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**Statement by Sheila B. Keetharuth
MEMBER OF THE FORMER COMMISSION OF INQUIRY ON HUMAN RIGHTS IN ERITREA &
SPECIAL RAPPOORTEUR ON THE SITUATION OF HUMAN RIGHTS IN ERITREA**

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**Honourable Chair,
Distinguished Delegates,
Ladies and Gentlemen,**

Today, I will brief you in my capacity as a **member of the former Commission of Inquiry on Human Rights in Eritrea**. I will present the final report of the Commission (A/HRC/32/47), which was jointly presented to the Human Rights Council by the three Commissioners, Mike Smith as Chair, and Victor Dankwa and myself as members, in June 2016.

In its work, the Commission has been at all times guided by the principles of independence, impartiality, objectivity, transparency, integrity, and the principle of “do no harm”; the protection of witnesses and victims was a central concern for the Commission.

After the Commission submitted its first report to the Human Rights Council in June 2015 documenting a multitude of human rights violations in Eritrea, the Council unanimously approved – without a vote – a resolution and mandated the Commission to determine whether these violations might amount to crimes against humanity and to address the issue of accountability.

In its final report (A/HRC/32/47) submitted to the Human Rights Council in June 2016, the Commission has concluded that there are reasonable grounds to believe that Eritrean officials have committed **crimes against humanity** since 1991. The crimes of enslavement, imprisonment, enforced disappearances, torture, other inhumane acts, persecution, rape and murder have been committed as part of a widespread and systematic campaign against the civilian population. The aim of the campaign has been to maintain control over the population and perpetuate the leadership’s rule in Eritrea.

I wish to highlight some of the crimes the Commission has documented in its final report. With regard to the **crime of enslavement**, the Commission found that the violations relating to Eritrea’s military/national service programmes include arbitrary and indefinite duration, often for years beyond the 18 months set out in the law; their involuntary nature; the use of conscripts as forced labour, including manual labour; the inhumane conditions of service; the rape and torture often associated with these military/national service programmes; and the devastating impact on family life and freedom of choice. For these reasons, the Commission concluded that Eritrean officials have committed the crime of enslavement. Despite reported promises to the contrary, the Eritrean Government has taken no steps to address any of the problems associated with its military and national services programmes.

The Commission has also documented the extensive use of **arbitrary arrest and detention** across Eritrea. Detainees are very rarely brought before a judge after arrest, or tried; family members are hardly ever informed, as required by both Eritrean and international law. This enables the commission of the numerous cases of **enforced disappearance and rampant torture**. These acts are on-going and constitute crimes against humanity.

The Commission has also documented various acts of sexual and gender-based violence. In military training camps and in the army, some young women are used as slaves to perform domestic duties and are also raped. **Rape** is also committed in detention facilities by officials and guards, not only against a significant number of women, but also against men.

While some forms of torture are used against both men and women, other forms are gender-specific such as the beating of pregnant women in military training camps or in the army to induce abortion.

Instances of sexual violence against men were also documented by the Commission, including sexual torture done intentionally to ensure that these men are no longer able to reproduce.

The Commission found that the crimes it documented have been committed primarily, directly or indirectly, by State and ruling party officials, military commanders, and members of the national security office. The Commission has identified alleged perpetrators and has compiled files on those individuals to assist future accountability mechanisms.

The Commission noted **no material changes** with the potential of impacting positively on the situation of human rights in Eritrea: there is still no constitution, no parliament where laws are discussed, enacted, and where questions of national importance are debated; the indefinite national service persists, with its adverse impacts on individual rights; there is no free press and no NGOs, except for government-sponsored ones. The population lives in fear and the government still controls their daily life, making the enjoyment of all human rights and fundamental freedoms by Eritreans a remote possibility.

In Eritrea, the rule of law is not supreme. The Government and its agents must be subject to the law. People who have their rights breached must have access to a properly constituted, independent court which is staffed by professional judges who are not frightened of retribution. Ordinary people should not fear using the justice system because of arrests, detention or risk disappearance in the country's jails for doing so.

