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Human rights situations that require the Council's attention

**Report of the Special Rapporteur on the situation
of human rights in Eritrea, Sheila B. Keetharuth***

Summary

The present report is submitted pursuant to Human Rights Council resolution 32/24, which extended the mandate of the Special Rapporteur on the situation of human rights in Eritrea for one year, and requested that the mandate holder follow up on the implementation of the recommendations of the Commission of Inquiry on Human Rights in Eritrea in its report (A/HRC/32/47) presented to the Human Rights Council in June 2016.

In the present report, the Special Rapporteur provides information about her activities, notes relevant regional developments, the situation of Eritreans fleeing their home country and Eritrea's engagement with the international community.

The Special Rapporteur notes that the Government of Eritrea has not made any effort to address the human rights concerns highlighted by the Commission of Inquiry and that it has shown no willingness to tackle impunity with regard to perpetrators of past and ongoing violations.

Finally, the Special Rapporteur sets out the steps required to put an end to continuing human rights violations and impunity, and presents possible avenues to pursue accountability by holding perpetrators of international crimes accountable.

* The present report was submitted after the deadline in order to reflect the most recent developments.

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I. Introduction

1. The present report is submitted pursuant to Human Rights Council resolution 32/47, which extended the mandate of the Special Rapporteur on the situation of human rights in Eritrea (Special Rapporteur) for one year, and requested that the mandate holder follow up on the implementation of the recommendations of the Commission of Inquiry on Human Rights in Eritrea in its report (A/HRC/32/47) presented to the Human Rights Council in June 2016. In the present report, the Special Rapporteur provides information about her activities since the extension of the mandate, notes relevant regional developments, and discusses the Eritrean Government's interaction with human rights mechanisms. She then provides an overview of the current human rights situation, based on information that was brought to her attention during the reporting period, the situation of Eritreans fleeing their home country and Eritrea's engagement with the international community. Finally, the Special Rapporteur presents her vision for improvement in the human rights situation by addressing steps required to put an end to continuing human rights violations and impunity, as well as exploring avenues to pursue accountability by holding perpetrators of international crimes accountable.

II. Activities

2. Since the extension of the mandate in June 2016, the Special Rapporteur undertook consultations in Switzerland (September 2016), Brussels, Belgium (September 2016) and Addis Ababa, Ethiopia (November 2016). In March 2017, the Special Rapporteur undertook missions to Stockholm, Sweden; Berlin, Germany; London, United Kingdom; The Hague, Netherlands; Paris, France; as well a mission to Oslo, Norway in May 2017.

3. The principal focus of her discussions was follow-up to the findings and recommendations of the Commission of Inquiry on Human Rights in Eritrea (Commission of Inquiry). With United Nations (UN) Member States, UN entities, European Union (EU) and African Union (AU) officials, and national prosecutors, investigators, and representatives of ministries of justice, as well as human rights defenders, representatives of civil society organisations and individual Eritreans, the Special Rapporteur explored avenues to take forward the work of the Commission of Inquiry. Discussions evolved around the current human rights situation in Eritrea, regional and bilateral engagement, as well as options to hold perpetrators of crimes against humanity to account.

4. In March 2017, the Special Rapporteur briefed the European Network of contact points in respect of persons responsible for genocide and crimes against humanity about the findings and recommendations of the Commission of Inquiry. Specifically, she explained the Commission's finding that there was reason to believe that crimes against humanity had been, and were being, committed in Eritrea.

5. The Special Rapporteur attended two meetings on human rights under the auspices of the AU, namely the Symposium on the 10th Anniversary of the African Court and the Fifth African Union High Level Dialogue on Human Rights, held in Arusha, Tanzania in November 2016. She also attended the 60th Ordinary Session of the African Commission on Human and Peoples' Rights (African Commission) and the preceding Forum on the participation of NGOs in the 60th Ordinary Session of the African Commission in Niamey, Niger in May 2017. During the NGO Forum, the Special Rapporteur participated in a panel on justice and human rights in the context of threats to peace and security in Africa, as well as in a side-event on accountability for grave human rights violations in Eritrea that

explored the role which regional mechanisms might play in this regard. The Special Rapporteur also took the opportunity to brief the African Commission and several of its special mechanisms on findings and recommendations of the Commission of Inquiry and on the human rights situation in Eritrea.

6. Also in May 2017, the Special Rapporteur was hosted by the Department of Politics and International Relations at the University of Johannesburg, South Africa for an event on the human rights situation in Eritrea. Following her presentation, the panel explored avenues to pursue accountability of perpetrators both at the international and domestic levels in the broader context of the fight against impunity.

7. Lastly, the Special Rapporteur accepted an invitation to attend the 2017 Oslo Freedom Forum, where she participated in a panel ‘Never Again: Why We Fail to Stop Crimes Against Humanity’. During her address, she presented the work of the Commission of Inquiry, laid out the different avenues to pursue accountability for the crimes identified in the Commission’s report, and discussed options to hold perpetrators of international crimes accountable.

8. Throughout the reporting period, the Special Rapporteur sought cooperation with the Government of Eritrea. She reiterated her request to visit the country and repeatedly solicited meetings with Eritrean Government representatives in Addis Ababa, Brussels, Geneva and New York. The Special Rapporteur regrets that despite these efforts, the Government of Eritrea has continued to refuse to cooperate with the mandate for the fifth consecutive year. The Special Rapporteur remains committed to cooperating with Eritrea to discuss the findings of her own mandate and of the Commission of Inquiry, as well as on the way forward for the country to respect, protect and fulfil its human rights obligations.

III. Regional developments

9. Eritrea and its immediate neighbours have had troubled relations over borders, some of which have been resolved while others persist to this day, creating a set of circumstances that is described by the Eritrean Government as a ‘no war no peace’ situation. Eritrea justifies its high level of militarisation on this basis. In addition, the ‘no war no peace’ situation informs Eritrea’s interaction with the international community, as well as its internal affairs, and has a very negative impact on the enjoyment of human rights by the Eritrean population. The continued non-implementation of the decision by the Eritrea-Ethiopia Boundary Commission (EEBC) of 2002 is of particular concern. Fifteen years ago, the EEBC rendered its decision regarding the border demarcation between the two countries, and in the process allocated the village of Badme to Eritrea.¹ The Special Rapporteur reiterates that the ongoing Ethiopian occupation of Badme is against international law and supports calls for the full implementation of the provisions of the decision.² However, the failure to implement the Boundary Commission’s decision cannot serve as justification for the open-ended and arbitrary nature of Eritrea’s military/national service programmes. Nor can the illegal occupation of the village justify the human rights violations and crimes against humanity that the Special Rapporteur and the Commission of Inquiry documented during their respective mandates.

¹ Eritrea-Ethiopia Boundary Commission, Decision regarding Delimitation of the Border between the State of Eritrea and the Federal Democratic Republic of Ethiopia, 13 April 2002, and Determinations of 7 November 2002, Determination para. 3.

