



DEFENDDEFENDERS

East and Horn of Africa Human Rights Defenders Project

Background paper: Options for the Special Rapporteur on Eritrea

Ahead of the 38th regular session of the UN Human Rights Council (hereafter “the Council” or “the HRC”), DefendDefenders and a large group of national, regional and international civil society organisations [urged](#) member and observer states of the Council to support and co-sponsor a resolution that accurately reflects the gravity of the human rights situation in Eritrea, extends the mandate of the UN Special Rapporteur, and sets out a framework for needed reforms to improve the human rights situation in the country and advance accountability.

The present paper elaborates on this letter and outlines some of the options for the current and the next Special Rapporteur on the situation of human rights in Eritrea, focusing on ways to advance accountability for the crimes under international law and violations of human rights, some of which may amount to crimes against humanity, that have been and continue to be committed in the country.

Developments on the ground¹

In June 2016, the Commission of Inquiry (CoI) on Eritrea established by the Council in its resolution 26/24² presented its findings and recommendations.³ Since the Council last took action on the human rights situation in Eritrea, at its 35th regular session (June 2017),⁴ the systematic, widespread and gross violations documented over the years by its mechanisms, including the Special Rapporteur (SR) on the situation of human rights in Eritrea and the CoI, some of which may amount to crimes against humanity,⁵ have continued unabated. As the SR has highlighted, the Government has shown no willingness to start addressing them. In light of its findings, the CoI urged a referral of the Eritrean situation to the International Criminal Court (ICC).⁶

As the abovementioned NGO letter highlights, at the last HRC session, during an enhanced interactive dialogue on Eritrea, Deputy UN High Commissioner for Human Rights Kate Gilmore noted that: “In 2016, the Commission of Inquiry on Eritrea found reasonable grounds to believe that crimes against humanity, namely, enslavement, imprisonment, enforced disappearance, torture, other inhumane acts, persecution, rape and murder, had been committed since 1991. The Commission noted that despite the State’s increased engagement with the international community, there was no evidence of progress in the field of human rights. I regret to report that this state of affairs remains unchanged.”⁷

¹ For more analysis, see www.defenddefenders.org/country/eritrea/; www.hrw.org/africa/eritrea/; www.amnesty.org/en/countries/africa/eritrea/; monitor.civicus.org/country/eritrea/; and www.article19.org/resources/eritrea-nation-silenced/

² ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/26/24

³ www.ohchr.org/EN/HRBodies/HRC/CoIEritrea/Pages/2016ReportCoIEritrea.aspx The CoI’s detailed findings are available at: www.ohchr.org/Documents/HRBodies/HRCouncil/CoIEritrea/A_HRC_32_CRP.1_read-only.pdf

⁴ ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/35/35

⁵ www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20067&LangID=E

⁶ www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20779&LangID=E

⁷ The meeting summary can be found at: www.bit.ly/2Fc69BX

In her most recent statement to the Council, the SR on Eritrea, Sheila B. Keetharuth, similarly detailed violations pertaining to the right to life, including deaths in custody for which responsibility “falls squarely on Government authorities,” the right to liberty and security of the person, freedom from arbitrary arrest and detention, freedoms of expression, assembly and association, and freedom of religion or belief, including the harassment, mistreatment, torture and detention of members of unrecognized religions.⁸

These continuing violations present a systematic character, meaning, in the words of the SR, that “they cannot be the result of random or isolated acts by the authorities” and that they occur in a country ruled “not by law, but by fear.”⁹

Following up on findings on Eritrea

DefendDefenders believes that the gravity, scale, and nature of the ongoing violations call for justice. Victims, including those who live inside the country and those who have fled it, deserve redress.

As domestic avenues for such redress are non-existent within Eritrea,¹⁰ the international community must continue to act with a view to ending the generalised impunity that prevails in the country. In this context, it is essential for the Council, the SR, and the Office of the High Commissioner for Human Rights (OHCHR) to keep advancing accountability, in line with calls for the operationalisation and implementation of the recommendations made to Eritrea, including to develop “specific and time-bound benchmarks” to assess substantive change.¹¹

In this regard, the Special Rapporteur could, taking into account existing international law and prevailing state practices with regard to accountability:

- (i) Compile a list of recommendations made by UN human rights bodies and mechanisms to Eritrea in relation to torture and other cruel, inhuman or degrading treatment or punishment, including in detention; enforced or involuntary disappearances; and enslavement, including human rights violations committed in relation to indefinite national service; and*
- (ii) Detail options and recommendations to seek accountability for human rights violations in Eritrea, including through practical mechanisms to secure truth and justice for the victims of human rights violations and abuses.*

This move would not be resource-intensive, as it would not require the establishment of a new, *ad hoc* mechanism. The SR would draw upon the recommendations that the current mandate holder and the CoI, as well as other UN bodies and mechanisms, including special procedures and treaty bodies, have made in relation to Eritrea, and upon in-house OHCHR expertise on accountability, justice, reparation, and guarantees of non-recurrence.

