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**Human Rights Council****Twenty-ninth session**

Agenda item 4

**Human rights situations that require the Council's attention****Report of the detailed findings of the Commission  
of Inquiry on Human Rights in Eritrea\* \*\****Summary*

The Commission of Inquiry undertook its investigation in accordance with Human Rights Council resolution 26/24.

Although the Commission was unable to visit Eritrea, it obtained first-hand testimony by conducting 550 confidential interviews with witnesses residing in third countries. It also received 160 written submissions.

On the basis of this body of evidence, the Commission found that systematic, widespread and gross human rights violations have been and are being committed in Eritrea under the authority of the Government. Some of these violations may constitute crimes against humanity.

In the present report, the Commission shows how the initial promises of democracy and rule of law, incarnated in the never-implemented Constitution of 1997, were progressively suppressed and then extinguished by the Government. It details how the Government has created and sustained repressive systems to control, silence and isolate individuals in the country, depriving them of their fundamental freedoms. Information collected on people's activities, their supposed intentions and even conjectured thoughts are used to rule through fear in a country where individuals are routinely arbitrarily arrested and detained, tortured, disappeared or extrajudicially executed. The Commission also describes how, on the pretext of defending the integrity of the State and ensuring its self-sufficiency, Eritreans are subject to systems of national service and forced labour that effectively abuse, exploit and enslave them for indefinite periods of time.

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\* Reproduced as received.

\*\* The information contained in this document should be read in conjunction with the report of the Commission of Inquiry on Human Rights in Eritrea (A/HRC/29/42).

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## Acronyms

ACHPR	African Charter on Human and Peoples' Rights
AENF	Alliance of Eritrean National Forces
AfDB	African Development Bank Group
AMISOM	African Union Mission in Somalia
ARDUF	Afar Revolutionary Democratic Unity Front
ARS	Alliance for the Re-Liberation of Somalia
AU	African Union
AMISOM	African Union Mission to Somalia
BANA	Eritrean Women War Veteran's Association
BMSC	Bisha Mining Shareholders Corporation
CAT	Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CEACR	Committee of Experts on the Application of Conventions and Recommendations of the International Labour Organisation
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CERD	Convention on the Elimination of All Forms of Racial Discrimination
CIA	Central Intelligence Agency (USA)
CPAP	Country Programme Actions Plans
CRC	Convention on the Rights of the Child
CRC-OPAC	Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict
COIE	Commission of inquiry on human rights in Eritrea
COMESA	Common Market for Eastern and Southern Africa
DMLEK	Democratic Movement for the Liberation of the Eritrean Kunama
EDP	Eritrean Democratic Party
EEBC	Eritrea-Ethiopia Boundary Commission
EECC	Eritrea-Ethiopia Claims Commission
EFND	Eritrean Forum for National Dialogue
EIJM	Eritrean Islamic Jihad Movement
EIT	Eritrea Institute of Technology
ELF-PLF	Eritrean Liberation Forces – People's Liberation Forces
ELF	Eritrean Liberation Front
ELM	Eritrean Liberation Movement
EMC	Eritrean Movement for Change

ENA/EDA	Eritrean National Alliance/ Eritrean Democratic Alliance
ENAMCO	Eritrean National Mining Corporation
ENCDC (Baito)	Eritrean National Congress for Democratic Change
EPLF	Eritrean People's Liberation Forces, then Front
EPRP	Eritrean People's Revolutionary Party
EPRDF	Ethiopian People's Revolutionary Democratic Front
ERRC	Eritrean Relief and Refugee Commission
ESLC	Eritrean High-School Leaving Certificate
EU	European Union
EYSC	Eritrean Youth Solidarity for Change
EYSNS	Eritrean Youth Solidarity for National Salvation
FAO	Food and Agriculture Organisation
FGM	Female Genital Mutilation
GDP	Gross Domestic Product
HRC	Human Rights Council
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICRC	International Committee of the Red Cross
ICU	Islamic Courts Union
IGAD	Intergovernmental Authority for Development
ILO	International Labour Organisation
IMF	International Monetary Fund
MDGs	Millennium Development Goals
NCEW	National Confederation of Eritrean Workers
NDF	(Sudanese) National Democratic Alliance
NGO	Non-governmental organisation
NIF	National Islamic Front
NUEYS	National Union of Eritrean Youth and Students
NUEW	National Union of Eritrean Women
OCHA	Office for the Coordination of Humanitarian Affairs
OHCHR	Office of the High Commissioner for Human Rights
ONLF	Ogaden National Liberation Front
OLF	Oromo Liberation Front
OAU	Organisation of African Unity
PFDJ	People's Front for Democracy and Justice