The Commission had asked, on several occasions, to visit the country and have unhindered access to sites and locations to gather information and conduct investigations, but was denied such an opportunity by the Government of Eritrea. The Commission's findings are based on detailed statements and information from over 833 individuals in over 13 countries, the overwhelming majority of whom have personally suffered human rights violations in Eritrea. We have been able substantially to corroborate the information provided by these witnesses. We also selected and contacted a sample of 500 individuals who wrote to us saying that our first report was inaccurate and read with care the written submissions of thousands more, all of which seemed to be part of a pro-government campaign.

The Commission has concluded that the Government of Eritrea has neither the political will nor the institutional capacity to prosecute the crimes we have documented. The Commission therefore recommended that the UN Security Council refer the situation in Eritrea to the prosecutor of the **International Criminal Court (ICC)** and that the **African Union establish an accountability mechanism**.

The Commission has also asked **Member States to prosecute or extradite** suspects on their territories, and that the Security Council impose **travel bans and freeze the assets** of individuals suspected of crimes against humanity.

The preamble of the ICC statute states that crimes that shock the conscience of humanity, such as those that we have documented in our report, threaten the peace, security and well-being of the world. Therefore, they must not go unpunished. We need collectively to bring the perpetrators of these crimes to justice not only for the sake of the countless number of Eritrean victims but to demonstrate that such behaviour is simply unacceptable anywhere in the world today.

My plea to you, Excellencies, on behalf of the three members of the former Commission of Inquiry on Human Rights in Eritrea, Mike Smith, Victor Dankwa and myself, is for you to pay heed to voices of victims of crimes against humanity in Eritrea.

Distinguished Delegates,

Let me now turn to my mandate as the **Special Rapporteur on the situation of human rights in Eritrea**. I am honoured to brief you for the fourth time in this capacity.

When extending my mandate in resolution 32/24, the Human Rights Council requested me to follow up on the implementation of the recommendations of the Commission of Inquiry in its report (A/HRC/32/47). I want to focus on several recommendations, some of which I have already noted earlier.

The Commission recommended that the African Union establish an **accountability** mechanism, 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.

During the coming year, I intend to focus on the concrete measures that should be taken to ensure accountability for the crimes identified in the report of the Commission. Plans are still in preliminary stages, and I will report back during the next session.

The Commission recommended that Member States and international organisations keep Eritrea under scrutiny until consistent and tangible progress regarding the human rights situation is evident, and ensure the **centrality of human rights in all engagement** with the State.

Several foreign delegations, journalists, and others have recently been invited to visit Eritrea and have painted a favourable picture of the country. Some of these signs of increasing engagement from Eritrea with the international community, including with OHCHR have been duly acknowledged both by the Commission of Inquiry on Eritrea and by the Special Rapporteur. However, we have been mandated by the Human Rights Council to investigate systematic, widespread and gross human rights violations that generally take place in isolated locations and behind closed doors, in places where casual visitors, journalists and diplomats do not have access, including places of detention. Regrettably, we have not noted any substantial change regarding the human rights situation in the country.

Since the beginning, the Government of Eritrea has refused to cooperate with the Special Rapporteur and the Commission. It has rejected findings of wide-ranging and gross human rights violations and crimes against humanity that continue to be committed to date. Without recognition of the serious situation, it is unclear how the Government will address the documented violations.

I hope that the strengthened links with Eritrea will offer space for Member States and international organisations, including the UN and OHCHR to discuss the Commission's findings and assist the Government to devise strategies on how to respect its obligations under international law. It is my considered view that following the publication in June 2016 of the findings of the UN-mandated Commission, **'business as usual'** is no longer an option. Eritrea's international partners should ensure that their engagement with the Government contributes to putting an end to the ongoing

violations and foster a marked improvement of the human rights situation of Eritrean children, women and men.

The Commission recommended that Member States provide Eritrean nationals seeking protection with **refugee status** in accordance with the provisions of the international law governing asylum, and the Convention relating to the Status of Refugees; and to respect the **principle of non-refoulement**.

Since the beginning of 2016, Eritrean asylum-seekers continue to constitute one of the largest African nationalities arriving in Europe. As of July 2016, Eritreans ranked 8th in the number of asylum applicants in Europe and second among African countries.

