

CRITIQUE OF THE HUMAN RIGHTS COMMISSION ON ERITREA

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By Asmarom Legesse, Ph.D. (Harvard)

Emeritus Professor of Anthropology

Boston & Northwestern Universities and Swarthmore College

Allow me to express my gratitude for giving me the opportunity to address members of this august body and to Lord Rea and Lord Avebury for their efforts and attempts to hold the meetings at the House of Lords and especially despite Lord Avebury's grave illness. The first meeting that was scheduled was cancelled at short notice, due to the concerted effort of Baroness Kinnock and to the dismay of the Eritrean Diaspora. We remain however always deeply indebted to Lord Avebury for his sustained support over the years.

The Commission of Inquiry (COI) and the Mandate of the Special Rapporteur

I preface my remarks by indicating that this paper is concerned with the research carried out by Sheila Keetharuth as the Special Rapporteur for the United Nations, pursuant to the mandate of the Human Rights Council, the research became the basis of the Commission of Inquiry's report on human rights in Eritrea. The two versions of the report are referred to as COIR, full version or abridged.

Under the heading of "Mandate and Methodology", the mandate is defined as follows:

In compliance with resolution 26/24 the commission of inquiry investigated the human rights violations described by the Special Rapporteur in her reports, including extrajudicial killings, enforced disappearances, and incommunicado detention, arbitrary arrest and detention, torture, violations committed during compulsory national service, including those affecting children's rights, and restrictions on the freedoms of expression and opinion, assembly, association and religious belief and movement.

The list of human rights violations that were included in the mandate are the result of prior research conducted by Keetharuth. The source of the said list, whether empirical or mandatory, is clearly focussed on the *International Covenant on Civil and Political Rights* and takes no consideration of the extensive work of the Government of Eritrea in the area of *Economic, Social and Cultural Rights*.

Judging from specific manner that Keetharuth carried out her mandate, it is clear that she framed her role not as an *investigator*, indicated in the mandate, but an advocate, indeed not even as an *advocate* but as a *prosecutor*, whose single-minded and sole purpose was to gather evidence that would incriminate the Government of Eritrea. There is no indication that she cared about *justice*, or fairness, particularly in regard to the underlying conflict between Ethiopia and Eritrea which is at the

¹One day before the date of the meeting, the venue was cancelled by Baroness Glenys Kinnock, a member of the House of Lords, after invitations had been sent out to all the participants and I arrived in London from the United States for that purpose. It was done without explanation and without apology. The meeting was then held by the Eritrean participants in a large London pub, the Coronet, which became the last bastion for free assembly available to us, beyond the reach of Baroness Kinnock, a sad day for Britain's venerable parliamentary traditions and the historic defence of freedom of speech and assembly in the United Kingdom. This will be the first time that readers will view this paper intended to be presented in that scuttled meeting.

deepest root of what she is investigating. Keetharuth does not purport to have conducted an *objective* study for the simple reason that there are no *pros* and *cons* in the inquiry or in the resulting analysis. If there are any *pros* in her presentation they are oblique and dismissive references that completely belittle Eritrea's achievements concerning *Economic, Social and Cultural Rights* and *Millennium Development Goals*, two important UN documents regarding fundamental human rights that are largely ignored by Ms. Keetharuth. *De jure*, her role was defined as an “investigator” a role which requires some objectivity and impartiality. *De facto*, her role is that of a “prosecutor” a role which does not require that the work be impartial, no obligation to reconcile divergent but potentially complementary perspectives reflected in human rights treaties. If the Special Rapporteur's role is indeed that of prosecutor, the accused would then be presumed *innocent until proven guilty* and would be entitled to have ample *opportunity for defence*. At an early stage of her research, Ms Keetharuth welcomed Eritrean scholars and academics to a breakfast meeting held in New York City. From that meeting we came to the realization that she was convinced of Eritrea's guilt and we assumed that the rest of her work would be devoted to buttressing that preconceived premise. That turned out to be an accurate assumption.

At the end of the project, in closing the period of its mandate, the Commission conducted its televised meetings *as if it were a court*, with a powerful prosecution team in place but *no defence team* anywhere. At the end of the long sessions Eritrea—the “country concerned”—was given very limited time to respond, an opportunity which was not commensurate with the time allotted to the prosecutors. That cannot, by any stretch of the imagination, be construed as fulfilling the requirement of *due process of law* and the *right to defence*. We believe however that her mandate, as presented at the start of the document, was to investigate, not to prosecute, in which case the issue of *impartiality* becomes critical.