² See Report of the commission of inquiry on human rights in Eritrea, A/HRC/32/47, para. 134; and for example, the recent declaration by the EU of 13 April 2017, available at <http://www.consilium.europa.eu/en/press/press-releases/2017/04/13-declaration-hr-eritrea-ethiopia-boundary-commission/>.

10. In 2009, the United Nations Security Council imposed an arms embargo on Eritrea, primarily in response to Eritrea's suspected support for Al Shabaab in Somalia. In its most recent report, the Monitoring Group on Somalia and Eritrea stated that it had found no firm evidence of Eritrea's support for Al Shabaab. It also described the use of Eritrean land, airspace and territorial waters by the Arab coalition supporting the anti-Houthi military campaign in Yemen, as well as the construction of a permanent military base at Assab International Airport and a new permanent seaport adjacent to it.³ In November 2016, the Security Council noted the finding about the lack of evidence pointing to Eritrean support for Al Shabaab, but expressed concern for ongoing Eritrean support for other regional armed groups and lack of cooperation with the Security Council; it extended the arms embargo on Eritrea.⁴

11. Reportedly, in October 2016, a helicopter gunship hit a boat carrying Eritrean Afar fishermen travelling along the Eritrean coast near Edi and Bara-Assoli, killing one person and injuring seven others.

12. In February 2017, the Panel of Experts supporting the Security Council Sanctions Committee on the Democratic People's Republic of Korea (DPRK) accused Eritrea of violating the arms embargo by buying military communications material from the DPRK.⁵ On 21 March 2017, the United States imposed sanctions pursuant to the Iran, North Korea, and Syria Nonproliferation Act (INKSNA) on the Eritrean Navy and any successor, sub-unit, or subsidiary thereof for prohibited transfer to or acquisition from DPRK of goods, services, or technology controlled under multilateral control lists.⁶

13. In October 2016, a Canadian court ruled that a lawsuit against Nevsun Resources Ltd, a Canadian mining company, by several Eritreans claiming that they had been forced to work at the Bisha mine, could proceed in British Columbia, Canada. However, the court found that the case could not continue as a representative action, so the six workers would each have to file separate lawsuits.⁷ The plaintiffs and Nevsun have both appealed the decision.

IV. Update on the human rights situation

14. During the reporting period, the Special Rapporteur received information indicating that Eritrea's military/national service programmes continued to be arbitrary, extended, and involuntary in nature, amounting to enslavement, as per the findings of the Commission of Inquiry.

15. Several interlocutors highlighted that forced recruitment into the military/national service also continued.

16. The Special Rapporteur also received reports that the Government has increased stipends paid to national service conscripts. While this would be a positive and much needed development, such increases would not remedy the other determining factors for the military/national service programmes amounting to enslavement. However, there are serious doubts as to whether the stipend increases are real as the Government also imposes compulsory deductions for various purposes such as taxes, logistics, and construction. The

³ Report on Eritrea of the Monitoring Group on Somalia and Eritrea, S/2016/920, 31 October 2016, p.4.

⁴ S/RES/2317 (2016).

⁵ Final report to the Security Council by the Panel of Experts established pursuant to resolution 1874 (2009), S/2017/150, 27 February 2017.

⁶ See notice by the State Department on 03/30/2017 available at <https://www.federalregister.gov/documents/2017/03/30/2017-06225/imposition-of-nonproliferation-measures-against-foreign-persons-including-a-ban-on-us-government>.

⁷ British Columbia Supreme Court, *Araya v. Nevsun Resources Ltd.*, 2016 BCSC 1856.

Special Rapporteur is not in a position to verify the information but strongly urges the Government to enhance transparency with respect to the handling of administrative matters, especially those that have a significant impact for the majority of the population.

17. The Special Rapporteur notes reports about the death in detention of Tsehay Tesfamariam, a Jehovah's Witness, who died in Asmara on 30 November 2016 after having been imprisoned at the Me'eter camp since his arrest in January 2009.⁸ She recalls the findings of the Commission of Inquiry with respect to the mistreatment of religious minorities in Eritrea, including Jehovah's Witnesses.

18. During the reporting period, the Special Rapporteur continued to receive reports of new cases of arbitrary arrest and detention. The reasons for the arrests appear to be those previously identified by the Commission of Inquiry, namely attempting to evade military service or trying to assist a family member in doing so; trying to leave the country; practicing an unauthorised religion; or offending a high-ranking Government or official of the People's Front for Democracy and Justice, the sole political party in the country. The Special Rapporteur has received no official communication indicating that the Government has released arbitrarily detained prisoners or that it has provided information about the fate of high profile individuals subject to enforced disappearance.

19. In June 2014, the Special Rapporteur sent a communication to the Government of Eritrea about H.E. Mr. Mohamed Ali Omaro, former Ambassador of Eritrea to Nigeria, jointly with the Working Groups on Arbitrary Detention, and on Enforced or Involuntary Disappearances, the Special Rapporteurs on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, on torture and other cruel, inhuman or degrading treatment or punishment. The mandate holders noted the reported arrest of Mohamed Ali Omaro in April 2014 in Asmara, who was believed to be held *incommunicado*, without charge or trial. They expressed concern about his well-being in view of the alleged prolonged *incommunicado* detention, as well as the risk of torture or other forms of ill-treatment.

20. The Special Rapporteur regrets that more than two years later, the Government has not responded to the allegations. According to information received from other sources, Mohamed Ali Omaro is being detained in Karshale in Asmara, and his state of health is deteriorating. The Special Rapporteur is very concerned about his well-being and urges the Government to provide information about the situation of Mohamed Ali Omaro as the proffered reason of 'national security' for his arrest is untenable to hold him *incommunicado* and without being charged before an independent court of law.

21. It appears that the practice of arbitrary arrest and detention of individuals based on their religious belief continues. Reportedly, in August 2016, Abune Antonios, Patriarch of the Orthodox Church, refused to apologise to the President for what had led to his removal and he was subsequently taken to an unknown location. Abune Antonios had been held in *incommunicado* detention for more than ten years after calling for the release of political prisoners and failing to excommunicate church members opposed to the Government. The Special Rapporteur was also informed about the arrest of eight Christians during a raid by military police on a gathering close to Asmara in August 2016; reportedly the detainees, including a young child, are held in Mai Serwa. According to the Special Rapporteur's sources, round-ups of members of unregistered religious denominations⁹ took place in May 2017. Several Christian women and men were arrested during a prayer meeting in Ghinda and picked up from their homes in Adi Quala. A Jehovah's Witness was released from

⁸ Jehovah's Witnesses, Press release, 30 January 2017, available at <https://www.jw.org/en/news/legal/by-region/eritrea/eritrean-witness-dies-20170130/>.

⁹ Only four religious denominations are recognized, namely, Eritrean Orthodox, Roman Catholic, Evangelical Lutheran and Sunni Islam.

prison on 5 October 2016 after having been arrested in April 2016 for attending a religious ceremony.¹⁰

22. The Special Rapporteur also received reports of unrelated incidents of arrests of people for allegedly trying to avoid the military/national service or for assisting others, namely their own children, to do so.

