

Check against delivery



**Statement by Sheila B. Keetharuth
SPECIAL RAPPORTEUR ON THE SITUATION OF HUMAN RIGHTS IN ERITREA**

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**Mr. Chairperson,
Distinguished delegates,
Ladies and gentlemen,**

It is my pleasure to brief you for the second time in my capacity as the Special Rapporteur on the situation of human rights in Eritrea.

My mandate was created during the 20th session of the Human Rights Council to address continued widespread and systematic violations of human rights and fundamental freedoms in Eritrea. The Council renewed my mandate in June 2014 (A/HRC/RES/26/24) and I was again requested to address and engage in an interactive dialogue with the General Assembly.

Today, I wish to use this opportunity to brief you on a number of points, namely, a few positive developments, the persisting challenges in the implementation of my mandate, and an update on the unchanged human rights situation in Eritrea resulting in mass departures of roughly 4,000 Eritreans on a monthly basis.

I congratulate the Government of Eritrea for its accession to the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) in September 2014. I hope this is an indication of Eritrea's willingness to comply with the prohibition of torture under international law. I look forward to seeing Eritrea's implementation of the CAT by taking the required effective legislative, administrative, judicial and other measures to prevent acts of torture in the country. However, Eritrea did not accept the inquiry procedure under Article 20 of CAT, which provides for an inquiry when the Committee Against Torture obtains reliable information containing well-founded indication that torture is being systematically practised in the territory of a State Party. Art. 20(3) stipulates that such an inquiry may include a visit to the territory. I urge Eritrea to accept the CAT's Art. 20 Inquiry Procedure. I encourage Eritrea to accede to the Optional Protocol to the CAT, the OPCAT, which establishes "a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment".¹

Eritrea underwent its second Universal Periodic Review (UPR) on 3 February 2014. I have welcomed Eritrea's high-level engagement in the review of its human rights record. However, Eritrea's poor performance with regard to implementing the recommendations made during the first review in 2009 and the selective approach to recommendations during the second review demonstrate a lack of goodwill in addressing the serious human rights situation in the country. I encourage the Government of Eritrea to reconsider accepting the remaining recommendations, namely those dealing with torture, particularly following accession to the CAT.

During the UPR, Eritrea highlighted the progress made towards achieving seven out of the eight Millennium Development Goals; however, this is extremely difficult to verify as no independent monitors have been able to cross-check or verify the data used by the Government. I am also concerned about whether the Government policies aimed at achieving the Millennium Development Goals are in line with Eritrea's obligations under international human rights law.

I also note with satisfaction that in 2012, Eritrea submitted reports to the Committee on the Rights of the Child and the Committee on the Elimination of All Forms of Discrimination against Women. I encourage the Government to submit all other pending reports to human rights treaty bodies, notably

¹ Art. 1 OPCAT

the initial ones. By way of example, Eritrea's initial report under the International Covenant on Economic, Social and Cultural Rights was due on 30 June 2003.

Excellencies,

I regret having to report that the Eritrean Government continues to deny me access into the country. Without a visit to Eritrea to hold consultations with relevant Government officials and stakeholders, my only option, though not my preferred one, will be to continue assessing the human rights situation by listening to Eritreans residing outside of the country who have been victims of human rights violations whilst in Eritrea.

Since taking up my mandate, I have sent visit requests to 23 countries. I thank the Governments of Germany, Italy, Malta, Switzerland and Tunisia for their invitations, which allowed me to meet with Eritrean refugees and migrants on their territories for my second round of reporting. I have two outstanding invitations which, should the security situation permit, I am keen to accept (namely by Libya and South Sudan). I appeal to the other 14 Member States that have still not responded or responded negatively, to grant me access in order to facilitate the delivery of my mandate.

Distinguished Delegates,

Let me now turn to the findings of my recent visit to Italy (22 – 26 September 2014) and to those in my second report. At the outset, I would like to indicate that many Eritrean refugees and migrants interviewed during my field missions described severe human rights violations that they experienced along the escape routes. Although those violations have not been the focus of my reports, they require urgent and in-depth examination in another context.

