Enslaved by their Own Government: Indefinite National Service in Eritrea

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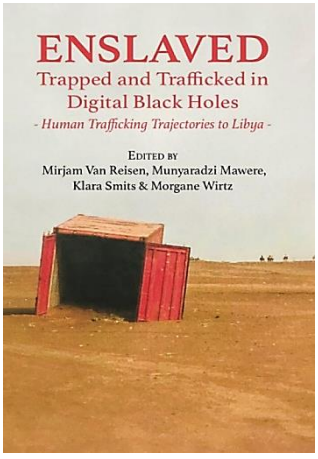

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Enslaved by their Own Government: Indefinite National Service in Eritrea[1]

Sara Palacios-Arapiles

Introduction

Eritreans are currently forcefully conscripted into national service, which is indefinite and requires them to engage in tasks that are beyond a 'purely military character'. These include economic development activities, work for private companies and even domestic work for their superiors, for which they receive little or no pay. Deserting or evading national service is heavily punished and refugees describe being tortured and detained in inhumane conditions. The control exercised over conscripts deprives them of their individual liberty and autonomy, leaving many in a state of 'false consciousness', even years after having left Eritrea. This enables the government to exercise powers 'attaching to the right of ownership' over them. This chapter finds that this level of control constitutes slavery under international law.

This book, to which the present chapter is a contribution, looks at human trafficking for ransom in Libya, with a focus on Eritreans. Although people from various nationalities fall victim to human trafficking for ransom, in the Horn of Africa, Eritreans seem to make up the vast majority. In understanding why this is so, it is important to look at the situation in Eritrea that is causing them to flee. While many factors have been identified as driving the exodus from Eritrea (see Chapter 7: *Escaping Eritrea: The Vulnerability of Eritreans to Human Trafficking for Ransom*), the main driver identified by refugees is compulsory conscription into Eritrea's indefinite national service.

[1] The research for this chapter was undertaken as part of the author's PhD thesis and will be reused fully or in part for this purpose.

Compulsory conscription is at the heart of Eritrea's national structure. What was originally prescribed by law to be a 6-month period of military training followed by 12 months of "active military service and development tasks in military forces" (Proclamation No. 82/1995, Art. 8, State of Eritrea, 1995) was extended indefinitely in May 2002 under the Warsai-Yikealo Development Campaign (WYDC) (UN Human Rights Council, 2015; Kibreab, 2009; 2013; 2017a; 2017b; Hirt & Saleh Mohammad, 2013). With the WYDC, President Isaias Afwerki, the head of the Eritrean state,[2] transformed the statutory 18-month national service into an indefinite and open-ended conscription for anyone – male or female – officially from the age of 18 to 40,[3] but in practice this extends much longer (up to 57 for men and 47 for women) (UK Upper Tribunal, 2016; Landinfo, 2015; Amnesty International, 2016; Human Rights Watch, 2009), and citizens may also be conscripted before reaching the lower age limit.

Van Reisen, Saba and Smits (2019) point out that, for Eritreans in Eritrea, "[t]here is no alternative to national service" (p. 125). Proclamation No. 82/1995 (State of Eritrea, 1995), which regulates national service,[4] does not allow for conscientious objection or

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[2] Eritrea is ruled by the People's Front for Democracy and Justice (PFDJ); no other political party has been allowed since Eritrea gained independence in 1991. The Constitution, which was ratified in 1997, has never entered into force. The country has been described as a "highly centralized, authoritarian regime under the control of President Isaias Afwerki" (US Department of State, 2019a); as well as a "dictatorial regime" (Court of Amsterdam, 2016), a "totalitarian" state (Higher Administrative Courts of Hessen, Hamburg; Münster, and Saarland, as cited in Palacios-Arapiles 2022a), and an "authoritarian" state (German Federal Government, 2019). In this sense, the terms 'Eritrea,' 'government', 'country', 'state', 'PFDJ' and 'Isaias Afwerki' are used interchangeably in this chapter to denote the Eritrean political system.

[3] Art. 8 of Proclamation No. 82/1995 on national service states that "all Eritreans citizens from the age of 18 to 40 years have the compulsory duty of performing Active national service" (State of Eritrea, 1995).

[4] The terminology favoured and used by the author in other contributions is 'military/national service programme' or its acronym 'MNSP'. However, to keep consistent with the terminology of the present edited volume, in this chapter the author uses the term 'national service'.

alternative service (UN Human Rights Council, 2014; 2015; US Department of State, 2019b; Amnesty International, 2013; Human Rights Watch, 2009; 2021; UNHCR, 2011). Nor does it permit exemptions, except for former freedom fighters (see Art. 12, Proclamation No. 82) and "citizens who suffer from disability such as invalidity, blindness, physiological derangement" (Art. 14(5)).[5] However, the former group (i.e., former freedom fighters), as well as those who have already been discharged or completed national service, are subject to compulsory service in the national reserve army, officially until they reach the age of 50 (Art. 23(2)), but, in reality, this can be much longer. Members of the reserve army are required to accept calls for mobilisation and military training; to that end, they must be "ready physically and mentally in all circumstances" (Art. 25). Besides the reserve army, the People's Army, or so-called 'militia', was created in March 2012 as an extension of national service. It is made up of citizens in their sixties and seventies, who are also required to undertake additional military training and accept mobilisation at any time (UN Human Rights Council, 2015).

While some national service conscripts are assigned to military roles in the army, others perform civilian duties in the administration, ministries, schools, hospitals, and judiciary (UN Human Rights Council, 2014; 2016). These assignments or postings are determined by the government, often based on its own demands and needs, rather than people's capabilities or choices (UN Human Rights Council,

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[5] Proclamation No.11/1991 (State of Eritrea, 1991), which regulated national service prior to the promulgation of Proclamation No. 82/1995 (State of Eritrea, 1995), included among the citizens exempt from national service married women and single mothers. Although Proclamation No. 82/1995 removed these exemptions, "many married women and single mothers continue to be *de facto* exempted, *at the discretion of recruiting officers* [emphasis added]" (UN Human Rights Council, 2015; see also Mekonnen, 2009). For instance, according to citizens living in the city of Keren in Eritrea, married women were conscripted in May 2015 (Palacios-Arapiles, 2015). A female draftee whom the author interviewed in November 2019 said that she was forced to continue in national service after marriage, without pay, as a form of punishment for getting married without obtaining official permission from her superiors (FGD 2, interview with Palacios-Arapiles, face to face, November 2019).

2016; Amnesty International, 2013). Members of the government and senior military officers also use national service conscripts, and sometimes members of the militia, to work on private construction sites, farms, mining operations, infrastructure projects, and enterprises owned and operated by the military and PFDJ elite, as well as to provide manual labour for the government's development programmes (UN Human Rights Council, 2014; 2015; Human Rights Watch, 2020; Stevis-Gridneff, 2020; Van Reisen, Saba & Smits, 2019; Amnesty International, 2013). In addition, the government 'lends' national service conscripts to foreign companies operating in Eritrea (Tesfagorgis, Hagos, Zere & Mekonnen, 2018; Van Reisen, Saba & Smits, 2019). In that sense, national service in Eritrea is much broader than military service, as it encompasses work in the civil and private sectors and extends indefinitely.

Following a two-year long investigation into violations of human rights in Eritrea, the UN Commission of Inquiry on Human Rights in Eritrea (Commission of Inquiry on Eritrea) found that national service constitutes slavery under the terms of the 1926 Slavery Convention (UN Human Rights Council, 2016). Having analysed the aspects of national service that satisfy the definitional threshold of slavery, the Commission of Inquiry on Eritrea concluded that national service serves primarily to: (i) "boost the economic development of the nation, profit state-endorsed enterprises"; and (ii) "maintain control over the Eritrean population in a manner inconsistent with international law" (UN Human Rights Council, 2016, para. 234). The control is described in a social, economic and political sense as well as relating to people's autonomy and liberty.

Several authoritative pronouncements on national service have adhered to the Commission of Inquiry on Eritrea's finding on control, although in isolation from its context, i.e., *slavery*. Notably, the International Labour Organization's (ILO's) Committee of Experts – the body mandated to examine the compliance of states with international labour standards and legal instruments – subscribes to the Commission's finding that national service serves "to maintain control over the Eritrean population" (ILO, 2018). This finding has

also been endorsed by a number of asylum courts in Europe. The United Kingdom (UK) Upper Tribunal Immigration and Asylum Chamber (UK Upper Tribunal), in its latest Country Guidance on Eritrea,[6] held that the available evidence strongly suggests that the policy imperatives of the Eritrean government are driven "by domestic concerns about the maintenance of control and regulation of their own population" (UK Upper Tribunal, 2016, para. 367). Similarly, the Swedish Migration Court of Appeal, in a guiding decision of 2017,[7] highlighted the "Eritrean government's desire to control National Service conscripts" (Migration Court of Appeal, 2017). While bypassing its meaning in law, the UK Upper Tribunal and the Swedish Migration Court of Appeal attached significance to the Eritrean government's control over conscripts to conclude that draft evaders and deserters should be granted refugee status (Palacios-Arapiles, 2022a). In sharp contrast, several Higher Administrative Courts in Germany have relied on the same two findings of the Commission of Inquiry (stated above), including the government's control over the population, to refuse Eritrean applications for refugee status (Palacios-Arapiles, 2022a).

In the literature, there is also a certain level of consensus that the government exercises control over national service conscripts. For instance, according to Kibreab, national service "has enabled the government to keep tens of thousands of Eritreans in perpetual control and exploitation" (Kibreab, 2013, p. 363). In the view of Tronvoll and Mekonnen, the objective of the PFDJ "was to develop a mass party organisation which through its structure was able to

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[6] In the UK, Country Guidance case law is used as a tool in determining refugee status. It provides authoritative guidance on the situation in a particular country or region, which needs to be considered by the asylum decision-makers in the UK until fresh evidence demonstrates that the country conditions have changed (Joshi, 2020; Thomas, 2008).

[7] Unlike in the UK, in Sweden, the Migration Court of Appeal (which is the court of last resort for asylum matters) does not issue Country Guidance. Rather, it issues guiding decisions, which provide guidance on legal issues, but not on the situation in a particular country, to lower courts and the Migration Agency (Stern, 2013).

mobilise and control all citizens and societal activity in the country" (Tronvoll & Mekonnen, 2014, p. 73). Van Reisen, Saba and Smits have also underlined the "high degree of control" exercised by President Afwerki over the lives of Eritreans in national service (Van Reisen, Saba & Smits, 2019, p. 137).