The aspect of the study that needs to be verified is the evidence the Special Rapporteur obtained from *asylum seeking refugees*. It does not seem that established asylees were as important a part of her study. In any case, she provides no statistics on the ratio of these two critical populations. As a result, it is not possible to determine the extent to which the sample was skewed in favour of asylum seekers.

Keetharuth avoided contact with the *mainstream Eritrean communities* around the world. Most of these communities have branches of the *National Union of Eritrean Women*², an association, founded in 1979, which fought for women's rights in Eritrea for decades and continues to do so today. Keetharuth makes numerous allegations about the status of women in Eritrea without ever approaching or observing any of the tens of thousands members of the National Union of Eritrean Women in the Diaspora. At the same time, Keetharuth and the COI have collaborated with or gathered testimony from an Eritrean *opposition group, based in Pretoria, South Africa*, funded by US agencies. They provided Keetharuth with lists of informants. This is a *subversive group* unabashedly devoted to bringing about regime change in Eritrea and to destabilize the Eritrean Government by launching a well-crafted *campaign of disinformation*. Why then is she disappointed that she was not “invited” to the country.

Keetharuth has systematically searched for evidence that can help her to incriminate the Government of Eritrea. At the same time she ignored all evidence concerning the Government's effort to realize the people's right to *food security, universal primary education for boys and girls, universal healthcare* in nationwide hospitals and clinics, *universal vaccination programs for children* that have greatly *reduced child mortality rates*. Numerous dams and micro dams were built and *water resources* and water closets were provided in most villages. These facilities contributed greatly to the *hygienic standards* of the population and the prevention of *water-borne diseases*. Furthermore irrigation and drip-irrigation projects using water drawn from wells or captured in dams

² Information about NUEW is readily available through the internet.

allowed communities to continue agricultural production in spite of the inevitable periods of droughts. Huge silos were built that can store grains to be used in lean years. The *achievements of Eritrea include great effort made toward the eradication of poverty*, in contrast to nations that are devoted to *unrestrained capitalism*, where the disparity between extreme wealth and extreme poverty has reached obscene levels, and inflation puts basic commodities beyond the reach of the poor, while their wages remain stagnant. All the rights described here, are given top priority in Eritrea, and are enshrined in the Covenant of Economic, Social and Cultural Rights. What is proclaimed in this convention is the most basic of all human rights, i.e. *the right to life, livelihood and health*. These and other achievements are the reason why Eritrea is expected to be one of the first African countries destined to achieve the *Millennium Development Goals by 2015*. The country did not register such achievements by persecuting and terrorizing its citizens, as the country is claimed to have done in the COI report—a document filled with hyperbolic language.

The rights of *children* and the rights of *women* hold an important place regardless of the political orientation of *human rights defenders? They are top priorities for COI and for Eritrea as well*. They have universal significance. However, as far as two key covenants that are most relevant to our assessment of human rights record are concerned, the world is divided. The *International Covenant of Civil and Political Rights*, is top priority for *nations that stress individual rights*, and *the Covenant for Economic, Social and Cultural rights*, has a high priority for *nations that give priority to individual and communal rights*. These two bodies of human rights law are equally important, but they do not have the same standing in the context of world ideological systems today.

Keetharuth dwells largely on civil and political rights and aligns herself with individualist traditions in placing issues of freedom of speech, freedom of assembly and democratic governance above the economic, social and cultural rights. Eritrea is deeply committed to the fair and equitable treatment of all her *nationalities, equal access to land, poverty eradication, food security, education, health* and the *survival* of its people. Similarly the Africa Commission of Human and People's rights are of little concern to the COI particularly the parts that deal with *peoples' rights*. Thus, the fact of *mass expulsions* of Eritreans from Ethiopia, *mass displacement* out of the areas occupied by the Ethiopian army are of no concern to the COI's investigation, although they constitute *massive violations of collective rights* of the Eritrean people. They contributed to the uprooting of entire communities, break-up of families, destruction of family estates, alienation of land, and impoverishment of subsistence economies. These are factors that have enduring long-term effects on the emigration of Eritreans.³ These critically important human rights violations by the Ethiopian armed forces have everything to do with Eritrean emigration today but are ignored in the COI study.

The empirical question that COI must answer is this: how many of the refugees in the COI's sample are IDPs, expellees and their children, victims of war whose condition is a critical driving force behind emigration. Has this population been dismissed as irrelevant?