Based on my findings, I continue to be concerned about the human rights situation in Eritrea, where persisting violations are compelling thousands of Eritreans, many of them very young, to seek refuge outside their country. Eritreans are escaping systematic and widespread human rights violations, namely indefinite forced conscription and violations in the context of the national service, arbitrary arrests and detention, incommunicado detention, inhumane prison conditions, extrajudicial killings, disappearances and torture, especially in the context of the attempted coup in 21 January 2013, dubbed as the "Forto incident". An unknown number of people, though the numbers quoted are as high as 800, including public figures, were reportedly arrested and detained, with no information as to their whereabouts, nor have they appeared before any court of law.

I have also collected testimonies detailing the deteriorating economic situation; many families would find it difficult to survive without support from relatives and friends in the diaspora. According to the recently released Global Hunger Index (2014), Eritrea is classified amongst those countries where the levels of hunger are "extremely alarming". Poor health care and lack of adequate medication leaves treatment in neighbouring countries as the only option, yet unaffordable for most. Power cuts, fuel and water shortages are also common occurrences.

Today, I want to focus on two issues, namely: violations committed in the context of the national service and the alarming refugees situation, including refugee children.

(1) National service

The national service programme was formalised by Proclamation No. 11/1991. There are several laws and proclamations on the subject matter, though the most important one to note is Proclamation No. 82 of 1995. In Proclamation No. 82 of 1995, national service was viewed as a means of giving effect to the "historical responsibility" that "present and future generations" shoulder to preserve "a free and

sovereign Eritrea as a legacy of thousands of martyrs” (preface). It took a relatively short period of time for national service to veer from its “noble objective” as a nation-building programme to become one of the main drivers spurring thousands of Eritreans to flee the country, despite the perils encountered on escape routes and a future fraught with uncertainty in foreign lands.

The indefinite nature of the national service goes beyond the standard length stipulated in the Proclamation and thus deprives conscripts of their liberty, which is in direct violation of article 9 of the International Covenant on Civil and Political Rights. In its jurisprudence, the Human Rights Committee stated that during a period of military service, restrictions exceeding the exigencies of normal military service or deviating from the normal conditions of life within the armed forces amount to deprivation of liberty.

The military police carries out routine conscription round-ups, known as “*giffas*”, in homes, workplaces, streets or other public areas, with the aim of rounding up persons considered fit to serve, including draft evaders and those who escaped from national service, as well as minors. Opposing such a round-up is fraught with danger, as deadly force is permitted against those resisting or attempting to flee, in violation of the fundamental right to life, liberty and security of the person.

Women in the national service: The military draft also applies to women. Women are particularly vulnerable and at risk of sexual violence during military service by both officers with responsibilities in the chain of command or by peers. Army commanders force women to submit to their sexual advances; those who resist are usually punished in different ways, including psychological violence, through harsh treatment; assignment to unduly heavy military duties or denial of leave to visit family. In addition to their regular military duties, women are also expected to perform domestic chores, such as cooking and cleaning for military commanders, who often use female conscripts as maids.

Militarisation of the final year at school: Grade 12 students are conscripted into the armed forces and undergo military training at the Sawa Military Training Camp. Some Grade 12 students may be below the age of 18, as the Grade 12 requirement is not based on age, but on performance in school; many students reach it before their 18th year, including those who may have skipped earlier grades. Students, both male and female, who drop out of school before reaching Grade 12, are likely to receive “a call” to report for military training, through the local administration. Minors, some as young as 15 years old, are often picked up during round-ups and sent for military training to Wi’a and other places, with little prospect of release because of their young age, even if parents provide documentation, such as a birth certificate, as proof that the child is underage.

Penalties for draft evasion: The penalties for draft evasion and desertion can be up to five years imprisonment. In practice, draft evaders, as well as deserters who are caught or deported back to Eritrea face heavy punishment, including lengthy periods of detention, torture and other forms of inhumane treatment. After the period of detention, they are forced back into the army.

In cases where draft evaders and deserters remain untraceable, members of their families are often punished instead, in line with the “guilt by association” policy. Such reprisal can take the form of an obligation to pay 50,000 ERN (approximately USD 3,350), a sum that most Eritreans cannot afford, and/or a family member may be detained for an undefined period of time until the amount is paid.