While there appears to be agreement on the presence of control over national service conscripts, what this really means from a normative point of view is not clear from the foregoing sources. This chapter focuses on this point. It is guided by the following research question: *To what extent does the control exercised over conscripts in national service in Eritrea reach the level of slavery under international law?*

Following this introduction, the next section presents the research methods employed in the research for this chapter. This is followed by a conceptual discussion of the meaning of slavery under international law and the element of control (versus ownership), based primarily on the jurisprudence of international tribunals and courts pertaining to cases of slavery. The chapter then turns to a discussion of how national service in Eritrea has been described as forced labour, but not slavery, in multiple sources and why a proper application of the legal definition of slavery to the Eritrean context is important. The meaning of the two factual elements in the Commission of Inquiry on Eritrea's passage discussed above are then unpacked. First, the use of national service labour for the country's economic development is examined; the author argues that this, among other factors, makes national service fall under the category of *forced labour*, contrary to international labour legal instruments. In the subsequent section, primary data collected from national service draft evaders and deserters, supplemented by institutional and human rights organisations reports, is presented and analysed to determine whether the level of control exercised over national service conscripts is indicative of *slavery*. This is followed by a brief conclusion.

Methodology

This chapter is part of a socio-legal doctoral research project analysing the elements and patterns of slavery in Eritrea's national service in

terms that are meaningful to asylum decision-makers and refugee law practitioners and scholars (see UK Research and Innovation, n.d.; Palacios-Arapiles, 2021). The analysis draws on data from both primary and secondary sources. Diverse methods of data collection were used, including a desk review and fieldwork.

The desk review encompassed scholarly literature, reports of government entities, international and non-governmental organisations, as well as legal sources. The latter included international legal instruments, Eritrean domestic law, and judicial decisions on Eritrean asylum applications by various European courts. It also included a review of the case law from regional and international courts and tribunals pertaining to slavery. Although there is insufficient space in this chapter to provide a full account of this case law, the author has carried out an exhaustive analysis of existing judgments on slavery in order to identify patterns and draw conclusions.

The fieldwork involved semi-structured interviews and focus group discussions (FGDs) with a total of 50 respondents from Eritrea; it was carried out over a 6-month period, from October 2019 to March 2020, in several locations in Switzerland, Germany, Sweden, and Denmark.[8] All of the interviews and FGDs were conducted in person in English, with translations in Tigrinya, Tigre, Bilen, Saho, or Arabic when required. All were recorded (except for one at the request of the respondent), transcribed, and subsequently analysed. Respondents were invited to participate in the research using the snowball sampling technique and by directly contacting refugee service providers and trusted members of different Eritrean communities. As Eritrea is a multi-faith and multi-ethnic society,

[8] The fieldwork research was conducted in compliance with the University of Nottingham's *Code of Research Conduct and Research Ethics* (https://www.nottingham.ac.uk/academicservices/documents/academic-misconduct/code-of-research-conduct-and-research-ethics-version-6-2016.pdf) and was approved by School of Law Research Ethics Committee at the University of Nottingham.

respondents were from various ethnic groups, including Bilen, Jeberti,[9] Kunama, Saho, Tigre, and Tigrinya, as well as from Muslim and Christian backgrounds. While most of the respondents were men (40), some women (10) were also interviewed. This was important to take account of any religious, ethnic and gender differences there could be in the way that national service is implemented. Due to ethical considerations, only adults were interviewed.

All of the respondents had either deserted or evaded national service and most had subsequently been granted either refugee status or complementary forms of protection in one of the countries referred to in the previous paragraph.[10] A few were still in the asylum seeking process, while a group in Switzerland was denied international protection owing to a change in policy towards Eritrean asylum applications (see Palacios-Arapiles, 2022a; UN Human Rights Council, 2020; 2019; 2018). The sample does not claim to be representative, but it typifies features common shared by most Eritreans affected by national service. The data gathered from the respondents is consistent with the testimonies reported by the Commission of Inquiry on Eritrea (UN Human Rights Council, 2015; 2016) and the reports of the UN Special Rapporteur on the Situation of Human Rights in Eritrea (e.g., UN Human Rights Council, 2022; 2019; 2018; 2014; 2013). The data are also aligned with reports of non-governmental human rights organisations, most notably Amnesty International (e.g., 2015; 2013) and Human Rights Watch (e.g., 2019; 2009). Owing to government restrictions on independent research in the country, these sources also rely on interviews with

[9] Jeberti is not officially recognised as a separate ethnic group in Eritrea, although this group makes a persistent claim for such recognition. Insofar as respondents from that group identified themselves as Jeberti, as a distinct ethnic group, the author considers them as belonging to the Jeberti ethnic group.

[10] In relation to these differences, the author has argued elsewhere that during the process of interpreting the definition of a refugee and applying it to the context of national service in Eritrea, the definition is subject to varying interpretations, as a result of which the treatment of similarly situated Eritrean asylum applications differs from one European country to another (see Palacios-Arapiles, 2022a).

Eritrean refugees and asylum-seekers. Due to security and ethical considerations, data remains anonymous.

As the following sections illustrate, the data gathered from the interviews indicate that Eritreans have been subjected to a high degree of control by the Eritrean government, as a result of which even feelings and thoughts are commonly concealed. With that in mind, some of the questions that the author asked had to be unpacked or simplified, as will be shown. In addition, the author engaged in a trust-building process during the interviews and FGDs, so as not to be regarded as an 'authority' figure, which could make the respondents feel pressured or coerced to respond. To that end, the author also explained thoroughly the information contained in the consent form, in particular that participation was entirely voluntary, could be terminated at any point, and that a complaint mechanism was in place should they have any concerns or complaints about how the research was conducted. Furthermore, the author continuously highlighted throughout the conversations the importance of the respondent's personal views and own thoughts. All things considered, this allowed many of the respondents to speak at ease and, on some occasions, helped them to (re)gain agency and self-confidence. After the interviews and FGDs, some respondents reported feeling relieved after expressing themselves.

The following sections present the results of the desk review and the findings of the fieldwork.

The definition of slavery: Ownership vs control

Slavery is defined in Art. 1(1) of the 1926 Slavery Convention, which reads: "Slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised" (League of Nations, 1926).[11] From the language of this definition, it

[11] This definition is replicated in the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (as conceptually distinct from 'institutions and practices similar to slavery'

would appear that slavery requires the 'ownership' of a person, that is, that slavery can only exist if a person is legally owned. However, despite claims to the contrary by Kibreab (2009) and various asylum courts in Europe (Palacios-Arapiles, 2022b; 2021), which will be discussed in the next section, this is not necessarily the case. Such an interpretation does not correspond with the wording of the 1926 definition, which refers to "*powers attaching to* [emphasis added] the right of ownership" (League of Nations, 1926) as opposed to ownership *per se*.[12] This narrow interpretation of slavery as dependent on ownership also departs normatively from how the definition of slavery has been interpreted and applied by international courts of law and tribunals, which, as the following discussion shows, have taken a very different approach.

The International Criminal Tribunal for the former Yugoslavia (ICTY) was the first international tribunal to pronounce on the meaning of the 1926 definition of slavery. It did so in the *Kunarac* case, which dealt with commanders of the Bosnian Serb Army, who for months held Bosnian Muslim women in captivity, subjected them to repeated rape, and compelled them to perform household chores. In this case, the ICTY Appeals Chamber held that the "traditional concept of slavery, […] often referred to as 'chattel slavery', has evolved to encompass various contemporary forms of slavery which are also based on the exercise of any or all of the powers attaching to the right of ownership" (ICTY Appeals Chamber, 2002, para. 117). It then observed that:

> *[…] the law does not know of a "right of ownership over a person". Article 1(1) of the 1926 Slavery Convention speaks more guardedly "of a person over whom any or*

– also referred to as 'servile status' – such as 'serfdom' or 'debt bondage') (UN ECOSOC, 1956), and in the 1998 Rome Statute of the International Criminal Court under the name 'enslavement' (UN General Assembly, 1998).

[12] "Powers attaching to" is expressed in the French version of the Convention as "*les attributs*" and in the Spanish version as "*los atributos*". Therefore, as Allain explains, the slavery definition "does not speak of a right of ownership, but of exercising the attributes of the right of ownership without necessarily exercising a legal right of ownership" (Allain, 2009, p. 262; see also Allain, 2017).

> *all of the powers attaching to the right of ownership are exercised." That language is to be preferred.* (ICTY Appeals Chamber, 2002, para. 118; see also Palacios-Arapiles, 2022b)

The ICTY Trial Chamber enumerated relevant factors that are indicative of the exercise of powers attaching to the right of ownership over a person, i.e., indicia of slavery. These, which were subsequently upheld by the Appeals Chamber, include: (i) "restriction or control of an individual's autonomy"; (ii) "restriction or control of [someone's] movement", including "measures taken to prevent or deter escape"; (iii) "restriction or control of […] freedom of choice"; (iv) "control of physical environment"; (v) "psychological control" or "oppression"; (vi) "force, threat of force[,] coercion", "fear of violence, deception or false promises"; (vii) "duration"; (viii) "assertion of exclusivity"; (ix) "subjection to cruel treatment and abuse"; (x) "control of sexuality"; (xi) "*forced labour* [emphasis added]"; (xii) "the abuse of power"; (xiii) "the victim's position of vulnerability"; (xiv) "detention or captivity"; and (xv) "socio-economic conditions" (ICTY Trial Chamber, 2001, paras. 542–543).

In dealing with cases of slavery, several international and hybrid courts, including the International Criminal Court (ICC), the Special Court for Sierra Leone (SCSL), the Extraordinary Chambers in the Courts of Cambodia (ECCC), the Inter-American Court of Human Rights (IACtHR), the Extraordinary African Chambers in Senegal, and the Economic Community of West African States (ECOWAS) Court of Justice, have endorsed the ICTY's interpretation of the definition of slavery discussed above (Palacios-Arapiles, 2022b). In doing so, these courts have similarly held that legal ownership over people is not required to satisfy the legal definition of slavery; instead, a factual determination must be made in light of the above factors to establish whether or not a particular phenomenon constitutes slavery (Palacios-Arapiles, 2022b).[13] For its part, the European Court of

[13] Importantly, these tribunals and courts have made it clear that not all of the above factors or indicia of slavery need to be met for a phenomenon to qualify as slavery;

Human Rights (ECtHR), although it first interpreted that slavery requires the exercise of a "genuine right of legal ownership" over a person in *Siliadin v France* (2005), it removed the requirement of 'legal ownership' in later judgments, namely, *Rantsev v Cyprus and Russia* (2010) and *M. and Others v Italy and Bulgaria* (2012) (Palacios-Arapiles, 2021; Stoyanova, 2020; see also Allain, 2010).