23. According to reports received by the Special Rapporteur, the use of torture by Eritrean officials in civilian and military detention centres continues. In a report published in early 2017, Médecins Sans Frontières stated that its doctors in neighbouring countries have observed and treated patients from Eritrea with wounds, scars and other physical and psychological traumas consistent with their description of torture.¹¹

24. According to the Food and Agriculture Organization of the United Nations (FAO), harvesting of the 2016 main season crops started in Eritrea in early November, and was expected to be completed at the beginning of 2017. Based on remote sensing analysis, production prospects in the main agricultural areas of Debub, Maekel, Gash Barka and Anseba 'zobas' were favourable, with the 2016 'kiremti' rains having a timely onset and characterised by above average and well-distributed precipitation amounts in most cropping areas. However, below-average vegetation conditions, mostly pasture land, were reported in northern coastal areas, where 'kiremti' rains had an early cessation at the end of August. In most coastal areas, 'bahri' rains (December-March) had an early onset in November, expected to bring some relief in terms of pasture and water availability.¹²

25. Despite this assessment, FAO maintained Eritrea on the list of 37 countries that require external assistance for food, mainly owing to economic constraints having increased the population's vulnerability to food insecurity.¹³

26. At the beginning of the year, the United Nations Children's Fund (UNICEF) raised concerns about the impact of drought conditions caused by El Niño experienced by Eritrea since 2015.¹⁴ It noted that these conditions have further undermined household food and livelihood security, particularly for women and children, and contributed to a cholera outbreak across three of the country's six regions.¹⁵ UNICEF noted that according to 2016 data from the Nutrition Sentinel Site Surveillance System by the Eritrean Ministry of Health, Nutrition Sentinel Site Surveillance System indicated an increase in malnutrition rates over the past few years in four out of six regions of the country, with 22,700 children under five years projected to be affected by severe acute malnutrition in 2017; national data also indicated half of Eritrean children are stunted.¹⁶

27. There have been claims that the Government of Eritrea tries to conceal the real extent of the humanitarian predicament in the country. Indeed, there is little information about the concrete humanitarian needs of the Eritrean population. Major organisations

¹⁰ Information by Jehovah's Witnesses available at <https://www.jw.org/en/news/legal/by-region/eritrea/jehovahs-witnesses-in-prison/>.

¹¹ Médecins Sans Frontières, *Dying to Reach Europe: Eritreans in search of safety*, 2017, p.11.

¹² Food and Agriculture Organization of the United Nations (FAO), *Global Information and Early Warning System on Food and Agriculture, Eritrea*, 23 November 2016, available at <http://www.fao.org/giews/countrybrief/country.jsp?code=ERI>

¹³ FAO, "Countries requiring external assistance for food", updated on March 2017, available at www.fao.org/giews/country-analysis/external-assistance/en/

¹⁴ The negative impact of the drought caused mainly by El Niño for Eritrea was also highlighted by the Government of the Netherlands in February 2017, see <https://www.government.nl/latest/news/2017/02/18/government-prevent-famine-in-the-horn-of-africa>

¹⁵ UNICEF's 2017 appeal 'Humanitarian Action for Children', available at [https://www.unicef.org/appeals/files/2017_Eritrea_HAC\(3\).pdf](https://www.unicef.org/appeals/files/2017_Eritrea_HAC(3).pdf)

¹⁶ UNICEF's 2017 appeal 'Humanitarian Action for Children', available at <https://www.unicef.org/appeals/eritrea.html>

which monitor indicators and provide analysis and early warning on food insecurity do not provide information on Eritrea.¹⁷ The Special Rapporteur is concerned about the lack of data and restriction of access and stresses the importance of providing access to humanitarian actors.

28. While some interlocutors told the Special Rapporteur that they had witnessed an active economic life during visits to Eritrea, with thriving markets and well-stocked shops, she heard from Eritreans in the diaspora that their relatives back home are struggling to meet their basic needs. While they confirmed the availability of food, they indicated that many households were unable to afford adequate and sufficient basic supplies, and were trying to cope with acute water shortages, especially in Asmara. As noted above, the recent UNICEF report confirmed this, indicating that half of the children are stunted. Reportedly, increasing numbers of people are leaving drought-affected regions in search of better living conditions. The ability to purchase food and other basic items has also been hampered by cash withdrawal limits which are still in place following the Nakfa currency exchange programme introduced by the Government at the end of 2015.

29. Since October 2016, reportedly, internet cafes must now require that customers register before being permitted to use the internet, allowing for the tracking of their browsing history. If confirmed, this new regulation would have an impact on the conduct of internet users and further restrict freedom of expression. In addition, frequent power cuts and very slow connections interfere with the use of internet.

30. The Special Rapporteur is extremely concerned that the Government has not taken the necessary steps to address any of the areas highlighted by the Commission of Inquiry. In its final report, the Commission concluded that there are reasonable grounds to believe that Eritrean officials have committed crimes against humanity in a widespread and systematic manner in Eritrean detention facilities, military training camps and other locations across the country over the past 25 years. Crimes of enslavement, imprisonment, enforced disappearances, torture, persecution, rape, murder and other inhumane acts have been committed as part of a campaign to instil fear in, deter opposition from and ultimately to control the Eritrean civilian population since Eritrean authorities took control of Eritrean territory in 1991.

V. Eritrean refugees

31. The Special Rapporteur observed that in 2016, Eritrean refugees constituted the fifth largest group of arrivals to Europe via the Mediterranean Sea, with 21,253 people arriving, amounting to six per cent of the overall figures; Eritrea was the only country among those five not experiencing violent conflict¹⁸. Regarding arrivals in Italy, Eritreans were among the top two nationalities.¹⁹

¹⁷ See for example Famine Early Warning Systems Network, at <https://www.fews.net/>; the International Food Policy Research Institute noted that for Eritrea, a 2016 Global Hunger Index score could not be calculated for Eritrea because data for all underlying indicators were not available, available at <http://www.ifpri.org/topic/global-hunger-index>.

¹⁸ UNHCR, Refugees & Migrants Sea Arrivals In Europe, Monthly Data Update: December 2016, available at <https://data2.unhcr.org/en/documents/details/53447>; the top four countries are Syrian Arab Republic, Afghanistan, Nigeria and Iraq.

¹⁹ UNHCR report released on 27 February 2017, see <http://www.unhcr.org/news/press/2017/2/58b458654/refugees-migrants-face-heightened-risks-trying-reach-europe-unhcr-report.html>.

