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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\***

### **Note by the Secretariat**

The Secretariat has the honour to transmit to the Human Rights Council the report of the Special Rapporteur on the situation of human rights in Eritrea, which was prepared pursuant to Council resolution 32/24. In that resolution, the Council extended the mandate of the Special Rapporteur for one year and requested that she follow up on the implementation of the recommendations of the commission of inquiry on human rights in Eritrea contained in its report dated 9 May 2016 (see A/HRC/32/47).

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

The Special Rapporteur notes that the Government of Eritrea has made no effort to address the human rights concerns highlighted by the commission of inquiry and that it has shown no willingness to tackle impunity for past and ongoing violations.

Finally, the Special Rapporteur sets out the steps required to put an end to the continuing human rights violations and impunity and to hold perpetrators of international crimes accountable.

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



## Report of the Special Rapporteur on the situation of human rights in Eritrea

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## I. Introduction

1. The present report is submitted pursuant to Human Rights Council resolution 32/24, by which the Council 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 dated 9 May 2016 (see A/HRC/32/47). 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 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, including on the situation of Eritreans fleeing their home country and the engagement of Eritrea with the international community. Finally, the Special Rapporteur presents her vision for improving the human rights situation by setting out the steps required to put an end to the continuing human rights violations and impunity and to hold perpetrators of international crimes accountable.

## II. Activities

2. Since the mandate was extended in June 2016, the Special Rapporteur has engaged in consultations in Switzerland (September 2016), Belgium (September 2016) and Ethiopia (November 2016). In March 2017, she undertook missions to Sweden, Germany, the United Kingdom of Great Britain and Northern Ireland, the Netherlands and France. She visited Norway in May 2017.

3. In her discussions, she has focused on following up on the findings and recommendations of the commission of inquiry on human rights in Eritrea. Together with representatives of Member States, United Nations entities, the European Union and the African Union, with prosecutors, investigators and representatives of ministries of justice, as well as with human rights defenders, representatives of civil society organizations and individual Eritreans, the Special Rapporteur has explored ways to take forward the work of the commission of inquiry. Discussions were held on the current human rights situation in Eritrea, on regional and bilateral engagement and on the options for holding 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 and war crimes about the findings and recommendations of the commission of inquiry. She specifically explained that there was reason to believe that crimes against humanity had been and continued to be committed in Eritrea.

5. The Special Rapporteur attended two meetings on human rights held under the auspices of the African Union, namely the symposium on the tenth anniversary of the African Court on Human and Peoples' Rights and the Fifth Annual High-level Dialogue on Democracy, Human Rights and Governance, both held in Arusha, United Republic of Tanzania, in November 2016. She also attended the Sixtieth Ordinary Session of the African Commission on Human and Peoples' Rights and, before that, the forum on the participation of non-governmental organizations (NGOs) in that session, both held in Niamey 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 of regional mechanisms in that regard. The Special Rapporteur took the opportunity to brief the African Commission and several of its special mechanisms on the 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 invited by the Department of Politics and International Relations of the University of Johannesburg, South Africa, to an event on the human rights situation in Eritrea. Following her presentation, a panel explored avenues

for pursuing accountability at both the international and national levels, as part of the broader effort to fight impunity.

7. The Special Rapporteur attended the 2017 Oslo Freedom Forum, where she participated in a panel entitled “Never again: why we fail to stop crimes against humanity”. During her presentation, she spoke of the work of the commission of inquiry, laid out the different avenues for pursuing accountability for the crimes identified in the report of the commission of inquiry and discussed options for holding perpetrators of crimes against humanity accountable.

8. Throughout the reporting period, the Special Rapporteur sought to cooperate with the Government of Eritrea. She reiterated her request to visit the country and repeatedly solicited meetings with government representatives in Addis Ababa, Brussels, Geneva and New York. The Special Rapporteur regrets that, despite these efforts, the Government of Eritrea refused to cooperate with the mandate holder for a fifth consecutive year. The Special Rapporteur remains committed to cooperating with Eritrea to discuss her own findings and those of the commission of inquiry, as well as ways 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 persist to this day, creating what has been described by the Government as a “no war, no peace” situation that justifies the country’s high level of militarization. In addition, the “no war, no peace” situation affects how Eritrea interacts with the international community and how it addresses its internal affairs, and has a very negative impact on the enjoyment of human rights by Eritreans. The continued non-implementation of the 2002 decision of the Eritrea-Ethiopia Boundary Commission on border demarcation, which resulted in the village of Badme being allocated to Eritrea, is of particular concern.<sup>1</sup> 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 (see A/HRC/32/47, para. 134 (b)).<sup>2</sup> However, the failure to implement the Boundary Commission’s decision cannot serve as justification for the open-ended and arbitrary nature of Eritrean military/national service programmes, nor can the illegal occupation of the village justify the human rights violations and crimes against humanity documented by the Special Rapporteur and the commission of inquiry.

