



This publication provides an overview of status and trends regarding the constitutional, legislative and administrative protection of the rights of indigenous peoples in South Africa.

This report provides the results of a research project by the International Labour Organization and the African Commission's Working Group on Indigenous Communities/Populations in Africa with the Centre for Human Rights, University of Pretoria, acting as implementing institution. The project examines the extent to which the legal framework of 24 selected African countries impacts on and protects the rights of indigenous peoples.

*This report was researched and written by S Mebrahtu (with comments by Zerisenay Habtezion incorporated).*

For an electronic copy of the other 23 country studies and the overview report of the study, see [www.chr.up.ac.za/indigenous](http://www.chr.up.ac.za/indigenous)

Country Report of the Research Project by  
the International Labour Organization and the African Commission on Human and Peoples' Rights on  
the constitutional and legislative protection of  
**the rights of indigenous peoples:**  
**Eritrea**

Published with the support of:



Danida





Copyright © 2009 International Labour Organization and African Commission on Human & Peoples' Rights  
First published 2009

For rights of reproduction or translation, permission should be obtained by both the ILO Publications (Rights and Permissions), International Labour Office, CH-1211 Geneva 22, Switzerland, or by email: [pubdroit@ilo.org](mailto:pubdroit@ilo.org), and the Information and Documentation Centre, African Commission on Human and Peoples' Rights, PO Box 673, Banjul, The Gambia, or by e-mail: [idoc@achpr.org](mailto:idoc@achpr.org) [mailto:idoc@achpr.org](mailto:mailto:idoc@achpr.org).

---

ILO/ACHPR

Eritrea : constitutional, legislative and administrative provisions concerning indigenous peoples / International Labour Office. - Geneva: ILO, 2009

1 v.

ISBN: 978-92-2-122817-2 (web pdf)

Indigenous people / economic and social rights / cultural rights / administrative aspect / constitutional law / legislation / comment / Eritrea

14.08

*ILO Cataloguing in Publication Data*

---

The designations employed in this publication, and the presentation of material therein do not imply the expression of any opinion whatsoever on the part of the International Labour Office and the African Commission on Human & Peoples' Rights concerning the legal status of any country, area or territory or of its authorities, or concerning the delimitation of its frontiers.

The ILO and the African Commission on Human & Peoples' Rights shall accept no responsibility for any inaccuracy, errors or omissions resulting from the use of the data.

The responsibility for opinions expressed in signed articles, studies and other contributions rests solely with their authors, and publication does not constitute an endorsement by the International Labour Office and the African Commission on Human & Peoples' Rights of the opinions expressed in them.

---

# **ERITREA: CONSTITUTIONAL, LEGISLATIVE AND ADMINISTRATIVE PROVISIONS CONCERNING INDIGENOUS PEOPLES\***

S Mebrahtu (with comments by Zerisenay Habtezion incorporated),  
*Eritrea: Constitutional, legislative and administrative provisions concerning indigenous peoples*

<b>Table of contents</b>	<b>Pages</b>
<b>Part I: Introduction to indigenous peoples, the country and its legal system</b>	<b>3</b>
1 Indigenous peoples in the country - Basic situational overview	3
1.1 Indigenous communities / groups in Eritrea	3
1.2 Main human rights concerns of indigenous peoples	9
2 Background to the country	10
2.1 Pre-colonial history	10
2.2 Colonial history	11
2.3 Post-colonial history and current state structure	14
2.4 Current government structure	16
2.5 Role of media and civil society	18
3 Background to the legal system	20
3.1 Legal system	20
3.2 Sources of law	20
3.3 Court structure	21
3.4 Status of international law	22
3.5 Ratification of UN, ILO and regional instruments	22
3.6 Status of communications and state reporting	24
3.7 National Human Rights organisations	25
<b>Part II: Legal protection of indigenous peoples in Eritrea</b>	<b>26</b>
1. Recognition and identification	26
2. Non-discrimination	27
3. Self-management	28
4. Participation and consultation	29
5. Access to justice	31
6. Cultural and language rights	33

7.	Education	36
8.	Land, natural resources and the environment	38
9.	Socio economic rights	46
10.	Gender equality	48
11.	Indigenous children	49
12.	Indigenous peoples in border areas	50
<b>Part III: Conclusion and recommendations</b>		<b>53</b>
<b>Part IV: Bibliography</b>		<b>56</b>

## **1 Indigenous peoples in Eritrea**

### **1.1 Indigenous peoples**

Recent estimates are that the total Eritrean population stands at about 4.8 million.<sup>1</sup> It is generally recognised that there are nine ethnic groups in Eritrea. These groups may be divided into three categories, according to their historical evolution from three ancient races: the Semitic; the Hamitic (Cushitic); and the Nilotic races. The Semitic group forms the majority of the population, and consists of the Tigrinya (48 per cent of the total population) and the Tigre (35 per cent). The Rashaida (1 per cent), a recently-established group of Arab origin, may also be included in the Semitic family. Four ethnic groups comprise the Cushitic category: the Afar (4 per cent of the total population); the Saho (3 per cent); the Bilen (2 per cent); and the Hedareb (2 per cent). The Nilotic groups are the Kunama (with 3 per cent of the total population) and the Nara (2 per cent). Jiberti Muslims regard themselves as an additional (tenth) ethnic group.<sup>2</sup> In addition, there is a small group of recently-settled migrants said to be descendants of the Hausa tribe in Nigeria, called the Tekurir.<sup>3</sup> At present, the Eritrean government recognises all these groups – with the exception of the Jeberti and the Tekurir.

---

\* First draft of report by Simon Mebrathu; comments by the reader, Zerisenay Habtezion, senior lecturer, Faculty of Law, University of Asmara, as well as Daniel Mekonnen, Martin Nsibirwa and Adiam Woldeyohannes; further revision by editors.