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PGE	Provisional Government of Eritrea
PROFERI	Programme for Refugee, Reintegration and Rehabilitation of Resettlement Areas in Eritrea
RCHRD	Regional Centre for Human Rights and Development
RCSE	Red Cross Society of Eritrea
RSADO	Red Sea Afar Democratic Organisation
SDF	Sudan Defence Force
SGBV	Sexual and Gender Based Violence
SPCF	Strategic Partnership Cooperation Framework
SPLM	Sudan People's Liberation Movement
TFG	(Somalian) Transitional Federal Government
TSZ	Temporary Security Zone
TPDM	Tigray People's Democratic Movement
TPLF	Tigray People's Liberation Front
TTI	Teachers' Technology Institute
UASU	University of Asmara Student Union
UN	United Nations
UNAIDS	Joint United Nations Programme on HIV/AIDS
UNCT	United Nations Country Team
UNCTAD	United Nations Conference on Trade and Development
UNDAF	United Nations Development Assistance Framework
UNDP	United Nations Development Programme
UNFPA	United Nations Population Fund
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNMEE	United Nations Mission in Ethiopia and Eritrea
UNOSAT	United Nations Institute for Training and Research's Operational Satellite Applications Programme
UNOVER	United Nations Observer Mission to Verify the Referendum in Eritrea
UPR	Universal Periodic Review
USAID	United States Agency for International Development
WHO	World Health Organisation
WYDC	Warsai Yikealo Development Campaign

## I. Introduction

1. The Commission of Inquiry on Human Rights in Eritrea (hereinafter “the Commission”) was established for a period of one year by the Human Rights Council through its resolution 26/24 of 27 June 2014 on the “situation of human rights in Eritrea”.

2. On 26 September 2014, the President of the Council appointed Mr. Mike Smith as Chair of the Commission and Mr. Victor Dankwa and the Special Rapporteur on the situation of human rights in Eritrea, Ms. Sheila B. Keetharuth, as members of the Commission. The Commissioners served in a non-remunerated, independent, expert capacity, supported by a secretariat of experienced human rights officers.

3. This report is presented in compliance with paragraph 13 of resolution 26/24, whereby the Human Rights Council requested the Commission to present a written report to the Council at its 29th session, in addition to an oral update at its 28th session in March 2015 and an oral presentation to the General Assembly at its 70th session in October 2015.

4. In keeping with paragraph 14 of the resolution, the Human Rights Council may decide to “transmit all reports of the Commission to all relevant bodies of the United Nations and to the United Nations Secretary-General for appropriate action.”

## II. Mandate, methodology, and legal framework of the Commission of Inquiry

### A. Origins of the mandate

5. In accordance with its mandate “to address situations of violations of human rights, including gross and systematic violations, and make recommendations thereon”,<sup>1</sup> the Human Rights Council first considered the situation of human rights in Eritrea as one that required its attention during its 20th session in July 2012.<sup>2</sup> During this session, the Human Rights Council adopted, by consensus, resolution 20/20, in which it expressed its “deep concern at the ongoing reports of grave violations of human rights by the Eritrean authorities against its own population ... and the alarming number of civilians fleeing Eritrea as a result of those violations”. It also strongly condemned, among other things, “a) the continued widespread and systematic violations of human rights and fundamental freedoms committed by the Eritrean authorities, including cases of arbitrary and extrajudicial executions, enforced disappearances, the use of torture, arbitrary and incommunicado detention without recourse to justice, and detention in inhumane and degrading conditions; b) the severe restrictions on [fundamental freedoms ...]; c) the forced conscription of citizens for indefinite periods of national service, which could amount to forced labour”. In resolution 20/20, the Human Rights Council, therefore, decided to appoint a Special Rapporteur on the situation of human rights in Eritrea and to remain seized of this matter. It also called upon the Eritrean authorities to fully cooperate with the Special Rapporteur.<sup>3</sup>

6. Later that year, during its 21<sup>st</sup> session held in September 2012, the Council decided “to discontinue reviewing the human rights situation in Eritrea under its confidential

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<sup>1</sup> See General Assembly resolution 60/251 of 15 March 2006, operative paragraph 3.

<sup>2</sup> Agenda item 4 on its programme of work.

<sup>3</sup> Human Rights Council resolution 20/20, operative paragraphs 4 and 5.



complaint procedure in order to take up public consideration of the same in the context of the implementation of Council resolution 20/20. The Council adopted a confidential resolution on Eritrea and decided to make it public as Human Rights Council resolution 21/1”.<sup>4</sup> In resolution 21/1, the Council, therefore, decided that the documentation it had received from individuals, groups, or non-governmental organizations about human rights violations in Eritrea under the complaint procedure should no longer be considered confidential. The information was thereby transmitted to the newly appointed Special Rapporteur on the situation of human rights in Eritrea, Ms. Sheila B. Keetharuth, who was requested to further investigate the allegations contained therein.<sup>5</sup>

7. The Special Rapporteur presented her first report during the 23rd session of the Human Rights Council held in June 2013. In its resolution 23/21, the Council welcomed the report and expressed its concern about the lack of cooperation of the Government of Eritrea with the Special Rapporteur. It also reiterated its concerns about the situation of human rights in Eritrea and its condemnation of the human rights violations occurring in the country, as previously highlighted in resolution 20/20. It decided to extend the mandate of the Special Rapporteur for one year.

8. At its 26th session in June 2014, the Human Rights Council was faced with the continuous lack of cooperation by the Government of Eritrea and with an unchanged situation of human rights in the country. In its resolution 26/24, adopted by consensus, the Council therefore welcomed the second report of the Special Rapporteur; reiterated its concern for the lack of cooperation of Eritrea with the Special Rapporteur and for the human rights situation in the country; and as a result decided to extend for another year the mandate of the Special Rapporteur and to establish the Commission.<sup>6</sup>

## **B. Interpretation of the mandate by the Commission**

9. The mandate of the Commission is outlined in paragraph 8 of resolution 26/24, which states that “the Commission of inquiry will investigate all alleged violations of human rights in Eritrea, as outlined in the reports of the Special Rapporteur.”