32. Since the beginning of 2017, the International Organisation for Migration (IOM) has noted a recent surge with over 4,500 people crossing into Ethiopia.²⁰ United Nations High Commissioner for Refugees (UNHCR) reported that Eritrean sea arrivals in Italy in the first three months of 2017 are comparable to the same period last year.²¹

33. Eritreans fleeing human rights violations in the home country continue to face life threatening situations in their attempts to seek refuge in third countries. These challenges are increasing because of the pushback by countries in the region and in Europe. Eritreans, like many other refugees and/or migrants travelling through Libya suffer human rights violations and abuses in the course of their journeys. They are subjected to arbitrary detention, torture, ill-treatment, unlawful killings, sexual exploitation, forced labour, extortion and a host of other human rights abuses at the hands of smugglers, traffickers, as well as members of State institutions. There have been numerous and consistent reports of rape and other sexual violence indicating that women are at the greatest risk of violence.²² Media sources reported that in April 2017, Libyan authorities released 28 Eritreans and others who had been captured and enslaved by the so-called Islamic State in Iraq and the Levant (ISIL) in Sirte. They had been held in detention since the jihadist group lost control over the city in December 2016.²³ These are examples of the extreme risks Eritreans are prepared to take to leave their country.

34. The Special Rapporteur has also received information about the precarious situation of Eritrean Afar refugees in Yemen stemming from the prolonged conflict in the country. UNHCR has warned about the dangers of crossing from Africa to Yemen and the horrendous conditions and rising risks in the country, highlighting that war and insecurity mean conditions there are not conducive for asylum.²⁴ As these examples show, Eritreans continue to take substantial risks to escape from the human rights situation back home.

35. The Special Rapporteur takes note of EU efforts to respond to the migration influx, but is concerned about an approach that appears to focus predominantly on external border protection and increased return rates. She stresses that any efforts to curb the flow of refugees from Eritrea should not come at the expense of addressing the root causes of ongoing human rights violations in the country, which are the real drivers of forced migration from Eritrea.

36. The Special Rapporteur is particularly worried by the marked increase in numbers of unaccompanied and separated children from several countries making the journey to Europe, with figures reaching over 25,000 in 2016. They represented 14 percent of all new arrivals in Italy and this is more than double the figure reported the previous year. 14 percent of all arrivals (25,846 children) were unaccompanied and separated children, including a large number from Eritrea²⁵, more than double the 12,360 unaccompanied and

²⁰ IOM press release, IOM Provides Transport, Access to Aid for Eritrean Refugees in Ethiopia, 14 March 2017, available at <http://www.iom.int/news/iom-provides-transport-access-aid-eritrean-refugees-ethiopia>

²¹ See Italy UNHCR Update #13, March 2017, available at <https://data2.unhcr.org/en/documents/download/56622>.

²² See “Detained and dehumanised”, Report on human rights abuses against migrants in Libya by the United Nations Support Mission in Libya and the Office of the United Nations High Commissioner for Human Rights, 13 December 2016.

²³ See Reuters article, Dozens of Eritrean and Nigerian former Islamic State captives freed in Libya, 5 April 2017, available at <http://www.reuters.com/article/us-europe-migrants-libya-women-idUSKBN1772NS>.

²⁴ See UNHCR Press Release, UNHCR campaign spreads awareness about dangers of Yemen sea crossings, 7 February 2017, available at <http://www.unhcr.org/news/press/2017/2/5899ccae13/unhcr-campaign-spreads-awareness-dangers-yemen-sea-crossings.html>

²⁵ See Save the Children, Young Invisible Enslaved: The child victims at the heart of trafficking and exploitation in Italy, November 2016, p. 22ff.

separated children who arrived in 2015.²⁶ In 2013, the Special Rapporteur informed the Human Rights Council about the number of children she had met in refugee camps in neighbouring countries as part of the early warning function of the mandate. In 2016, she raised concerns about their vulnerability as well as their special protection needs in the camps, during their journeys and at destination. This warning remains valid more than ever today. The enormous risks faced by an increasing number of children moving on their own across international borders fleeing violence and conflict, disaster, poverty, and forced conscription, was also highlighted in May 2017 by UNICEF.²⁷

37. The Special Rapporteur is concerned about persistent gaps in protecting unaccompanied children, namely from sexual exploitation and abuse, child labour, kidnapping by smuggling and/or trafficking gangs, and detention. This includes the lack of psycho-social support necessary to address post-traumatic stress disorder. Based on her discussions with Eritrean children and those familiar with their situation, the Special Rapporteur is concerned that practices to recognise unaccompanied and separated children as refugees are not always transparent. There have been allegations that in some countries, authorities delay decisions until the child becomes an adult. In this context, the Special Rapporteur would like to remind Member States about their obligation under the Convention on the Rights of the Child to respect at all times the ‘best interests of the child’, and that this obligation applies to each child within a State’s territory and to all children subject to its jurisdiction.²⁸ Accordingly, asylum procedures should be based on an assessment of the child’s best interests, taking the child’s views duly into account. Furthermore, she supports UNICEF’s call for faster procedures to reunite children with their families, including in destination countries.²⁹

38. Throughout the EU, about 93 percent of Eritrean asylum applicants continued to be granted some form of protection.³⁰ This is in line with recently updated country of origin guidance in different countries, supporting the Special Rapporteur’s assessment that the critical aspects of Eritrea’s human rights situation remain unchanged. For example, the European Asylum Support Office published a report on issues related to national service and illegal exits in Eritrea in November 2016.³¹ It notes that individuals who leave Eritrea in violation of Eritrean law are subject to extrajudicial punishment upon return. Regarding voluntary returnees who had previously evaded draft, deserted or left the country illegally, the draconian laws are reportedly not applied at the moment, provided the returnees have regularised their relationship with the Eritrean authorities prior to their return. The report stresses, however, that not all Eritreans are able to regularise their relation before returning, especially those forcibly returned. Information published by the Swiss State Secretariat for Migration in January 2017 on the Eritrean civilian militia programme named *Hizbawi Serawit*, or the ‘People’s Army’ notes, as did the Commission of Inquiry, that the legal basis of the programme is not known. In addition, punishment of service evaders is meted out inconsistently by the authorities. In some cases, the refusal to serve has no

²⁶ Ibid.

²⁷ UNICEF, A child is a child - Protecting children on the move from violence, abuse and exploitation, May 2017, p. 14, available at https://www.unicef.org/publications/files/UNICEF_A_child_is_a_child_May_2017_EN.pdf

²⁸ Committee on the Rights of the Child, General Comment No. 6 on Treatment of Unaccompanied and Separated Children Outside their Country of Origin (2005), CRC/GC/2005/6, para. 12-13.

²⁹ UNICEF, A child is a child, p. 8.

³⁰ Eurostat, see http://ec.europa.eu/eurostat/statistics-explained/index.php/File:First_instance_decisions_in_the_EU-28_by_outcome_selected_citizenships_2nd_quarter_2016.png

³¹ European Asylum Support Office, Country of Origin Information Report on Eritrea: National service and illegal exit, November 2016.

consequences, whereas in other cases, it leads to detention, forced recruitment into the military, or withdrawal of food coupons or business licenses.³²

39. In other instances, government policy makers have sought to revise asylum policies aimed at restricting the access to protection for Eritreans, although these efforts have not all been successful. For example, in 2016 the UK Upper Tribunal reversed a government decision limiting protection and found that Eritrean asylum seekers who had left without fulfilling Eritrea's arbitrary military/national service obligations were likely to be perceived upon return as draft evaders or deserters and would thus face a risk of persecution.³³ The Tribunal drew extensively on the findings of the reports of the Commission of Inquiry. Following the Tribunal's decision, the UK Home Office issued a new country policy.