Because of the biased perspective on human rights law adopted by Keetharuth, the violations of the *collective* rights of large classes of Eritreans have been presented as a “pretext” held up by Eritrea to justify *individual* human rights violations. Kindly contemplate the full implication of the following statement by the COI:

The international community and the United Nations bear an ongoing responsibility for the situation in Eritrea. In particular, the non-implementation of the Algiers Agreement of 12 December 2000 and of the ruling on the demarcation of the border between Ethiopia and Eritrea

³ All documented in A. Legesse, “*The Uprooted*,” V.1, Human Rights Task Force, 1998; and A. Legesse “*The Uprooted, A scientific Survey of Ethnic Eritrean Deportees from Ethiopia Conducted with Regard to Human Rights Violations*, V.2, 1999. This Volume is also available also in German and Italian, translated by human rights organization in Germany and Italy; and A. Legesse, *The Uprooted, part III, Studies of Urban Eritreans Expelled from Ethiopia, Villages Expelled from Tigrai and Communities in Eritrea Displaced by Bombardment*, V.3, 2000.

has *provided an easy pretext* for the Government to implement repressive practices supposedly aimed at the defence of the State". COIR, abridged: 17 (emphasis added)

That is a convoluted argument that treats the plight of the Eritrean people with contempt because it dismisses the two greatest offenses or crimes committed by Ethiopia against the Eritrean people as *pretexts* for something else. The Special Rapporteur, who conducted the study, and the UN Human Rights Council, that authorized the study, have both glorified individual rights and dismissed the rights of an entire nation as being at present irrelevant to the task they have undertaken.

HISTORIC, CULTURAL, PEACE-BUILDING CONTEXTS

1. Eritrea cannot be viewed as a lawless nation

Eritrea has a rich body of customary laws and traditions that protect the rights of women, children and minorities. These customary laws have existed for centuries in written form and have survived successive colonial regimes that attempted to abolish them and to supplant them with colonial laws. The customary law elders view Western traditions of *litigation* as a method of fighting, not a method of conflict resolution. They use *mediation* to settle disputes and resort to *binding arbitration* or litigation only as a last resort.

The fact that the constitution of 1997 has not been implemented does not mean that the country is without any laws, as Keetharuth assumes. The country inherited the Civil and Penal codes of Ethiopia written by a French legal thinker, René David, and handed down to the people by Emperor Haile Selassie in classic Napoleonic style. *Those laws were in force in Eritrea throughout the post war years.* Eritrea has an entire system of courts that operate on the basis of those laws. Both codes have now been thoroughly revised incorporating some aspects of the customary laws, particular aspects that specify penalties for crimes and offenses in greater detail than does the penal code. In Western judicial systems judges are allowed broad discretion to determine the magnitude and kind of penalties for particular crimes and offences, in customary laws they are more precisely prescribed.

The law-abiding nature of the people was tested on 24 May 1991, the moment of liberation of the country from the communist military dictatorship. At that moment there was a gap—an *inter-regnum*—of several hours when the sixty-five-thousand strong Ethiopian army fled, heavily armed, to the Sudan, but the Eritrean army had not yet arrived in the capital city. In the following weeks, the city streets were lined with tens of thousands of unarmed Ethiopian soldiers in disarray. Whenever there is such an *inter-regnum* during which there is no effective government, many societies often go on a rampage. I went around the city asking the customary law elders why there was no vandalism or vendettas against the army that had persecuted them for seventeen years, a regime that committed many mass murders. They said “We are a nation of laws, *our* laws are always in force, whether there is a government or not.”⁴

During the weeks following the country’s liberation, there were many tens of thousands Ethiopian prisoners of war in Asmara. They were all treated humanely. Their wounded were given medical care before returning them to Ethiopia. Selam Hotel was converted into a hospital for that purpose, since Eritrea’s hospitals were filled with Eritrean wounded warriors. Eritrea’s treatment of prisoners of war was humane throughout the thirty-year war, as it was humane also at the moment of victory. Keetharuth ignores these historic facts, and preaches to Eritrea how the country should treat its prisoners. In so doing, she is preaching the choir.

2. Religious Freedoms have an important place in Eritrea

Eritrea has many religions and ethnic groups. Like Lebanon, the country’s population is half Muslim and half Christian. Unlike Lebanon, of recent decades, however, the two religious communities in Eritrea live side by side peacefully and collaborate in most aspects of life. Both

⁴ See Michel Collon’s interview with A. Legesse in U-Tube.

Muslim and Christians played equally critical roles in the national liberation struggle. All four of the major religions in the country—Muslim, Orthodox, Catholic, and Protestant—practice their faiths freely.