<sup>1</sup> <https://www.cia.gov/cia/publications/factbook/geos/er.html> (accessed 28 January 2007).

<sup>2</sup> J Markakis *Ethiopia: Anatomy of a traditional polity* (1974) 65: A small group called Jeberti or Jaberti did request the provisional government of Eritrea to recognise them as a tenth ethnic group of Eritrea. They were, however, denied this as they failed to show their peculiarity both in terms of having a separate language or culture. The Jeberti are Muslims found in the northern plateau and, unlike the lowland and eastern plateau's Muslim tribes, the Jeberti mainly belong to the Tigrinya and share the same culture, differentiated only by their religion and the interior socio-political status traditionally attached to it. The Jeberti traditionally devoted themselves to trade and crafts, since they were barred from land possession in most areas and from state office everywhere. Enjoying access to the seaports under Muslim control and taking advantage of the Christians' scorn for commerce, the Jeberti became a trader community. In this vocation they still are to be found concentrated in the towns and large villages of Eritrea and northern Ethiopia. See also [www.jiberti.com](http://www.jiberti.com).

<sup>3</sup> Their date of arrival is presumed between 100-150 years ago. Their numbers are very small, compared even to the smallest of the known ethnic groups in Eritrea. They are found mostly in the south-western part of the Gash-Barka region, Tekombia area. They are poor communities and mostly function as traditional healers and are known to have herbs and amulets; they are also said to be good peanut growers. They follow strict Islam and speak Arabic with an accent. Little is written about them and hence little is known. It is generally accepted that the Tekurir are descendants of west African immigrants who remained in Eritrea while they

The Tigrinya live on the central and southern plateau.<sup>4</sup> The Tigre groups inhabit the northern hills and lowlands. The Afar live along the southern Red Sea coast.<sup>5</sup> The Bilen are located in the Northern Eritrean highlands and in and around the city of Keren and north of it in the region of Halhal (the Bogos area).<sup>6</sup> The Hedareb live in the western lowlands and along the border with Sudan. The Kunama occupy the region between the Gash and Setit rivers, near the border with Ethiopia. The Nara reside north of the Gash river around Barentu. The Tekurir live in the Anseba and Gash-Barka regions. The Rashaida live along the Red Sea coast. The Saho live on the escarpment and coastal plain southeast of Asmara. To some extent, most of the ethnic groups exist across the boundaries of the present-day Ethiopia, Djibouti and the Sudan.<sup>7</sup>

Identifying any of these groups as ‘indigenous’ is a difficult task, and may lead to differences of views and controversies. The lack of clarity is due mainly to the fact that none of these groups self-identifies as ‘indigenous’. Self-identification, which Article 1 of ILO Convention 169 describes as a fundamental criterion for determining who may be considered indigenous, is almost non-existent, most likely due to the complete lack of discourse on indigenous peoples’ rights in Eritrea. Discussions of indigenosity have not infiltrated these societies, mainly because they have been submerged into a discourse of nationalism and nation-building. Often indigenous peoples may be distinguished by their ways of life which differ considerably from those of the dominant society.<sup>8</sup> However, another complicating factor in Eritrea is the similarity in lifestyle of members of all these groups, most of whom benefit from an agrarian subsistence existence. Even if the different communities in Eritrea are socially and culturally distinct, many of them share farming and pastoralism as predominant means of survival and economic activities. A further factor is the gradual merging of ethnic identities, which now manifests itself

---

were on their way to Mecca for Haj or on their way back from Mecca. The Eritrean government resisted attempts to repatriate members of this group to Nigeria, claiming that they are full Eritrean citizens.

<sup>4</sup> GK Trevaskis *Eritrea: A colony in transition: 1941-52* (1960) 11.

<sup>5</sup> IM Lewis *Peoples of the Horn of Africa: Somali, Afar and Saho* (1955) 155.

<sup>6</sup> WG Smidt ‘Discussing ethnohistory: The Blin between periphery and international politics in the 19th Century’ 134 <[http://www.cefas.com.ye/cy/cy13/08\\_Smidt\\_blin.pdf](http://www.cefas.com.ye/cy/cy13/08_Smidt_blin.pdf)> (accessed 5 January 2007).

<sup>7</sup> Due to the cross-boundary existence of the ethnic groups it is important to highlight that any fact or facts stated mainly apply to those parts of the ethnic groups within the boundaries of Eritrea.

<sup>8</sup> Report of the African Commission’s Working Group of Experts on Indigenous Populations/Communities, submitted in accordance with the ‘Resolution on the Rights of Indigenous Populations/Communities in Africa’ Adopted by the African Commission on Human and Peoples’ Rights (African Commission) at its 28<sup>th</sup> Ordinary Session, ACHPR & IWGIA, 2005 89.

in ethnic pluralism in many localities.<sup>9</sup> Towns and cities are inhabited by almost all ethnic groups, although the Tigrinya and Tigre remain the most numerous in most regions, villages and towns.

As the Tigrinya and Tigre make up 83 per cent of the total Eritrean population, it is clear that the other groups constitute minorities. Of these, it may be argued that the Kunama, the Nara, and the Tekurir have the best claim of the many ethnic groups in Eritrea to be regarded as ‘indigenous’. However, the situation in Eritrea is extremely complex, as other groups also meet some of the criteria for indigenusness, as will appear from the discussion below.

Traditionally, indigenous peoples have been identified by their ‘historical continuity’ with pre-invasion society. They are often considered the ‘first peoples’—meaning those who lived in the area before colonial or other similar powers arrived. Based on this criterion, it may be argued that the Kunama and Nara are indigenous. Both the Kunama and the Nara are Nilotic groups, and are believed to have been the earliest settlers of the territory.<sup>10</sup> Although the Tekurir share Nilotic origins with the Kunama and Nara, they do not meet this criterion, because their arrival in the territory of Eritrea has been much more recent.