10. As part of the definition of its methods of work, the Commission further delineated the scope of its mandate and its competences as follows:

Competence *ratione personae*: the Commission shall only investigate alleged violations that are imputable on Eritrean authorities. This means violations directly committed by Eritrean public officials; committed at their instigation or with their consent or acquiescence; or when the relevant authorities have abstained to prevent, investigate and prosecute authors of violations of the fundamental rights of a person.

Competence *ratione loci*: the geographic scope of the investigation is human rights violations allegedly committed on the territory of Eritrea, without any exclusion of a specific area of the country and including the border zones and Eritrean maritime territory.

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<sup>4</sup> See Human Rights Council report 21/2, para. 228.

<sup>5</sup> A/HRC/23/53.

<sup>6</sup> A/HRC/26/45.

Competence *ratione temporis*: the temporal scope of the investigation covers the period from the independence of Eritrea until present day.<sup>7</sup>

Competence *ratione materiae*: the Commission shall investigate the human rights violations “as outlined in the reports of the Special Rapporteur”,<sup>8</sup> which “include but are not limited to”:<sup>9</sup>

Extrajudicial killings

Enforced disappearances and incommunicado detention

Arbitrary arrest and detentions

Torture

Violations occurring during compulsory national service, including those affecting children’s rights

Restrictions to freedoms of expression and opinion, assembly, association, religious belief and movement

11. Other commissions of inquiry established by the Human Rights Council have been specifically requested to investigate the human rights violations and related crimes in a specific country or territory.<sup>10</sup> The Commission was only mandated to investigate all alleged violations of human rights in Eritrea. Therefore, the Commission interpreted its mandate as not including the investigation of international crimes in Eritrea. This is without prejudice to the possible perpetration of international crimes in Eritrea and in particular of crimes against humanity<sup>11</sup> and war crimes.<sup>12</sup> It also does not preclude the possibility for the Commission to recommend further investigations, if by the end of its own investigation it has collected information indicating that such international crimes may have occurred. The Commission emphasizes that its present findings should not be interpreted as a conclusion that international crimes have not been committed in Eritrea.

## C. Cooperation of Eritrea and other States with the Commission

### 1. Lack of Cooperation of the State of Eritrea

12. In paragraph 9 of resolution 26/24, the Council “calls upon the Government of Eritrea to cooperate fully with the Special Rapporteur and the Commission of inquiry, to permit them and their staff members unrestricted access to visit the country, to give due consideration to the recommendations contained in the reports of the Special Rapporteur, and to provide them with the information necessary for the fulfilment of their mandates.”

13. On 24 October 2014, the Chair of the Commission sent a letter to the President of Eritrea, His Excellency Isaias Afwerki, to express the wish of the Commission to visit Eritrea. Having received no answer, on 25 November 2014 the Chair of the Commission transmitted a second letter to the Permanent Mission of Eritrea to the United Nations Office

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<sup>7</sup> Eritreans celebrate Independence Day on 24 May, date that recalls the take-over of Asmara in 1991, whereas the declaration of the independent state of Eritrea formally occurred in May 1993. For the purpose of its investigation, the Commission has taken the date of 1991 as a starting point.

<sup>8</sup> Paragraph 8 of resolution A/HRC/Res/26/24.

<sup>9</sup> (A/HRC/23/53) published on 28 May 2013 and (A/HRC/26/45), published on 13 May 2014.

<sup>10</sup> Sri Lanka, The Democratic People’s Republic of Korea, Syria and Gaza.

<sup>11</sup> Crimes against humanity may happen in both war and peace time.

<sup>12</sup> During the war between Eritrea and Ethiopia from May 1998 to June 2000, and during the border clashes with Djibouti in June 2008.

and other international organizations in Geneva, in which he reiterated the request of the Commission to visit the country. This correspondence was sent after the three Commissioners met the First Secretary and *Chargé d' affaires ad interim* of the Permanent Mission of Eritrea on 19 November 2014, in Geneva. The Commission did not receive a reply.

14. On 19 December 2014, the Chair of the Commission sent a letter to the Minister of Foreign Affairs of Eritrea, His Excellency Osman Mohammed Saleh, through the Permanent Mission of Eritrea to the United Nations Office and other international organizations in Geneva, requesting for information about statements made by Eritrean officials in late 2014 about the decision of the Government of Eritrea to limit the duration of the national service of future conscripts to 18 months, as stipulated by Eritrean legislation.<sup>13</sup> In this correspondence, the Chair reiterated the desire of the Commission to visit Eritrea. Again, the Commission received no answer or information. On 19 May 2015, the Chair of the Commission sent another letter to the Minister of Foreign Affairs of Eritrea to request a copy of the new Civil, Penal, Civil Procedure and Penal Procedure Codes that were promulgated on 11 May 2015. The Commission received no answer or information.

15. In the context of each of its visits to other States (detailed hereafter), the Commission also systematically requested to meet with Eritrean representatives in-country. The Commission, however, did not receive any reply to these requests.

