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The Human Rights Situation in Eritrea and the Role of Eritreans in the Diaspora

Thank you, Mr. Chairman,

Fellow Compatriots,

It is a pleasure to present in this Seminar. I wish to thank the *Eritrean-Canadians Human Rights Group of Manitoba* for their kind invitation. The organisers have informed me that the objectives of this Seminar are threefold:

- 1. To commemorate the 15th anniversary of the arrest of a group of prominent leaders of the Eritrean People's Liberation Front (EPLF) and its successor, the People's Front for Democracy and Justice (PFDJ), cabinet ministers, members of parliament, senior army officers and independent journalists;*
- 2. To request the Government of Canada to meet its international obligation to host Eritrean refugees fleeing political repression at home; and*
- 3. To request the Government of Canada to advocate for an end to human rights violations in Eritrea.*

More specifically, I am invited to speak on *Crimes against Humanity and the Role of Eritreans in the Diaspora and the Role of Canadians, and the Canadian Government in the UNSC, re the Commission of Inquiry (COI) Resolution on the Human Rights Situation in Eritrea*. An exhaustive discussion of such a broad topic requires more time than we have here today.

I will thus make a personal commentary re the general situation and the need for democratic governance in our home country, with particular focus on the *Human Rights Situation and the Role of Eritreans in the Diaspora*. With regards to the *Role of Canadians and the Canadian Government in the UNSC*, let me note that Canada, as a co-sponsor of the *Resolution on the Human Rights Situation in Eritrea* at the UN Human Rights Council in Geneva, seems well aware of the situation. I will raise this and other issues of national concern moving forward with the relevant authorities of the Canadian Government in Ottawa next week.

Were it not for reasons beyond my control, I would have been here last Sunday 18 September, as per the original plan. For the day marked the 15th anniversary of what I

call *Eritrea's Black September* in my book, *Eritrea at a Crossroads: A Narrative of Triumph, Betrayal and Hope*.

Let me underscore at the outset that the struggle for human rights in Eritrea is an integral part of the overall struggle for democracy and rule of law. These essential elements are indelibly linked. Experience shows that respect for human rights, rule of law and democratic principles is incompatible with dictatorship. I will proceed to highlight the organic link between human rights, rule of law and democratic governance.

Justice Tom Bingham (2010), an eminent British jurist, defines rule of Law as “*a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards.*”

Under the rule of law, all people and institutions are subject to and accountable to law that is fairly applied and equally enforced. In a political system that adheres to the supremacy of the rule of law, the law is paramount over the acts of the government and the people. In a dictatorial form of government like ours, where the rule of man prevails, governance and the rules of conduct are set and altered at the discretion of a single person, or a select group of persons.

Let us look at the state of rule of law in Eritrea in terms of existing domestic, regional and international instruments.

At the domestic level, Eritrea has (1) a ratified Constitution that enshrines basic rights and fundamental freedoms and (2) Civil and Penal Codes and Associated Procedures. At the international and regional levels, Eritrea is state party to several international and regional conventions, such as, (1) the International Covenant on Civil and Political Rights [2002]; (2) the African Charter on Human and Peoples' Rights [1999]; (3) the Convention on the Abolition of Forced Labour [2000]; and (4) the Convention against Torture [2014].

The problem is that these legal instruments exist only on paper. They are not put to effect. The ratified Constitution has been shelved since ratification in 1997. The Civil and Penal Codes and Associated Procedures are not duly applied. The international instruments are ignored. There exists no mechanism of domestic accountability, regional censure or international enforcement.

It is in the context of such a constitutional and legal vacuum that the Commission of Inquiry (COI) [*Report of the Commission of Inquiry on Human Rights in Eritrea, A/HRC/32/47, 9 May 2016*] has concluded that it *has reasonable grounds to believe that Eritrean officials have committed gross, widespread and systematic violations of human rights that amount to crimes against humanity*. Its list of alleged crimes includes ‘enslavement, imprisonment, enforced disappearances, torture, persecution, rape, murder and other inhumane acts’ since 1991’.

Noting that Eritrea, without substantial legal and institutional reform, cannot provide accountability for these crimes and violations, the COI recommends that the United Nations Security Council (UNSC) refer the situation to the Prosecutor of the International Criminal Court (ICC) for consideration, that the African Union (AU) conduct an investigation and establish an accountability mechanism, and that UN Member States exercise their obligation to prosecute or extradite individuals suspected of such crimes present in their territory.

