOI Report, para. 98.

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