The African Commission’s Working Group on Indigenous Populations/Communities has concluded that one of the primary characteristics of indigenous communities in Africa is that they have suffered discrimination and marginalisation.<sup>11</sup> The Kunama, Nara and Tekurir meet this second ground through their experience of social stigmatisation. Generally, the numerical majority ethnic groups, particularly the Tigrinya, tend to regard all minority ethnic groups as ‘less developed’ and ‘less advanced’.<sup>12</sup> However, such an attitude is more pronounced towards

---

<sup>9</sup> TM Woldemikael ‘The cultural construction of the Eritrean nationalist movements’ in C Young (ed) *The rising tide of cultural pluralism* (1993) 179–199.

<sup>10</sup> The Kunama are sometimes called the ‘pre-historic inhabitants’ of the country, see Refugees International, ‘Forgotten People: The Kunama of Eritrea and Ethiopia’ [www.refugeesinternational.org/content/article/detail/939/](http://www.refugeesinternational.org/content/article/detail/939/) (accessed 31 July 2007). [www.refugeesinternational.org/content/article/detail/939/](http://www.refugeesinternational.org/content/article/detail/939/).

<sup>11</sup> Report of the African Commission’s Working Group of Experts on Indigenous Populations/Communities, submitted in accordance with the ‘Resolution on the Rights of Indigenous Populations/Communities in Africa’ Adopted by the African Commission on Human and Peoples’ Rights (African Commission) at its 28<sup>th</sup> Ordinary Session, ACHPR & IWGIA, 2005 89.

<sup>12</sup> J Markakis *Ethiopia: Anatomy of a traditional polity* (1974) 61.

the Kunama, the Nara, and the Tekurir, who face social marginalisation as a result.<sup>13</sup> The words that identify these groups, ‘Kunama’ and ‘Tekurir’, also carry pejorative undertones. These terms denote a person of bad appearance and dark skin colour. ‘Baria’, an alternate term used to refer to the Nara, means ‘black slave’ in Amharic.<sup>14</sup> Having their origin from Nilotic stock, the Kunama, Nara and Tekurir are different in their physical appearance from the rest of the ethnic groups, who are descendants of Hamitic and Semitic stock.

The Kunama, in particular, have been singled out as unpatriotic.<sup>15</sup> Although the Kunama participated in the Eritrean independence struggle, they are sometimes blamed for lacking strong allegiance with the independent state. The Kunama are suspected of taking Eritrea’s independence as a mere act of change of government occurring, as ‘larger government replaced by smaller government’.<sup>16</sup> Moreover, during the recent border conflict between Eritrea and Ethiopia, the Kunama were criticised by other Eritreans for not showing strong enough allegiance to Eritrea.

Going beyond mere stigmatisation, all three of these groups have been subjected to marginalisation. There is no official policy of political marginalisation, and the nine officially-recognised ethnic groups are mostly represented in various public presentations, cultural performances, national documents and, importantly, the national media.<sup>17</sup> The exceptions are the Tekurir and Jiberti Muslims.<sup>18</sup> However, marginalisation does occur due to the dominance of the culture and way of life of the two major ethnic groups, which have gradually influenced the culture and way of life of the other groups. This is illustrated most clearly in the high rate of resettlement of the members of the Tigrinya ethnic group, who form the core of ex-soldiers resettled by the government on the settlements and living areas of the Kunama and the Nara.

---

<sup>13</sup> USA Department of State - Bureau of Democracy, Human Rights, and Labour ‘Country Reports on Human Rights Practices - 2005: Eritrea’ (8 March 2005).

<sup>14</sup> LM Bender *Kunama* (1996) 5.

<sup>15</sup> See eg M Wubneh & Y Abate *Ethiopia: Transition and development in the Horn of Africa* (1988): ‘The Kunama have always supported the Ethiopian government ...’

<sup>16</sup> Larger government refers to the Ethiopian domination over Eritrea while the smaller government refers to the Eritrean government.

<sup>17</sup> Important examples are the national currency and postal stamps.

<sup>18</sup> The position of the Tekurir is not altogether clear. The Jiberti are officially considered to be a part of the Tigrinya ethnic group.



Marginalisation is not unique to the Kunama, Nara, Tekurir and Jiberti Muslims. Some of the other minority groups also experience marginalisation, but to a lesser degree. Surrounded by the two dominant groups, the Bilen, for example, face the consequences of Tigrinya and Tigre cultural hegemony.<sup>19</sup> Other groups are also more physically-isolated and economically marginalised than the Kunama and the Tekurir. Some of these communities live in regions that are inaccessible either due to the inhospitable climate, or due to the rough terrain which makes modern transportation difficult. This isolation accounts for the neglect in infrastructure of the Nara, Hedareb, Afar, Saho and many clans within the Tigre, who all live in relatively remote and inaccessible areas with limited economic potential. Some Rashaida live on the Dahlak Islands, and are largely isolated from the rest of the Eritrean population.