The SR¹² could detail options and recommendations for accountability, including:

- (a) at the *domestic* level (that is to say: in other states, through the use of national, territorial and/or universal jurisdiction (i) over cases involving perpetrators or victims holding dual nationality, (ii) over perpetrators finding themselves on the territory of states that are willing to exercise jurisdiction, and/or (iii) on the basis on universal jurisdiction, over cases involving any Eritrean national);
- (b) at the *regional* level, including through African Union mechanisms; and
- (c) through *international* mechanisms, including the ICC.

The SR could also detail the legal and institutional framework needed to advance accountability at these various levels.

⁸ www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22821&LangID=E

⁹ www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16055&LangID=E

¹⁰ Avenues for redress and accountability in Eritrea are non-existent, as the authorities have proven unwilling to bring perpetrators of violations to justice and to provide victims with reparation, justice, and guarantees of non-recurrence.

¹¹ ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/35/39, para. 61.

¹² The current mandate holder will complete her second, and final, three-year term in October 2018. A new mandate holder will be appointed at the 39th session of the UN Human Rights Council and start his/her work in October 2018.

Additionally, the Council could use a two-step strategy and invite the mandate holder, once s/he assesses that the Eritrean Government has taken minimal measures of engagement and cooperation on issues relevant to the human rights situation in Eritrea, to identify benchmarks for progress and to develop a time-bound action plan for the implementation of these benchmarks.

A long-term strategy regarding accountability necessitates paying close attention to the overall context, including in relation to civic space. The mandate holder's work on follow-up to the findings of HRC mechanisms does not preclude ongoing work on addressing systemic issues relating to, inter alia, freedom of opinion and expression, freedom of peaceful assembly and association, and freedom of religion or belief in the country, which are systemic. Holding those who are responsible for violations and abuses accountable and addressing systemic issues, including in relation to civic space, go hand in hand.

Importance of the Special Rapporteur's mandate

The SR's mandate remains an indispensable mechanism to advance the protection and promotion of human rights in Eritrea. The mandate holder continues to fulfil an invaluable role by monitoring the dire situation in the country, shining a light on violations, providing a crucial platform to help amplify the voices of victims, and offering Eritreans an opportunity to find long-lasting solutions for the respect of their human rights.

A dedicated and holistic country-specific special procedure under the Council's agenda item 4 provides a number of advantages which the Council should continue to provide itself with:

- *Institutionalisation*: The human rights situation in Eritrea should continue to be inscribed on the Council's agenda and discussed regularly, ensuring sustained attention to it, documentation of, and investigation into, cases and patterns of violations, monitoring of human rights developments in the country, public reporting and debates, and follow-up to previous Council action.

- *Protection*: A special procedure, despite the Government's refusal to grant the mandate holder access to the country, provides protection to victims of violations, those who are or may be at risk, and Eritrean citizens, both inside and outside the country, through examining individual communications and allegation letters, sending communications and urgent appeals to the Government, gathering information and testimonies, including through information and communication technology means and meetings in countries where Eritrean nationals have sought refuge.

- *Expertise*: The Council should continue to receive analyses and recommendations formulated by a country-specific expert, including with regard to human rights reform, including priority areas, the identification of legal and practical obstacles to such reform, and immediate steps to be taken to bring Eritrea's legal framework, policies and practices in line with its legal obligations.

- *Engagement*: A country-specific special procedure is in a position to enhance dialogue with a range of national, regional and international stakeholders and to provide technical assistance and capacity-building to the governments of all States concerned, including those whose legal systems may be involved in accountability efforts and whose prosecutorial services may exercise jurisdiction over Eritrea-related cases, as well as with civil society.

- *Visibility*: A Special Rapporteur is able to disseminate country-specific information, analyses and recommendations, to enhance the visibility of UN work regarding Eritrea, to voice concerns from a human rights perspective, and to make sure that human rights issues are central to any international discussion on Eritrea. This includes reminding States that refugee outflows are intimately linked to human rights violations committed in the country where asylum-seekers come from.

No change in the Eritrean Government's behaviour

Since Eritrea was first considered by the Human Rights Council, the Government of Eritrea has refused to cooperate with the mechanisms the Council set up, including the Special Rapporteur and the CoI. At the March 2018 enhanced interactive dialogue, Eritrea was not present to take the floor as the concerned country, which amounts to a *de facto* boycott of a debate on its own human rights situation.