The ECCC's interpretation and application of the legal definition of slavery in the *Duch* case is instructive. Under the Khmer Rouge Regime,[14] Prey Sâr Prison (previously known as 'S-24') and Security Prison 21 (commonly referred to as 'S-21') were used as a re-education camp and a torture and execution centre, respectively, mostly for those seen as enemies of the Regime. In determining whether the condition of inmates in those facilities rose to the level of slavery, the Trial Chamber first replicated a passage of the Pre-Trial Chamber's Decision that had identified some of the indicia of slavery:

> *Certain detainees at S21 and Prey Sâr were forced to work. Strict control and constructive ownership was exercised over all aspects of their lives by: limiting their movement and physical environment; taking measures to prevent and deter their escape; and subjecting them to cruel treatment and abuse. As a result of these acts, detainees were stripped of their free will.* (ECCC Trial Chamber, 2010, para. 225)

On the lack of free will, for instance, one of the detainees at S-24 described her condition as not having "rights or freedom", and not being permitted "to make any decision by herself" or "to contest or challenge anything" (ECCC Trial Chamber, 2010, para. 228). The evidence put before the Chamber also showed that the main purpose of S-24 was to "reform and re-educate combatants and farming rice to supply Office S-21 and its branches"; a fact that was supported by the accused, who described it as "to have them work hard for the

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and that the ICTY's list of indicia of slavery is not exhaustive (Palacios-Arapiles, 2022b).

[14] 'Khmer Rouge' is the name commonly used to refer to the Communist Party of Kampuchea (CPK).

benefit of the [Communist Party of Kampuchea], for the production of rice", and to make them "learn to follow the superior and not to be rude or not to oppose the Party in any case whatsoever" (para. 226).[15] Unlike S-24, the overall purpose of S-21 was extermination, although a small number of detainees at S-21 were also forced to farm rice. Having analysed the facts, the Trial Chamber concluded that "total power and control" had been exercised over the S-24 detainees as well as over the group of detainees at S-21 who had been selected for forced labour, finding that their forced labour coupled with their detention amounted to slavery (para. 346).

The above verdict was subsequently upheld by the ECCC Supreme Court Chamber on appeal. While the Trial Chamber had only made positive findings on slavery with regard to the detainees assigned to work, the Supreme Court Chamber clarified that the Trial Chamber had not considered forced labour as an essential or necessary element of the legal definition of slavery, and that "no factor was singled out by the Trial Chamber as being of greater relative importance for establishing [slavery]" – forced labour being "merely one factor to be considered among several [others]"[16] (ECCC Supreme Court Chamber, 2012, para. 125). Proceeding with its legal analysis, the Supreme Court Chamber echoed the *Kunarac* Appeal judgment in that the concept of slavery centred on ownership "is not coterminous with 'chattel slavery'" (para. 155). It observed that the ownership of a human being through the legal system rarely occurs in present times; rather, the exercise of powers attaching to the right of ownership "is usually possible only within the margins of criminal activity and/or in the situation of *failing or deficient state systems* [emphasis added]" (para. 155).

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[15] The evidence also showed that the Communist Party of Kampuchea used the term "element" to refer to the detainees whom the Party suspected of being enemies. The accused agreed with this and added that "elements" were detained and subjected to forced labour "like [an] animal so that they cannot oppose or fight against the Party" (ECCC Trial Chamber, 2010, para. 227).

[16] Here, the Chamber was referring to *Kunarac's* factors indicative of slavery.

The Supreme Court Chamber went on to explain that slavery "necessarily implies the presence of *behavioural aspects of* [emphasis added] ownership" and, therefore, in going through the checklist of factual indicators of slavery, to which it referred as a "multi-factor analytical approach":

> *[A] Chamber must above all identify the indicia of "ownership", that is, facts pointing to the victim being reduced to a commodity, such that the person is an object of "enjoyment of possession"; that she or he can be used (for example, for sexual purposes); economically exploited; consumed (for purposes of organ harvesting, for example); and ultimately disposed of.* (ECCC Supreme Court Chamber, 2012, para. 156)

The Supreme Court Chamber added that:

> *Clearly, the exercise over a person of powers attaching to ownership requires a substantial degree of control [emphasis added] over the victim. There is no enslavement, however, where the control has an objective other than enabling the exercise of the powers attaching to ownership.* (ECCC Supreme Court Chamber, 2012, para. 156)

Consistent with the above analysis, the Supreme Court Chamber noted that the overall purpose of exercising control over the S-24 detainees and the small group of detainees at S-21 subjected to forced labour was not to bring about their death – as was the case for the majority at S-21 – but to reform and re-educate them and to farm rice for the Khmer Rouge Regime. The Supreme Court Chamber added that there was no evidence of Office S-21 receiving "some gain from the totality of S-21 detainees or otherwise treating them as [a] commodity" (ECCC Supreme Court Chamber, 2012, para. 166). Instead, the objective behind the imprisonment and mistreatment of the S-21 detainees (other than the group selected for forced labour) was their extermination, not the exercise of the powers attaching to ownership over them.[17] This further explains why the Supreme Court

[17] Actually, the group of S-21 detainees used for forced labour enjoyed better conditions than the rest at S-21 and "notably, survived" (ECCC Supreme Court Chamber, 2012, para. 166).

Chamber agreed with the Trial Chamber in limiting its finding on slavery only to those detainees at S-21 who had been subjected to forced labour and to the detainees at S-4, because only those detainees were treated as a commodity in order to accrue some gain.[18] Even if the farming of rice (that is, forced labour) was not present, slavery would still remain, as the gain does – in detaining and reforming the said detainees, the Regime sought to eliminate all real or perceived adversaries of the Party.

Importantly, the exercise of control over a person is not restricted to physical control, that is, a person does not need to be deprived of liberty or autonomy by physical fences to fall within the definition of slavery. For instance, in the case of *Sesay*, deprivation of liberty was achieved in different ways. Hundreds of civilians, including men, women, and children, were abducted from several villages in Sierra Leone by the Armed Forces Revolutionary Council (AFRC) and the Revolutionary United Front (RUF). Following their abduction, some were forced to engage in military training, while others were forced to engage in domestic labour, labour in diamond mines or farms, and the mobilisation of arms, ammunition, food, and any other loads according to the necessities and orders of the AFRC/RUF fighters (SCSL Trial Chamber, 2009). These civilians were not physically confined, instead their movement and labour were controlled through violence[19] and the threat of physical violence and/or death. They were also controlled by means of deception. A large group was taken to AFRC/RUF camps and told that they were not allowed to move freely outside the confines of the camps for their own protection. They were made to believe that "if they escaped they would meet certain death at the hands of the enemy" (para. 1325). The SCSL Trial Chamber was of the view that this "fear-based

[18] Importantly, the Court pointed out that such gain does "not need to be monetary" (ECCC Supreme Court Chamber, 2012, para. 157).

[19] Civilians who attempted to escape or committed other perceived breaches of the AFRC/RUF rules were beaten or killed. There were also checkpoints, for instance, surrounding mining sites to prevent their escape.

manipulation" – which even misled some civilians to seek 'safety' in the camps – "was intended to control the population", including their movement, so that they could "use them as forced labour in furtherance of the RUF war efforts" (para. 1325). Consequently, the Trial Chamber made positive findings on slavery, including with regard to the civilians forced to undergo military training, which it considered as constituting forced labour.[20] In a later case – *Taylor* – the SCSL Appeals Chamber similarly found that slavery was committed against civilians "to achieve the RUF/AFRC's military and political goals, specifically in order to support and sustain the RUF/AFRC and enhance its military capacity and operations" (SCSL Appeals Chamber, 2013, para. 271).

In all of the cases in which it dealt with slavery, the SCSL Trial Chamber has considered that deprivation of liberty also covers situations in which the victims are "unable to leave as they would have nowhere else to go and feared for their lives" (SCSL Trial Chamber, 2007, para. 709; 2009, para. 161; 2012, para. 420). This consideration draws from the *Kunarac* case, in which the ICTY made positive findings on slavery, notwithstanding the fact that the door of the place where some of the victims were kept was left open on some occasions. According to the ICTY Trial Chamber, the victims were nonetheless "psychologically unable to leave, as they would have had nowhere to go had they attempted to flee [and] were also aware of the risks involved if they were re-captured" (ICTY Trial Chamber, 2001, para. 750). These verdicts have been cited with approval by the ICC Trial Chamber (2019, para. 952; 2021, para. 2713). In doing so, the Chamber observed that deprivation of liberty "may take various forms", including "situations in which the victims may not have been physically confined" (ICC Trial Chamber, 2021, para. 2713), and, therefore, special consideration must be given to "the subjective

[20] The Chamber found that such military training constituted forced labour, as "it was a preparatory step to forcing these civilians to the front lines of the RUF's military efforts or to becoming the bodyguards of the RUF Commanders" (SCSL Trial Chamber, 2009, para. 1487).

nature of such deprivation, that is, the person's perception of his or her situation as well as his or her reasonable fear" (ICC Trial Chamber, 2014, para. 977).

For instance, in the *Ongwen* case, the ICC Trial Chamber found that fighters of the Lord's Resistance Army (LRA) had subjected hundreds of civilians to slavery in Northern Uganda in the early 2000s. Victims were not physically restrained, instead they lived in the bush under (intermittent) guard. One of the testimonies said: "you are like a prisoner, and every now and then you will be guarded" (ICC Trial Chamber, 2021, para. 1344). Besides violence and threats of violence and/or death made to prevent their escape, some of the victims were led to believe that if they escaped, the government soldiers or other civilians would catch them and kill them, which in turn created a situation of dependence on the LRA fighters for their survival.[21] Also, those who were forced to remain in the LRA as soldiers were given false or negative information about life outside of the LRA, including preventing them from obtaining information through public radio or broadcasts. Some testimonies show the effect that such manipulation and, more generally, the control under which they lived, had on them. A few of them, for instance, stated that they were not forced, while others did not try to escape believing that the LRA protected them from the enemy (for a detailed discussion, see Palacios-Arapiles, 2022b), something that the author has coined as 'false consciousness' (discussed further below, in the penultimate section). The ICC Trial Chamber found this to be an expression of the general system of control that existed to ensure their obedience to the LRA (ICC Trial Chamber, 2021).