Additionally, the livelihood of indigenous peoples and the survival of their distinct ways of life typically depend substantially on their access and rights to traditional lands and resources.<sup>20</sup> The Kunama were formerly exclusively nomadic, but today they are mostly farmers and agro-pastoralists. The Nara economy is based on agriculture, although many people weave, trade, hunt, or breed animals to supplement their incomes.<sup>21</sup> The principal crops of both the Kunama and Nara include sorghum (the universal staple), wheat, barley, millet, legumes, vegetables, fruits, sesame, linseed and tobacco.<sup>22</sup> Both the Kunama and the Nara gather forest products, vines for ropes and baskets, as well as wood for stools. Men do the hunting, herding, and milking; but both men and women participate in farm work. Surplus crops and woven crafts are traded for other items, such as spices, iron and iron works, jewellery, and clothing. The Kunama also tend to manifest self-exclusion in an attempt to keep their distinct cultural identity and way of life intact and perpetuate it. When their traditional settlement sites were urbanised, largely due to the relocation of the Tigrinya ethnic group, the agriculturalist Kunama and Nara tended to withdraw to new settlements.<sup>23</sup>

---

<sup>19</sup> Smidt (n 6 above) 134.

<sup>20</sup> Report of the African Commission's Working Group of Experts on Indigenous Populations/Communities, submitted in accordance with the 'Resolution on the Rights of Indigenous Populations/Communities in Africa' Adopted by the African Commission on Human and Peoples' Rights (African Commission) at its 28<sup>th</sup> Ordinary Session, ACHPR & IWGIA, 2005 21, 89.

<sup>21</sup> 'The Prayer Profile: The Nara of Eritrea' [http://kcm.co.kr/bethany\\_eng/p\\_code4/2429.html](http://kcm.co.kr/bethany_eng/p_code4/2429.html) (accessed on 5 January 2007).

<sup>22</sup> As above.

<sup>23</sup> Wikipedia, the Free Encyclopaedia, 'The Kunama People' [http://en.wikipedia.org/wiki/Kunama\\_people](http://en.wikipedia.org/wiki/Kunama_people) (accessed on 5 January 2007).

In a predominantly rural society, the characteristics of farming and pastoralism are by no means limited to the Kunama and Nara. Groups such as the nomadic Afar, who live in the arid and inhospitable region bordering Djibouti, have a more distinct and ‘traditional’ lifestyle than the Kunama and Nara. The Rashaidas are mostly nomadic pastoralists, and are ‘the least integrated group, living in near-isolation from the rest of Eritrean society’.<sup>24</sup> As pastoralists, these groups have been discriminated against by the government, which has failed to recognise, let alone promote, the pastoralist way of life.<sup>25</sup> The Tekurir are poor communities that mostly function as traditional healers and are also said to be good peanut growers; and they are known to use herbs and amulets.

Religion is an important aspect of cultural life and identity. No reliable figures on religious affiliation are available. According to the *Encarta Encyclopaedia*, Orthodox Christians constitute around 46 per cent of the total population, Muslim 45 per cent, Roman Catholic 3 per cent, non-religious 4 per cent and others 2 per cent. Other sources also indicate that approximately 45 per cent of the Eritrean population is *Sunni* Muslim, 46 per cent Orthodox Christian, 2 per cent traditional indigenous religions and the remainder includes Eastern Rite and Roman Catholics, Protestants, smaller numbers of Seventh Day Adventists and Jehovah's Witnesses, and a few *Bahai*.<sup>26</sup> The majority of Muslims are in the eastern and western lowlands, whereas Orthodox Christians dominate the central and southern highlands. The Tigrinya are predominantly Christian, while the Tigre, Afar, Saho, Rashaida, Hedareb, and Nara are predominantly Muslims. The Bilen are half-Christian and half-Muslim. The Kunama originally adhered to traditional belief systems. Over time, many of them adopted either Christianity or Islam.<sup>27</sup> Only to a limited extent, then, do the Kunama distinguish themselves in their religious adherence from other groups in the territory of Eritrea. In the traditional Kunama and Nara communities, an independent nuclear family is built around the principle of polygamous marriage.

---

<sup>24</sup> TM Woldemikael ‘Language, Education and Public Policy in Eritrea’ *African Studies Review* (2003) 119.

<sup>25</sup> See SF Joireman ‘The minefield of land reform: comments of the Eritrean Land Proclamation’ *African Affairs* (April 1996).

<sup>26</sup> Library of Congress – Federal Research Division ‘Country Profile: Eritrea’ (September 2005) 14 <http://lcweb2.loc.gov/frd/cs/profiles/Eritrea.pdf> (accessed 7 January 2007). See also Berhan Hagos ‘Disunity’ (March 2007) [http://selfi-democracy.com/?read=articles/articles/1172945107eda1\\_e.htm](http://selfi-democracy.com/?read=articles/articles/1172945107eda1_e.htm) (accessed 20 March 2007) 7.

<sup>27</sup> Trevaskis (n 4 above) 16.

In conclusion: Although three of the ethnic groups in Eritrea (the Kumana, the Nara and the Tekurir) are here identified as ‘indigenous’, it must be clear from the discussion above that the dividing line between those three and other groups is not very clear. The Kunama and Nara meet the criteria of long-standing settlement, social stigmatisation, economic marginalisation, and - albeit to a declining extent dependence on their land for the survival of their culture and ways of life. Although the Tekurir have no claim to long-term settlement, they most clearly meet the criterion of marginalisation. On a sliding scale of indigeniety, these three groups would be followed by the Afar, the Bilen, the Hedareb, the Rashaida and the Saho.

## **1.2 Main human rights concerns of indigenous peoples**

**General concerns:** The general human rights issues prevalent in Eritrea are equally applicable to the three ethnic groups identified above as ‘indigenous’. Except for a short period during the 1940s and 50s, there has since Italian colonialism never been democracy in Eritrea. The situation has not changed since Eritrea has become an independent state in 1993.

The government in power is not democratically constituted and its management of the country has been undemocratic. The rule of law has been severely undermined by successive colonial forces and is equally disregarded by the present government. Citizens do not benefit from the law, and there is no predictability or accountability for government conduct. The classical institutions essential to support a democracy are largely absent, and the existing ones are so weak that they hardly make any difference to people’s lives. The judiciary and the legislature have remained institutionally weak and are subject to unfettered executive manipulation. There are very few civil society organisations in Eritrea, mainly due to the curtailment of the fundamental rights and freedoms that such institutions require for their existence and proper functioning.