This was not an isolated incident. Since it started to be subjected to the Council’s attention, the Eritrean Government has consistently refused to cooperate with HRC mechanisms, rejecting “baseless allegations” made against it and referring to the CoI as “ignorant” and motivated by “a sinister political agenda.” The Eritrean representative also called the CoI’s first report “a travesty of justice.”¹³

Its cooperation with other international bodies, mechanisms or agencies has been extremely selective. Eritrea invited OHCHR for a short-term mission, but has denied special procedures access to the country (see below). In February 2018, for the first time, the Government submitted a periodic report to the African Commission on Human and Peoples’ Rights (62nd ordinary session (Nouakchott, Mauritania, 25 April-9 May 2018)).¹⁴ The report included neither government acknowledgment of international expert findings with regard to the country’s human rights situation nor indication that the Government was ready to change its course of action, address systemic human rights issues, and hold perpetrators of violations and abuses accountable. The Government delegation present in Nouakchott was unable to substantively address any of the approximately 70 questions raised by African Union Commissioners.

But Eritrea did not content itself with failing to cooperate with the Council and the mechanisms it set up. It has also deliberately attacked, defamed and threatened human rights defenders, civil society organisations and independent UN experts, including the SR and members of the CoI. In June 2015, as members of the CoI travelled to Geneva to present their initial findings, they were followed by pro-government protesters. As the CoI’s Chairperson put it: “We had the opportunity to experience, in a token way, [a campaign of intimidation] in Geneva, where we were followed in the streets and in our hotels and vilified in blogs on line where the words of our report have been twisted and misquoted.” He added: “Of course this is trivial compared to the day to day experience of people in Eritrea itself, but it is indicative of a determination on the part of the authorities to control anyone they perceive as a critic.”¹⁵ The incident, during which members of the Commission were physically intimidated, triggered a firm response from the President of the Council, Mr. Joachim Rücker, who denounced “various threats and acts of intimidation [carried out] in their hotel and in the streets since their arrival in Geneva.” Police had to guard all three members of the Commission.¹⁶

In 2017, Eritrea’s Ambassador referred to Ms. Keetharuth as a “naked Empress with no clothes” and accused her of acting like a “Viceroy over Eritrea,” and carrying out a witch-hunt.¹⁷

Since then, although the narrative that representatives of the Eritrean Government have used has evolved (from the denunciation of “plots” and “lies” to claims about positive change on the ground), the Government has chosen to walk out of the Human Rights Council plenary room. Nothing indicates that it intends to meaningfully cooperate with the Council and its mechanisms, including the country-specific Special Rapporteur, and to allow them full, unfettered access to its territory.

At the time of writing, pending visit requests by UN special procedures included requests from the Special Rapporteurs on torture and other cruel, inhuman or degrading treatment or punishment (request in 2005; reminders in 2007 and 2010); freedom of religion or belief (request in 2004; reminders in 2005 and 2006); extrajudicial, summary or arbitrary executions (request in 2010); the right to food (request in 2003); and freedom of opinion and expression (request in 2003; reminders in 2005 and 2015).

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The Human Rights Council is at a critical juncture with regard to its response to Eritrea’s abysmal human rights situation. At its 38th session, the Council should make sure that it builds upon the work that the SR, the CoI, OHCHR and itself have carried out over the years, including by

¹³ www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16136&LangID=E; www.reuters.com/article/us-eritrea-un/police-in-geneva-guard-u-n-investigators-into-eritreas-human-rights-after-threats-idUSKBN0P427S20150624

¹⁴ www.achpr.org/states/eritrea/

¹⁵ www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16731&LangID=E

¹⁶ www.reuters.com/article/us-eritrea-un/police-in-geneva-guard-u-n-investigators-into-eritreas-human-rights-after-threats-idUSKBN0P427S20150624

¹⁷ www.africanews.com/2017/11/24/eritrea-burundi-slammed-for-threatening-un-human-rights-experts/

making sure that all relevant stakeholders are reminded of the nature and legal qualification (i.e., crimes against humanity) of the violations committed, of the prevailing impunity, and of the absence of any positive change on the ground. It should continue to consider Eritrea under its agenda item 4, which is dedicated to situations of gross human rights violations.

While rationalising and streamlining its resolutions on Eritrea, it should seek to extend the mandate of the SR and advance accountability by keeping the latter at the centre of its concerns.

The SR could additionally contribute to accountability efforts by (i) compiling a list of recommendations made by UN human rights bodies and mechanisms to Eritrea in relation to crimes under international law and violations of human rights and fundamental freedoms; and (ii) detailing options and recommendations to seek accountability for human rights violations in Eritrea, including through practical mechanisms to secure truth and justice for the victims of human rights violations and abuses.