The adherents of those four religions constitute nearly the total population of the country. In view of these facts, it is a gross misrepresentation of the reality to suggest that there is no freedom of religion in Eritrea, dwelling, as Keetharuth does, entirely on tiny minorities, nearly all of them new Pentecostal religions and nearly all heavily funded by foreign religious organizations and some of them openly declaring that they have no allegiance to the new Eritrean state. I believe, however, that a mistake was made with regard to the Seventh Day Adventist Church which is not a new Pentecostal religion but is an old well-established conservative protestant church in Eritrea and Ethiopia, with a long history of educational and medical service including an exceptional and humane medical centre for the leper colony in Ethiopia. It never showed any inclination to deny the sovereignty of the state.

3. Eritrea, a corruption-free, acetic and orderly society

There are few developing nations that can credibly claim that they have no corruption, since bribery is often openly practiced in developing as well as some developed nations. In Eritrea, one is rarely asked to pay a bribe to Government officials. In 24 years I have personally never come across it. Hence, corruption, if any, takes a secretive form and, if exposed, it is severely punished. Eritrea has gone further than most developing nations in attempting to totally eradicate corruption.

Similarly, during the thirty-year war, liberation fighters lived an acetic life and used their meagre resources with utmost thrift. For a major part of their history they were celibate. Only in the last decade of thirty year war, 1978 and later, were intimate relationship and marriage between fighters allowed, and their children were left in pre-schools where they were cared for by older women volunteers, while the parents went to the war front. I believe that the same standards of conduct, concerning a life of sacrifice, and thrift are still the ideals but cannot be enforced with the same rigor with later generations. Concerning sexual offences, the same norms are in force today as in the last decade of the liberation struggle. The cases of rape reported by the COI are the work of extremely deviant individuals. It is certainly not “systemic” across institutions.

4. Peace has no place in COI’s campaign to incriminate Eritrea

The COI report is not aimed at *making peace* or bringing about *rapprochement between Ethiopia and Eritrea*. In fact, the COI report exacerbates the simmering conflict between them by its harsh judgement of one party and its total absolution of the other party. It violates its own procedural requirement of complete *impartiality* by adopting the *illegal* proposal made by Ethiopia to reopen and settle diplomatically the boundary dispute which was decisively and irrevocably settled by the Eritrea-Ethiopia Border Commission.⁵

Paradoxically, Eritrea is a war-torn nation that is internally one of the most peaceful nations in Africa, and Asmara, the capital city, is a safe and secure community. It did not fall apart as a result of the protracted war, as happened in Somalia. It is a nation that has maintained an orderly way of life after decades of devastating wars. Eritrea has also maintained a hands-off and neutral attitude in the midst of the terrorist plague that is spreading across Africa, and has resisted a Jihadist incursion from the Sudan in the early nineties and, on several occasions, attempted to resolve regional conflicts, particularly in the Sudan. A peace treaty between the central government and the Eastern Sudan was concluded and signed in Asmara. The country also hosted North and South Sudanese delegations, allowing them to use Asmara as a neutral venue for their negotiations and peace building. All these facts are submerged in the COI report in the effort to label Eritrea an aggressive nation and a sponsor of terrorism.

⁵See the chairman of the EEBC, Sir Elihu Lauterpach’s unambiguous response to Ethiopia’s Foreign Minister.

THE GEOPOLITICAL AND LEGAL CONTEXT OF THE COI'S MANDATE

4. Human rights as instruments of controlling small nations

The manner that the Special Rapporteur's role and mandate are defined reveals that it aims to expose the alleged human rights offenses committed by a small nation. The geopolitical environment in which the campaign to incriminate Eritrea occurred, however, reveals that it is part of a general pattern in which rich and powerful nations use human rights as a tool for controlling, influencing, intimidating and bullying small nations. Despite all the grand moralizing about human rights by US and the COI, human rights treatment is administered *very selectively*. When a protégé of US, such as Ethiopia, commits human rights violations they are swept under the rug. When self-reliant Eritrea, which is nobody's protégé, is under review, its offenses are greatly exaggerated, sporadic offenses committed by individuals are labelled "systemic" and tagged as "crimes against humanity." That is the extreme injustice that Eritrea is being subjected to coming in the heels of the accusations instigated by Ethiopia and pushed through the African Union all the way to the Security Council, leading to the imposition of sanctions on Eritrea. The hypocrisy of this campaign is revealed when we realize that USA—the super power that is accusing Eritrea of torturing its citizens—has used torture to execute its "war on terror".