**Specific concerns:** In addition to the above, there are specific concerns affecting indigenous communities. The lack of recognition of the Tekurir as a community has been noted, as well as the lack of recognition of these groups as ‘indigenous’. Another prominent concern relates to the groups’ traditional livelihood and access to land. Starting from the time of independence, the EPLF has encouraged nomads to settle by providing education for their children and vaccination

for their cattle. The Land Reform Proclamation, Proclamation No 58/1994, does not recognise land rights for pastoralism.<sup>28</sup> The pastoralist way of life has not been given any meaningful legal recognition.<sup>29</sup> National policies towards pastoralism favour a gradual shift to sedentarisation.<sup>30</sup> This settlement policy takes the form of a ‘villagisation’ process, involving the combination of scattered hamlets within a radius of ten to 15 kilometres into larger villages.<sup>31</sup> The land laws bestow ownership of land on the state and the government grants the authority to manage land.<sup>32</sup> The government may use this stipulation to relocate people from their traditional lands to other parts of the country. This would in return affect the cultural identity and ways of life of the above indigenous communities.

## **2 Background to the country**

### **2.1 Pre-colonial history**

It is accepted that the earliest inhabitants of present-day Eritrea have been Nilotic peoples, forest dwellers who in about 2000 BC had moved from their homes in south-eastern Sudan into the Gash-Setit lowlands, and from there to the plateau of present-day Eritrea.<sup>33</sup> The Kunama are one of the earliest settled peoples in Eritrea. They adopted rain-fed agriculture and settled into communal villages in the lowlands of Eritrea. Accounts indicate that present-day Eritrea was subsequently invaded by pastoral Hamitic peoples, moving from the deserts of Northern Sudan,

---

<sup>28</sup> K Mengsteab ‘Eritrean land reform proclamation: A critical appraisal’ (1998) 2 *Eritrean Studies Review* 1-18.

<sup>29</sup> JR Wilson ‘Eritrean land reform: The forgotten masses’ (1999) 24 *North Carolina Journal of International Law and Commercial Regulation* 498 and SF Joireman, ‘The minefield of land reform: Comments on the Eritrean land proclamation’ (1996) 95 *African Affairs* 273, 275. See also the Land Proclamation: Proclamation 58 of 1994.

<sup>30</sup> It is, however, important to note the fact that in Eritrea there are no longer any pure nomads who continuously shift their tents, moving with their herds. The majority of pastoralists are semi-sedentary, living in villages and moving seasonally between a dry season camp and a wet season camp situated a few kilometres from each other. Transhumant movements of herds are common. However, only households with larger herds are able to send their non-essential animals outside their village in search of better grazing. All stock-owning households need to keep one camel or donkey for transportation and a couple of goats to provide milk for children. Among households involved in transhumance, most family members, especially women, children and old people remain in their village all year round. Only a small number of men (often paid herders) migrate with the herds.

<sup>31</sup> A Dinucci and Z Fre ‘Understanding the Indigenous Knowledge and Information Systems of Pastoralists in Eritrea’ (FAO 2003) communication for development case study 26, prepared in collaboration with Communication for Development Group Extension, Education and Communication Service Research and Training Division Development Department <<http://www.fao.org/docrep/006/y4569e/y4569e00.HTM>> (accessed 5 January 2007).

<sup>32</sup> See arts 8(3), (23(1) and 23(2) of the Constitution and art 3 of Proclamation 58 of 1994, the Land Proclamation.

<sup>33</sup> Trevaskis (n 4 above) 4.

who occupied the north-western lowlands and northern highlands. The Hamitic peoples expelled the Nilotic inhabitants, and started occupying the lowlands of present-day north-eastern Ethiopia and Somaliland.<sup>34</sup> Thereafter, the Semites crossed the Red Sea to colonise the Eritrean and Ethiopian plateau, where the climate and countryside closely resembled the South Arabian highlands from which they came.<sup>35</sup>

## 2.2 Colonial history

At different times the territories of present day Eritrea were ruled by a sundry of external powers, including the Ottoman Turks, Egyptians, Italians, the British and Ethiopians.<sup>36</sup>

The Ottoman influence in the 16th century was limited to the promotion of trade and the spread of Islam to the coastal areas.<sup>37</sup> Although the Egyptian conquest of Eritrea in the 19th century introduced Islam to some Eritrean ethnic groups, the short stay of the Egyptians was of little consequence.

The Italian occupation of Eritrea progressed steadily from 1885 to 1889.<sup>38</sup> Their expansion towards the highlands of Eritrea, though momentarily challenged, was finalised by the signing of the Treaty of Ucciali of 1889 with Ethiopia, by which Eritrea became an Italian colony in 1890.<sup>39</sup> It remained an Italian colony until 1941.

During the time of Italian colonisation a formal judicial system was established and the Italian Codes (Civil, Penal, Commercial and Maritime) were applied in Eritrea. The Italians established a court system for the Italian settlers and assimilated Eritreans while leaving the customary justice system to govern the natives.<sup>40</sup> In criminal cases, appeals from native chiefs and disputes

---

<sup>34</sup> As above.

<sup>35</sup> As above.

<sup>36</sup> BH Selassie *Conflict and intervention in the Horn of Africa* (1980) 49- 51.

