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**1 april 2019**

**Emiel.Jurjens@kvdl.com**

re: **Foundation Human Rights for Eritreans / European Union**

Dear Sir or Madam,

On behalf of my client, the Stichting Human Rights for Eritreans (the "**Foundation**") I am writing to summon the EU to immediately stop a € 20 million project it is financing in Eritrea. For this project, forced labour is being used, of which the EU is aware. This is in violation of human rights law standards and unlawful. In this letter, the Foundation will substantiate this summons and requests all documents relating to the project at hand pursuant to Regulation 1049/2001.

### 1. Facts

The Foundation is a Dutch-based organization which acts on behalf of all Eritreans who are suffering, directly or indirectly, from human rights violations for which the Eritrean regime is or may be held responsible.

There is convincing evidence that the dictatorial regime in Eritrea has committed extensive human rights violations against its own people. Eritrea has no legislature, independent judiciary or free press and the rights of its people are violated daily in countless ways.

For example, Eritreans are forcibly conscripted for indefinite periods into the 'national service', a practice the UN has condemned as "enslavement" and a "crime against humanity".<sup>1</sup> Eritreans in the national service are forced by the regime to work indefinitely on all types of projects, including commercial construction projects. This compulsory work, often undertaken in terrible and inhumane conditions, is not remunerated. Those in national service receive a small fixed amount of (pocket) money, which is inadequate for survival standards and the use of which is capped by financial and bank regulations.

While executing forced labour, Eritreans run the risk of torture and other ill-treatment. They are furthermore indiscriminately and randomly put in detention without access to an (independent) court, are subject to torture and sexual violence and cannot enjoy the right to family life.

The national service is therefore the main reason for Eritreans to flee their country. In many cases these refugees fall into the hands of illegal smugglers and human traffickers. Moreover, there is convincing evidence that Eritrean government senior officials play a major role in human trafficking networks, and that senior officials of the Eritrean government financially benefit from the exploitation and extortion inherent in human trafficking.<sup>2,3,4,5,6,7</sup> The EU itself adopted sanctions against two Eritrean individuals for human trafficking in Libya. Another Eritrean individual is held in Italy in relation to his involvement in human trafficking and the death of hundreds of Eritreans while attempting to cross the Mediterranean Sea.<sup>8,9,10</sup> There is publicly available evidence that Eritrean trafficking networks are supported by the Eritrean regime and that it benefits from the trafficking of its own people.<sup>11,12</sup>

<sup>1</sup> OHCHR. (2016). *Detailed findings of the UN Commission of Inquiry on Human Rights in Eritrea*. A/HRC/32/CPR.1. Retrieved from [https://www.ohchr.org/Documents/HRBodies/HRCouncil/ColEritrea/A\\_HRC\\_32\\_CRP.1\\_read-only.pdf](https://www.ohchr.org/Documents/HRBodies/HRCouncil/ColEritrea/A_HRC_32_CRP.1_read-only.pdf)

<sup>2</sup> *Ibid.*

<sup>3</sup> United Nations Security Council. (2011). [Letter dated 18 July 2011 from the Chairman of the Security Council Committee pursuant to resolutions 751 \(1992\) and 1907 \(2009\) concerning Somalia and Eritrea addressed to the President of the Security Council](#). S/2011/433.

<sup>4</sup> United Nations Security Council. (2012). *Report of the Monitoring Group on Somalia and Eritrea pursuant to Security Council resolution 2002 (2011)*. [S/2012/545].

<sup>5</sup> Van Reisen, M., Mawere, M. (Eds.) (2017). [Human Trafficking and Trauma in the Digital Era. The ongoing tragedy of the Trade in Refugees from Eritrea](#). Bamenda. Cameroon: Langaa

<sup>6</sup> DSP-groep Amsterdam, Tilburg School of Humanities. (2017). [The 2% Tax for Eritreans in the diaspora: Facts, figures and experiences in seven European countries](#). Amsterdam: DSP-Groep

<sup>7</sup> United Nations Security Council Committee. (2018, September 17). [Security Council Committee Concerning Libya Amends Its Sanctions List](#). *UN Press Release*.