As noted earlier, the ECCC Supreme Court Chamber spelt out some examples/forms of powers attaching to the right of ownership, namely, the enjoyment, use, economic exploitation, consumption, or

[21] In some instances, LRA fighters released some of the victims from their control, which reinforced the ICC Trial Chamber's finding on slavery, considering that it was an "indication that [the victims] were constrained and could not leave of their own choice" (ICC Trial Chamber, 2021, para. 2196).

disposal of a person (ECCC Supreme Court Chamber, 2012, para. 156). Likewise, in the *Katanga* case (also drawing on *Kunarac*), the ICC Trial Chamber stressed that powers attaching to the right of ownership "may take many forms", holding that these must be construed as "the use, enjoyment, and disposal of a person who is *regarded as* [emphasis added] a property by placing him or her in a situation of dependence which entails his or her deprivation of any form of autonomy" (ICC Trial Chamber, 2014, para. 975; see also Palacios-Arapiles, 2022b). This passage was cited approvingly by the Extraordinary African Chambers in Senegal in the case against Hissein Habré, former Head of State of Chad (Extraordinary African Chambers, 2016).

In a similar fashion, the IACtHR, in *Trabajadores de la Hacienda Brasil Verde v Brasil*, observed that, within a phenomenon of slavery, 'ownership' should be understood as control over a person that "considerably reduces their autonomy" or that "results in the person's loss of their own will"[22] (Inter-American Court of Human Rights, 2016, para. 271). The IACtHR held that, in that sense, the exercise of powers attaching to the right of ownership should be construed as "control exercised over a person in a manner that significantly restricts or deprives that person of their individual liberty, with the intent to exploit them through the use, management, benefit, transfer, or divestment of that person"[23] (Inter-American Court of Human Rights, 2016, para. 271).

Other examples of powers attaching to the right of ownership include "purchasing, selling, lending or bartering" a person (ICC Trial Chamber, 2021, para. 2711; see also Palacios-Arapiles 2022b), although the exercise of powers attaching to the right of ownership "need not entail a commercial transaction" (ICC Trial Chamber, 2021, para. 2713; 2019, para. 952; 2014, para. 976; SCSL Trial Chamber, 2007, para. 709; 2012, para. 420; ICTY Trial Judgment,

[22] Translated from Spanish.

[23] Translated from Spanish.

2001, para. 542; see also Palacios-Arapiles 2022b). As the Commission of Inquiry on Eritrea puts it, victims of slavery in "[…] Cambodia during the Khmer Rouge regime, and in the former Yugoslavia and Sierra Leone in the 1990s […] [were] not bought and sold on an open market" (UN Human Rights Council, 2016, para. 223).

According to Jean Allain, a leading scholar on the law of slavery who has analysed the case law pertaining to slavery in great detail (including some of the cases discussed in this section), slavery should be understood as the ability to control a person as they would possess a thing. In Allain's words, "[o]wnership implies such a background relationship of control" (Allain, 2017, p. 39; see also Allain, 2012a). According to Anthony Honoré, when a person is subjected to slavery, that person is unable to exercise their natural capacities, as they are in a "state of unlimited subordination to another individual" (cited in Allain, 2017, p. 39). Both Allain and Honoré are among the scholars who contributed to the *Bellagio-Harvard Guidelines on the Legal Parameters of Slavery* (Research Network on the Legal Parameters of Slavery, 2012), which aims to provide an understanding of how the 1926 slavery definition is applicable to contemporary situations. Drawing on their contributions, these guidelines illustrate that control over a person may also manifest in more abstract ways, such as forging a new identity by compelling the person to adopt a new religion, language, or place of residence.

In sum, the exercise of powers attaching to the right of ownership over a person translates as the exercise of a substantial degree of control that restricts or deprives a person of their individual liberty and/or autonomy, or that results in the person's loss of own will. Such a level of control enables the slaveholder to, for instance, use, enjoy, benefit, economically exploit, dispose of, transfer, lend, and/or divest a person at their whim, with the intent to accrue some gain. The control exercised is not restricted to physical control; it may be exerted through violence, threat of violence, coercion, deception, or even through more abstract means.

Forced labour, but not slavery?

In a seminal article, now more than a decade ago, Gaim Kibreab aptly described how national service in Eritrea falls within the definition of forced labour in international law (Kibreab, 2009), set forth in Art. 2(1) of the 1930 Forced Labour Convention No. 29 (ILO, 1930).[24] He did so after claiming, albeit superficially, that the relationship between the Eritrean state and Eritrean conscripts "is not one of ownership", thereby discarding the notion that Eritrea's national service could be considered slavery. However, as illustrated in the previous section, Kibreab's claim is at odds with the wording of the definition of slavery in international law and, furthermore, departs normatively from how this definition is interpreted and applied by international courts and tribunals (see also Palacios-Arapiles, 2022a; 2022b; 2021). Despite such crucial shortcoming, it is worth delving into Kibreab's analysis of forced labour in Eritrea, as it led to a paradigm shift from understanding Eritrea's national service as compulsory military service to state-imposed forced labour.

Turning to the analysis of forced labour, Kibreab first unpacked the elements of the definition of forced labour in Art. 2(1) of the 1930 Forced Labour Convention, including: (i) the involuntary nature of the work and (ii) the exaction of work or service "under the menace of any penalty", to reflect how national service involves these two key elements of forced labour. Kibreab then analysed the prescribed exceptions or exclusions to forced labour listed in Art. 2(2) of the 1930 Forced Labour Convention, including: Art. 2(2)(a) work or service "of a purely military character" that is "exacted in virtue of compulsory military service laws"; (b) work or service "that forms part of the normal civic obligations of the citizens […]";[25] (d) "work

[24] The European Court of Human Rights has taken this definition as a starting point for its interpretation of the prohibition of forced labour under Art. 4(2) of the European Convention on Human Rights (European Court of Human Rights, 2022).

[25] Note, Kibreab did not discuss Art. 2(2)(c): "any work or service exacted from any person as a consequence of a conviction in a court of law...".

or service exacted in cases of emergency", such as war, calamity, or any circumstance endangering the existence or the well-being of the population; and (e) "minor communal services performed by the members of the community in the direct interest of the said community", provided that they have "the right to be consulted in regard to the need for such services". In doing so, he convincingly shows how national service falls outside the permitted exemptions to the definition of forced labour.

According to Kibreab, the extended obligations imposed on Eritrean conscripts go far beyond work or service of a "purely military character", or what is considered to be "normal civic obligations" or "minor communal services" (Kibreab, 2009). In relation to work or service of a "purely military character", Kibreab more specifically shows that the work demanded from Eritrean conscripts, as per Proclamation No. 82/1995, is used for the purposes of political education, mobilisation, *economic development*, discipline, and fostering national identity and unity – and is, hence, not for purely military purposes. As for "work or service exacted in cases of emergency", he argues that, despite subsequent border disputes, the state of emergency in Eritrea ceased when the country signed a peace agreement with Ethiopia in December 2000,[26] after the 1998–2000 border conflict, and that, in any case, recourse to forced labour in cases of emergency cannot be extended indefinitely (Kibreab, 2009). This argument is even more relevant today, as Eritrea and Ethiopia ended the dispute over the border between the two countries by means of signing a new peace agreement in July 2018.

Apart from the Commission of Inquiry on Eritrea (UN Human Rights Council, 2016), country reports on Eritrea have made no attempt to assess whether or not the circumstances that characterise

[26] This is known as the Algiers Peace Agreement. It is important to note that a state of emergency was never formally proclaimed in Eritrea; it was a *de facto* state of emergency. Mekonnen argues that it did not end with the aforementioned Agreement, but with the Agreement on Cessation of Hostilities between the Governments of Ethiopia and Eritrea signed on 18 June 2000 (Mekonnen, 2006).

Eritrean national service qualify as slavery. Instead, they focus on assessing it as forced labour, predominantly since 2009, the year in which Kibreab published the article discussed above. In its 100-page report *Service for Life: State Repression and Indefinite Conscription in Eritrea*, Human Rights Watch (2009) makes no mention of slavery, restricting its analysis to forced labour, which cites Kibreab's 2009 article. Similarly, since 2008, the annual World Reports by Human Rights Watch (except for the 2009 issue) contain a section on forced labour in the pages dedicated to Eritrea (Human Rights Watch, n.d.; 2022; 2021). Reports by Amnesty International describe national service as amounting to forced labour in violation of international law, but make no reference to slavery (Amnesty International, 2015; 2013). Since 2009, the US State Department's yearly country reports on human rights practices in Eritrea have included a section on forced labour in national service, but they do not contain any separate section on slavery, nor make any mention of it (US Department of State, n.d.). In addition, ILO's Committee of Experts has consistently maintained that Eritrea's national service constitutes forced labour, as it meets the definition set forth in the 1930 Forced Labour Convention and does not fall under any of its permitted exceptions[27] – however, it has never assessed whether or not national service meets the definitional criteria of slavery. This is possibly because ILO's mandate is restricted to a set of international labour instruments, which the 1926 Slavery Convention is not part of (ILO, n.d.).

The latest United Nations High Commissioner for Refugees (UNHCR) *Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Eritrea* (which were first published in 2009 and last revised in 2011), drawing strongly on ILO conventions and materials and Kibreab's 2009 article, highlight relevant factors that make national service fall under the definition of forced labour (UNHCR, 2011). Intervening as a third party in the court proceeding leading to the latest Country Guidance on Eritrea by the UK Upper Tribunal, UNHCR expressed its wish to update its own Guidelines

[27] For a discussion of this, see the following section.

on Eritrea (UK Upper Tribunal, 2016),[28] however, these have not yet been revised, at least to date. In this proceeding, UNHCR invited the UK Upper Tribunal to find whether the (re)assignment to national service duties would constitute a breach of the prohibition on servitude or the prohibition on forced labour under Art. 4 of the European Convention on Human Rights (UK Upper Tribunal, 2016). While the latter provision also prohibits slavery, the UNHCR's request remained silent on that.