16. On 5 June 2015, the report was shared with the Government of Eritrea.

## 2. Cooperation of other States

17. The Human Rights Council, in its resolution 26/24, requested all States to cooperate with the Commission.<sup>14</sup> The Commission sent requests to visit the following 24 countries with the view to conduct interviews with Eritrean refugees, migrants and other members of the diaspora: Algeria, Australia, Chad, Egypt, Ethiopia, Djibouti, Malta, Tunisia, Germany, Israel, Italy, Kenya, Kuwait, Morocco, Qatar, Saudi Arabia, South Africa, Sudan, Switzerland, Uganda, The United Arab Emirates, the United Kingdom, the United States, and Yemen.

18. Australia, Chad, Djibouti, Germany, Ethiopia, Israel, Italy, Malta, Sweden, Switzerland, Tunisia, the United Kingdom and the United States of America agreed to such a visit. The Commission thanks the Governments of these countries for their cooperation. On the basis of these acceptances and taking into consideration its budget and timeline, the Commission selected the countries it would visit according to the following criteria: 1) The size of the Eritrean population they host, and 2) The average dates of arrival of Eritreans in these countries, to ensure the entire period under investigation was covered. The Commission visited Switzerland, Italy, the United Kingdom, Djibouti, Ethiopia, Germany, Sweden and the United States of America between November 2014 and March 2015.

19. The Commission regrets that Algeria, Qatar and Saudi Arabia officially declined its request and that the other States have not replied to its official letters.

## 3. Cooperation of the United Nations entities

20. In paragraph 12 of resolution 26/24, the Human Rights Council also requests the United Nations, through its Secretary-General, to “provide the Special Rapporteur and the

<sup>13</sup> Proclamation 82/1995.

<sup>14</sup> Paragraphs 9 and 10 of the Resolution.

commission of inquiry with all information and the resources necessary to fulfil their mandates”.

21. Accordingly, the Commission engaged with a number of United Nations entities to obtain relevant information and support to conduct its investigations. The Commission must express its concern about the fact that a small number of United Nations entities were reluctant to cooperate with the Commission for fear of negative repercussions on their relationship with the Eritrean Government. Most entities requested that any contact with the Commission or information provided to it be treated as highly confidential. This report, therefore, only attributes information to specific organizations where such information is reflected in their public reports. The citation of a public report is not necessarily an indication that an organization has cooperated with the Commission.

22. The Commission extends its gratitude to the Office of the High Commissioner for Human Rights (OHCHR), which provided a dedicated secretariat as well as its advice and support. The Commission also extends its gratitude to UN Women for the provision of the services of a gender expert to the Commission. Such support and assistance from OHCHR and UN Women was afforded with proper respect to the independence and integrity of the Commission; once appointed, secretariat members worked independently of these agencies. The Commission also interacted with, and received relevant information from a number of mandate-holders under the Special Procedures of the Human Rights Council and Human Rights Treaty Bodies.<sup>15</sup>

#### **4. Cooperation of individuals and non-governmental organizations**

23. The Commission has benefitted from the invaluable support of a number of individuals and non-governmental organizations who have helped to identify and contact Eritrean victims and witnesses of alleged human rights violations.

### **D. Methods of work**

24. During their first meeting in Geneva in November 2014, the Commissioners adopted the terms of reference, rules of procedure, methodology, and standard of proof to be applied to the findings and the initial programme of work of the Commission.

25. In carrying out its work, the Commission was guided at all times by the principles of independence, impartiality, objectivity, transparency, integrity and the principle of “do no harm”.

#### **1. Protection of victims, witnesses and other sources of information**

26. The Commission established procedures to ensure the protection of victims, witnesses and other sources of information at all stages of its work and beyond its conclusion. These procedures are in accordance with the standard policies adopted by

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<sup>15</sup> Treaty bodies refer to the Committees established under the core human rights treaties with the mandate to monitor the implementation of the treaties by State parties. These are the Human Rights Committee, Committee on Economic, Social and Cultural Rights, Committee on the Elimination of Racial Discrimination, Committee against Torture, Committee on the Rights of the Child, Committee on the Elimination of Discrimination against Women, Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, Committee on the Rights of Persons with Disabilities, Committee on Enforced Disappearances and the Subcommittee for the Prevention of Torture.

OHCHR, which are themselves based on the central principles of confidentiality and “do no harm”.<sup>16</sup>

27. The protection of victims and witnesses was one of the main challenges faced by the Commission during its investigations. Almost all victims and witnesses in contact with the Commission feared reprisals by Eritrean authorities, be it against themselves or targeting their family members still living in Eritrea. Irrespective of the country or location where the interviews were organised, the persons who agreed to speak on a confidential basis to the Commission were convinced that the Eritrean authorities were in a position to monitor their conduct through a network of spies and informants within the Eritrean diaspora. Indeed, the Commission was able to witness one specific episode of such monitoring. The Commission is, therefore, particularly grateful to those individuals who, notwithstanding such fears, did agree to speak to the Commission.

28. The Commission sought guarantees from the States concerned that individuals wishing to meet the Commission would have unhindered access to it, and that no person would, as a result of such contact, suffer any harassment, threats, acts of intimidation, ill-treatment or reprisals from anyone, or face any criminal prosecution or other judicial proceedings. The Commission reminds the governments of countries visited in the course of its investigation that they have a responsibility to ensure the protection of persons who have cooperated with the Commission.

## **2. Principle of confidentiality of the investigations**

29. As a matter of principle, all information gathered by the Commission in the course of its investigations is confidential. The Commission took all necessary measures and precautions to protect the confidentiality of information and the identity of the individuals who provided information to the Commission and/or supported its work. The names of victims, witnesses and sources are therefore not mentioned in the report. However, names of some individuals whose cases have previously been published on open sources are listed in the present report and the consent of the victim has been obtained.