10. In 2009, the Security Council imposed an arms embargo on Eritrea, primarily in response to the country’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 Eritrean 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 (see S/2016/920). In November 2016, the Security Council noted the finding about the lack of evidence pointing to Eritrean support for Al-Shabaab, but expressed concern about ongoing Eritrean support for other regional armed groups and lack of cooperation with the Security Council. It extended the arms embargo on Eritrea (see resolution 2317 (2016)).

11. In October 2016, a helicopter gunship reportedly 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 established pursuant to Security Council resolution 1874 (2009) accused Eritrea of violating the arms embargo by buying military

<sup>1</sup> United Nations, *Reports of International Arbitral Awards*, vol. XXV, pp. 83-195.

<sup>2</sup> See also the declaration by the High Representative of the European Union for Foreign Affairs and Security Policy dated 13 April 2017, available from [www.consilium.europa.eu/en/press/press-releases/2017/04/13-declaration-hr-eritrea-ethiopia-boundary-commission](http://www.consilium.europa.eu/en/press/press-releases/2017/04/13-declaration-hr-eritrea-ethiopia-boundary-commission).

communications materiel from the Democratic People's Republic of Korea (see S/2017/150, para. 72). On 21 March 2017, the United States of America imposed sanctions pursuant to the Iran, North Korea and Syria Non-Proliferation Act on the Eritrean Navy and any successor, sub-unit or subsidiary thereof for prohibited transfer to or acquisition from the Democratic People's Republic of Korea of goods, services or technology included in multilateral control lists.<sup>3</sup>

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.<sup>4</sup> 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 the military/national service programmes of Eritrea continued to be arbitrary, extended and involuntary in nature, amounting to enslavement, in line with 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 received reports that the Government had increased the stipends paid to national service conscripts. While this would be a positive and much-needed development, it is not sufficient to counter the other factors that render the military/national service programmes tantamount to enslavement. In any event, there are serious doubts as to whether the Government really has increased the stipends given that it also imposes deductions for various purposes such as taxes, logistics and construction. The 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 on the majority of the population.

17. The Special Rapporteur notes reports about the death in detention of Tsehaye Tesfamariam, a Jehovah's Witness, who died in Asmara on 30 November 2016 after having been imprisoned at the Me'eter camp since January 2009.<sup>5</sup> 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 unauthorized religion; and offending a high-ranking government official or an 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 subjected to enforced disappearance.

19. In June 2014, the Special Rapporteur sent a communication to the Government of Eritrea about the former Ambassador of Eritrea to Nigeria, Mohamed Ali Omaro, jointly with the Working Group on Arbitrary Detention, the Working Group on Enforced or Involuntary Disappearances, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Special

<sup>3</sup> See the notice by the State Department dated 30 March 2017, available from <https://www.federalregister.gov/documents/2017/03/30/2017-06225/imposition-of-nonproliferation-measures-against-foreign-persons-including-a-ban-on-us-government>.

<sup>4</sup> Canada, British Columbia Supreme Court, *Araya v. Nevsun Resources Ltd.*

<sup>5</sup> See <https://www.jw.org/en/news/legal/by-region/eritrea/eritrean-witness-dies-20170130/>.

Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. The mandate holders noted the reported arrest in April 2014 in Asmara of Mr. Omaro, who was believed to have been held incommunicado, without charge or trial. They expressed concern about his well-being given that he was alleged to have been detained incommunicado for a long period, as well as about the risk of him being subjected to torture or other forms of ill-treatment.

20. The Special Rapporteur regrets that more than two years have passed and the Government has still not responded to the allegations. According to information received from other sources, Mr. Omaro is being detained in Karshela, 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 Mr. Omaro. The claim that he is under arrest because of “national security” is untenable and not sufficient to hold him incommunicado and without being charged before an independent court of law.

21. It appears that individuals continue to be arbitrarily arrested and detained for their religious beliefs. In August 2016, the Patriarch of the Orthodox Church, Abune Antonios, reportedly refused to apologize to the President for having called for the release of three imprisoned Orthodox priests and failing to excommunicate church members, an incident that had already led to his removal and to his incommunicado detention for more than 10 years. 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; the detainees, including a young child, are reportedly being held in Mai Serwa. According to the Special Rapporteur’s sources, members of unregistered religious denominations<sup>6</sup> were rounded up in May 2017. Several Christians were arrested during a prayer meeting in Ghinda and picked up from their homes in Adi Quala. A Jehovah’s Witness was released from prison on 5 October 2016, after having been arrested in April 2016 for attending a religious ceremony.<sup>7</sup>