I note that the overall recognition rate for Eritrean asylum seekers in European countries remains considerable; between January and April 2016 it stood at over 90% in those European countries that receive the largest number of Eritrean asylum applications. However, I am very concerned about increasing reports of Eritreans being deported from third countries back to Eritrea, in a context where their situation upon return is not adequately monitored.

The findings of the Commission underscore that it is not safe to forcibly return those who have left Eritrea. The Commission, in its first report, documented that individuals forcibly repatriated, with a few exceptions, have been arrested, detained and subjected to ill-treatment and torture.

In this context, I was pleased to note the recent decision by the UK Upper Tribunal in a Country Information and Guidance case on Eritrea, which found that failed Eritrean asylum seekers of or approaching draft age who had left illegally were likely to be perceived on return to Eritrea as a draft evader or deserter from national service and be subjected to national service, and would thus face a real risk of persecution or serious harm by virtue of such service constituting forced labour contrary to Article 4(2) and Article 3 of the European Convention on Human Rights.¹

I appeal to Member States to grant Eritreans access to their territory and asylum procedures. I strongly reiterate my call to protect all Eritrean asylum-seekers from refoulement and to refrain from any forced repatriation to Eritrea or to third countries where they may still be at risk or unwelcomed.

Distinguished Delegates,

Let me briefly lay out how I intend to implement my mandate with a view to give effect to the recommendations of the Commission of Inquiry over the next few months:

- I will identify opportunities to promote the implementation of the recommendations and advocate for taking them forward with those engaging directly with the Government of Eritrea, namely Member States with a presence in the country, the United Nations Country Team and the broader UN system, including OHCHR; I will track the progress of this engagement and report back to the Human Rights Council;
- I intend to continue my cooperation with the other human rights mandates of the Human Rights Council;
- I will follow closely Eritrea's efforts to implement the recommendations made during its second Universal Periodic Review;

¹ United Kingdom: Upper Tribunal (Immigration and Asylum Chamber) [2016] UKUT 00443 (IAC), 11 October 2016, available at: <https://tribunalsdecisions.service.gov.uk/utiac/2016-ukut-443> [accessed 26 October 2016].

- I will continue updating the international community on any changes of the human rights situation in Eritrea and hope to be able to highlight concrete improvements for the people on the ground in my upcoming reports to the Human Rights Council;
- Last but not least, I will take up any reprisals against those that have cooperated with the Commission or with my mandate as Special Rapporteur and ensure that there is appropriate follow-up by relevant mechanisms.

The Commission has recommended that the **General Assembly** put the human rights situation in Eritrea on its agenda. I hope this august body will adopt a resolution with a view to submit the report of the Commission of Inquiry on Human Rights in Eritrea to the Security Council for a possible referral of the human rights situation in Eritrea to the International Criminal Court.

While working towards ensuring accountability of those responsible for the serious human rights violations, I hope that engagement with the Government of Eritrea will help to make a difference in the lives of the uncounted victims and the people of Eritrea while reiterating that the Commission of Inquiry's findings no longer allow for 'business as usual'.

I hope that the voices of the numerous victims that the Commission as well as the Special Rapporteur strived to document do not go unheard. There are high expectations that the international community will listen to their calls for justice.

I recall one Eritrean, one of those who had the courage to share his story with us. A young man, who was clearly emotionally scarred from his experience of enslavement in the military/national service, repeated instances of arbitrary arrest and imprisonment, and the pain of having been separated from his family for too long. After describing in detail the harrowing human rights violations he had been subjected to, we asked at the end of the interview if he would want to add anything. He responded that he wanted us to tell the world what was going on in Eritrea, so that the international community would do something to bring justice to the people of Eritrea and bring an end to the human rights violations there. Today, I am here to ask you to listen to his plea.

To conclude, I want to reiterate and reassure the Government of Eritrea, as well as Member States, that as the Special Rapporteur, I remain open for meaningful and constructive dialogue about all human rights in Eritrea; and I am available to visit the country prior to my written report to the Human Rights Council in June 2017.

I thank you for your attention.