30. At the conclusion of the Commission’s work, all the information collected will be moved on to the official United Nations archive system, where in accordance with the established procedure its contents will be classified as “unclassified”, “confidential” or “strictly confidential”.<sup>17</sup> All interviews from victims and witnesses will be classified as “strictly confidential”. Information will not be shared with any State, entity or individual without the explicit and informed consent of each victim or witness concerned. This includes sharing with other sections of OHCHR; United Nations human rights mechanisms; any international judicial mechanisms; any judicial mechanisms of other states; and any government authorities, in particular the Eritrean government.

## **3. Standard of proof**

31. Consistent with the practice of other United Nations fact-finding bodies, especially those which have not been granted access to the territory where the alleged violations have

<sup>16</sup> See OHCHR Manual on International Commissions of Inquiry and Fact-Finding Missions on International Human Rights Law and International Humanitarian Law (2013).

<sup>17</sup> According to United Nations rules, “unclassified” information refers to all information or material that can be disclosed without prior authorization; “confidential” information refers to information that will be declassified automatically after 20 years, although access to the information will be granted only upon request; and “strictly confidential” information is never automatically declassified. Information and records that are marked “strictly confidential” shall be reviewed item by item for possible declassification after 20 years and, thereafter, every five years.

occurred, the Commission based its findings on a “reasonable grounds to believe” standard of proof.<sup>18</sup> Internal guidelines were developed to ensure the corroboration of the information that is needed to reach the adopted standard.

32. Fact-finding bodies consider that the standard is met when in assessing all the information gathered – including open sources – they can conclude that it is reasonable to believe that the incident or event occurred as reported. The adopted standard of proof does not imply that on the basis of the information gathered, such conclusion should be the only reasonable one. This standard is sufficiently high to call for further investigations into the incident or pattern of conduct, which may lead to possible criminal prosecution in the future.

33. Patterns of systematic human rights violations have been identified taking into account the high frequency of occurrence of the human rights violations documented and corroborated during the investigation (taking into account the number of victims and the replication of the violation during a certain period of time); the type of rights violated; and the systemic nature of these violations, meaning that they cannot be the result of a random or isolated act of the Eritrean authorities

#### **4. Investigation methodology**

34. In order to establish the facts and circumstances of alleged violations and taking into account the impossibility to access Eritrea, the Commission decided to collect first-hand testimonies and accounts of victims and witnesses of alleged human rights violations from Eritrean refugees, asylum-seekers, migrants and other members of the diaspora.

35. The Commission also used the services of the United Nations Institute for Training and Research’s Operational Satellite Applications Programme (UNOSAT) to obtain satellite imagery of detention places identified in the course of its investigations. Thus the Commission has been able to locate 67 detention facilities throughout Eritrea.<sup>19</sup>

##### **(a) Confidential interviews**

36. In the course of its investigations, which started effectively in November 2014, the Commission carried out 550 confidential interviews with victims and witnesses of and sources on the perpetration of alleged human rights violations. These interviews were conducted during its successive visits to Switzerland, Italy, the United Kingdom, Djibouti, Ethiopia, Sweden, Germany, and the United States of America.

37. Some excerpts from these interviews are included in the report. These are published without information on the exact place and time of violations or any other details that might lead to the identification of the person, due to the legitimate protection concerns referred to above and substantiated in other parts of the text. These extracts have been rephrased in order to protect the identity of the sources and ensure better readability and comprehension.

##### **(b) Organization of thematic discussions**

38. During its country visits, the Commission also organized thematic discussions with researchers, academics, representatives of non-governmental organizations, as well as groups of victims and witnesses. Thus, in the United Kingdom, Ethiopia, Djibouti, Sweden,

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<sup>18</sup> It should be understood that all findings presented in this report have reached the standard of “reasonable grounds to believe”. In the very few instances where the adopted reasonable ground to believe standard has not been reached, the lower standard of proof is explicitly mentioned. In such case, the Commission usually refers to “allegation” instead of “information”.

<sup>19</sup> The satellite images are annexed to the present report as Annex VI.

and the United States, thematic discussions were organised on freedom of religion; freedom of expression; freedom of association; women's rights; national service; extrajudicial killings; enforced disappearances, torture; prison conditions; and intimidation in the diaspora.

**(c) Call for submissions**

39. In November 2014, the Commission published a call for submissions on its website.<sup>20</sup> It invited interested individuals, groups and organizations to submit written information and/or documentation on alleged violations of human rights perpetrated in Eritrea since its independence. The call for submissions was initially opened until the end of January 2015 and then extended for one additional month, until 28 February 2015. Written submissions were received in English, Tigrinya and Arabic. Video, audio and photographic materials were also received. By the deadline, the Commission had received a total of 160 submissions related to 254 individual cases, providing first-hand testimonies of victims and witnesses of human rights violations as well as background information on the situation of human rights in Eritrea. When additional information was needed, the Commission contacted the author(s) of the submissions.

**(d) Consideration of other written materials**

40. The Commission collected and reviewed many reports and background information materials about Eritrea written by United Nations entities, non-governmental organizations, research institutes and academics.<sup>21</sup>

**(e) Engagement with other States**

41. At the beginning of each country visit, the Commission met with representatives of the respective States and from international organizations based in-country. During these meetings, the Commission informed the representatives of its mandate, methods of work and objectives as well as about the advancement of its work. The Commission also alerted the State authorities to its concerns about the security of persons assisting the Commission who are residing on their territory.