22. The Special Rapporteur also received reports of people being arrested for allegedly trying to avoid military 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 continued during the reporting period. In a report published early in 2017, Médecins sans frontières stated that its doctors in neighbouring countries had observed and treated patients from Eritrea with wounds, scars and other signs of physical and psychological trauma consistent with their description of torture.<sup>8</sup>

24. According to the Food and Agriculture Organization of the United Nations (FAO), the main harvest season started in Eritrea early in November 2016 and was expected to end at the beginning of 2017. Based on remote sensing analysis, production prospects in the main agricultural regions of Debeba, Maekel, Gash Barka and Anseba were favourable, with the 2016 rains having started in a timely manner and with precipitation patterns characterized as above average and well-distributed over most crop-growing areas. However, below-average vegetation conditions, mostly affecting pasture land, were reported in northern coastal areas, where the rains ended earlier than expected, at the end of August. That said, the rains that normally fall between December and March, started early, in November, and were expected to bring some relief in terms of improving the conditions of pasture land and increasing water availability.<sup>9</sup>

25. Despite that assessment, FAO kept Eritrea on the list of 37 countries requiring external assistance for food, mainly owing to economic constraints having increased the population’s vulnerability to food insecurity.<sup>10</sup>

<sup>6</sup> Only four religious denominations are recognized, namely, Eritrean Orthodox, Roman Catholic, Evangelical Lutheran and Sunni Islam.

<sup>7</sup> See <https://www.jw.org/en/news/legal/by-region/eritrea/jehovahs-witnesses-in-prison/>.

<sup>8</sup> Médecins sans frontières, *Dying to Reach Europe: Eritreans in Search of Safety* (2017), p. 11.

<sup>9</sup> See [www.fao.org/giews/countrybrief/country.jsp?code=ERI](http://www.fao.org/giews/countrybrief/country.jsp?code=ERI).

<sup>10</sup> See [www.fao.org/giews/country-analysis/external-assistance/en/](http://www.fao.org/giews/country-analysis/external-assistance/en/).

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.<sup>11</sup> It noted that those conditions had 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.<sup>12</sup> UNICEF noted that 2016 data indicated an increase in malnutrition rates over the previous few years in four of the six regions, with 22,700 children under 5 years of age projected to be affected by severe acute malnutrition in 2017; national data also indicated that half of all Eritrean children were stunted.<sup>13</sup>

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 organizations which monitor indicators and provide analysis and early warning on food insecurity do not provide information on Eritrea.<sup>14</sup> The Special Rapporteur is concerned about the lack of data 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, Eritreans in the diaspora said that their relatives at home were struggling to meet their basic needs. While food was available, many households were unable to afford adequate and sufficient basic supplies and were trying to cope with acute water shortages, especially in Asmara. The recent UNICEF report confirms such an assessment (see para. 26 above). Increasing numbers of people are reportedly 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 put in place following the currency exchange programme introduced by the Government at the end of 2015.

29. It has been reported that since October 2016 Internet cafes must register customers before they use the Internet, to make it possible to track their browsing history. If confirmed, this new regulation would further restrict freedom of expression. In addition, frequent power cuts and very slow connections interfere with the use of the Internet.

30. The Special Rapporteur is extremely concerned that the Government has taken no steps to address the concerns expressed by the commission of inquiry. For example, 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 disappearance, 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 control the Eritrean civilian population since the authorities took control of Eritrea in 1991.

## V. Eritrean refugees

31. The Special Rapporteur observes that, in 2016, Eritrean refugees constituted the fifth largest group of persons arriving in Europe from across the Mediterranean Sea (21,253 people or 6 per cent of the total) and that Eritrea was the only one of those five sending

<sup>11</sup> The negative impact on Eritrea of the drought caused mainly by El Niño 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>.

<sup>12</sup> UNICEF, "Humanitarian action for children: Eritrea" (2017). Available from

[https://www.unicef.org/appeals/files/2017\\_Eritrea\\_HAC\(3\).pdf](https://www.unicef.org/appeals/files/2017_Eritrea_HAC(3).pdf).

<sup>13</sup> See <https://www.unicef.org/appeals/eritrea.html>.