The nations that are accused of human rights violations are in the main small nations. The only time that big nations, such as Germany and Japan, were held responsible for crimes against humanity is when they were devastated by military defeat and were, at that moment, in worse shape than small nations that are at peace. Aside from these instances the great majority of the nations that are targeted for human rights inquisition and for alleged crimes against humanity are nations that do not belong to the elite club of powerful states that make up the permanent members of the Security Council.

5. Exclusion of human traffickers from COI's Mandate

A most astounding instance of selective administration of human rights law is the case of human traffickers in the Sudan, Egypt (Sinai), Libya, where criminals have committed some of the most vicious violations of human rights ever seen in Africa. The rights they violated are those of Eritrean refugees who are the objects of study of the Special Rapporteur. The traffickers have resorted to the most brutal and most cruel methods of extorting huge sums of money from the parents and families of their victims whom they reach by phone while the perpetrators pour molten plastic onto the backs of their victims, and the victims scream at the top of their voices begging their parents to save them from their agony and from the imminent threat to their lives. Should the family fail to produce the money demanded, up to 35,000 USD, they are killed and very likely their organs harvested. The UN is not in any great rush to investigate these real crimes against humanity.⁶

These are some of the atrocities that have been *set aside* by the UN Human Rights Council in defining the mandate for that office. What is the justification for investigating human rights violations against Eritrean refugees when the worst perpetrators of human rights against them are excluded from the study? Is that a rational and just decision or some incomprehensible form of bureaucratic taxonomy?

6. Exclusion of economic, social & cultural rights from the mandate

⁶See the documentary film by Meron Estefanos released by Publique Senat, the publicity wing of the French Parliament. The documentary film is all about the heinous crimes committed by a team of Egyptian Bedouins and their associates and the conclusion is all about the crimes committed by the Government of Eritrea that drove people out of the country. It is a totally irrational conclusion. Meron has recently retracted her own *documentation of organ harvesting* in the Sinai, which she published in U-tube and her radio programs, probably because she fears she may be implicated in the crimes as a facilitator and a *go-between linking the traffickers, the victims and their families*.

Eritrea has adopted a generally self-reliant strategy of development and uses its own resources to build up its economy, its infrastructure, dams, mineral resources and to extend all manner of services to its people: free health care with clinics and hospitals spread out across the nation, universal vaccination of children, free care given to mothers before and after childbirth, monitoring children's health regularly during early childhood, universal free elementary education for boys and girls, for Christians and Muslims alike, even when Muslim parents are reluctant to let their nubile daughters attend school beyond the elementary grades because they feel that the girls must remain under the supervision of their parents.

Education is also free at all levels from elementary all the way to the end of college, depending on the ability and achievement of individual children. The *nine nationalities* in the country receive elementary education in their vernacular languages. They are supported and encouraged to develop their local *cultures, languages, literatures* and *music*—a policy that was developed during the liberation war and is now carried out on a much bigger scale. All that contributes to the realization of the Economic, Social and Cultural rights of its citizens—rights that are ignored by the COI.

METHODOLOGICAL DEFICITS OF THE COI REPORT

1. Dangers of anecdotal research

Anecdotal research has an inherently arbitrary quality because *the author can pick and choose particular types of evidence and individual subjects* for the sole purpose of carrying out the prosecutorial task i.e. demonstrating that Eritrea has committed human rights violations.

Thus, Keetharuth *chose* to gather anecdotal evidence from refugees, along with the testimony of two African nations that are hostile to Eritrea: Djibouti and Ethiopia.⁷ Since Sudan hosted Eritrean refugees for decades and Djibouti has not, it is not clear why she chose to exclude the Sudan from her area of research: perhaps that country was considered inappropriate because it has peaceful relationship with Eritrea and would not be as useful in incriminating Eritrea as Djibouti and Ethiopia were. In this and many other regards, Ms Keetharuth has made every effort to stack the cards against Eritrea.