42. The Commission visited Switzerland from 17 to 26 November 2014; Italy from 27 November to 3 December 2014; the United Kingdom of Great Britain and Northern Ireland from 24 to 30 January 2015; Djibouti from 15 to 18 February 2015; Ethiopia from 19 to 22 February 2015; Sweden from 16 to 18 March 2015; Germany from 19 to 21 March 2015; and the United States of America from 26 to 30 March 2015, following a preparatory visit by the Chair of the Commission in January 2015.

43. The findings in this report rely primarily on first-hand testimonies from victims and witnesses collected during the confidential interviews, thematic discussions and through written submissions specifically addressed to the Commission. The written material and information gathered during consultation with representatives of other States and intergovernmental organizations were useful to obtain contextual and historical information on the past and current situation in Eritrea.

**5. Integration of gender in the work of the Commission**

44. In line with best practices in the integration of gender in commissions of inquiry and in accordance with Human Rights Council resolution 23/25, the Commission devoted

<sup>20</sup> <http://www.ohchr.org/EN/HRBodies/HRC/CoIEritrea/Pages/CallSubmissions.aspx>.

<sup>21</sup> See Annex VIII.

specific attention to gender issues and the gendered impacts of violations.<sup>22</sup> Pursuant to the commitment of the UN Secretary-General in 2011 to ensure that all commissions of inquiry have dedicated gender expertise and access to specific sexual violence investigative capacity, the services of a gender specialist were made available to the Commission.<sup>23</sup> The gender specialist provided gender sensitive investigation and analysis training and guidance to all members of the Commission.

45. The Commission faced significant challenges in the investigation and documentation of human rights violations suffered by women. Ahead of each country visit, the Commission - directly and through intermediaries - emphasized its desire to speak with as many Eritrean women as possible offering flexible arrangements to do so. Nevertheless, women represent just 18.5 per cent of the Commission's interviewees.

46. The Commission found that in general, women were more reluctant to come forward and speak for fear of their own safety as well as that of their families, lack of time, perceived inability to access interview locations, perceived lack of interest in their experiences and a general hesitation to disclose these. The Commission received information indicating that women in the diaspora communities were kept very busy with work, attending to their families and ensuring their family members', particularly children's survival in their new country. When communicating to men the Commission's desire to speak with their wives or other female family members, the Commission was often told that it would be possible, but that the women would be unable to travel or leave their homes as they could not navigate their new surroundings or because they cared for children or other relatives at home. The Commission also found that women hesitated to speak with the Commission because they perceived their experiences not worthy of consideration. By far, however, the biggest challenge to interview women was the fear for the safety of their families as they believed that their conduct was being clandestinely monitored by Eritrean authorities and were terrified for any person to know they had spoken with the Commission.

47. The Commission developed innovative ways to overcome these challenges. It contacted women's networks and groups and built relationships of trust through online conference calls. The Commission took the time to build rapport within these networks and was on hand to respond to questions or concerns of individuals at the convenience of the witnesses and intermediaries, which the Commission understood in the case of women, was often late into the evening after they had tended to their numerous responsibilities. Prior to country visits, the Commission engaged with female intermediaries as early as possible, expressing the Commission's desire to speak with women and highlighting the Commission's ability to be flexible with its arrangements to interview witnesses. It spoke with a number of witnesses in their homes where they felt comfortable and those with caring responsibilities could continue to care for their relatives/ children. Some interviews were undertaken in other locations where the witnesses felt comfortable and were only known by them. Some witnesses were interviewed online. In one location, where the Commission adopted an open door policy by which witnesses came to the interview location after being informed it would be there, the Commission explicitly introduced a "women's only day". The Commission understood that in the cultural setting in which women perceived themselves and their experiences to be of lesser significance to men, it would be important to have special days for women. The Commission noted that towards the end of the Commission's investigation phase, as trust and confidence in the

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<sup>22</sup> A/HRC/23/L.28, para 17.

<sup>23</sup> See the 2011 report of the UNSG on Women, Peace and Security (S/2011/598), para 69.



Commission's work had grown, many more women indicated their willingness to be interviewed, but due to the Commission's compressed timeline this was no longer possible.

48. The Commission also noted that many women who did speak with the Commission prioritised reporting abuses suffered by male relatives, typically husbands, fathers or brothers thereby subordinating abuses that they themselves might have suffered. The traditional patriarchal society and men-first culture has an unspoken yet highly ordered hierarchy which cause women to regard their own suffering as less important or to be considered only after that of their male relatives and elders. The Commission was empathetic to these situations, taking the time to explain the Commission's work and its interest in all experiences of both men and women.

49. The Commission found that men were often more willing and able to meet with the Commission in interview locations as they were often more familiar with their new surroundings. In general, men often easily proffered information about female family members, friends or members of the community with grave concern. In exceptional cases, men came forward explicitly to speak with the Commission about the experiences of a specific female relative, on her behalf.