Similarly, in their respective country of origin information reports on Eritrea, the former European Asylum Support Office[29] (EASO, 2019; 2016; 2015), as well as various national immigration authorities (see e.g., Ministry of Foreign Affairs, 2022; 2017; UK Home Office, 2021; Danish Immigration Service & Danish Refugee Council, 2020; Landinfo, 2015), cite various sources that describe national service as forced labour, including Kibreab's 2009 article (EASO, 2016; 2015; Landinfo, 2015). However, among these reports, only three cite *one* source (each) referring to national service as slavery, although without any further assessment.[30]

In the context of refugee status determination, various national courts in Europe – notably the UK Upper Tribunal (2016), the Federal Administrative Court of Switzerland (2018), and the Administrative Court in Malmö, Sweden (2018) – have stated that national service in Eritrea constitutes forced labour. In a similar manner to Kibreab's (flawed) reasoning, the UK Upper Tribunal held that national service, while satisfying the legal criteria of forced labour, cannot constitute

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[28] UNHCR added that before updating its Eligibility Guidelines on Eritrea it "would ideally wish to have full information based on full access to the country" (UK Upper Tribunal, 2016, para. 34).

[29] The European Union Agency for Asylum replaced EASO in January 2022.

[30] The Danish Immigration Service and Danish Refugee Council (2020, p. 22) cited a statement by Father Mussie Zerai, an Eritrean Catholic priest and the Chair of the Habeshia Agency, the UK Home Office (2021, p. 36), in turn, cited the 2020 Danish Report, while the Dutch Ministry of Foreign Affairs cited the report of the Commission of Inquiry on Eritrea (Ministry of Foreign Affairs, 2017, p. 33).

slavery insofar as Eritrean law does not allow for the "ownership" of people (UK Upper Tribunal, 2016; Palacios-Arapiles, 2021; 2022b). The UK Upper Tribunal, thus, interpreted legal ownership over a person as the *sine qua non* of slavery. The Federal Administrative Court of Switzerland (2018) and some courts in Germany, namely, the Higher Administrative Court of Hamburg (2021) and the Administrative Court of Gießen (2020), have adhered to the UK Upper Tribunal's interpretation of slavery in national service at face value (Palacios-Arapiles, 2022b).[31] It is important to note that, while the UK Upper Tribunal (2016) considered the (re-)assignment to a forced labour system as a harm serious enough to qualify for refugee status, the Federal Administrative Court of Switzerland (2018) conversely ruled that, as the right not to be subjected to forced labour is a derogable right – unlike slavery, from which no derogation is permissible – it does not qualify for international protection, *per se*, nor it does protect against removal to Eritrea. To support its argument, it further maintained that national service needs to be understood in the context of the "Eritrean socialist economic system" and the government doctrine of "self-reliance" (Federal Administrative Court of Switzerland, 2018, para. 6.1.5.2). The Higher Administrative Court of Hamburg (2021) and the Administrative Court of Gießen (2020) selectively relied on the latter judgement to reach the same restrictive outcome (see also Palacios-Arapiles, 2021; 2022a).

The literature on Eritrea's national service, except for recent contributions by the author of this chapter (Palacios-Arapiles, 2022a; 2021), has continued to restrict its assessment to forced labour. The most recent example is Van Reisen, Saba and Smits' chapter 'Sons of Isaias': Slavery and Indefinite National Service in Eritrea' (Van Reisen, Saba & Smits, 2019; see also Saleh Mohammad, 2017).

[31] More problematic is the approach of said German courts, which have ruled that the civilian duties in national service fall within the meaning of a "normal civic obligation" and, therefore, cannot be considered to constitute forced labour (Higher Administrative Court of Hamburg, 2021; Administrative Court of Gießen, 2020).

Although the title refers to slavery, the chapter's research question confined itself to answering the question of whether or not national service constitutes forced labour. The question remains, therefore, as to whether or not what seems undoubtedly to be forced labour, also amounts to slavery. This observation does not ignore the fact that some commentators, including Kibreab, have described forced labour in national service as a "form of modern slavery" (Freedom United, 2022; War Resisters' International, 2020; Duncan Lewis, 2020; Walk Free, 2018; Kibreab, 2009) or a "slavery-like" condition (ILO, 2015b; Kibreab, 2009), in what seems to be an (unnecessary) attempt to 'upgrade' Eritrea's national service to a more serious practice. Yet, such terms have been used rhetorically, but not factually and/or legally, to mean slavery. For instance, Kibreab considered the use of the term 'slavery' by Adhanom Gebremariam, a former Eritrean Ambassador and member of the dissident group G-15 (a group of 15 senior government officials who publicly criticised Isaias Afwerki in 2001, resulting in the enforced disappearance of 11 of them), to refer to national service, as a 'metaphor' (Kibreab, 2009, p. 49).[32]

The terms 'modern slavery' or 'slavery-like practice' are increasingly used by international organisations, some scholars, and the public, more generally, to refer to different proscribed practices, such as 'slavery', 'servitude', 'institutions and practices similar to slavery', 'forced labour', and 'human trafficking'. However, all of these practices are conceptually distinct and regulated under different international conventions (Palacios-Arapiles, 2021; 2022a; 2022b; Allain, 2017; Stoyanova, 2017).[33] Bringing together different legal

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[32] In 2002, Adhanom Gebremariam wrote an essay (in Tigrinya) entitled *The Warsay-Yikaalo Campaign: A Campaign of Slavery*. The use of the word 'slavery' to refer to national service after the WYDC may not be accidental, or a metaphor, as Kibreab put it (Kibreab, 2009), given Gebremariam's knowledge of the national service's machinery from the inside (Gebremariam, 2002).

[33] At the international level, 'slavery' is defined in the 1926 Slavery Convention; 'institutions and practices similar to slavery' are defined and regulated in the 1956

categories under a single umbrella term leads to conceptual ambiguity and confusion (Bunting & Quirk, 2017; see also Allain, 2012b), while courts must make judgments within the definitional limits of each of them separately.[34] Furthermore, as the author has argued elsewhere, the term 'modern slavery' contributes to the erroneous belief that slavery belongs to the past only; it creates an unhelpful old/modern dichotomy, which risks construing slavery as confined exclusively to chattel slavery, i.e., the 'ownership' of people (Palacios-Arapiles, 2022a; 2022b). This, as discussed earlier, has been the preferred interpretation of some asylum courts, which has led, in some cases, to international protection for Eritreans being unduly denied (Palacios-Arapiles, 2022a).[35]

The clear articulation and distinction between forced labour and slavery is important not only in the context of refugee status determination, but also in contexts of conflict, such as the ongoing one in Ethiopia's Tigray region, in which many national service conscripts, including children, have been forced to participate (Respondent no. 35, interview with Palacios-Arapiles, face-to-face, February 2020; see also UN Human Rights Council, 2022). Unlike forced labour, which is permitted under the 1930 Forced Labour Convention (Art. 2(2)(d)) in cases of emergency – such as in the event of war – although with limitations, slavery remains prohibited in

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Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery; 'forced or compulsory labour' is defined under the 1930 Forced Labour Convention; and 'human trafficking' is defined in the 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. None of these conventions refers to the term 'modern slavery'.

[34] According to the United Nations Office of the High Commissioner for Human Rights (OHCHR), this over-broad approach (that is, the use of the term 'modern slavery' to refer to different forms of exploitation) could actually "lead to a dilution of work against slavery and reduce its effectiveness in achieving the objective of eliminating the phenomenon" (OHCHR, 2002, p. 4).

[35] This misinterpretation of slavery also ignores other historical realities of slavery, which were not characterised by the legal ownership of people (see e.g., Quirk 2006; Schwarz & Nicholson, 2020).

wartime (International Committee of the Red Cross, 2005; Palacios-Arapiles, 2021). And, irrespective of the foregoing, it is important that slavery is called slavery – not watered down by terms such as 'modern slavery' or construed as a different legal category based on incorrect interpretations.

Forced labour for the purpose of economic development

As prefaced earlier, national service in Eritrea differs from compulsory military service in other countries due to its extended obligations and indefinite nature, as well as the fact that its goal is to strengthen the government's economic growth (see e.g., ILO, 2021; Landinfo, 2015; UNHCR, 2011; Human Rights Watch, 2009; Kibreab, 2009). As established by Proclamation No. 82/1995 (State of Eritrea, 1995), the statutory 18 months of national service includes "active military service and *development tasks* [emphasis added] in military forces" (Art. 8, State of Eritrea, 1995). Furthermore, pursuant to this Proclamation, national service was intended, among other things, to "create a new generation characterised by love of work, discipline, ready to participate and serve in the *reconstruction of the nation* [emphasis added]" and to "*develop* […] *the economy of the nation* [emphasis added] by investing in development work of [the Eritrean] people as a potential wealth" (Art. 5, State of Eritrea, 1995).

The use of national service as a means of economic development has been reinforced by Isaias Afwerki on various occasions. Soon after the introduction of the WYDC, in October 2002, Afwerki spelt out publicly the objectives of national service, including contributing to the "country's growth and development" (Kibreab, 2009, p. 45). In addition to this claim, Afwerki pointed out that safeguarding national security is not, and has never been, the main aim of national service, not even when it started (Kibreab, 2009), which further highlights the

fact that the rationale behind it is not purely military.[36] He reiterated similar views in a 2008 interview with Al Jazeera, in which he said:

> *[…] we have been in a state of war for the last ten years. We have been forced to mobilize the majority of the young … And we're using that resource to put in place a solid foundation for the economy of our country.* (cited in UN Human Rights Council, 2016, para. 208)

Since 2009, the Eritrean government has repeatedly stated in its reports to the ILO Committee of Experts that the work done by national service conscripts focuses on public reforestation, dams, roads, soil and water conservation, as well as reconstruction projects and food security programmes (ILO, 2019; 2018; 2015c; 2011; 2009).

The government's repeated reference to the use of conscripts for economic development purposes further reinforces Afwerki' conception of national service discussed above. The government's assertions are confirmed by data gathered by the author of this chapter from national service deserters in Switzerland, Germany, Denmark, and Sweden. Besides military duties, some of the respondents were assigned to work as labourers on farms, on construction sites belonging to the government, at mining sites, at the Port of Massawa, and even in the houses of their superiors. In other cases, the respondents were assigned to work in the civil service, including in ministries, the judiciary, schools, government departments, and administrative bodies. In a 2015 documentary

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[36] In parallel with this, and inconsistent with his statements above, Isaias Afwerki and the Eritrea government have, over the years, argued that the factual situation in Eritrea is characterised as a "no war, no peace" situation. This, in their view, amounts to an emergency situation which justifies national service in its current form. However, while "work or service exacted in cases of emergency" falls outside the definition of forced labour set forth in the 1930 Forced Labour Convention, the ILO organs interpret this exemption as applying only in restricted circumstances confined to *genuine* cases of emergency (ILO, 2018; 2010). In ILO's view, national service in Eritrea cannot benefit from this exemption, because it has been in force for decades (ILO, 2019; 2010). This interpretation by ILO has been endorsed by national courts, including the UK Upper Tribunal (2016) and the Federal Administrative Court of Switzerland (2018), in their judicial decisions on Eritrean asylum applications (see also Palacios-Arapiles, 2021).