2. Failure to do a compare asylum-seekers & asylees

The well documented study of Eritrean refugees by Danish Information Services (2014) casts considerable doubt on the reliability of testimony given by *asylum seekers*.⁸ The evidence they provide suggests that a full scale survey of different kinds of Eritrean refugees would be needed to check out the validity of the COI report. The situation calls for a thorough investigation of two different classes of refugees—*asylum seekers* and *asylees*—which may reveal whether there are *significant differences between them*. The Danish report contains ample evidence indicating that *asylum seekers* have every reason to exaggerate how much they allegedly suffered in the hands of the Eritrean government. On the other hand, there is no reason to believe that *asylees* have anything to gain by exaggerating their difficulties in Eritrea, since they have already gotten what they dreamed of, asylum in Europe. Hence, *the testimony of asylum seekers can be trusted if, and only if, their testimony does not deviate significantly from the testimony of asylees*. No such comparison has been offered by COI. Indeed we do not even know how many of their informants are *asylum-seekers* and how many are *asylees*. We have one incidental statement that there are no differences between them.⁹ That is not adequate. This

⁷COIR:4

⁸Danish Immigration Service,

Eritrea – Drivers and Root Cause of Emigration, National Service and Possibilities of Return, Country of Origin Information for Use in Asylum Determination Process. Report from the Danish Information Services fact finding mission to Eritrea and Ethiopia”, August-October, 2014.

⁹Statement by the chairman of COI in the press conference of 6/25/2015.

is the Achilles' heel of the COI study, the weakness that casts considerable doubt on the validity of the entire investigation.

3. No representative sample, lack of transparency

There are three major deficits in the COI study: The first concerns falsification of evidence *not necessarily by direct misrepresentation of the facts reported*, but misrepresentation of the facts due to the faulty—non-random—selection of the subjects to be investigated which can severely distort the results of the study. In other words *the subjects that were selected were those that could provide the worst possible image of Eritrea, whether they are truthful or not*. Keetharuth has no method of establishing the veracity of the testimonies. The Special Rapporteur has not presented the *methods of verification* that she might have used in compiling the mountain of anecdotal stories. If she has used any such methods she has an obligation to reveal what they are.

The second offense that COI committed is their attempt to completely bury the evidence, so that it will not be subjected to scrutiny by other investigators. Governments can “classify” information to protect themselves and their allies. That is their sovereign right. Individual scholars, however, cannot do so without violating the intellectual ethics by which scholarly research is judged.

The third offence concerns the generalizations made about entire institutions such as the armed forces without utilizing quantitative techniques that would provide a basis for such broad statements. Crimes committed by a few individuals that the refugees heard about, may be reported as their own “personal experiences” and that may be done by hundreds of refugees as part of their effort to win asylum. The crime may be considered “systemic” not realizing that there is a *multiplier effect* in the class of subjects that were interviewed and in their powerful desire to win asylum. That is a critical factor that casts much doubt on the *generalizations* about entire institutions made by the Commission of Inquiry.

4. Lack of quantitative survey needed for generalizations

Survey research is needed to correct some of the major inadequacies of the Special Rapporteurs investigation. A valid research project should start with life histories, of the type gathered by Keetharuth. That should be followed, however, with quantitative research (surveys) based on two different groups of subjects: asylum seekers and asylees. If the two groups yielded similar results, the Keetharuth study would be *validated*, because it would show that the study could achieve the same purpose even if it relied only on asylum seekers. If the two samples produced *statically different and significant results*, however, a major part of the study would be *invalidated*, because it would reveal that the asylum seekers testimony contains a significant amount of personalized stories that are fundamentally untrue, aiming to achieve the group's overwhelming purpose of securing asylum. From the quantitative sample survey it would also be possible to judge whether the human rights violations are *sporadic* or *systemic*, the work of *deviants* or an integral part of *institutional conduct*.

RECOMMENDATIONS

1. The COI report should be transparent and verifiable

The plan to completely bury the evidence gathered by Keetharuth is expressed in the following bleak words that sound like the language of totalitarian states:

Information will not be shared with any State, entity or individual *without the explicit and informed consent of each 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 Government of Eritrea. (COIR, p.5, emphasis added)

How can independent scholar obtain the “informed consent of each witness concerned” if the entire body of evidence is hidden from view? Furthermore, it is irrational to suggest, as the COI does, that the information gathered by Keetharuth must be buried as *classified evidence* in order to “protect the informants”. There is no reason why the names of informants could not be deleted and the substance of their testimony made available along with the class of subjects to which they belong, broken down by age, gender, asylum seekers or asylees and any other factors that were used in the analysis. Scholars, institutions and UN agencies alike can, thus, examine how valid the COI’s data are. Hence, the purpose of burying the evidence is not to “protect the informants.” That is a false pretext since the informants can be fully protected by removing their identities, as is often done with “confidential” data. The UN Human Rights Council cannot allow the COI to bury the evidence without seriously damaging their own reputation as a fair and just institution with a long history of transparency and veracity.