<sup>14</sup> See, for example, the Famine Early Warning Systems Network (<https://www.fews.net/>). According to the International Food Policy Research Institute, a 2016 Global Hunger Index score could not be calculated for Eritrea because data for all underlying indicators were not available ([www.ifpri.org/topic/global-hunger-index](http://www.ifpri.org/topic/global-hunger-index)).

countries not to be experiencing violent conflict.<sup>15</sup> Regarding arrivals in Italy, Eritreans constituted the second-largest group.<sup>16</sup>

32. The International Organization for Migration has noted a recent surge, with over 4,500 people crossing into Ethiopia since the beginning of 2017,<sup>17</sup> and the Office of the United Nations High Commissioner for Refugees (UNHCR) has reported that the number of Eritreans arriving in Italy by sea during the first three months of 2017 was comparable to the number recorded for the same period the previous year.<sup>18</sup>

33. Eritreans fleeing human rights violations in their 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 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 and representatives of State institutions. There have been numerous and consistent reports of rape and other sexual violence, indicating that women are at greatest risk of violence.<sup>19</sup> Media sources have reported that in April 2017 the Libyan authorities released 28 Eritreans who had been captured and enslaved by Islamic State in Iraq and the Levant in Sirte. They had been held in detention since the jihadist group had lost control of the city in December 2016.<sup>20</sup> These are examples of the extreme risks Eritreans are prepared to take to leave their country.

34. The Special Rapporteur also received information about the precarious situation of Eritrean Afar refugees in Yemen stemming from the prolonged conflict in that 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 that conditions there are not conducive for asylum.<sup>21</sup> As these examples show, Eritreans continue to take substantial risks to escape the human rights situation back home.

35. The Special Rapporteur takes note of European Union 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 effort 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. Fourteen per cent of all arrivals (25,846 children) were unaccompanied and

<sup>15</sup> UNHCR, “Refugees and migrants: sea arrivals in Europe”, monthly data update for December 2016, available from <https://data2.unhcr.org/en/documents/details/53447>. The top four countries were the Syrian Arab Republic, Afghanistan, Nigeria and Iraq.

<sup>16</sup> See [www.unhcr.org/news/press/2017/2/58b458654/refugees-migrants-face-heightened-risks-trying-reach-europe-unhcr-report.html](http://www.unhcr.org/news/press/2017/2/58b458654/refugees-migrants-face-heightened-risks-trying-reach-europe-unhcr-report.html).

<sup>17</sup> IOM, “IOM provides transport, access to aid for Eritrean refugees in Ethiopia” (14 March 2017). Available from [www.iom.int/news/iom-provides-transport-access-aid-eritrean-refugees-ethiopia](http://www.iom.int/news/iom-provides-transport-access-aid-eritrean-refugees-ethiopia).

<sup>18</sup> UNHCR, “Italy: UNHCR update No. 13” (March 2017). Available from <https://data2.unhcr.org/en/documents/download/56622>.

<sup>19</sup> United Nations Support Mission in Libya and Office of the United Nations High Commissioner for Human Rights, “Detained and dehumanised: report on human rights abuses against migrants in Libya” (13 December 2016), p.12. Available from [http://www.ohchr.org/Documents/Countries/LY/DetainedAndDehumanised\\_en.pdf](http://www.ohchr.org/Documents/Countries/LY/DetainedAndDehumanised_en.pdf).

<sup>20</sup> Reuters, “Dozens of Eritrean and Nigerian former Islamic State captives freed in Libya” (5 April 2017). Available from [www.reuters.com/article/us-europe-migrants-libya-women-idUSKBN1772NS](http://www.reuters.com/article/us-europe-migrants-libya-women-idUSKBN1772NS).

<sup>21</sup> UNHCR, “UNHCR campaign spreads awareness about dangers of Yemen sea crossings” (7 February 2017). Available from [www.unhcr.org/news/press/2017/2/5899ccae13/unhcr-campaign-spreads-awareness-dangers-yemen-sea-crossings.html](http://www.unhcr.org/news/press/2017/2/5899ccae13/unhcr-campaign-spreads-awareness-dangers-yemen-sea-crossings.html).



separated children, including a large number from Eritrea,<sup>22</sup> more than double the 12,360 unaccompanied and separated children who arrived in 2015.<sup>23</sup> 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 and their special protection needs in camps, en route and upon arrival. The concern remains valid more than ever today. The enormous risks faced by an increasing number of children moving on their own across international borders in order to flee violence, conflict, disaster, poverty and forced conscription was also highlighted in May 2017 by UNICEF.<sup>24</sup>

37. The Special Rapporteur is concerned about the persistence of gaps in systems to protect unaccompanied children, including from sexual exploitation and abuse, child labour, kidnapping by those involved in smuggling and/or trafficking, and detention. The psychosocial support necessary to address post-traumatic stress disorder, for example, is lacking. Based on her discussions with Eritrean children and those familiar with their situation, the Special Rapporteur is concerned that the procedures for recognizing unaccompanied and separated children as refugees are not always transparent. There have been allegations that in some countries the authorities delay decisions until children become adults. In this context, the Special Rapporteur would like to remind States parties to the Convention on the Rights of the Child about their obligation to respect, at all times, the best interests of the child, an obligation that applies to all children within a State's territory and subject to its jurisdiction.<sup>25</sup> Accordingly, asylum procedures should be based on an assessment of a child's best interests and take duly into account his or her views. Furthermore, she supports the call of UNICEF for faster procedures to reunite children with their families, including in destination countries.<sup>26</sup>