<sup>8</sup> *Ibid.*

<sup>9</sup> Jaura, R., Nastranis, J. (2018, June 10). [Security Council Backs Dutch Sanctions Against Eritrean and Libyan Traffickers](#). *IDN-InDepthNews*.

<sup>10</sup> Plaut, M. (2018, June 8). [UN Security Council backs Dutch sanctions against Eritrean and Libyan traffickers](#). *Eritreahub*.

<sup>11</sup> United Nations Security Council. (2011). [Letter dated 18 July 2011 from the Chairman of the Security Council Committee pursuant to resolutions 751 \(1992\) and 1907 \(2009\) concerning Somalia and Eritrea addressed to the President of the Security Council](#). S/2011/433.

<sup>12</sup> Van Reisen, M., Mawere, M. (Eds.) (2017). [Human Trafficking and Trauma in the Digital Era. The ongoing tragedy of the Trade in Refugees from Eritrea](#). Bamenda. Cameroon: Langaa

The European Parliament has denounced the human rights violations in Eritrea, concluding it has “*one of the worst human rights records in the world*” and considering the national service respectively “*forced labour*”, a “*form of slavery*” and “*a situation of slavery*”.<sup>13</sup>

The European Parliament also called upon the European Commission to ensure that any EU funds allocated to Eritrea “[do] not benefit the Eritrean Government but [are] strictly assigned to meeting the needs of the Eritrean people for development, democracy, human rights, good governance and security, and freedom of speech, press and assembly.”<sup>14</sup>

There is no evidence that the recent peace agreement between Eritrea and Ethiopia has had a positive impact on the implementation of human rights in Eritrea. On 16 March 2019 the UN Deputy High Commissioner for Human Rights, Kate Gilmore, called for an end to the national service, stating:

“*Conscripts continue to confront open-ended duration of service, far beyond the 18 months stipulated in law and often under abusive conditions, which may include the use of torture, sexual violence and forced labour*”.

On 28 March 2019, the Human Rights Committee recommended Eritrea to end its national service and expressed its concern about “*allegations that national service conscripts are deployed for labour in various posts, including mining and construction plants owned by private companies, while receiving no or very little salary*.”<sup>15</sup>

At the moment of writing, every day hundreds of Eritreans are leaving the country due to these conditions.

One of the crucial financial channels used by the Eritrean regime is a company called “Red Sea Trading Corporation” (“**RSTC**”). The RSTC is fully owned by the PFDJ, the ruling party in Eritrea. Apart from the RSTC, the Eritrean regime is also the owner of many other companies, including all major construction companies in Eritrea such as Segen Construction. These companies, which all have *de facto* monopolies in Eritrea, have been widely reported to employ Eritreans who have been forced to work in the ‘national service’.

The companies are highly profitable because the labour costs are near to zero due to the use of forced labour of Eritrean citizens. The profits from these companies directly benefit the Eritrean

<sup>13</sup> European Parliament. (2017). [Resolution on Eritrea, notably the cases of Abune Antonios and Dawit Isaak](#). 2017/2755(RSP). Retrieved from

<sup>14</sup> European Parliament. (2016). [European Parliament resolution of 10 March 2016 on the situation in Eritrea](#). 2016/2568(RSP). Retrieved from

<sup>15</sup> Human Rights Committee, CCPR/C/ERI/CO/1, 28 March 2019.

regime and according to the UN Monitoring Group on Somalia and Eritrea are “*one of the principal sources of revenue for the ruling party and, by extension, the Eritrean state*”.<sup>16</sup>

The Monitoring Group also concluded that both the RSTC and the construction companies are part of an opaque “*offshore financial system, controlled by elements of the ruling PFDJ party and/or their supporters, to generate significant revenue streams*”. RSTC is mentioned as the main entity in the “*clandestine business networks of the [PFDJ]*”.<sup>17</sup> The government of Eritrea has not published a budget since 2000 and the finances of the country are entirely controlled by individual accounts held in a network controlled by individuals in the party without any public scrutiny.<sup>18</sup>

The EU Emergency Trust Fund for Africa (“**ETFA**”) recently announced it will donate € 20 million directly to Eritrea. Along with the announcement, the ETFA published an Action Fiche detailing the way the money will be spent.<sup>19</sup>

From this, it follows that ETFA is donating € 20 million to the RSTC to procure material and equipment for repairing Eritrean roads. These projects have already been started and the building work is ongoing. The work is being carried out by the “*three major national construction companies*”, which will in any case include Segen Construction.