1. Evidence of COI should be shared with other institutions

Let Keetharuth present to her peers the list of informants *not listed by name* but by *code numbers* from which a limited number of subjects can be randomly selected. If those individuals are *willing*, independent investigators can interview them and compare the evidence they offer with what Keetharuth has reported. ***The verifying scholar can be bound by the same rule of confidentiality as the first investigator, unless Keetharuth is placing herself in an ethically superior position vis-a-vis the rest of the scholarly world.***

In my own research defending the victims of the Ethio-Eritrean war (1998-2000) Amnesty International read one of my three reports on Ethiopia’s human rights violations titled: *The Uprooted, A scientific Survey of Ethnic Eritrean Deportees from Ethiopia Conducted with Regard to Human Rights Violations, 1999*. Amnesty requested to see my raw data to check its veracity and I made it available to them. They found the data credible. That year, their reports on human rights in Eritrea and Ethiopia were influenced by my findings. That is precisely what is meant by *transparency* and *verifiability*. As it is presented so far, the work of COI is neither transparent nor verifiable.

2. Partisan evidence from a hostile nation should be excluded

Keetharuth also interviewed officials in Ethiopia’s refugee camps.¹⁰ That country is still engaged in a diplomatic war with Eritrea, and has violated the rights of the Eritrean people by still occupying large pieces of their territory. By so doing, Ethiopia revealed her persistent belligerent intentions. Hence, any evidence their officials provide about Eritrea is *partisan* and remains inherently suspect, as long as the state of unsettled war continues because of Ethiopia’s refusal to accept the decision of the boundary commission. That is the grim reality Eritreans have had to live with as a people and as individuals, as IDPs and expellees, for fourteen years. All that is not a “pretext” but an enduring reality.

3. IDP and Expellee families should be included in the study

An important issue that has been neglected in the COI report is the role of IDP and Expellee populations as drivers of emigration. Based on my own research during the 1998-2000 war, they would be more likely than the rest of the population to emigrate because their displacement or expulsion is an added burden on top of the problems they share with the rest of the society. These families lost their properties, land, savings, businesses, and means of livelihood. As such, they are exceptionally vulnerable. Many committed suicide upon arriving in Eritrea deprived of all their earthly possessions and their pensions. Families were also deliberately broken up during expulsion from Ethiopia. Hence, the big question that COI must answer is this: Are these two groups not ***victims of human rights violations in Eritrea*** and as such are they not ***part of the COI mandate***? It would of

¹⁰COIR, 2015:4

course be very easy to sweep this evidence under the rug by not mentioning their identity as Expellees or IDPs, but describing them as generic refugees. Were they perhaps excluded from the study because their plight is the result of human rights violation by Ethiopia, not Eritrea and Keetharuth was not interested in investigating human rights violations in Eritrea by Ethiopians? Is it because Ethiopia is a “good nation” and Eritrea is an “evil nation” according to the simple-minded and primitive typology devised by G. W. Bush and implicitly perpetuated by his successors. The gratuitous comparison of Eritrea and North Korea is a case in point.

The question of the selective application of human rights laws surfaces again as a systemic geopolitical bias built into the world dominated by wealthy superpowers, in which nations are classified “good” and “evil” nations. The “good” may be chided for their misconduct but cannot be accused of rights violations. Of all the varieties of ethnocentrism invented by man, that is probably the most egregious and narcissistic. In that world, Ethiopia cannot be implicated in human rights violations—even if it resorts to brutally rigged elections and violent elimination of opposition groups—so long as it has superpower protection.

4. Unlawful recommendation about the border demarcation

The Commission of Inquiry revealed their fundamental bias against Eritrea and their support of Ethiopia, when they proposed that the two countries should go back to negotiating the border. That is precisely what Ethiopia demanded.¹¹ In making this recommendation both the Commission of Inquiry and the Federal Democratic Republic of Ethiopia are in violation of international law and are proposing that the final and binding decision of the EEBC be undone for Ethiopia’s benefit.¹² What justification is there for a United-Nations-mandated body, such as COI, to *exceed its mandate* and recommend that Eritrea *accept illegal demands of Ethiopia* regarding the irrevocable decision of the Ethiopia- Eritrea Border Commission (EEBC)?

5. Nationwide mobilization for defence: model for small nations

A proposal I expressed in a public forum in Asmara, several years ago, is that Eritrea should explore the possibility of introducing something similar to what Switzerland has done with regard to national mobilization for defence. The Swiss strategy is to *enlist all healthy adult males into the national reserve army, train and arm them and allow them to go back to their normal lives with all their military gear to be kept in their homes under lock and key*. Recall them once every year to ensure their fitness and preparedness. With a proper mobilization hierarchy—well-structured and well-rehearsed—if war breaks out, the entire nation would be always ready fight the aggressor.