38. Throughout the European Union, about 93 per cent of Eritrean asylum seekers continued to be granted some form of protection.<sup>27</sup> This is in line with recently updated country-of-origin guidance provided by different countries and supports the Special Rapporteur's assessment that the critical aspects of the human rights situation in Eritrea remain unchanged. Moreover, the European Asylum Support Office, in a report on the national service and illegal exits from Eritrea, has noted that individuals who leave Eritrea in violation of Eritrean law are subjected to extrajudicial punishment upon return.<sup>28</sup> Eritreans who return voluntarily after having previously evaded the draft, deserted the army or left the country illegally, however, are not subject to the draconian laws at the moment, provided they have regularized their relationship with the Eritrean authorities prior to their return. The European Asylum Support Office stresses, however, that not all Eritreans are able to regularize their situation before returning, especially if they have been forced to return. In information published in January 2017 on the Eritrean civilian militia programme known as "the People's Army", the State Secretariat for Migration of Switzerland noted, as did the commission of inquiry, that the legal basis for the programme was unknown. In addition, national service evaders are punished inconsistently by the authorities. In some cases, the refusal to serve has no consequences; in other cases, such refusal leads to

<sup>22</sup> Save the Children, *Young, Invisible, Enslaved: The Child Victims at the Heart of Trafficking and Exploitation in Italy* (November 2016), pp. 22 ff.

<sup>23</sup> Ibid.

<sup>24</sup> UNICEF, *A Child Is a Child: Protecting Children on the Move from Violence, Abuse and Exploitation* (May 2017), p. 14. Available from [https://www.unicef.org/publications/files/UNICEF\\_A\\_child\\_is\\_a\\_child\\_May\\_2017\\_EN.pdf](https://www.unicef.org/publications/files/UNICEF_A_child_is_a_child_May_2017_EN.pdf).

<sup>25</sup> See Committee on the Rights of the Child general comment No. 6 (2005) on treatment of unaccompanied and separated children outside their country of origin, paras. 12-13.

<sup>26</sup> UNICEF, *A Child Is a Child*, p. 8.

<sup>27</sup> 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](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).

<sup>28</sup> European Asylum Support Office, *Country of Origin Information Report: Eritrea — National Service and Illegal Exit* (November 2016), p. 11.

detention, forced recruitment into the military or the withdrawal of food coupons or business licences.<sup>29</sup>

39. Some government policymakers have sought to revise asylum policies so as to make it harder for Eritreans to get protection, but their efforts have not always been successful. For example, in 2016 the Upper Tribunal of the United Kingdom reversed a government decision limiting protection, having found that Eritrean asylum seekers who had left without fulfilling the arbitrary military/national service obligations were likely to be perceived upon return as draft evaders or deserters and would thus risk persecution.<sup>30</sup> The Upper Tribunal drew extensively on the findings of the reports of the commission of inquiry. Following the Upper Tribunal's decision, the Home Office of the United Kingdom issued a new country policy.

40. The Federal Administrative Court of Switzerland assessed the situation of Eritreans returning to their home country slightly differently. Early in 2017, the Court decided, in its decision D-7898/2015, that Switzerland would no longer grant refugee status to Eritreans who had left their home country illegally, barring the existence of any additional factors. Previously, the illegal departure from Eritrea had been considered sufficient to claim asylum in Switzerland since those who did so were regarded by the Eritrean authorities as traitors and risked detention for a considerable length of time were they to return. According to the Court, the previous position could no longer be maintained. In its ruling, the Court noted that several Eritreans living in Switzerland, some of whom had left illegally, were able to return to Eritrea without repercussions 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 the Eritrean authorities regarding them as undesirable.

41. In that context, the Special Rapporteur reiterates her previous findings, also reflected in the reports of the commission of inquiry, that the Eritrean authorities consider those who leave Eritrea without an exit visa to be "illegal". Those who cannot obtain exit visas are seen as draft evaders or military deserters, as well as political opponents akin to traitors. If they returning, such individuals risk being detained in inhumane conditions and are most likely to be assigned or re-assigned to military training and service, which continues to amount to enslavement and forced labour. Additionally, and as the European Asylum Support Office has indicated, not all potential returnees can regularize their relationship with the Eritrean authorities. As reported by the commission of inquiry, Eritreans abroad must sign an immigration and citizenship services request form in order to regularize 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 a procedure gives the authorities carte blanche to mete out arbitrary punishment.

42. During the reporting period, the Special Rapporteur met several individuals who told her that individuals applying for family reunification had 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 the diplomatic representations of Eritrea abroad only after payment of a 2 per cent rehabilitation tax. The Security Council believes that the Government of Eritrea uses illicit methods to ensure payment of the tax and in its resolution 2023 (2011) decided that Eritrea should 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.