40. The Swiss Federal Administrative Court assessed the situation of Eritreans returning to their home country slightly differently. In early 2017, the Court decided that Switzerland will no longer grant refugee status to Eritreans who left their home country illegally barring any additional factors.³⁴ Previously, illegal departure from Eritrea had been considered sufficient to claim asylum in Switzerland since those who did so were regarded by Eritrean authorities as traitors and risked detention for a considerable length of time were they to return. According to the court, the previous praxis could no longer be maintained. In its ruling, the court noted that several Eritreans living in Switzerland including some who had left illegally, were able to return to Eritrea without repercussion for short visits after obtaining refugee status. The court ruled that refugee status would only be granted if applicants could substantiate additional factors that might result in Eritrean authorities regarding them as undesirable.

41. In this context, the Special Rapporteur reiterates her previous findings, also reflected in the reports of the Commission of Inquiry, that Eritrean authorities consider as illegal those who leave Eritrea without an exit visa. Those who cannot obtain exit visas are individuals deemed to be draft evaders or military deserters, as well as political opponents who are considered to be traitors. Returning individuals in these categories risk detention in inhumane conditions and are most likely to be (re-) assigned to military training and service, which continues to amount to enslavement and forced labour. Additionally, 'regularising' the relationship with the Eritrean authorities, as the European Asylum Support Office indicated, is not an option available to all potential returnees. As reported by the Commission of Inquiry, Eritreans abroad are requested to sign an "Immigration and Citizenship Services Request Form" to regularise their situation before they can request consular services. By signing the form, individuals admit that they "regret having committed an offence by not completing the national service" and are "ready to accept appropriate punishment in due course." Such procedure would provide a blank cheque for arbitrary punishment.

42. The Special Rapporteur also met several stakeholders who flagged that those applying for family reunification have been requested to provide documentation from Eritrean embassies. It appears that similar requests have been made by the authorities of some countries in the context of asylum application processes. She would like to recall that the Commission of Inquiry obtained information that such documentation is provided by Eritrea's diplomatic representations abroad only after payment of a two per cent rehabilitation tax. According to the United Nations Security Council, the Eritrean Government uses illicit methods to ensure payment of the tax, and decided that "Eritrea

³² Swiss State Secretariat for Migration (SEM), Division Analysis, Focus Eritrea Volksarmee ("Volksmiliz"), 31 January 2017.

³³ United Kingdom, Upper Tribunal (Immigration and Asylum Chamber), CG [2016] UKUT 00443 (IAC).

³⁴ Switzerland, Bundesverwaltungsgericht/Tribunal administratif federal, D-7898/2015.

shall cease using extortion, threats of violence, fraud and other illicit means to collect taxes outside of Eritrea from its nationals or other individuals of Eritrean descent.”³⁵

VI. Eritrea’s engagement with external actors on human rights

A. Scrutiny by international and regional human rights mechanisms

43. In November 2016, the African Commission on Human and Peoples’ Rights (African Commission) released its decision relating to Communication 428/12 – *Dawit Isaak v. Eritrea*, regarding the arrest of the Eritrean-Swedish journalist Dawit Isaak by Eritrean police on 23 September 2001. Since that date, Dawit Isaak, held in *incommunicado detention* in an undisclosed location, has never been charged with any offence, and has never been brought before a magistrate or allowed access to counsel. In Communication 428/12, the African Commission reiterated its decision in Communication 275/03 – *Article 19 v. Eritrea*, recommending the release of Dawit Isaak and all others held arbitrarily. It had found that Eritrea, as State Party to the African Charter, breached several Charter provisions. Consequently, it ordered the Government of Eritrea to release or to bring to a speedy and fair trial the 18 journalists detained since September 2001, including Dawit Isaak. The African Commission also recommended that the detainees be granted immediate access to their families and legal representatives and indicated that the Government of Eritrea should take appropriate measures to ensure payment of compensation to the victims of arbitrary arrest and enforced disappearance. The African Commission further noted with regret that Eritrea had failed to implement its previous decision given in 2003, and that as a result Dawit Isaak had been held *incommunicado* for thirteen³⁶ years.

44. The African Commission asked the Government of Eritrea to report back on the implementation of decision 428/12 within 180 days, according to Rule 112 (2) of the Commission’s Rule of Procedure. The Government has failed to do so.

45. In May 2017, Dawit Isaak was awarded the UNESCO/Guillermo Cano World Press Freedom Prize 2017 in recognition of his courage, resistance and commitment to freedom of expression. Cilla Benkö, the President of the jury noted that Dawit Isaak was among those who have persevered to shed light in the dark spaces, keeping their communities informed against all odds. Noting that Dawit Isaak has spent nearly 16 years in jail, without charge or trial, she expressed the hope that with the award the world will say, ‘Free Dawit Isaak Now’.

46. In January 2017, the African Committee of Experts on the Rights and Welfare of the Child (African Committee) issued its concluding recommendations on the State of Eritrea’s report on the status of implementation of the African Charter on the Rights and Welfare of the Child. The African Committee noted measures to attain the Millennium Development Goals but regretted that data to track progress was not available. The African Committee raised a number of serious concerns with regard to the rights of children. It noted that children at the Sawa Military Training Camp continued to be subjected to acts amounting to torture, inhuman, degrading treatment and to corporal punishment; and that children of particular religious groups, including the Jehovah Witnesses, were not able to enjoy the benefits of the freedom of religion. The African Committee noted with concern the number of children involved in child labour, which in 2000 was estimated by the International Labour Organisation (ILO) to be 183,000 children. Regarding reports of forced conscription of children, the African Committee called on Eritrea to refrain from recruiting children into the army and other security forces, to ensure that those who violate this strict

³⁵ Security Council Resolution 2023 (2011), para. 11.

³⁶ At the time of writing this report, Dawit Isaak has been held in detention for more than 15 years.

prohibition are punished, and to refrain from using the educational system for military training prior to full military service. The African Committee also noted reports of sexual harassment and rape, particularly in military training camps and educational institutions or during interrogations.

47. The Special Rapporteur regrets that the Government of Eritrea continues to deny independent experts of the international and regional human rights mechanisms access to the country, as these mechanisms could undertake a comprehensive assessment of the human rights situation by taking into account the perspectives of all actors, including those of victims.

B. Assistance by the international community

48. The Special Rapporteur reiterates that efforts by international actors to reinforce engagement with Eritrea represent a move in the right direction after years of self-imposed isolation. The UN Country Team in Asmara is being strengthened with the deployment of several senior advisors who will focus on issues such as peace, development, youth, migration and implementation of universal periodic review (UPR) recommendations. Under the 11th European Development Fund, the EU is also supporting Eritrea in the implementation of UPR recommendations. The Special Rapporteur notes that the recommendations formulated by Member States during the 2014 UPR offer a framework for progress in several critical areas. However, she deplores Eritrea's selective approach to the recommendations, and notes that it has mainly agreed to those pertaining to economic and social rights. She expects that the assistance provided will enhance the Government's implementation in a comprehensive manner. Eritrea's report for its third review scheduled for the 32nd session of the UPR Working Group in January/February 2019 will indicate whether the Government is genuinely committed to addressing the broad array of serious and systemic human rights violations documented.