In this context, the ETFA freely admits that:

“*The labour used by the construction companies will consist of [inter alia] those in national service (...)*”<sup>20</sup>

In other words: forced labour will be used in the course of a project which is being financed by the EU. Shockingly, the EU is clearly aware of this and accepts it. The ETFA simply accepts the contention of the Eritrean government that there will be no short-term reforms to the national service (allegedly “*the current economic realities preclude this*”). The ETFA has no real concerns regarding the use of forced labour for its project. It just notes there is a risk of “*poor quality*” of the work due to “*unskilled or semi-skilled labourers*”. This shows a blatant disregard for the human rights of the Eritrean citizens involved.

<sup>16</sup> United Nations Security Council. (2011). [Letter dated 18 July 2011 from the Chairman of the Security Council Committee pursuant to resolutions 751 \(1992\) and 1907 \(2009\) concerning Somalia and Eritrea addressed to the President of the Security Council](#). S/2011/433.

<sup>17</sup> UN Security Council. (2014). [Letter dated 10 October 2014 from the Chair of the Security Council Committee pursuant to resolutions 751 \(1992\) and 1907 \(2009\) concerning Somalia and Eritrea addressed to the President of the Security Council](#). [S/2014/727]

<sup>18</sup> Van Reisen, M., Mawere, M. (Eds.) (2017). *Human Trafficking and Trauma in the Digital Era. The ongoing tragedy of the Trade in Refugees from Eritrea*. Bamenda. Cameroon: Langaa

<sup>19</sup> Action Fiche T-05-EUTF-HOA-ER-66.

<sup>20</sup> EU Trust Fund for Africa. (2019). [Reconnecting Eritrea and Ethiopia through rehabilitation of the main arterial roads in Eritrea](#). T05-EUTF-HOA-ER-66. p.3.

This alone is reason enough to cease the ETFA support to the Eritrean regime immediately.

Furthermore, it is in itself remarkable that the EU directly supports the Eritrean regime. The Eritrean regime has been found responsible by the UN Commission of Inquiry of having perpetrated and continuing to perpetrate “*systematic, widespread and gross human rights violations*” against the Eritrean people, including “*forced labour*”.<sup>21</sup> The UN Commission of Inquiry on Human Rights in Eritrea found that these human rights violations constitute crimes against humanity.<sup>22</sup>

In the past and until this project, the EU has avoided any direct funding to the Eritrean regime for this reason and all of the above. The European Parliament has also explicitly called upon the Commission to avoid any funding which benefits the Eritrean government, as detailed above.

It is even more striking that the corporations involved in the EU action have already been specifically linked with human rights violations. For instance, in Canada a court case is currently pending against mining company Nevsun, which allegedly used forced labour provided by Segen Corporation in building mines in Eritrea. In the course of this work, labourers have been forced to work under horrifying conditions and many (in some cases fatal) accidents have taken place. The Canadian courts have accepted the case and it is currently ongoing.<sup>23</sup>

Another example is that RSTC has been found to engage in the illegal trade of arms in violation of sanctions applicable at that time.<sup>24,25,26,27</sup> The fact the EU willingly and unconditionally pays significant sums of money to such companies is stunning and in violation of the legal obligation of the EU to strengthen human rights.

<sup>21</sup> OHCHR. (2015). [Report of the Commission of Inquiry on Human Rights in Eritrea](#). No. A/HRC/29/CRP.1.

<sup>22</sup> OHCHR. (2016). [Detailed findings of the UN Commission of Inquiry on Human Rights in Eritrea](#). A/HRC/32/CPR.1.

<sup>23</sup> Harris, K. (2019, January 23). [Top court weighs precedent-setting case of human rights breaches at Canadian mine in Eritrea](#). *CBC News*.