It is important to note that the COI has not said that *crimes have been committed* but only that it *has reasonable grounds to believe that crimes have been committed*. Moreover, there is a problematic with its timeframe that includes the entire 1st decade of statehood, which seems to unduly malign the very legitimacy of the Eritrean State, as opposed to the praxis of the Eritrean Government.

On its part, the Eritrean Government has denied any wrongdoing and faulted the COI's Report as politically motivated. Moreover, the Eritrean Diaspora is divided between support for and opposition to the COI's findings. Furthermore, the Diaspora opposition is also divided, fragmented and polarised, thereby generating considerable internal negative energy. How can the political opposition in the Diaspora overcome its divisions, stem its polarisation and coalesce under a minimum programme based on a shared vision in the service of an orderly democratic transition at home?

To begin with, we must recognise and be able to distinguish the difference between the State of Eritrea (ሃገረ ኤርትራ), the People of Eritrea (ህዝቢ ኤርትራ), and the Government of Eritrea (መንግስቱ ኤርትራ). The State of Eritrea is the homeland of all Eritreans, embracing the people, the country, the territory, and the government. The people are the entire citizenry in all its ethnic, linguistic, cultural, religious and regional diversity. The Government is the regime in power under the auspices of the PFDJ.

The People and the Country are permanent; an independent sovereign Eritrean State and the Eritrean people are here to stay. However, the present government of Eritrea is transient; it shall come to pass, sooner or later. Of course, better sooner than later. And it is entirely up to us, the Eritrean people at home and in the Diaspora, to shorten or extend its tenure. It is in our hands to accelerate the end of the dictatorship and usher in a new democratic dispensation.

What does this mean in practice? It means that patriotic prodemocracy Eritreans should: (1) defend the sovereignty, territorial integrity and national security of the State of Eritrea; (2) promote the interest, unity and wellbeing of the Eritrean people; and (3) expose, isolate and weaken the tyrannical regime.

Once we recognise the distinction between the State, the People and the Government, we can see that the COI does not accuse the State or the People of Eritrea. Nor does it accuse the entire Government of Eritrea. It only accuses some officials in the government of committing crimes against the people and, hence, the State. Still, the Report upholds the legal principles of *due process* and the *presumption of innocence*

until proven guilty. This is precisely why the COI has recommended taking legal measures to ascertain the alleged crimes, establish accountability for the perpetrators and ensure justice for the victims.

Furthermore, the Report of the COI points to two possible avenues to pursue justice: (1) a democratic Eritrea embodying substantial legal and institutional reform capable of administering justice, providing accountability for proven crimes and violations, and fair closure for the victims. (2) UNSC Referral to the ICC, which is mandated to prosecute crimes of genocide, crimes against humanity and war crimes. Both paths to the administration of justice would require sustained hard work, with neither path guaranteed success *a priori*.

The divergent national interests of the major powers, especially the Permanent Members of the UNSC (the P5), and the prevailing geopolitics of the strategic but volatile region of the Horn of Africa, the Red Sea Basin and the South Arabian Peninsula, would make the required unanimous decision on a referral resolution difficult, if not impossible.

In addition, the politicisation of the workings of the ICC has undermined its credibility. Moreover, its track record of selective prosecution, special focus on African suspects¹, and consequent loss of confidence by the AU and most of its Member States, would render the external route to justice problematic in the continental context. Furthermore, prosecution under ICC jurisprudence would require the cooperation of the Eritrean government, which is highly unlikely. At the same time, the national route to justice necessitates Eritrea's transition to a constitutional system of governance based on democratic principles, rule of law and respect for human rights.

In the final analysis, we pro-democracy Eritreans must make a strategic choice. We must decide whether we wish to pursue retributive and punitive justice or transformative and restorative justice; whether we wish to take revenge or seek reconciliation; whether we wish to relive the old dark past or move on to a new bright future. We need to engage in an inclusive national conversation at all levels to make a strategic choice that empowers our people to become masters of their own destiny, ensures justice for the aggrieved and best serves the cause of national reconciliation, progress and prosperity of the Eritrean people.

Against this backdrop, let us look at certain basic facts and try to find common ground to build the basis to work together to accelerate the end of tyranny and the advent of a new democratic dispensation in our beloved home country. In the interest of time, I would like to make brief comments regarding three of the alleged crimes, namely, enslavement, imprisonment and torture.