49. The Special Rapporteur notes that the Government of Eritrea continues to grant access to bilateral and international delegations, including to numerous missions from migration departments in different European countries, aimed at re-assessing their Country of Origin information relevant for decision-makers in the field of asylum. Notably, none of the visitors, or any of the foreign diplomats or staff of international organisations based in Asmara, have been permitted to visit any places of detention or military training centres, where the bulk of the violations take place. The Special Rapporteur has no information as to whether international actors request access or the ability to monitor such locations during their discussions with Eritrean officials.

50. Regrettably, the Government continues to deny civil society organisations access to Eritrea. During the reporting period, the Special Rapporteur met with civil society organisations and Eritrean Human Rights Defenders who are monitoring and reporting on the human rights situation in Eritrea. They confirmed that there is still no space in Eritrea for independent civil society organisations, more specifically human rights civil society organisations, to operate. The Special Rapporteur commends the increased participation of Eritrean Human Rights Defenders and civil society groups at the level of the African continent in meetings and events such as the Citizens Continental Conference before the AU Heads of State Summit or the Forum on the participation of NGOs to the African Commission. They raise their concerns and share reflections on the state of human rights in Eritrea, while advocating for accountability for human rights violations.

51. According to information reaching the Special Rapporteur, the Eritrean Ministry of Religious Affairs has advised representatives of authorised religious denominations that members of their partner organisations based abroad would not be granted visas to visit Eritrea. While Finn Church Aid is able to develop teacher training in Eritrea in collaboration with Eritrean teacher training institutions and national education officials, several other members of Christian churches based abroad have been denied access.

52. Based on her discussions with various interlocutors, the Special Rapporteur is convinced that the Government of Eritrea is keen to improve its diplomatic relations and to strengthen its cooperation with the international community, including development actors. It remains to be seen, however, what tangible results such engagement will yield in the area of human rights.

53. During the reporting period, the Special Rapporteur invited the Government of Eritrea to share the concrete steps it took to address the serious human rights situation in-country. The Special Rapporteur regrets to inform the Human Rights Council that the Government did not respond.

54. In all her exchanges with relevant interlocutors, the Special Rapporteur sought updates on the human rights situation in Eritrea. She was particularly interested in hearing about any actions by the Government to stop on-going human rights violations and ensure accountability for crimes committed, as per the findings of the Commission of Inquiry on Human Rights in Eritrea. Vague references were made to a mid-term report the Government was preparing under the UPR, but at the time of writing, there was no public document available. None of the interlocutors reported on any progress pertaining to the overall human rights situation, let alone regarding the key areas identified by the Commission of Inquiry in its recommendations addressed to the Government of Eritrea, such as the national/military service, disappearances, extra-judicial executions, rape and sexual violence, for instance. As a result, the Special Rapporteur can only conclude that the situation of human rights in Eritrea has not significantly improved.

C. Lack of progress

55. The Commission of Inquiry addressed a host of specific recommendations to the Government of Eritrea, none of which appear to have been implemented. As highlighted during her oral update to the Human Rights Council in March 2017, the Special Rapporteur wishes to reiterate the evident lack of progress on the most pressing issues.

56. The Commission of Inquiry called on Eritrea to implement fully and without delay the 1997 Constitution. Following announcements by President Isaias Afwerki in 2014 that a new Constitution would be drafted, the Special Rapporteur was told in 2016 that a committee had been established for this purpose. No information is available about the actual steps taken to initiate such a process in a transparent, inclusive, and participatory manner.

57. Furthermore, it appears that the Government has not taken any measures towards a reform that would bring its military/national service programmes in line with international law. Eritreans continue to be subjected to indefinite national service. The Special Rapporteur continued to receive reports of new cases of arbitrary arrest and detention, while the Government continues to refuse access to prisoners and to provide any information on those that have disappeared, some of them for more than two decades. In addition, the Special Rapporteur has not been informed of any Government efforts to address other crucial issues, including torture and sexual abuse in the army and detention centres.

58. Last but not least, the Commission of Inquiry called on the Government to ensure accountability for past and persistent human rights violations and crimes against humanity, including enslavement and forced labour, imprisonment, enforced disappearance, torture, and other inhumane acts, persecution, rape and murder, through the establishment of independent, impartial and gender-sensitive mechanisms, and that it provide victims with adequate redress, including the right to truth and reparations. The Special Rapporteur deeply regrets that the Government of Eritrea has not made any effort to implement these recommendations and that it has shown no willingness to tackle impunity with regard to perpetrators of past and ongoing violations.

VII. Human rights in Eritrea: the way forward

59. Since the Human Rights Council's establishment in 2012 of the country mandate on the situation of human rights in Eritrea, the Special Rapporteur has used the initial two years following her appointment to develop the mandate, devoting considerable time and effort to building bridges with the Government of Eritrea. This initial phase was followed by a period during which she ensured that the mandate remained strong and relevant while the Commission of Inquiry was operational. She now intends to devote resources to the fight against impunity, working with a broad spectrum of stakeholders, including victims, survivors, family members, human rights defenders and lawyers in their search for justice and accountability for human rights violations.

60. In light of the serious findings by the Commission of Inquiry, the Special Rapporteur is of the view that business as usual cannot be an option. Eritreans have and continue to suffer serious abuses, some of which amount to crimes against humanity, while the Government continues to deny and deflect attention from the serious human rights situation. Additionally, she is convinced that there can be no sustainable solution to the Eritrean refugee outflow until the Government complies with its human rights obligations. The international community's engagement with Eritrea needs to be firmly guided by international human rights norms and standards aimed at putting an end to ongoing violations and impunity.

A. Improvement of the human rights situation

61. Consequently, the Special Rapporteur wishes to suggest a set of specific areas that may assist Member States and more broadly the international community in assessing positive changes in the human rights situation in Eritrea. If the Government of Eritrea is committed to rebuilding the trust of its own people, it needs to demonstrate that it is willing to address the key areas identified by the Commission of Inquiry and the country mandate. It will require the Government's genuine commitment and serious determination to achieve progress on a number of areas by taking concrete steps as outlined below. The following are based on the recommendations the country mandate and the Commission of Inquiry addressed to the Government of Eritrea and may serve to develop specific, time-bound benchmarks to assess substantive change.