<sup>29</sup> See <https://www.sem.admin.ch/dam/data/sem/internationales/herkunftslander/afrika/eri/ERI-volksarmee-d.pdf>. (Available in German only.)

<sup>30</sup> See [www.eritreadaily.net/News2016/UKCOURT.pdf](http://www.eritreadaily.net/News2016/UKCOURT.pdf).

## VI. Engagement of Eritrea 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 issued its decision relating to communication No. 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, Mr. Isaak, who is being held incommunicado at an undisclosed location, has never been charged with any offence and has never been brought before a magistrate or allowed access to counsel. In its communication No. 428/12, the Commission reiterated the decision it had taken in its communication No. 275/03 (*Article 19 v. Eritrea*) to recommend the release of Mr. Isaak and all others being held arbitrarily. It had found that Eritrea, a State party to the African Charter on Human and Peoples' Rights, had breached several Charter provisions. Consequently, it ordered the Government of Eritrea to release or to bring to a speedy and fair trial 18 journalists detained since September 2001, including Mr. Isaak. The Commission also recommended that the detainees be granted immediate access to their families and legal representatives and recommended that the Government of Eritrea should take appropriate measures to ensure payment of compensation to the victims of arbitrary arrest and enforced disappearance. The Commission noted with regret that Eritrea had failed to implement its previous decision on the matter, issued in 2003, and that as a result Mr. Isaak had been held incommunicado for 13 years.<sup>31</sup>

44. The Commission asked the Government of Eritrea to report to it on the implementation of the decision relating to communication No. 428/12 within 180 days, in accordance with rule 112, paragraph 2, of the Commission's rules of procedure. The Government has failed to do so.

45. In May 2017, Mr. Isaak was awarded the UNESCO/Guillermo Cano World Press Freedom Prize in recognition of his courage, resistance and commitment to freedom of expression. The President of the jury noted that Mr. Isaak was among those who had persevered in shedding light in dark spaces and in keeping their communities informed against all odds. Noting that Mr. Isaak has spent nearly 16 years in jail, without charge or trial, she expressed the hope that the award would be a way for the world to say "Free Dawit Isaak now".

46. In January 2017, the African Committee of Experts on the Rights and Welfare of the Child issued its concluding recommendations on the report on the status of implementation by Eritrea of the African Charter on the Rights and Welfare of the Child. The Committee noted measures to attain the Millennium Development Goals but regretted that data to track progress was not available. The 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 and degrading treatment or corporal punishment and that children of particular religious groups, including Jehovah's Witnesses, were not able to enjoy freedom of religion. The Committee noted with concern the number of children involved in child labour, which was estimated by the International Labour Organization to be 183,000 in 2000. Regarding reports of the forced conscription of children, the Committee called on Eritrea to refrain from recruiting children into the army and other security forces, to ensure that those who violated that strict prohibition were punished and to refrain from using the educational system as a means of giving military training prior to full military service. The 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 international and regional human rights mechanisms access to the

<sup>31</sup> At the time of writing the present report, Mr. Isaak has been detained for more than 15 years.

country, as those mechanisms could undertake a comprehensive assessment of the human rights situation by taking into account the perspectives of all actors, including 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 United Nations country team in Asmara is being strengthened with the deployment of several senior advisers who will focus on issues such as peace, development, youth, migration and implementation of recommendations arising from the universal periodic review. Through the 11th European Development Fund, the European Union too is supporting Eritrea in the implementation of those recommendations. The Special Rapporteur notes that the recommendations formulated by Member States in 2014 offer a framework for progress in several critical areas. However, she deplores the selective approach taken by Eritrea to the recommendations, noting that the Government 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. The report of Eritrea scheduled for review during the thirty-second session of the Working Group on the Universal Periodic Review, to be held early in 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 representatives of States and international entities, including to representatives of the migration departments of various European countries, whose aim is to reassess the country-of-origin information used by decision makers working in the area of asylum. It also notes, however, that none of the visitors, be they foreign diplomats or staff of international organizations based in Asmara, have been permitted to visit 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 organizations access to Eritrea. During the reporting period, the Special Rapporteur met with civil society organizations and Eritrean human rights defenders engaged in monitoring and reporting on the human rights situation in Eritrea. They confirmed that there was still no space in Eritrea for independent civil society organizations, more specifically human rights civil society organizations, to operate. The Special Rapporteur commends the increased participation of Eritrean human rights defenders and African civil society groups in meetings and events such as the Citizens' Continental Conferences, which are held before the Summits of the Heads of State and Government of the African Union, or the NGO forums held before the summits of the African Commission on Human and Peoples' Rights. At those events, they express 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 office of religious affairs of Eritrea has advised representatives of authorized religious denominations that members of their partner organizations based abroad would not be granted visas to visit Eritrea. While Finn Church Aid is able to train teachers 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 information on the concrete steps it has taken to address the serious human

rights situation in the country. The Special Rapporteur regrets to inform the Human Rights Council that the Government did not respond.