In my view, Switzerland’s reserve army and her neutrality in the Great War, were some of the reasons why the country was not invaded by German armed forces. Instead the German army went past Switzerland to invade Austria, The Netherlands, France and Norway. (Incidentally, since the Great War, the Netherlands have also adopted a similar mobilization strategy as Switzerland’s.)I presume that *the thought of fighting the Swiss people door to door, in their extraordinary mountainous environment, was too daunting to contemplate even for the massive German army—an army that was not blocked by the Maginot lines*. The same natural mountain fortresses also exist in Eritrea and I suspect that the same “reserve army” strategy could reconcile Eritrea’s critical need for national defence, at very little cost to the nation, compared with the prohibitive cost of a maintaining a large standing army. *Eritrean youth could then go back to their normal lives*, after fulfilling their

¹¹(COIR:17)

¹²COI recommends that Eritrea and Ethiopia should be assisted “in solving border issues through diplomatic means”. (COIR: 22)

national service obligations, lasting eighteen months. That would be required in exchange for the youth getting free education from first grade through college. That, in my view, is an entirely fair use of the labours of students who have received twelve to sixteen years of free education. Thereafter, they too would be adults subject to the same requirement to join in the reserve army. That would, however, allow them to pursue their individual occupations and professions, seek employment in government or in the private sector, allow them to marry and have children, and be able to provide for their families.

6. The impact of the boundary crisis on Eritrean society

The COI seems to be quite oblivious of the fact that a terrible war, that cost more than 120,000 lives, was fought in 1998-2000 over the boundary issue, a war that broke out on the heels of another war that lasted thirty years. What was a simple border skirmish triggered by the assassination of five Eritrean border commissioners, followed by the occupation of a border village, called Badime, by Eritrean forces, was made to escalate into a full scale invasion by Ethiopia, an invasion that failed to achieve its hidden expansionist agenda, partly aimed at capturing the port of Assab. It is important to realize that while the Algiers peace process was in its final stages, Ethiopia made one last-ditch effort to capture the port of Assab and to present a *fait accompli* to the Algiers interlocutors. The campaign failed. Nevertheless, the project persists, to this day, as the hidden agenda of Ethiopia and as the motive for blocking the EEBC's final and binding virtual demarcation of the boundary, which is a more precise a demarcation than any in the world that depends on physical markers.

Most of the Eritrea's current social and economic problems are traceable back to the second war of 1998-2000. Before that very disruptive event, the economy was booming at an average growth rate 7% annually. There was less youth emigration then and the country was well on its way to normal development of constitutional, legal, political and economic institutions. Ethiopia's refusal to accept the decision of the boundary commission was a *belligerent act* by a nation whose population is 16 times larger than Eritrea's. That is the threat that has forced the country to maintain a high level of military preparedness, with all the social and economic consequences that it entails.

Most of the difficulties Eritrea faces with the flight of youth out of the country cannot be remedied *unless the threat to the country's national existence is removed*. If the boundary decision were implemented today, there would be no need for Eritrea to maintain a large standing army, no need for extended military service, and no drivers for large scale emigration of Eritrean youth out of the country. To dismiss the social and economic impact of the war and claim that any mention of it in this context is a "pretext" invoked to justify individual human rights violations is false piece of logic. It is insensitive to the suffering and social disruption the war inflicted on hundreds of thousands of expelled, displaced and broken families. Their rights were violated by Ethiopia's *mass expulsion* of 75,000 of its citizens of Eritrean descent, confiscation of their property, as well as the *mass displacement* of hundreds of thousands of Eritreans as a result of the occupation of large areas along the border, and settlement of other peoples in the areas thus vacated. *That belligerent strategy adopted by Ethiopia continues until the present day, unchecked by the United Nations*. That is the elephant in the room that cannot be ignored, however hard the COI attempts to do so.

The COI cannot credibly contribute to the realization of individual rights in Eritrea if it insists on legitimizing the gross and persistent violations of peoples' rights in Eritrea by Ethiopia. It is a violation of the fundamental principles of human rights law to advocate for the realization of one set of rights at the expense of another set, as the COI has done: all human rights have equal standing. That principle applies to the COI and to the Human Rights Council that created it, as it applies to the rest of humankind.