62. The Government of Eritrea will need to demonstrate which steps it has taken to:

- (a) Establish without delay an independent, impartial and transparent judiciary, and ensure access to justice for all;
- (b) Allow for the creation of political parties, and hold free, fair and transparent democratic elections at all levels;
- (c) Permit human rights defenders and independent civil society organisations, including gender-specific organisations, to operate without constraints or interference;
- (d) Discontinue indefinite military/national service by limiting it to 18 months for all current and future conscripts, as stipulated by the 1995 Proclamation on National Service;
- (e) Put an immediate end to torture and ill-treatment, sexual violence and the enslavement of conscripts;
- (f) Cease the practice of using conscripts, detainees and members of the peoples' militia and reserve army as forced labour;

- (g) Put an end to the practice of arrests and detention carried out without legal basis, and release immediately and unconditionally all those unlawfully and arbitrarily detained;
- (h) Provide information on the fate and whereabouts of all those deprived of physical liberty;
- (i) Provide immediately information on all prisoners of war, and release them promptly;
- (j) Allow legal representatives and family members immediate access to detainees;
- (k) Allow independent monitoring of all places of detention with regard to both legality and conditions of detention;
- (l) Immediately permit unhindered access by independent monitors, including the Office of the United Nations High Commissioner for Human Rights and other recognised organisations, to all places of detention, official and unofficial, to monitor the legality of detentions and the treatment of detainees and prison conditions; allow them to conduct regular and unannounced visits, and act promptly on their recommendations;
- (m) Put an immediate end to the use of torture and other forms of ill-treatment, establish adequate complaints mechanisms and ensure that prompt and effective investigations are conducted into all allegations of torture and ill-treatment with a view to bringing perpetrators to justice;
- (n) Put an end to discrimination on religious or ethnic grounds;
- (o) Prohibit the assignment of women and girls to officials' quarters for forced domestic servitude, and implement a zero-tolerance policy for sexual abuse in the army and in detention centres.

B. Accountability for past violations

63. The Commission of Inquiry called on the Government of Eritrea to ensure accountability for past and persistent human rights violations and crimes, including enslavement, imprisonment, enforced disappearance, torture, and other inhumane acts, persecution, rape and murder, through the establishment of independent, impartial and gender-sensitive mechanisms, and provide victims with adequate redress, including the right to truth and reparations. It noted, however, that far-reaching and substantial institutional and legal reforms would be required before the domestic legal system could hold perpetrators to account in a fair and transparent manner.

64. As Eritrea is not a party to the Rome Statute of the International Criminal Court, jurisdiction of the court depends on a Security Council's referral or Eritrea accepting its jurisdiction. Thus, the Commission of Inquiry recommended that the Security Council refer the situation in Eritrea to the Prosecutor of the International Criminal Court. During her interactive dialogue with the General Assembly in October 2016, the Special Rapporteur briefed Member States about the findings of the Commission, namely its conclusion that there are reasonable grounds to believe that Eritrean officials have committed crimes against humanity since 1991. The Special Rapporteur called on Member States to adopt a resolution submitting the report of the Commission of Inquiry to the Security Council for a referral of the human rights situation in Eritrea to the Prosecutor of the International Criminal Court. For reasons unrelated to the human rights situation in Eritrea, it is unlikely that a referral to the International Criminal Court is an imminent option.

65. Additionally, the Commission recommended that an accountability mechanism be established under the aegis of the AU and supported by the international community, to investigate, prosecute and try individuals reasonably believed to have committed crimes against humanity. The main objective of Special Rapporteur's participation in various human rights fora under the auspices of the AU, as well as her mission to the AU, was to follow up on this specific recommendation. Necessary first links have been made and the report of the Commission of Inquiry has been transmitted to the respective AU dignitaries and officials. The aim is to make the situation of human rights in Eritrea a live issue at the level of the AU one step at a time in order to ensure that the idea of an accountability mechanism to address international crimes in Eritrea gains enough traction for its establishment.

66. As a third avenue for tackling impunity, the Commission of Inquiry recommended that Member States exercise jurisdiction over crimes against humanity when any alleged offender is present on their respective territories, or extradite him or her to another State in accordance with its international obligations. Given the long-term perspective required for both aforementioned avenues, it will be essential to explore alternative approaches to ensure accountability for human rights violations where such violations amount to crimes against humanity, as per the findings of the Commission of Inquiry.

67. There are accountability mechanisms that can be used to secure justice for victims of international crimes at the domestic level in certain countries. Given the political and practical challenges that may be involved in securing a Security Council referral to the International Criminal Court, these mechanisms can offer more immediate relief and realistic options to access justice for victims. During the reporting period, the Special Rapporteur embarked on a round of talks aimed at exploring the available options under universal jurisdiction.

68. Universal jurisdiction provides the ability to the judicial system of any state to try persons for crimes committed outside its territory which are not linked to the state by the nationality of the suspect or the victims or by harm to the state's own national interests.³⁷

69. Various countries have adopted laws that permit domestic courts to exercise universal jurisdiction, including for those crimes identified by the Commission of Inquiry, irrespectively of the nationality of the victim or the perpetrator, or the location of the crime. According to a 2012 study a total of 163 states could exercise universal jurisdiction over one or more crimes under international law, either as such crimes or as ordinary crimes under national law.³⁸ Those countries that have included crimes against humanity or torture as crimes in their national laws and provided for universal jurisdiction over such crimes could exercise jurisdiction over Eritreans suspected of having committed such crimes. Such proceedings would be consistent with the principles set out in the preamble of the Rome Statute of the International Criminal Court which, *inter alia*, recalls "that it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes".

70. The significance of universal jurisdiction for victims' search for justice is on the rise. In 2016, 13 countries opened 47 cases based on the principle of universal jurisdiction, 7 more than the previous year, and 10 more than in 2014.³⁹ One of the landmark cases in 2016 was the conviction of the former Chadian dictator Hissène Habré by a special court in

³⁷ International Law Commission, Preliminary report of the Special Rapporteur on the obligation to extradite or prosecute, A/CN.4/571, 7 June 2006, para. 31; with reference to Amnesty International, *Universal Jurisdiction: The Duty of States to Enact and Implement Legislation*, 2012, chap. 1, pp. 11–12.

³⁸ Amnesty International, *Universal Jurisdiction: The Duty of States to Enact and Implement Legislation*, 2012, chap. 1, p. 2.

³⁹ TRIAL, *Make way for Justice #3*, *Universal Jurisdiction Annual Review 2017*.

Senegal for crimes against humanity, war crimes and torture, including rape and sexual slavery. A coalition of victims and civil society organisations created the conditions for a successful prosecution under the principle of universal jurisdiction. The case is an encouragement for all victims of crimes against humanity that they can drive the struggle against impunity and efforts to bring the perpetrators to justice, no matter how high-ranking they may be.⁴⁰

71. In 2012, the AU adopted a *Model National Law on Universal Jurisdiction over International Crimes* at the 21st Ordinary Session of the Executive Council on the recommendations of AU Ministers of Justice and/or Attorneys General.⁴¹ The Model Law is a non-binding instrument aimed at assisting AU Member States to adopt or strengthen their national legislations for the exercise of universal jurisdiction over international crimes and to give effect to their obligations under international law.⁴² The objectives of this model law are to combat impunity for crimes set out by the model law, including crimes against humanity, provide for mutual legal assistance and cooperation among states, and to provide for the rehabilitation and reparation for victims.⁴³

72. In the European context, the establishment of the European Network of contact points in respect of persons responsible for genocide, crimes against humanity and war crimes has no doubt contributed to the increasing number of cases under universal jurisdiction. This network's secretariat, which is based in The Hague, brings together prosecutors, investigators, representatives of the Ministries of Justice and legal officers to exchange information during its biannual meetings, which are also attended by several observer states. It aims at facilitating the cooperation between national authorities in the prosecution of international crimes.