<sup>37</sup> Islam was originally introduced in Eritrea during the late 7th and early 8th centuries AD, when followers of Muhammad crossed the Red Sea and later other Islamized Arabs occupied regions along the coast, thus making Eritrea one of the first East African regions to come under the influence of Islam. J Miran 'A Historical Overview of Islam in Eritrea' in *Die Welt des Islams* 45 (2005) 177-215 180. Yet the 'pivotal phase in the growth and development of Islam' in Eritrea took place during the nineteenth century (183).

<sup>38</sup> A Cassese *Self-determination of peoples: A legal reappraisal* (1995) 291.

<sup>39</sup> Cassese (n 38 above) 291.

<sup>40</sup> MB Hagos 'Eritrea' in C Heyns (ed) *Human rights law in Africa* (2004) 1060. See also GK Trevaskis *Eritrea: A colony in transition: 1941-52* (1960) 18 - 43.



between natives adhering to different customary laws were heard by the Italian regional commissioners and district officers.<sup>41</sup>

The influence of the Italian administration on land tenure was wide-reaching.<sup>42</sup> In 1909 and 1926, the Italian government nationalised large sections of land throughout Eritrea and designated these tracts as *demaniale* or government land.<sup>43</sup> Although much of the expropriated land fell within the control of local villages and pastoralists, the colonial government classified it as ‘unoccupied’ land and granted much of it to Italian farmers.<sup>44</sup> This effectively restricted pastoralists in the lowland areas from using the best and most suitable lands for grazing. Although the Italian colonisation of Eritrea introduced a high level of modernity in terms of extensive commercial farms, industries, road networks and education until the fourth grade, the Italians gave no consideration to the political development and democratisation of Eritrea. Instead, in the late 1930s, they proclaimed ‘racial laws’ which, *inter alia*, prohibited the natives from going to or residing in certain areas of Eritrean towns and using the same public transport as the Italians.<sup>45</sup>

After the evacuation of the Italians in 1941, Eritrea was administered by Great Britain under a trusteeship until 1952. The period of 1941 to 1952 is, for various reasons, an important time in Eritrean history.<sup>46</sup> There was a promising start to multi-party democracy, with fierce debates on the fate of the ex-colony. On the other side was equally tense disagreement among the four powers on how to settle the future of Italian ex-colonies, particularly Eritrea. Generally the various ethnic groups and sub-groups took stands based on how becoming part of Ethiopia or the Sudan or remaining as independent states would impact upon their ethnic and religious setting.<sup>47</sup> The General Assembly ultimately decided that ‘Eritrea shall constitute an autonomous unit federated with Ethiopia under the sovereignty of the Ethiopian Crown’.<sup>48</sup> Ethiopia, however, later violated the Federation and subjugated Eritrea as its 14th province.

---

<sup>41</sup> Hagos (n 40 above) 1060.

<sup>42</sup> Wilson (n 29 above) 503.

<sup>43</sup> As above.

<sup>44</sup> As above.

<sup>45</sup> Hagos (n 40 above) 1060.

<sup>46</sup> See generally Trevaskis (n 4 above).

<sup>47</sup> Trevaskis (n 4 above) 76.

<sup>48</sup> UN General Assembly Resolution 390(V) para A1.

By 1961, political resistance to the ‘Ethiopianisation’ of Eritrea led to the first sporadic instances of armed struggle, and, as the decade progressed, this defiance coalesced into a potent guerrilla force under the leadership of the Eritrean Liberation Front (ELF),<sup>49</sup> of which many of the early members were pastoralists, largely Bani Amir and Nara.<sup>50</sup> The lack of co-ordination in the ELF during the early 1960s led to a practice by ELF fighters of obtaining supplies from local populations, often by force.<sup>51</sup> By the late 1960s members of the ELF had become highly critical of the movement’s ‘fragmented political and military structures’, which it blamed for the Ethiopian army’s successes.<sup>52</sup> Demands for reform created a crisis in the ELF and resulted in a split in the organisation.<sup>53</sup> In the early 1970s, a group of ELF commanders, both Muslim and Christian, supporting the reformist position, defected from the ELF and formed a rival group, the Eritrean People's Liberation Front (EPLF), which pursued an aggressively secular and non-sectarian policy of uniting all of the ethnic groups and religions in Eritrea behind the liberation struggle.<sup>54</sup> While both movements continued fighting against Ethiopian domination, differences on some national issues aroused fierce fighting between the two movements in the 1970s and 1980s. The ELF never fully recovered from the earlier division and was eventually forced into exile by the EPLF in the early 1980s.<sup>55</sup> ELF supported the nomadic pastoralist way of life, while the EPLF favoured settlement and shift to sedentary farming.<sup>56</sup>

The 30 year-long Eritrean struggle for independence was not only aimed at ending Ethiopian domination and operation but also at liberating women, workers and peasant farmers from centuries of grinding poverty, chronic hunger and numbing oppression.<sup>57</sup> There was a real

---

<sup>49</sup> RA Rosen ‘Constitutional process, constitutionalism, and the Eritrean experience’ (1999) 24 *North Carolina Journal of International Law and Commercial Regulation* 271.

<sup>50</sup> D Pool *From Guerrillas to Government: The Eritrean People’s Liberation Front* (2001) 49-50.

<sup>51</sup> As above, 52; MRG 11.

<sup>52</sup> Pool (n 44 above) 54.

<sup>53</sup> As above 55. See also R Sherman *Eritrea: The Unfinished Revolution* (1980) 44.

<sup>54</sup> D Connell *Against all odds: A chronicle of the Eritrean revolution* (1993) 74-91.

<sup>55</sup> Pool (n 50 above) 55.