54. In all her exchanges, the Special Rapporteur sought updates on the human rights situation in Eritrea. She was particularly interested to hear about any actions by the Government to stop ongoing human rights violations and ensure accountability for crimes committed, as recommended by the commission of inquiry. Vague references were made to a midterm report the Government was preparing in the framework of the universal periodic review but, at the time of writing, no public document was available. None of the interlocutors reported any progress having been made on 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, for example in respect of the national/military service, disappearances, extrajudicial executions, rape and sexual violence. 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 the 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 that 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 programme in line with international law. Eritreans continue to be subjected to indefinite national service. The Special Rapporteur has 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 individuals who have disappeared, some of whom have been missing for more than two decades. In addition, the Special Rapporteur has not been informed of any Government effort 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 those recommendations and that it has shown no willingness to tackle impunity for perpetrators of past and ongoing violations.

## **VII. Human rights in Eritrea: the way forward**

59. Starting in 2012, when the Human Rights Council established her mandate, the Special Rapporteur spent two years developing the role, devoting considerable time and effort to building bridges with the Government of Eritrea. That 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 the 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 suffered 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. The Special Rapporteur suggests focusing on a set of specific areas to assist Member States and the international community more broadly in assessing positive changes in the human rights situation in Eritrea. If the Government of Eritrea is committed to rebuilding the trust of its people, it needs to demonstrate that it is willing to address the key areas identified by the commission of inquiry and the Special Rapporteur. The Government needs to demonstrate genuine commitment and serious determination to achieve progress on a number of areas by taking the concrete steps outlined below, which are based on the recommendations addressed by the Special Rapporteur and the commission of inquiry to the Government of Eritrea. They may serve to develop specific, time-bound benchmarks to assess substantive change.

62. The Government of Eritrea should indicate the 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 the holding of free, fair and transparent democratic elections at all levels;
- (c) Permit human rights defenders and independent civil society organizations, including gender-specific organizations, to operate without constraint 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 of 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, members of "the People's Army" and army reserves as forced labour;
- (g) Stop carrying out arrests and detentions without a 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 their legality and the 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 recognized organizations, 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 grounds of religion or ethnicity;

(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 referral or on 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 of inquiry, 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 requesting the report of the commission of inquiry to be submitted to the Security Council and for the human rights situation in Eritrea to be referred 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 of inquiry recommended that an accountability mechanism be established under the aegis of the African Union and supported by the international community, to investigate, prosecute and try individuals reasonably believed to have committed crimes against humanity. The main objective of the Special Rapporteur's participation in various human rights forums held under the auspices of the African Union, as well as her mission to the African Union, was to follow up on this specific recommendation. The necessary first links have been made and the report of the commission of inquiry has been transmitted to the respective African Union dignitaries and officials. The aim is to make the situation of human rights in Eritrea an urgent issue at the level of the African Union, 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 their international obligations. Given the long-term perspective required for both aforementioned avenues, it would 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 for victims seeking justice. During the reporting period, the Special Rapporteur embarked on a round of talks aimed at exploring the options available under universal jurisdiction.

68. Universal jurisdiction is the ability of 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.<sup>32</sup>

69. Various countries have adopted laws that permit domestic courts to exercise universal jurisdiction, including for those crimes identified by the commission of inquiry, irrespective of the nationality of the victim or the perpetrator or of the location of the crime. According to a 2012 study, 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.<sup>33</sup> States 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, sets out that it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes.

70. The importance 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, seven more than the previous year and 10 more than in 2014.<sup>34</sup> One of the landmark cases in 2016 was the conviction of the former Chadian dictator Hissène Habré by a special court in Senegal for crimes against humanity, war crimes and torture, including rape and sexual slavery. A coalition of victims and civil society organizations created the conditions for a successful prosecution under the principle of universal jurisdiction. The case is encouraging for all victims of crimes against humanity, as it signals that they can drive the struggle against impunity and efforts to bring perpetrators to justice, no matter how high-ranking they may be.<sup>35</sup>

71. In 2012, the African Union adopted, on the recommendation of ministers of justice and/or attorneys general, a model national law on universal jurisdiction over international crimes at the Twenty-first Ordinary Session of its Executive Council.<sup>36</sup> The model law is a non-binding instrument aimed at assisting African Union member States in adopting or strengthening national legislation on the exercise of universal jurisdiction over international crimes and in giving effect to their obligations under international law. The objectives of the model law are to combat impunity for crimes set out in the model law, including crimes against humanity, provide for mutual legal assistance and cooperation among States, and provide for rehabilitation and reparation for the victims.