Conscientious objection: Under international law, the right to conscientious objection to military service is derived from article 18 of the International Covenant on Civil and Political Rights, to which Eritrea has been a party since 2002. States that practice conscription must either offer exemption for conscientious objectors or ensure the availability of an alternative non-punitive civilian service. Eritrean law does not provide for conscientious objection and many Eritreans are forced into military service, despite their conscientious objections based on religion or belief. Refusal to serve is punished

by detention in harsh conditions. Members of certain religious groups, unrecognised by the state, are subjected to persecution and discrimination as a means of coercion into military service. At least 56 Jehovah's Witnesses are currently incarcerated in Eritrea, including three who have been in jail since 1994 for refusing to serve in the army.

National service constituting forced labour: A number of human rights instruments contain standards and principles relating to forced labour². Under international human rights law, conscription, per se, is not covered by the prohibition of forced labour. Indeed, the International Covenant on Civil and Political Rights states that “no one shall be required to perform forced or compulsory labour” (art. 8, Para. 3 (a)), and for the purposes of that paragraph, the term “forced or compulsory labour” shall not include “any service of a military character” (art. 8, Para. 3 (c) (ii)). However, national service in Eritrea does not constitute service of a purely military character. Furthermore, conscription for military service is normally for a reasonable period of time, from one to three years, and not of an indefinite character. Since the length of national service in Eritrea is of an indefinite nature, it effectively constitutes forced labour as provided for in article 8, paragraph 3 (a) of the Covenant.

The ILO Committee of Experts has, on several occasions, discussed whether national service in Eritrea constitutes forced labour. Article 2 of ILO Convention No. 29 defines forced labour as “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily”.

National service in Eritrea is involuntary in nature; conscripts are recruited without their consent to perform military service. The compulsory nature of national service in Eritrea is further highlighted by the “*giffas*”, which are aimed at rounding up those who try to avoid conscription. Furthermore, the lack of conscientious objection demonstrates the absence of any element of voluntariness. As of the age of 18 years, Eritreans are obliged to carry out national service, under threat of a penalty. Conscripts are not free to leave national service before they have been officially demobilized. However, there is no comprehensive demobilization programme in Eritrea, and the majority of conscripts serve in the military for most of their working lives for a paltry salary.

Excellencies,

(2) Refugees, including refugee children

The distressing human rights situation has spurred thousands of Eritreans to flee despite life-threatening risks faced during escape or during flight. In recent months, we have seen a considerable increase in Eritrean asylum seekers and refugees crossing into neighbouring countries - 4,000 fleeing on a monthly basis, compared to 2,000 last year. I also want to highlight the significantly higher numbers of Eritreans arriving in Europe. Between January and September 2014, 32,537 Eritreans arrived in Italy by boat; with Syrians and Eritreans constituting the largest group of arrivals.

In June 2014, UNHCR noted that the number of Eritrean asylum seekers reached unprecedented levels among the group of 44 industrialized countries. The figure was at its highest with close to

² The Universal Declaration of Human Rights states that no one shall be held in slavery and servitude (art. 4) and further states that everyone has the right to free choice of employment (art. 23, Para. 1). Those rights are further developed in other United Nations instruments, including the International Covenant on Civil and Political Rights (art. 8) and the International Covenant on Economic, Social and Cultural Rights (art.6, Para. 1), as well as in regional instruments, including the African Charter on Human and Peoples' Rights (art. 5). Forced labour is also prohibited by the ILO Forced Labour Convention (No. 29) and the Abolition of Forced Labour Convention 1957 (No. 105), both of which Eritrea has ratified.

19,000 asylum applications registered during the first half of 2014, more than three times more (+229 per cent) than during the first two quarters of 2013 (5,700 claims) and 18 per cent higher than during the last two quarters of 2013 (16,000). The increase in Eritrean asylum claims was particularly significant during the third quarter of 2014, when 14,600 applied for asylum in the 44 industrialized countries, the highest quarterly level for this nationality ever recorded.

By September 2014, 2,498 unaccompanied Eritrean children had registered with UNHCR in Ethiopia. At the same time, 1,010 unaccompanied Eritrean children were registered with UNHCR in Kassala, Sudan, with approximately 20 per cent were girls. However, these figures do not include the many unaccompanied children coming indirectly from Eritrea through Ethiopia who rarely register with UNHCR in Sudan. Most unaccompanied children stay less than three months in Kassala before continuing their journey. By mid-October, more than 4,000 Eritrean minors had arrived in Italy since the beginning of the year, including more than 3,200 children travelling without their parents.