<sup>56</sup> SF Joireman ‘The minefield of land reform: Comments on the Eritrean land proclamation’ (1996) 95 *African Affairs* 273. See also A Dinucci & Z Fre ‘Understanding the Indigenous Knowledge and Information Systems of Pastoralists in Eritrea’ (FAO 2003) communication for development case study 26, prepared in collaboration with Communication for Development Group Extension, Education and Communication Service Research and Training Division Development Department <http://www.fao.org/docrep/006/y4569e/y4569e00.HTM> (accessed 5 January 2007).

<sup>57</sup> Connell (n 54 above) notes on the back cover.

blending of a social revolution with political objectives that had far-reaching consequences in transforming various aspects of the lives of the Eritrean people.<sup>58</sup> Much effort was exerted to root out ethnic, tribal, regional, religious and social identities and substitute them with a single Eritrean identity.<sup>59</sup> The EPLF's strategy was both a reaction to foreign domination as well as the social divisions characteristic of the 1960s.

### 2.3 Post-colonial history

On 24 May 1991 the EPLF entered the Eritrean capital, Asmara, marking *de facto* independence. Soon thereafter, the EPLF formed the provisional government and called for a referendum by which the political future of Eritrea was decided. *De jure* independence was formally declared on 24 May 1993. The government issued Proclamation 37/1993, which could be regarded as an interim constitution pending the adoption of a final Constitution.<sup>60</sup> In 1994 the EPLF renamed itself the People's Front for Democracy and Justice (PFDJ).

Proclamation 37/1993 provides for the three main government branches and the separation of powers among them. The National Assembly is the supreme legislature. Proclamation 37/1993 requires that the National Assembly be composed of 150 members: half of them members of the Central Committee of the PFDJ and the other half elected representatives. However, the relevant parts of Proclamation 37/1993 related to the composition of the National Assembly were amended in 1994 (by Proclamation 52/1994). The amendment requires that the National Assembly be composed of the Central Committee of the PFDJ and 60 representatives of the Eritrean people – 30 to be drawn from the regional assemblies; and the other 30 to be appointed by the Central Committee of the PFDJ. In 1997,<sup>61</sup> the newly-elected regional assemblies jointly with the 75 Central Committee members of the PFDJ and 75 representatives of Eritrean people living in the Diaspora, formed the constitutional Constituent Assembly.<sup>62</sup> The composition of the National Assembly (150) as provided by Proclamation 37/1993 was thus restored when the

---

<sup>58</sup> Connell (n 54 above) notes on the back cover.

<sup>59</sup> Connell (n 54 above).

<sup>60</sup> DR Mekonnen 'The reply of the Eritrean government to ACHPR's landmark ruling on Eritrea' (2006) 31 *Journal for Juridical Science* 35.

<sup>61</sup> Proclamation 52 of 1994, art 2(3).

<sup>62</sup> RA Rosen & BH Selassie 'The Eritrean constitutional process: An interview with Dr Bereket Habte Selassie' (1999) 3 *Eritrean Studies Review* 172.

Constituent Assembly appointed 75 regional assembly members to the National Assembly and added 15 representatives from the Eritrean Diaspora.<sup>63</sup>

In 1993 the government permitted the preparation of a constitution.<sup>64</sup> The constitution-making process lasted from 1993 to 1997, and on 24 May 1997 the Constitution was finally ‘ratified’ by the Constituent Assembly.<sup>65</sup> In accordance with the relevant legislation set forth to guide the drafting of the Constitution, the Constitution has passed through all the requirements,<sup>66</sup> however, the Constitution does not stipulate a date for its entry into force, nor does it have transitional provisions. The popular expectation was that the ratified Constitution would come into effect soon after its ratification, and transformation to a constitutional setting would start from the date of ratification.<sup>67</sup> However, the Constitution has not been implemented and is not in force. The country is therefore still governed by a Transitional National Assembly. Considering the democratic nature of the constitution-making process, the Constitution should be considered as properly-enacted and thus as enforceable law, but it has been ignored by the transitional government. The transitional government has also not complied with transitional laws.

From 1998 until 2000, war raged between Eritrea and Ethiopia, mainly concerning disputes about the delimitation of the border between the two countries, particularly in the Badme area. A peace agreement was concluded between the warring countries late in 2000, and a peace-keeping force, the UN Mission in Ethiopia and Eritrea (UNMEE), was subsequently deployed in the area.

Responding to increasing criticism against authoritarian tendencies in his style of governance, President Isaias Afwerki in September 2001 staged a crackdown on dissenters, rounding up leading politicians, religious leaders, journalists and others. Many of them remain in detention.

---

<sup>63</sup> As above.

<sup>64</sup> Proclamation 37 of 1993 (interim Constitution).

<sup>65</sup> For the Eritrean constitution-making processes see generally BH Selassie *The making of the Eritrean Constitution: The dialectic of process and substance* (2003).

<sup>66</sup> Proclamations 37 of 1993, 55 of 1994 and 92 of 1996.

<sup>67</sup> BH Selassie (2001) ‘The disappearance of the Eritrean Constitution and its impact on current politics in Eritrea’ <http://news.asmarino.com/Articles/2001/01/bhs-20.asp> (accessed on 5 December 2005).

The PFDJ is the only political party in Eritrea. Reports of violations of the right to privacy, political opinion, freedom of assembly, freedom of religion and freedom of movement persist.<sup>68</sup>

## 2.4 Current state structure

Almost ten years after the Constitution was ratified, it has not been implemented; thus, Eritrea continues to be governed by a transitional legal framework. In reality, this transitional legislation is often violated and the rule of law has been severely weakened.