50. Sexual violence, particularly against women proved difficult to document owing to the cultural contexts specific to Eritrea, as well as to the general shame and stigma that still attaches to victims. Eritrean women were generally afraid to speak about sexual violence because of the cultural emphasis on their virginity, chastity or monogamy. Women reported that they customarily self-censor to avoid shame being brought upon their families as news travels quickly and easily through communities both inside and outside Eritrea. In Eritrea, the social shame a sexual violence victim suffers from can in turn lead to ostracism, inability to marry if single, and divorce and loss of children if married. In some cases, women also feared violence from their families if their experience of sexual violence was known. In the Afar community women and girl victims of sexual violence were also afraid that such violence could lead to their death.

51. The Commission also received reports of suicide among victims of sexual violence in Eritrea as a result of the extreme shame, stigma and related consequences from which they traditionally suffer. In the words of a woman who spoke with the Commission:<sup>24</sup>

*"Not only can we not report it, it is part of our culture not to be able to say this ... I cannot report it to another officer, because it is my superior doing this to me. I cannot talk about it with other people. If I reported it and the case went to court, the whole neighbourhood would know. Then it would bring shame to the family. No one would marry the girl. No one will marry a raped girl. The officers do it because they know this, they know that no one will report it because of the social shame and self-censorship of women. A woman cannot live in our society and be known to be a rape victim."*

52. The Commission was sensitive to these cultural contexts and the risk of re-traumatisation of victims. It sought to ensure all witnesses felt comfortable when speaking with the Commission. Interviews were held in safe and confidential locations, interpreters were selectively chosen and communications were kept confidential. The Commission reassured all witnesses, particularly female witnesses, of the Commission's confidentiality protocols and its policy of non-disclosure to any individual or entity any details documented. Gender sensitive investigation methods were utilised, and gender, cultural and security considerations were taken into account when arranging, and during interviews.

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<sup>24</sup> TSH081.

Where appropriate, the Commission referred victims of sexual violence to medical and psycho-social service providers as needed. Given the difficulty of both connecting with women and documenting sexual violence, the Commission takes the view that its inquiry may have only partially captured the extent of sexual violence and violence against women.

## **E. Legal framework of the investigation**

### **1. International human rights instruments**

53. The Commission assessed the human rights situation in Eritrea on the basis of the international legal obligations voluntarily subscribed to by Eritrea. Eritrea is a State Party to the following universal and regional human rights treaties: the Convention on the Rights of the Child since 1994 - and its two Optional Protocols since 2005, the Convention on the Elimination of All Forms of Discrimination against Women since 1995, the African Charter on Human and Peoples' Rights since 1999, the African Charter on the Rights and Welfare of the Child since 2000, the International Convention on the Elimination of Racial Discrimination since 2001, the International Covenant on Economic, Social and Cultural Rights since 2001, the International Covenant on Civil and Political Rights since 2002, and the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment since September 2014.

54. Eritrean authorities are responsible for guaranteeing the protection and preservation of the human rights and fundamental freedoms enshrined in these treaties at all times. They are obliged to refrain from any conduct that violates human rights and they have the duty to protect those living within their jurisdiction through the enactment of laws at the domestic level that protect and implement the human rights recognised at the international level. This means that the Commission also assessed, where possible, whether the national legislation enacted by Eritrean authorities is in line with the international obligations of Eritrea.<sup>25</sup> The Commission did not assess the compliance of Eritrean authorities with these domestic provisions, but whether their actions, in law and in practice were in accordance with the international standards.

### **2. Non-derogable rights**

55. The Commission is of the view that Eritrea is bound by all the international obligations indicated above. It rejects the argument frequently raised by Eritrean authorities that the so-called “no war, no peace” status of the country and the “continued occupation of Sovereign Eritrean Territories” by some of its neighbours justifies some derogations and restrictions of the human rights to be enjoyed by the persons under its sovereignty.<sup>26</sup> Under public international law, derogations and restrictions to human rights in exceptional situations are strictly regulated by the human rights treaties themselves.

56. In accordance with article 4 of the International Covenant on Civil and Political Rights, some of the human rights guaranteed by the Covenant are “non-derogable” and should be respected at all times, including in time of public emergency that threatens the life of the nation. These include: The right to life; the prohibition of torture or cruel, inhuman or degrading punishment; the prohibition of slavery and forced labour; the right to

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<sup>25</sup> Such assessment has been very limited because of the lack of accessibility to domestic legislation, including within Eritrea – see Chapter V.

<sup>26</sup> See National UPR Report submitted in accordance with paragraph 5 of the Annex to Human Rights Council resolution 16/21, A/HRC/WG.6/18/ERI/1, para. 91; Statement of the Eritrean Delegation, 18<sup>th</sup> Session of the UPR Working Group, 3 February 2014, p. 10; See chapter III.C. Historical Background – Post- Independence.

be recognised as a person before the law; and the freedom of thought, conscience and religion. In addition to this list of non-derogable rights established by the Covenant, a number of other rights were considered by the Human Rights Committee as non-derogable. These are: the right of all persons deprived of their liberty to be treated with humanity and with respect for the inherent dignity of the human person; the prohibition against taking hostages; imposing collective punishments through arbitrary deprivations of liberty or by deviating from fundamental principles of fair trial, including the presumption of innocence; abductions or unacknowledged detention; and certain elements of the rights of minorities to protection.<sup>27</sup> Moreover, the provisions of the Covenant relating to procedural safeguards may never be subjected to measures that would circumvent the protection of non-derogable rights.<sup>28</sup>

57. Temporary derogations to the other fundamental rights are possible in times of public emergency but they should not be discriminatory (that is based on the ground of race, colour, sex, language, religion or social origin).<sup>29</sup> Further, the scope of the derogation as to time and place should be restricted to the extent strictly required by the exigencies of the situation, in accordance with the principle of proportionality. In particular, it is acceptable under international standards to restrict the exercise of certain freedoms such as the freedoms of expression, assembly, association or to manifest one's religion or belief, provided that such restrictions be prescribed by law and be necessary in a democratic society to protect public safety, order, health or morals, or the fundamental rights and freedoms of others, and are designed in accordance with the proportionality principle.