73. The effective use of universal jurisdiction will largely depend on the availability of the necessary structures, capacities and resources required for ensuring accountability for international crimes. Given the experience of the Commission of Inquiry and the Special Rapporteur, it seems unlikely that the Government of Eritrea would provide investigators and prosecutors access to Eritrea to gather evidence, or agree to extradite suspects to third countries. In similar situations, civil society organisations have contributed by collecting of documentation about serious human rights violations, which may serve as evidence both for current domestic trials, as well as for future investigations at the international level. The Special Rapporteur wishes to stress, however, that questions have been raised in investigations at the domestic level as to whether documents collected by civil society actors would be allowed as evidence. These issues need to be carefully considered ahead of any such initiatives. The Special Rapporteur also recalls that at the end of its mandate, the information compiled by the Commission of Inquiry has been transferred to the United Nations High Commissioner for Human Rights who may grant access to information for purposes of accountability where confidentiality and protection concerns have been addressed.

⁴⁰ For a detailed documentation see Reed Brody, *Victims bring a Dictator to Justice - The Case of Hissène Habré*, 2017.

⁴¹ African Union Model National Law on Universal Jurisdiction over International Crimes, Doc EX.CL/731 (XXI) c, available at http://www.un.org/en/ga/sixth/71/universal_jurisdiction/african_union_e.pdf. The issue of universal jurisdiction has also been discussed in the context of the relationship between the AU and the EU, see Report by the AU-EU Technical Ad hoc Expert Group on the Principle of Universal Jurisdiction, 16 April 2009, 8672/1/09 REV 1, available at <http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%208672%202009%20REV%201>.

⁴² See AU Model Law (EX.CL/731 (XXI) c) section 1.

⁴³ See AU Model Law (EX.CL/731 (XXI) c) section 3.

74. There are other significant challenges, such as the immunity of serving government officials, and the limited travel outside Eritrea of suspected perpetrators. Furthermore, efforts to initiate and pursue universal jurisdiction cases are likely to be unsuccessful without the required political will, both at the domestic, as well as at the international level. Civil society actors, in close collaboration with survivors, victims and victims' organisations, can play an important role to create and maintain such political will, as was the situation in the Hissène Habré case. During the coming year, the Special Rapporteur plans to concentrate on raising awareness about the available accountability mechanisms at the domestic level, while focusing on the role of victims in such processes.

VIII. Conclusions and recommendations

A. Conclusions

75. The Government of Eritrea has demonstrated an ongoing unwillingness to implement its obligations and commitments it has undertaken in ratifying both regional and international human rights instruments.

76. In the context of a military/national service, marked by the indefinite nature of the conscription and a harsh life in the army, which does not respect the human rights of conscripts, urgent reforms are required. Eritrea's judicial system, including its Special Court charged with adjudicating complex cases, is inadequate to prosecute international crimes. There are still no strong institutions established according to the rule of law that could effectively protect the human rights of the Eritrean people. The Government's ongoing denial of the existence of sexual exploitation and violence in the army is a denial of women's rights and needs to be urgently reversed. The Special Rapporteur believes that ignoring the call for justice and accountability by Eritrean survivors and victims of human rights violations will have devastating consequences and perpetuate the cycle of never-ending impunity.

B. Recommendations

77. The Special Rapporteur notes that the Government of Eritrea has, up to now, ignored the bulk of the recommendations that she has made in her previous reports, having addressed only two of them, namely the ratification of the Convention against Torture and seeking technical assistance from the Office of the High Commissioner for Human Rights. All recommendations of the Commission of Inquiry have to date remained unheeded. The Special Rapporteur therefore reiterates her own recommendations, as well as those of the Commission of Inquiry.

1. Government of Eritrea

78. The Special Rapporteur recommends that the Government of Eritrea:

- (a) Share substantive information about the concrete efforts it has undertaken to put an immediate end to the crimes against humanity and human rights violations identified by the country mandate and the Commission of Inquiry;
- (b) Release immediately and unconditionally all those unlawfully and arbitrarily detained, including members of the G-15, journalists and members of religious groups;
- (c) Immediately allow independent media, and civil society organisations to operate freely without constraints and interference;

(d) Investigate allegations of rape and sexual violence in the military/national service and secondary institutions such as Sawa promptly and prosecute perpetrators immediately;

(e) Set up a task force on sexual and gender based violence in the army to address past and ongoing violations;

(f) Adopt protocols to prevent further occurrences while providing support for victims;

(g) Take concrete steps to ensure a truly participatory process in preparation for Eritrea's next review under the Universal Periodic Review to ensure it will adequately reflect the diverse voices of civil society organisations involved in the protection of human rights in Eritrea.

2. Member States and international organisations

79. The Special Rapporteur recommends that Member States and international organisations:

(a) Ensure accountability for those responsible for serious human rights violations in Eritrea, including by means of referral by the Security Council of the situation in the country to the International Criminal Court, in line with the findings and recommendations of the Commission of Inquiry on human rights in Eritrea that there are reasonable grounds to believe that crimes against humanity have been committed;

(b) Exercise jurisdiction over crimes against humanity when any alleged offender is present on the territory of a Member State or extradite him or her to another State in accordance with its international obligations;

(c) Provide Eritrean nationals seeking protection with refugee status in accordance with the provisions of the international law governing asylum, and in particular the Convention relating to the Status of Refugees, respect the principle of non-refoulement and end bilateral and other arrangements that jeopardize the lives of those who seek asylum;

(d) Keep Eritrea under close scrutiny until consistent and tangible progress with regard to the situation of human rights is evident, and ensure the centrality of human rights in all engagement with Eritrea;

(e) Cooperate closely with Eritrean human rights defenders and civil society organisations to ensure that human rights remain at the core of all engagement with the country, while also bearing in mind the findings of the Commission of Inquiry.

3. African Union

80. The Special Rapporteur reiterates the recommendation of the Commission of Inquiry regarding the setting up of an appropriate accountability mechanism under the aegis of the African Union to hold perpetrators of crimes against humanity in Eritrea accountable to secure justice and truth.

4. Civil Society Organisations

81. The Special Rapporteur recommends that civil society organisations:

(a) Set up and support networks among victims of crimes against humanity and other human rights violations, human rights defenders and their partners at regional and global levels;

(b) **Build skills and seek ways and means to consolidate capacity to continue their monitoring, documenting and reporting in the field of human rights, as well as drive the fight against impunity in their quest for justice.**