¹ In the six cases that are ongoing or about to begin, the ICC has charged only Africans, which explains why African states are threatening withdrawal from the ICC.

Enslavement

Open-ended active national service has been the scourge of Eritrea's youth. Implemented contrary to the terms of the 1995 Proclamation, it denies them the right to normal upbringing, the opportunity to proper education and the prospect to develop their potential. Furthermore, it ruins the national and household economies, subverts the development of the country and poses a threat to our long-term national security. Endless national service has stolen the future of our youth. Undertaken without due compensation, indefinite national service represents modern day servitude tantamount to enslavement. This, I believe, constitutes a crime against humanity. *Don't you?*

Imprisonment

The political prisoners and detained journalists were arrested without due process. Arbitrary arrests and indefinite detentions happen by word of mouth without any written or signed orders. For the members of the defunct Transitional Eritrean National Assembly, the arrests represented a clear violation of the principle of parliamentary immunity. Arrest without due process and detention without trial constitute gross abuses of human rights.

Beyond baseless allegations of treachery and sedition, the political detainees have not been formally charged or brought to trial before a court of law. Once detained, they have not been heard of or heard from. They are held incommunicado in solitary confinement. There is no official information on their whereabouts and the state of their physical or mental health. They have no visitation rights from family or international human rights monitors, such as the International Committee of the Red Cross (ICRC). You don't lock up people, let them waste away and forget about them! *I believe this constitutes a crime against humanity.*

Torture

The COI Report compiles horrific stories of torture perpetrated on political detainees and ordinary prisoners from victims themselves first hand. Indefinite detention, incommunicado and solitary confinement represent denial of the fundamental right to life, liberty and the pursuit of happiness. They rank among the cruellest forms of torture and constitute crimes against humanity. *Imagine yourselves in such a situation just for a moment!*

Evidently, Eritrea has become unliveable for its people! Gross, widespread and systematic violations of human rights, aggravated by economic hardship, drive Eritrean youth to flee their country in droves at great risk to their lives. Some use human traffickers; others march on foot. Many die from sunstroke in the perilous Sahara trek to North Africa; drown in the Red Sea or the Mediterranean Sea in transit to the Arabian Peninsula or Europe; or perish from organ harvest in the Sinai. We all remember the Lampedusa tragedy!

Quite clearly, Eritreans fleeing the country are political refugees. They are pushed primarily by harsh political repression and utter despair rather than pulled by the prospects of a better life elsewhere. Countries like Canada have thus an obligation to

welcome, host and provide them with protection under international humanitarian law.

The Regional Geopolitical Situation

The highly strategic region of the Horn of Africa (HoA) and the Red Sea Basin is in turmoil. The HoA, whether the HoA proper [Djibouti, Eritrea, Ethiopia and Somalia] or the Greater Horn of Africa (GHOA) [Djibouti, Eritrea, Ethiopia, Somalia, Kenya, South Sudan, Sudan and Uganda], and the adjacent South Arabian Peninsula, is in deep crisis. We must beware that this volatile region, beset by worsening intrastate strife, chronic interstate conflict and bloody sectarian wars, exerts a powerful negative impact on the peace, security and stability of our homeland and the wellbeing of our people.

Role of the Eritrean Diaspora in Canada:

Eritrean Canadians should lobby the Canadian government to:

- Call for the immediate and unconditional release of all political detainees, jailed journalists and prisoners of conscience.
- Persuade the Eritrean government to institute rule of law and put into effect the international and regional conventions to which Eritrea is a state party and guarantee universal human rights to its people.
- Demand transparency and accountability of Canadian companies operating in Eritrea's mining sector re (1) environmental policy, (2) employment practice, and (3) revenue distribution and financial transactions with the Eritrean government.
- Lobby the Government of Canada to exert pressure on the Eritrean government to:
 1. Manage national service in line with the 1995 Proclamation;
 2. Effect the immediate and unconditional release of all political detainees, jailed journalists, prisoners of conscience and detained ordinary citizens;
 3. Cease arbitrary arrests, torture, extrajudicial killings and enforced disappearances.
- Finally, and most crucially, actively participate in the national effort to generate an orderly Eritrean owned and home grown transition to democratic governance and contribute to the construction of a constitutional, progressive and prosperous Eritrean State.

Eternal glory to our martyrs!

Thank you for your kind attention.