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 increasing the number of cases under universal jurisdiction. The network's secretariat, which is based in the Hague, the Netherlands, brings

<sup>32</sup> See the report of the Special Rapporteur on the obligation to extradite or prosecute submitted to the International Law Commission at its fifty-eighth session (A/CN.4/571, para. 31). See also Amnesty International, *Universal Jurisdiction: Strengthening This Tool of International Justice* (London, 2012) p. 6.

<sup>33</sup> *Ibid.*, p. 24.

<sup>34</sup> Trial International, European Centre for Constitutional and Human Rights, International Federation for Human Rights, International Foundation Baltasar Garzón and Redress, *Make Way for Justice #3: Universal Jurisdiction Annual Review 2017* (Geneva).

<sup>35</sup> For details of the case, see Reed Brody, *Victims Bring a Dictator to Justice: the Case of Hissène Habré* (Bread for the World, Berlin, 2017).

<sup>36</sup> African Union Executive Council decision 708 (XXI), available from [www.un.org/en/ga/sixth/71/universal\\_jurisdiction/african\\_union\\_e.pdf](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 African Union and the European Union (see the report of the African Union-European Union Technical Ad Hoc Expert Group on the Principle of Universal Jurisdiction, available from <http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%208672%202009%20REV%201>).



together prosecutors, investigators, representatives of ministries of justice and legal officers to exchange information during its biannual meetings, which are also attended by several observer States. It aims to facilitate cooperation between national authorities in the prosecution of international crimes.

73. The effective application of universal jurisdiction will largely depend on the availability of the 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 will provide investigators and prosecutors access to Eritrea to gather evidence or agree to extradite suspects to third countries. In similar situations, civil society organizations have contributed by collecting 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 was transferred to the Office of the United Nations High Commissioner for Human Rights, which may make it available for the purpose of accountability where confidentiality and protection concerns have been addressed.

74. There are other significant challenges, such as the immunity accorded to serving government officials and the fact that suspected perpetrators rarely travel outside Eritrea. Furthermore, efforts to initiate and pursue universal jurisdiction cases are likely to be unsuccessful without the required political will, at both the domestic and the international levels. Civil society actors, in close collaboration with survivors, victims and victims' organizations, can play an important role in creating and maintaining such political will, as happened in the Hissène Habré case. During the coming year, the Special Rapporteur plans to concentrate on raising awareness about the accountability mechanisms available at the domestic level and 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 meet its obligations and commitments under regional and international human rights instruments.**

76. **In the context of its military/national service, which is characterized by the indefinite length of conscription and harsh conditions, neither of which respect the human rights of conscripts, urgent reforms are required. The judicial system of Eritrea, including its special court charged with adjudicating complex cases, is inadequate for prosecuting perpetrators of international crimes. There are still no strong institutions established according to the rule of law capable of effectively protecting the human rights of the Eritrean people. The Government's ongoing denial of the existence of sexual exploitation and violence in the army also constitutes a denial of women's rights and must end. 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 never-ending cycle of impunity.**

### B. Recommendations

77. **The Special Rapporteur notes that the Government of Eritrea has ignored the bulk of the recommendations she has made in previous reports, having addressed only two of them, namely the recommendation that it ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and that**

it seek technical assistance from the Office of the United Nations High Commissioner for Human Rights. All the recommendations of the commission of inquiry remain 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 made to put an immediate end to the crimes against humanity and human rights violations identified by the Special Rapporteur and the commission of inquiry;

(b) Release immediately and unconditionally all those unlawfully and arbitrarily detained, including the 11 members of the G-15 who are currently imprisoned, journalists and members of religious groups;

(c) Immediately allow independent media outlets and civil society organizations to operate freely, without constraints or interference;

(d) Investigate promptly allegations of rape and sexual violence in the military/national service and secondary institutions such as the Sawa military training camp 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 to victims;

(g) Take concrete steps to ensure a truly participatory process in preparation for the next review of Eritrea in the context of the universal periodic review to ensure that the entire process adequately reflects the diverse voices of civil society organizations involved in the protection of human rights in Eritrea.

## 2. Member States and international organizations

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

(a) Ensure accountability for those responsible for serious human rights violations in Eritrea, including by having the Security Council refer the situation in the country to the International Criminal Court, in line with the finding of the commission of inquiry 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 refugee status to Eritrean nationals seeking protection, in accordance with the provisions of 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 seeking asylum;

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

(e) Cooperate closely with Eritrean human rights defenders and civil society organizations 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, with a view to securing justice and truth.

**4. Civil society organizations**

81. The Special Rapporteur recommends that civil society organizations:

(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 monitoring, documenting and reporting in the field of human rights, as well as drive the fight against impunity in their quest for justice.

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