These children risk their lives, travelling on their own or with friends, to escape from looming military training and conscription, to join family members or in the hope of finding better circumstances across borders. They are very vulnerable and run the risk of exposure to abuse and violence, including falling into the hands of traffickers and smugglers who ask for ransoms from their families. The numbers provided only reflect those who make it to Europe. We do not know how many children perish along flight routes. In all circumstances, unaccompanied minors require special protection.

Distinguished delegates,

The human rights situation in Eritrea still remains alarming and I reiterate my call on the Government of Eritrea to:

- Bring the provisions of the 1995 National Service Proclamation No. 82/1995 and the Warsai Yikaalo Development Campaign in line with international human rights standards, especially in line with the Convention against Torture;
- Discontinue the indefinite national service, demobilize those who have completed the 18 months of service originally envisaged, and stop using national service conscripts who serve more than 18 months as forced labour;
- Take concrete steps to ensure that children are not being conscripted into the military;
- Promptly investigate allegations of extrajudicial killings, torture, rape and sexual abuse within the national service, and bring perpetrators to justice;
- Provide for conscientious objection by law, in accordance with international norms;
- Put an immediate end to human rights violations committed against conscripts during national service, including freedom of expression and freedom of religious practice;
- Stop the practice of “guilt by association” and the punishment of the families of draft evaders and deserters, including exacting payments of 50,000 ERN;
- Immediately release the members of the “G-15” and the journalists arrested in 2001, as well as all other political prisoners;
- End restrictions on the freedom of movement within Eritrea and travel outside the country without requiring an exit permit and treat returnees according to the principles of human rights enshrined in international law.

To the international community:

- Ascertain that all development cooperation undergoes stringent due diligence processes to ensure that it fully respects international human rights norms and standards;

- Businesses investing in Eritrea should take into consideration the United Nations Guiding Principles on Business and Human Rights, in particular principle 12 on the responsibility of business enterprises to respect human rights, and ensure that these norms are applied in the recruitment of their workforce, so as to prevent the use of forced labour in the course of their operations;
- Bilateral and multilateral actors, including the United Nations, should advocate for the release of all political prisoners and those detained for their religious beliefs; call for an immediate stop to incommunicado detention; for those who have been detained without charges to be promptly brought before a judge or released; and for access of international monitors to prisons;
- Strengthen efforts to ensure the protection of those fleeing Eritrea, in particular unaccompanied children, by respecting the principle of non-refoulement and by granting them at least temporary refuge or protection;
- Promote legitimate channels of migration from Eritrea so as to reduce clandestine channels and promote inter-country cooperation to counter human smuggling and trafficking.

Ladies and gentlemen,

The above-described violations have a severe human impact and relate to a poignant human story. No matter what the circumstances are, people must be treated with humanity and with respect for the inherent dignity of the human person.

Eritrea's "no-war-no peace" rhetoric provides the context for: (a) the non-implementation of the Constitution that was ratified by the Constituent Assembly in 1997; (b) withholding the organization of free and fair elections at the national level; (c) severe restrictions on civil, political, economic, social and cultural rights, as well as a lack of economic opportunities; (d) excessive militarization of society, with a high proportion of the population either in indefinite national service or the People's Militia; and (e) forced migration.

The violations described are committed with impunity. If structures and procedures were in place, victims would not feel confident that perpetrators would be brought to justice. To date, no perpetrators have been brought to justice. This is why I welcome the establishment of a Commission of Inquiry by the Human Rights Council during its 26th session to investigate all alleged violations of human rights in Eritrea, as outlined in my reports. It is a historic moment for the thousands of victims of human rights violations in Eritrea. The Council responded to their call for justice and I hope the Commission of Inquiry will pave the way to establishing accountability for these violations, especially in view of the continued non-cooperation of Eritrea with my mandate and other UN mechanisms.

Eritrea deserves the development it strives for as a country and all Eritreans should be able to claim and enjoy their human rights, be it civil and political or economic, social and cultural. I will continue to deliver on my mandate with renewed dedication. I reiterate that my mandate offers the opportunity for a frank, meaningful and open dialogue on the human rights situation with the Government of Eritrea and I remain available for such a dialogue.

I thank you for your attention.