<sup>24</sup> UN Security Council. (2017). [Letter dated 2 November 2017 from the Chair of the Security Council Committee pursuant to resolutions 751 \(1992\) and 1907 \(2009\) concerning Somalia and Eritrea addressed to the President of the Security Council](#). S/2017/925.

<sup>25</sup> UN Security Council. (2015). [Letter dated 9 October 2015 from the Chair of the Security Council Committee pursuant to resolutions 751 \(1992\) and 1907 \(2009\) concerning Somalia and Eritrea addressed to the President of the Security Council](#). S/2015/802S/2015/802, paras. 39–40.

<sup>26</sup> UN Security Council. (2014). [Letter dated 10 October 2014 from the Chair of the Security Council Committee pursuant to resolutions 751 \(1992\) and 1907 \(2009\) concerning Somalia and Eritrea addressed to the President of the Security Council](#). S/2014/727, paras. 31–33.

<sup>27</sup> UN Security Council. (2011). [Letter dated 18 July 2011 from the Chairman of the Security Council Committee pursuant to resolutions 751 \(1992\) and 1907 \(2009\) concerning Somalia and Eritrea addressed to the President of the Security Council](#). S/2011/433, paras. 378 and 414.

## 2. Legal classification

The EU and its institutions, bodies, offices and agencies must respect human rights pursuant to (in any case) article 51(1) of the Charter of Fundamental Rights of the EU. This includes the rights laid down in the Charter and the European Convention on Human Rights (article 52(3) Charter).

Slavery and forced labour are absolutely prohibited, as set out in article 5(2) Charter, “*No one shall be required to perform forced or compulsory labour*”.

The EU is currently financing the use of forced labour by the Eritrean regime. This is a clear violation of in any case article 5(2) of the Charter. The EU therefore acts unlawfully vis-à-vis the Eritrean people, whose interests are being represented by the Foundation.

**The EU should therefore immediately stop its actions, in particular by cancelling the project described in Action Fiche T-05-EUTF-HOA-ER-66.**

Other and equally important norms violated by the EU as a result of this project include (but are not limited to):

- article 21 TEU, in which it is set out that all international action of the EU must comply with fundamental human rights principles accepted in international law;
- more specifically, providing funding and profits to a regime which has been found by leading sources to commit crimes against humanity, as well as knowingly cooperating with, and providing financing to, companies accused of human rights and sanctions violations, thus actively encouraging further violations of human rights of the Eritrean people;
- indirectly contributing to the promotion of human trafficking, as both (i) senior officials of the Eritrean regime are suspected of being directly involved in human trafficking and (ii) the actions of the regime cause Eritreans trying to escape the country to fall in the hands of human traffickers (which is in any case a violation of article 5 Charter and a violation of *inter alia* the Principles and Guidelines on Human Rights and Human Trafficking, and Directive 2011/36/EU on preventing and combating trafficking and protecting its victims).

These violations qualify as direct or indirect infringements of human rights of the Eritrean people and the actions of the EU set out in this letter are therefore undoubtedly unlawful.

## 3. Next steps

The Foundation will not hesitate to commence legal action against the EU. However, the Foundation is certainly willing to enter into open discussions with the EU in order to see if there is a way to reach the goals of the Foundation without having to take further legal steps.

The Foundation invites the EU for a meeting in Amsterdam. Please inform me as soon as possible, but ultimately before **15 April 2019** whether the EU wants to accept this offer and on which dates this would be possible in the period of 15-30 April 2019. If the EU does not accept this offer, or if negotiations between parties fail, the Foundation will take further legal steps against the EU.

4. Request for documents

Finally, the Foundation is conducting an investigation into the EU project described above. Under the right of access to documents in the EU treaties, as developed in Regulation 1049/2001, the Foundation requests all documents which contain information or data relating to the ETFA action as described in Action Fiche T-05-EUTF-HOA-ER-66. These documents can be sent digitally to [emiel.jurjens@kvdl.com](mailto:emiel.jurjens@kvdl.com) and by regular mail to the address mentioned in the header of this letter.

The Foundation reserves all rights.

Sincerely,

i.o. 

Emiel Jurjens  
Advocaat / Attorney-at-law