(Eritrea Embassy Media, 2015), interlocutors from various colleges in Eritrea similarly underlined the use of national service conscripts, including students at Sawa Military Training Camp,[37] for national development purposes. The public sectors that benefit from national service labour, as portrayed in the documentary, are education, health, environment conservation, tourism, infrastructure, and agriculture. Dr Estifanos Hailemariam, the Dean of the College of Business and Social Science, particularly referred to the use of "slave force" in Eritrea as a means of sustainably developing the country (Eritrea Embassy Media, 2015).

Recently, the government used national service conscripts in a road project in Eritrea, funded through the European Union (EU) Emergency Trust Fund for Africa,[38] which profited from the quasi-free labour exacted from conscripts. This account was confirmed by data elicited from a respondent in Sweden who fled Eritrea in 2019 (Respondent no. 49, interview with Palacios-Arapiles, face-to-face, February 2020). This project aims to rehabilitate the main arterial roads along the Eritrea-Ethiopia border to reconnect the two countries following the peace agreement signed in July 2018 and to provide Ethiopia with access to Eritrea's port (European Commission, n.d.). Ironically, Eritrean conscripts are used for a public works project from which they will not be able to benefit, as their exit from the country is not permitted.[39]

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[37] Sawa is a military camp located in the southwest of Eritrea where the Warsai Yikealo Secondary School is located. Since 2003, students have been obliged to complete the last year of secondary school at Sawa while receiving military training.

[38] The resources currently allocated to Eritrea through the EU Emergency Trust Fund for Africa amount to EUR 36,457,284, among which EUR 15,000,000 contributed to the road project (European Commission, n.d.).

[39] One of the main aims of the EU Emergency Trust Fund for Africa is to create "incentives for private entrepreneurship" in Eritrea (European Commission, n.d.). However, since 2006, enterprises owned by private citizens and individual entrepreneurs "were banned from the construction industry in Eritrea as part of the government's crackdown on the private sector" (Kibreab, 2009, p. 62; see also Saleh Mohammad, 2017).

Foreign companies operating in Eritrea also make use of national service conscripts. For instance, there is strong evidence to suggest that most manual labour in foreign mining projects in Eritrea is provided by conscripts, which provides the government with direct economic benefits (Tesfagorgis, Hagos, Zere & Mekonnen, 2018).[40] According to testimonies collected by the Commission of Inquiry on Eritrea, the amounts paid by foreign companies through the Eritrean government to remunerate conscripts are kept by the government, which only pays them national service wages (UN Human Rights Council, 2015).

Due to the broad scope of national service, which encompasses ordinary public works that are not of a purely military nature as well as work in the private sector, various UN bodies, including the ILO Committee of Experts (ILO, 2021; 2019; 2016), UNHCR (2011), the Commission of Inquiry and the Special Rapporteur on Eritrea (UN Human Rights Council, 2016; 2015; 2014), and a number of national courts in relation to asylum decisions (UK Upper Tribunal, 2016; Federal Administrative Court of Switzerland, 2018) have aptly held that national service exceeds military purposes. As articulated by these bodies and courts, as well as other commentators, such work constitutes forced labour under the 1930 Forced Labour Convention and does not fall within the exceptions or exclusions contained in this Convention (ILO, 2019; 2018; 2016; 2015; UNHCR, 2011; UN Human Rights Council, 2016; 2015; UK Upper Tribunal, 2016; Federal Administrative Court of Switzerland, 2018; Kibreab, 2009;

[40] For instance, national service conscripts are forced to work at the Bisha mine in Eritrea, formerly operated by the subcontractors of the Canadian company Nevsun Resources Ltd, whose shares are now mostly owned by the China-based company, Zijin Mining Group Co. Ltd. Nevsun, when operating the mine, used to pay royalties and taxes to the Eritrean treasury (UN Human Rights Council, 2015). In February 2020, the Supreme Court of Canada allowed claims of crimes against humanity, *slavery*, forced labour, and torture to go forward against Nevsun for the use of national service labour. The Supreme Court of Canada, however, did not pronounce on the merits of the case, as the parties reached a settlement in October 2020 (Mekonnen & Palacios-Arapiles, 2021).

Van Reisen, Saba & Smits, 2019).[41] It bears repeating that Art. 2(2)(a) of the 1930 Forced Labour Convention excludes from the definition of forced labour work or service that is exacted for the purpose of compulsory military service only to the extent that such work is "of a purely military character" (ILO, 1930). In the words of ILO, the term "purely" aims specifically at preventing the requisitioning of conscripts for the performance of *public works* (ILO, 2018; 2016; 2015a).[42] ILO's position in this respect is strengthened by Art. 1(b) of the 1957 Abolition of Forced Labour Convention No. 105, which prohibits the use of forced or compulsory labour "as a method of mobilizing and *using labour for purposes of economic development* [emphasis added]" (ILO, 1957).

It is worth pointing out that the language employed by some human rights reports on Eritrea has recently changed to denote forced labour instead of military service only. For instance, the US Department of State omitted the subsection on 'Child Soldiers' from the 2019 and 2020 reports on human rights practices in Eritrea, moving most of the content previously contained within this section into the sections 'Prohibition of Child Labor' and 'Minimum Age for Employment' (Asylum Research Centre, 2021). While the "forced or compulsory recruitment of children for use in armed conflict" is considered a "worst form of child labour", the latter comprises a broader spectrum of practices, such as slavery, forced labour, or debt bondage, to name a few (Art. 3, ILO 1999). Not being purely military, the work and

[41] Various courts in Germany have explicitly endorsed the fact that Eritrea's national service is used for economic development purposes, but without interpreting such feature as indicative of forced labour (for a discussion on this, see Palacios-Arapiles, 2022a).

[42] While, initially, Art. 1(2) of the 1930 Forced Labour Convention allowed recourse to forced or compulsory labour during a transitional period "for public purposes only and as an exceptional measure" (ILO, 1930), Art. 7 of the Protocol of 2014 to the 1930 Forced Labour Convention deleted that provision (ILO, 2014). However, the initial provision only allowed the use of work for public purposes for a limited period and in exceptional circumstances.

services required of some children in Eritrea clearly fit better under the broader category of child labour.

Notwithstanding the observations discussed above, the Eritrean government asserts that national service is compatible with the requirements of the 1930 Forced Labour Convention, of which it has been party to since 2000. For instance, it has argued on several occasions that national service falls under "normal civic obligations", which are not considered to be forced labour as per Art. 2(2)(b) of the 1930 Forced Labour Convention (ILO, 2018; 2016; 2015a). Contrary to the government's assertions, ILO maintains that national service falls outside this exception. According to ILO, the broad range of work that conscripts in Eritrea are required to perform, together with the duration, scope, and objectives of national service, means that it goes beyond the scope of "normal civic obligations" in Art. 2(2)(b) (ILO, 2018; see also UK Upper Tribunal, 2016; Federal Administrative Court of Switzerland, 2018; UNHCR, 2011). ILO's position in this regard is, in the UK Upper Tribunal's words, reinforced by the findings of the Commission of Inquiry on Eritrea, according to which national service "is a way of controlling the population" (UK Upper Tribunal, 2016, para. 423). It is this element of control to which this chapter now turns.

Control over Eritrean national service conscripts

The following passage, which is taken from a report by the Commission of Inquiry on Eritrea, is one of many that refer to the exercise of control over national service conscripts by the Eritrean government: "[c]onscripts are at the mercy of their superiors, who exercise control and command over their subordinates without restriction in a way" (UN Human Rights Council, 2015, para. 1518). As discussed in the opening section of this chapter, there appears to be no doubt that members of the Eritrean political and military structure exercise control over national service conscripts. The analysis that is lacking from the sources other than the Commission of Inquiry is whether or not such control is indicative of slavery.

As stated in the introduction to this chapter, the Commission of Inquiry on Eritrea concluded its analysis of slavery in Eritrea by stating that national service is used: (i) for the purposes of the country/government's economic development, and (ii) to control the population. In reaching this conclusion, the Commission analysed the factors that make national service satisfy the definitional threshold of slavery, using as an analytical framework *Kunarac*'s list of indicia of slavery discussed earlier (UN Human Rights Council, 2016; see also Palacios-Arapiles, 2021). A detailed discussion on each of the factors that indicate the existence of slavery in national service goes beyond the scope of this chapter. Instead, the analysis that now follows centres on some of the practices that enable the Eritrean government to exercise powers attaching to the right of ownership over national service conscripts. The discussion is by no means exhaustive, but the reader will gain a good grasp of how the control exercised over conscripts deprives them of their individual liberty and autonomy.

In Eritrea, national service starts in secondary school. In 2003, the education system was integrated into the WYDC and, since then, students in 12th grade – the final year of high school in Eritrea – combine academic work with a compulsory six months of military training, which both take place at Sawa Military Training Camp (Van Reisen, Saba & Smits, 2019).[43] Students at Sawa have military status; they are under the jurisdiction of the Ministry of Defence and subject to military discipline (Child Soldiers International, 2012; see also Van Reisen, Saba & Smits, 2019; Human Rights Watch, 2019; 2021). Only the respondents who passed the so-called 'matriculation exam', which is the final exam following 12th grade, could undertake either

[43] Prior to the WYDC, in addition to round-ups, deception also appeared to be used for conscription purposes. Hirt and Saleh Mohammad underscore that, in 1998, Isaias Afwerki announced on the State Television an "environmental campaign"; citizens who had been demobilised were called back to participate in that campaign, which also included "reforestation efforts". In their view, this was a hidden mobilisation, timed to take place just before the border conflict with Ethiopia erupted (Hirt & Saleh Mohammad, 2013). Those who were conscripted into the national service at that time have, to date, not been demobilised.

vocational training or higher education, depending on their grades. The courses that students enrolled in, however, were chosen by the government, based on available places and the government's *own needs* at the time. One of the respondents said: "I was among the lucky ones, as the government chose for me what I really wanted to study" (Respondent no. 12, interview with Palacios-Arapiles, face-to-face, November 2019). In 2006, the government closed the only accredited university in the country – the University of Asmara.[44] The closure took place when university students started to pose a threat to the government (see e.g., Human Rights Watch, 2001), and represents an attempt to eliminate all real or perceived opponents to the PFDJ. According to a former conscript who was assigned to work at the Ministry of Information, he and his colleagues were obliged to adapt news before making it public. He used the example of a shooting at a university in the United States years ago and being required to publish that universities were life-threatening places in order to justify the official closure of the University of Asmara, conveying the message that the closure was meant to protect students (Respondent no. 12, interview with Palacios-Arapiles, face-to-face, November 2019).