58. Eritrea has never sent a notification to the United Nations Secretary-General declaring a State of public emergency in the country, which in accordance with article 4 of International Covenant on Civil and Political Rights is the first required step to allow the Government of a State party to take measures derogating from some of their obligations under the Covenant. In fact, during its two Universal Periodic Reviews Eritrea confirmed that there was no state of emergency in the country.<sup>30</sup>

### 3. Other international instruments and obligations

59. In addition to the core human rights treaties, the Commission took into account other international obligations voluntarily subscribed by Eritrea. These include: the 1930 Forced Labour Convention (since February 2000); and the 1957 Abolition of Forced Labour Convention (since February 2000).

60. The Commission also based its findings, where applicable, on the international obligations of Eritrea under customary international law, which is the non-written source of public international law. Customary law is binding on every State, except where the State has constantly objected to a specific customary obligation.

<sup>27</sup> Human Rights Committee, General Comment 29 on state of emergency, para. 11 and 13.

<sup>28</sup> Article 14 of the ICCPR: right to due process and fair trial; In the context of international human rights law, the principle of proportionality implies that a reasonable balance should be struck between the aims pursued and the actions undertaken to achieve these aims.

<sup>29</sup> In this part, reference is only made to the specific provisions of the International Covenant on Civil and Political Rights regulating derogations to and restrictions of fundamental freedoms. Similar derogations and restrictions are usually recognized by other international human rights treaties, except under the African Charter on Human and Peoples' Rights that does not contain a general provision permitting the State parties to derogate from their responsibilities in times of emergency.

<sup>30</sup> In November 2009 and February 2014; A/HRC/13/2/Add.1. par. 31 and A/HRC/26/13/Add.1, para. 122.38. See chapter IV. C. on Eritrea's relations with the United Nations and other organizations.

#### 4. International instruments on the administration of justice

61. The Commission also referred to international human rights instruments concerning the administration of justice, which provide detailed guidance about more general rules. To conduct its assessment of the conditions of detention and treatment of prisoners in Eritrea, the Commission relied on the Standard Minimum Rules for the Treatment of Prisoners,<sup>31</sup> the Body of Principles for the Protection of All Persons under Any Form of Detention,<sup>32</sup> the United Nations Standard Minimum Rules for the Administration of Juvenile Justice,<sup>33</sup> and the United Nations Standard Minimum Rules for Non-custodial Measures.<sup>34</sup> It also referred to the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials,<sup>35</sup> the Basic Principles on the Independence of the Judiciary,<sup>36</sup> the Basic Principles on the Role of Lawyers<sup>37</sup> and the Guidelines on the Role of Prosecutors<sup>38</sup> during its consideration of the structure and functioning of judicial system in Eritrea. While these instruments are not formally binding on Eritrea, they reflect the general consensus of contemporary thought and the essential elements of the most adequate systems of today, to set out what is generally accepted as being good principle and practice in the treatment of prisoners and structure and functioning of the justice system.<sup>39</sup>

### III. Historical background

#### A. Pre-colonial and colonial times

##### 1. Pre-colonial time (until 1860)

62. In 2003, archaeologists discovered in Buya (or Buia),<sup>40</sup> a locality in the northern Danakil Depression of Eritrea, the remains of a woman dating from one and half million years ago. This discovery placed Eritrea near the dawn of human kind. Evidence of both agricultural cultivations and breeding of livestock in the region can be traced back to 5000 B.C. By the second millennium B.C., the Eritrean coast was almost certainly visited by Egyptian trading expeditions. Historians consider Eritrea as the most likely location of the

<sup>31</sup> Adopted by the first United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955 and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.

<sup>32</sup> Adopted by the General Assembly in resolution 43/173, Annex.

<sup>33</sup> Adopted by the General Assembly in resolution 40/33, Annex.

<sup>34</sup> Adopted by the General Assembly in resolution 45/112, Annex.

<sup>35</sup> Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August-7 September 1990, report prepared by the Secretariat (United Nations publication), chap. I, sect. B.2, Annex.

<sup>36</sup> Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August-6 September 1985: report prepared by the Secretariat (United Nations publication), chap. I, sect. D.2, Annex.

<sup>37</sup> Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August-7 September 1990, report prepared by the Secretariat (United Nations publication), chapter. I, sect. B.3, Annex.

<sup>38</sup> Ibid, chapter. I, sect. C.26, Annex.

<sup>39</sup> See the Preliminary Observations (1) of the Standard Minimum Rules for the Treatment of Prisoners..

<sup>40</sup> Both Tigrinya and Arabic, the two most common languages in Eritrea, lack formal systems of transliteration to the Latin alphabet. As a result, personal and place names are spelt differently in other languages. In this report, the Commission has used spellings most frequently appearing in public documents, publications, and media.