According to Art. 14 (4) of Proclamation No. 82/1995 (State of Eritrea, 1995), "[t]he student will be awarded with a Certificate, Diploma or Degree only upon competition of Active National Service". As national service is indefinite, none of the respondents in this study had received a diploma or certificate after completion of secondary school, vocational training, or higher education in Eritrea (see also UNHCR, 2018). In the author's view, this creates a situation of dependence on the government, as fleeing the country would mean starting from scratch.

Vocational training and higher education in Eritrea also include military training. After the completion of their studies, respondents

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[44] Since then, secondary school graduates with good grades go to one of the countries' colleges, which offer study programmes of two or four years; while graduates with lower grades may be offered vocational training, either inside Sawa or centres outside Sawa (Landinfo, 2015).

continued to be subject to national service and were deployed to a national service destination, which did not necessarily match their studies. The ones who did not pass the matriculation exam, or who for other reasons dropped out of school, were deployed to a military destination, at which they were also required to undertake tasks in public and/or private works. All of the former conscripts whom the author interviewed had no choice as to the role they were assigned, either military, civilian, or in the private sector, nor did they have the right to refuse to undertake the work assigned to them. In this sense, conscripts are deprived of a life characterised by one's own chosen ends, which are instead determined by the government according to its necessities.

Furthermore, respondents had no right to choose the place of deployment. Except for one case, all of the deserters interviewed were deployed far from their homes and families, sometimes in remote locations, isolated from their previous social relationships. In this respect, the data gathered from the respondents is consistent with the reports of the Commission on Inquiry on Eritrea (UN Human Rights Council, 2016, 2015) and the Special Rapporteur on Eritrea (UN Human Rights Council, 2014), as well as the reports of human rights organisations (see e.g., Amnesty International, 2013; Human Rights Watch, 2009; 2019). In Sawa and in other national service destinations, the use of other languages apart from Tigrinya is generally not tolerated. According to Hirt and Saleh Mohammad, the government, which is dominated by people of Tigrinya ethnicity, "use their language as a tool of domination in the administration and the military" (Hirt & Saleh Mohammad, 2013, p. 149). Non-Tigrinya respondents said that using languages other than Tigrinya raised suspicions that they were planning activities against the government or to flee; thus, they refrained from using their own language. Both, Muslim and Christian respondents said that religious observance was not permitted during their respective deployments, which is also consistent with the findings of the Commission of Inquiry on Eritrea (UN Human Rights Council, 2016; 2015) and the Special Rapporteur on Eritrea (see e.g., UN Human Rights Council, 2021; 2014). All of these things point to people being deprived of their own identity and

compelled to assimilate into a national identity, which is indeed one the goals of national service under Art. 5 of Proclamation No. 82/1995 (State of Eritrea, 1995). Moreover, in Eritrea there is limited access to official identity documents; the issuance of these documents is tied to people's perceived loyalty to the PFDJ. This creates numerous obstacles in relation to proving one's identity outside Eritrea (Mekonnen & Palacios-Arapiles, 2021), which strengthens people's dependence on the government.

National service conscripts, both at military and civil destinations, work for little (or no) pay, which, according to respondents, including those assigned to qualified jobs, is inadequate to meet basic living costs (see also UN Human Rights Council, 2022; 2019; Human Rights Watch, 2019),[45] and makes it difficult to have a family (Respondent no. 1, interview with Palacios-Arapiles, face-to-face, November 2019; see also UN Human Rights Council, 2014). Families may be given ration coupons upon certifying that family members of draft age are duly serving in national service. Without these coupons, families cannot shop in the government owned shops and other shops are not affordable (UN Human Rights Council, 2015; Mekonnen & Palacios-Arapiles, 2021). Furthermore, the food that conscripts in military posts receive is of an inadequate quantity and poor in nutritional value. The majority said that they were given only lentils, either once or twice a day, and a cup of tea without milk or sugar in the morning, sometimes together with a piece of bread,[46] which is in line with country information (see e.g., Human Rights Watch, 2019;

[45] Art. 22(1) of Proclamation No. 89/1996 states that "[t]he citizen who upon termination of military training enters into a 12-months of active national service is entitled to pocket money" (State of Eritrea, 1996); whether or not national service conscripts receive this money, and when, is discretionary and arbitrary. In addition, members of the reserve army are not entitled to remuneration, even during the training or mobilisation periods, only to free food and clothes (Proclamation No. 82/1995, Art. 32, State of Eritrea, 1995).

[46] *Ades*, which means lentils in the Tigrinya and Tigre languages, was among the most repeated words during the interviews. One of the respondents highlighted that it was not actually a proper dish of lentils, but rather water with a few lentils (Respondent no. 6, interview with Palacios-Arapiles, face-to-face, November 2019).

UN Human Rights Council, 2015, 2014). National service conscripts are prevented from engaging in other income-generating activities. Only those who have completed national service are eligible for a business licence; however, none of the respondents in this study had ever witnessed the issuance of certificates of completion. All of this creates a situation of dependence on the PFDJ for survival, notwithstanding the fact that they receive very little.

National service conscripts, other than those in Sawa, or other military camps, and prisons, are not physically confined, but their movement is restricted and dictated by the government. Conscripts often work longer than a year before they are granted leave,[47] which consists of a permit that allows travel only to the family's place of residence for a limited period of time, which usually ranges from a few weeks to a month. For this, conscripts are issued with a special or temporary pass paper (Mekonnen & Palacios-Arapiles, 2021). Otherwise, movement within the country is generally not permitted.[48]

Some respondents said that they knew only their hometown and their place of deployment; while others said they only remember having seen their father three to five times in their life. Returning late at the end of permitted leave, even by a day, or absence without official permission, is severely punished (see e.g., UN Human Rights Council, 2015). Punishment often takes place in front of peers to dissuade others from committing similar 'offences'. A respondent, for example, explained that he was subjected to the method of torture known as the 'helicopter' – a drawing of which can be found in the 2015 report of the Commission on Inquiry – for spending a couple of hours in a place close to his military unit, for which he did not obtain prior permission. He said that he was left in the 'helicopter' position for hours, bleeding, while surrounded by his peers, who were ordered not to untie him (Respondent no. 18, interview with Palacios-

[47] Leave is granted at the discretion of superiors. One of the respondents said that he was only granted leave after about four years of deployment (Respondent no. 40, interview with Palacios-Arapiles, face-to-face, February 2020).

[48] The country is full of checkpoints and people are also subject to sporadic checks.

Arapiles, face-to-face, November 2019). Respondents were asked if they had ever tried to use someone else's travel pass to move within Eritrea, a question that created confusion for most respondents, and had to be better explained. It became apparent that it was a scenario they had never imagined, because of the risks involved if they were caught.

Deserting or evading national service and exiting the country without permission are considered criminal offences. In addition to imprisonment for "attempting to" or "escaping abroad" to avoid national service (offences that carry two and five years' imprisonment, respectively, and three years' imprisonment for self-infliction of unfitness for service), Proclamation No. 82/1995 sets out further penalties for those who escape abroad to avoid national service. These include (life) suspension of the right to own land, to obtain an exit visa, and to work (Proclamation No. 82/1995, Art. 37, State of Eritrea, 1995; UNHCR, 2011).[49] Besides the penalties imposed under Proclamation No. 82/1995, the 1991 Transitional Penal Code of Eritrea (which up to now remains in force),[50] also covers military violations. These include, among other things, the evasion or failure to (re)enlist, desertion, and failure to return after an authorised period of absence. The attached penalties range from 6 months to 15 years imprisonment (Proclamation No. 4/1991, Arts. 296–305, State of Eritrea, 1991), and the punishment for desertion ranges from five years to life imprisonment, or even the death penalty in times of mobilisation (Proclamation No. 4/1991, Art. 300(2)) – such as at present, as a consequence of Eritrea's involvement in the conflict in Tigray.

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[49] In stipulating all these penalties, Proclamation No. 82/1995 refers to "avoidance", without distinguishing between draft evasion and desertion. Therefore, pursuant to the 1995 Proclamation's legal provisions, and as far as penalties are concerned, draft evaders and deserters fall within the same category of persons (State of Eritrea, 1995).

[50] Although made public in May 2015, the 2015 Penal Code has not entered into force yet (Mekonnen & Palacios-Arapiles, 2021; Ministry of Foreign Affairs, 2022; see also UN Human Rights Council, 2016; Goitom, 2016).

In practice, avoiding national service is not only punished by the above statutory penalties, but also by arbitrary and extrajudicial forms of punishment, often of a life-threatening nature, without recourse to a court of law. Such punishments have been extensively reported to include inhumane prison conditions,[51] which, as some of the respondents indicated, can result in death in detention,[52] as well as enforced disappearances, torture, extrajudicial executions, the punishment of relatives, and 'shoot-to-kill' operations at the border to deter exit from the country (UN Human Rights Council, 2020; 2018; 2016; 2015; 2014; Immigration and Refugee Board of Canada, 2017; UK Upper Tribunal, 2016; UNHCR, 2011; see also Danish Immigration Service & Danish Refugee Council, 2020; EASO, 2019).

In the diaspora, in addition to being subjected to surveillance by the Eritrean government (Bozzini, 2015), those who require consular assistance from an Eritrean diplomatic mission (such as identity documents for family reunification) are obliged to sign a self-incriminatory letter (the so-called 'regret from'), whereby they apologise for having committed a crime by failing to fulfil their national service obligations and accept any punishment in return (Mekonnen & Palacios-Arapiles, 2021; Buysse, Van Reisen & Van Soomeren, 2017). They are also compelled to pay the so-called '2% diaspora income tax' (Mekonnen & Palacios-Arapiles, 2021; Buysse, Van Reisen & Van Soomeren, 2017), which, according to Human Rights Watch, is used by the government "to consolidate its control

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[51] The documentary by Frontline (Williams, 2021), the first of this kind, includes footage and videos taken from a hidden camera inside Eritrea, including prisons.

[52] One of the respondents described being detained in a cell with no window and which was very crowded, to the extent that there was not even enough space for all to lay down, so they had to sleep in turns. He explained that when he arrived at that prison, he thought he had been taken to a psychiatric hospital, as all of the inmates were naked, which made him think that the inmates had serious mental problems. He soon found out that it was due to the high temperature there, as a result of which many died. As the rise in the number of deaths appeared to be untenable, the prison guard made a small hole in the wall of the call so that they could get a bit of fresh air; but still inmates continued to die, according to the respondent (Respondent no. 4, interview with Palacios-Arapiles, face-to-face, November 2019).

over the diaspora population by denying politically suspect individuals essential documents" (cited in UK Upper Tribunal, 2011, para. 62).

According to Hirt and Saleh Mohammad (2013), national service in Eritrea has resulted in the emergence of a society that is functioning in 'abnormal' ways, a situation that they describe as "social anomie". They use this sociological term to refer to a situation in which private norms and values are incompatible or cannot be reconciled with the demands and norms of the government. As illustrated above, the government is preventing citizens from achieving their aspirations, including realising personal, education and career ambitions, establishing a family, or even sustaining themselves and their families. Fulfilling such aspirations is only possible by committing the offence of fleeing the country, under threat of detention, physical punishment, extrajudicial killing, and/or reprisals against relatives – not through legitimate means (Hirt & Saleh Mohammad, 2013). In this sense, Hirt and Saleh Mohammad (2013) argue that, in Eritrea, citizens cannot live according to general norms and values without breaching the laws of the government. This featured prominently in most of the interviews conducted for this research. Many of the respondents said that, to Isaias Afwerki, they are criminals, and not deserving to be 'Eritreans'.

National service in its current form has now been in place for two decades, as a result of which some of the practices and norms of the government, while incompatible with people's own values, as Hirt and Saleh Mohammad (2013) claim, appear to have been internalised. The findings of this research strongly depart from Kibreab's view that Eritrean refugees and, more specifically, asylum-seekers "may have an incentive to overstate their plight" and "the extent of human rights violations associated with [national service]" (Kibreab, 2009, p. 50). Instead, the findings of this research indicate the opposite – they point to the 'false consciousness' of national service deserters and draft evaders, which renders them unable to fully understand and, consequently, articulate their own lived experiences. This, as explained earlier in this chapter, is a characteristic feature of people

who have been subjected to slavery. False consciousness describes the situation when people are unable to recognise oppression and exploitation because of the prevalence of views and practices that normalise and legitimise the existence of such oppressive situations. It refers to a systematically distorted and misleading understanding of a dire situation and dominant social relations in the consciousness of the subordinate class. It is often caused by lack of reflection and/or insufficient information, fostered by the dominant class to exert dominance over their subordinates.[53]

In Eritrea, people are given negative or false information about life outside the country. The private press is banned and the domestic media is controlled by the government (Van Reisen, Saba & Smits, 2019). The few private newspapers that existed in the country were forced to close in 2001 and 18 journalists working for the private media were detained incommunicado without trial (Tronvoll & Mekonnen, 2014).[54] In addition, access to the Internet is severely restricted. A former conscript who worked in one of the ministries said he only knew about Facebook after he fled the country about five years ago (Respondent no. 1, interview with Palacios-Arapiles, face-to-face, November 2019). While some hotels and cafés (mainly in Asmara) provide Wi-Fi, none of the respondents in this research had ever accessed it. The data gathered from the respondents indicates that connecting to Wi-Fi, or even being around areas where it is accessible, raises suspicions that you are conspiring against the government or planning illicit activities, such as leaving the country. The fear of arbitrary arrest and incommunicado detention, thus, curtails freedom of expression and access to information. Accordingly, Eritrea is the only reality known to most of its citizens,

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[53] While the concept of 'false consciousness' was first developed in the context of social relations under capitalism (Lukács, 1971), it has been extended to other contemporary contexts of oppression on the basis of, e.g., gender, ethnicity, and race.

[54] While some have died in custody, the whereabouts of the others is still unknown (Amnesty International, 2021).

which allows the government to systematically mislead them to perpetuate control and exploitation. According to some respondents in Denmark and Switzerland, Hollywood and Hindi movies were the only information they had about the 'outside' world while in Eritrea. Moreover, as stated above, the Ministry of Information adapts news to mislead the public.

Lacking an understanding of the wider world, Eritrean citizens internalise concepts and ideas about the world provided (only) by the government. As Thompson explains, this "can affect the ways that individuals come to bypass attempts at rational thinking and instead rely automatically upon the normative concepts that they have internalised" (Thompson, 2015, p. 455). When the author asked the respondents what type of protection (i.e., refugee status, complementary form of protection, or none)[55] they think they deserve according to their personal circumstances – regardless of the status they held – the majority of them were unable to express their views or thoughts, indicating that such a response should come from the respective migration authority. The answer to the follow-up question was the same; this time they were asked to imagine that they were the asylum decision-maker in charge of their application and, therefore, had the authority to decide on it. Many of them struggled to envision such a hypothetical scenario and were still unable to give a response based on their own thoughts. A similar scenario occurred when the author asked them how they felt about having to carry a weapon, and how they would have acted if they were given the option to either carry it or not. Most of them found it very difficult to imagine a life with choices (or even feelings), and simply responded that they were forced to do it, highlighting that thinking of how they felt about it is not an option in Eritrea. In relation to those questions, some respondents indicated that Afwerki 'controlled their minds' to the extent that they were unable to think for themselves.

[55] Explanations were given as to what each of those statuses mean and entail.

In addition, some questions, in particular "how many hours per day did you work while in national service", or "did you encounter any particular issue while in national service", did not elicit a straightforward response, reflecting the respondents' distorted understanding of their own situation. A respondent, to the first question, initially answered "about six hours". The author then asked him what he used to do in his free time, to which he responded that he had to work for military commanders at their houses, collect wood and perform other manual labour, and be always ready for any order at any time. The author further asked him how many hours per day he used to sleep, to which he explained that sleeping hours may range from very few hours to none, as at night, he used to guard checkpoints or be woken up for military training. To the question "how many days per week did you usually have off" he said "none". The respondent initially referred to six hours to denote only heavy military work, believing that 'work' only fits within that category (Respondent no. 4, interview with Palacios-Arapiles, face-to-face, November 2019). With regard to the second question ("did you encounter any particular issue while in national service"), many of the respondents, although they had been subjected to torture in Eritrea, did not mention it at first. Torture and corporal punishment being the rule and not the exception in Eritrea, appeared to be normalised among the respondents to the extent that they did not flag it as a particular issue.

The data discussed above, which exemplifies countless individual stories, suggests that the government subjects national service conscripts to substantial degree of control in a manner that deprives them of any form of autonomy and individual liberty. It also shows that national service conscripts are stripped of a will of their own. They live according to norms and concepts that are the product of manipulative or distorting external forces (i.e., the PFDJ), which leaves them in a state of 'false consciousness', even years after having left the country. All of this enable the government to exercise powers attaching to the right of ownership over them. As shown in the preceding section, the gains that the government accrues from this include economic growth (which is enjoyed by the PFDJ), securing

the PFDJ's political power, and more recently, furthering Eritrea's war efforts in Tigray.

Other chapters in this book use Barzilai-Nahon's theory of 'gatekeeping' (Barzilai-Nahon, 2008) to explore how the lives of Eritreans are gated during their migration trajectories by actors such as human traffickers, refugee agencies, and asylum decision-makers, which are referred to as 'gatekeepers'. The author of this chapter argues that the degree to which Eritreans are 'gated' in their journeys is exacerbated by the control that they have previously endured in Eritrea by the state and President Isaias Afwerki[56] – who can be considered the first and main gatekeeper in their lives – which certainly makes them more vulnerable to subsequent gatekeepers.[57]

Conclusion

This chapter has shown that most sources, ranging from scholarly contributions and reports of government entities and international and non-governmental organisations to asylum jurisprudence, either make negative findings about *slavery* in national service in Eritrea, based on the fact that Eritrean law does not allow for the ownership of people, or do not make any attempt to inquire about slavery. The latter is most probably because 'chattel slavery', i.e., the legal ownership of a human being, is regarded by some as the definitive benchmark and leads to the erroneous belief that slavery only belongs to the past. However, this chapter has aptly illustrated that this is not the case.

The legal definition of slavery, which is found in the 1926 Slavery Convention, also covers *de facto* slavery, that is, situations in which a

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[56] This is based on the author's own observations over many years of work with Eritrean communities in the diaspora.

[57] The Special Rapporteur on Eritrea, in its report to the Human Rights Council of 2020, stated that "[a] failure to take into account the rehabilitation needs of vulnerable [Eritrean] asylum seekers […] may influence their ability to present their claims in a coherent manner" (UN Human Rights Council, 2020).

person is not legally owned. It defines slavery as the exercise of "any or all of the powers attaching to the right of ownership" over a person, as opposed to actual 'ownership'. This definition has been consistently interpreted by various international courts and tribunals as the exercise of a substantial degree of control over a person that deprives him or her of their individual liberty and/or autonomy. Interestingly, most of the sources on national service agree that the Eritrean government exercises control over the Eritrean population, although they overlook what this really means. This chapter has unpacked its meaning from a normative point of view.

This chapter first discussed the fact that national service in Eritrea is used, among other things, to strengthen and develop the economy of the country. It showed that many sources have largely relied on the use of national service labour for the country's economic development to describe it as *forced labour*. Drawing on primary and secondary data, this chapter then showed how the government exercises control over conscripts. Both factual elements combined have an autonomous meaning in international law – *slavery*. While some courts in Germany and Switzerland appear to rely on the Eritrean economy being a "socialist economic system" (Palacios-Arapiles, 2022a) to justify the use of forced labour in the country, it has become clear that this is not an element to consider in the analysis of either forced labour or slavery. Furthermore, as this chapter has shown, such claim is factually wrong – the Eritrean government benefits from foreign investment and funding from the EU, among other sources.

Finally, the chapter problematized the extent to which the lives of Eritreans are not characterised by a will of their own. As a result, many have developed a 'false consciousness' that makes it difficult for Eritrean refugees to understand and, consequently, articulate their experiences in Eritrea. As discussed in other chapters (particularly Chapter 7: *Escaping Eritrea: The Vulnerability of Eritreans to Human Trafficking for Ransom*), this contributes to their vulnerability to human trafficking. Furthermore, the repression of key aspects of their identity, such as language and free speech, as well as the government's

control over access to information, affects their status as 'gated', both while in Eritrea and during their journeys on the migration routes from Eritrea to Libya.

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Author contributions

Sara Palacios-Arapiles is the sole author of this chapter.

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