**Regional administrative structures:** Before 1991, Eritrea was divided into eight local government units.<sup>69</sup> The borders of these units were devised on the basis of ethno-linguistic homogeneity. In 1992, a Proclamation redrew the map of local governments, dividing the country into nine units of local government.<sup>70</sup> In 1996, the position was fundamentally reversed by Proclamation 86/1996, which divided Eritrea into six units of local government, called regions (Maekel, Debub, Debubawi-Keih-Bahri, Semienawi-Keih-Bahri, Anseba and Gash-Barka).<sup>71</sup> Rather than striving for ethnic, religious, and linguistic homogeneity, the six regions were demarcated to ensure that as far as possible each region would include members of all the nine major ethnic groups. The Kunama and Nara are almost exclusively located in the Gash-Barka region, but other groups also inhabit that region.

Each region was in return divided into two levels: the sub-regional and village levels. At the regional level, every region has a legislative body called a Regional Assembly, an executive branch called an administration, and a judicial branch – the courts.<sup>72</sup> At the village level there is a Communal Court and an assembly called *Megabaeya*<sup>73</sup> that is composed of all villagers above the age of 18.

---

<sup>68</sup> See eg 'Eritrea' in JT Lawrence (ed) *Human Rights in Africa* (2004) ch 16; and 'Eritrea' in Amnesty International 2007 *The State of the World's Human Rights* (2007) 112-3; and D Connell *Conversation with Eritrean political prisoners* (2005).

<sup>69</sup> At that time they were called *Awrajas* in Tigrinya and Amharic.

<sup>70</sup> Proclamation 26 of 1992.

<sup>71</sup> The names of the first four regions simply indicate their geographical locations and thus are often translated as Central Region, Southern Region, Southern Red Sea Region and Northern Red Sea Region respectively. Proclamation No 86/1996, art 4(1).

<sup>72</sup> Courts are considered bodies of the central government, in practice however they are highly integrated with the executives of local governments.

<sup>73</sup> The term *Megabaeya* is a traditional word meaning representative local assemblies in Eritrean society. Proclamation 86 of 1996, art 8(a).



Regional assemblies are constituted by direct election.<sup>74</sup> As far as law-making powers are concerned, regional assemblies are empowered to legislate on areas where there is no contradiction with the laws of the National Assembly.<sup>75</sup> They exercise residual legislative powers. They can also exercise delegated legislative powers in areas where the National Assembly clearly empowers them to legislate. Although Proclamation 86/1996 and 139/2004 devolve considerable powers to the regions, in practice governance is highly centralised. The Constitution also provides for a unitary system where local governments enjoy powers given to them by the National Assembly.<sup>76</sup>

The executive is headed by the President who is elected by the National Assembly (article 4(3)). The current President of Eritrea, Isaias Afwerki, was elected in 1993. He also acts as the Chairperson of the PFDJ and the Chairperson of the National Assembly (article 4(3)). The President has the power with the approval of the National Assembly to select cabinet ministers and make numerous other appointments. Cabinet ministers can be members of the National Assembly. Currently the National Assembly is weak and nominal and it often skips its regular meetings which are supposed to be convened every six months (Proclamation 37/1993, article (4(3)).<sup>77</sup>

Article 7 of Proclamation 37/1993 states that the judiciary must be independent. The judiciary is, however, institutionally weak, subject to executive interference, and unable to uphold the rule of law in matters that implicate the executive and the PFDJ.<sup>78</sup> The judiciary has largely remained an arbiter of disputes between private individuals. Although the judiciary is considered efficient and independent as far as disputes between or among individuals are concerned, the public has no

---

<sup>74</sup> Proclamation for Election of Regional Assemblies 140 of 2004.

<sup>75</sup> Proclamation 86 of 1996, art 13 and Proclamation 139 of 2004, art 4.

<sup>76</sup> Proclamation 140 of 2004, art 1(5).

<sup>77</sup> See also Y Geberemedhin *The challenges of a society in transition: Legal development in Eritrea* (2004) 135-137.

<sup>78</sup> T Beyene 'The Eritrean Judiciary: Struggling for independence' (May 2001) a paper submitted to the International Conference in Eritrea on the 10th Anniversary of Eritrea's Independence.

confidence about matters where the PFDJ or the government is a party.<sup>79</sup> Practicing lawyers in the country do not challenge government actions before the judiciary.<sup>80</sup>

**Political parties:** The PFDJ is the ruling and only party allowed to function within Eritrea. Although there are no opposition political parties in Eritrea, opposition parties outside Eritrea are increasing in number. They include the Eritrean Liberation Front Revolutionary Council (ELF-RC), Eritrean Democratic Party (EDP), Eritrean National Salvation Front (ENSF), Eritrean Liberation Front (ELF), Eritrean Islamic Party for Justice and Development (Alkalas), Eritrean Islamic Islah Movement (Islah), Eritrean Democratic Front (*Sagem*), Democratic Movement for the Liberation of the Eritrean Kunama, Democratic Movement of the Red Sea Afar, Eritrean Federal Democratic Movement (EFDM - Federalists) and Alnahda Party.<sup>81</sup> From this list it appears that the interests of one group identified as indigenous in this study, the Kunama, are represented by a political party in the diaspora.<sup>82</sup>

## 2.5 Role of media and civil society

Freedom of the press is guaranteed by law<sup>83</sup>; however, there are no independent newspapers in Eritrea and the extremely limited domestic publications, which are all government-owned, are subjected to censorship. In 2007, Eritrea ranked lowest in the Worldwide Press Freedom Index, replacing North Korea.<sup>84</sup> It has been reported that any journalist who criticises the current regime is imprisoned and at least four journalists have already died in jail.<sup>85</sup> In 2001, the government closed down eight private newspapers and arrested an undisclosed number of journalists contrary to the law which clearly prohibits the censorship, suspension or banning of newspapers and other press products.<sup>86</sup> The only published newspapers are those which are government-owned -

---

<sup>79</sup> SM Weldehaimanot 'Securing the independence of the Eritrean Judiciary' (2003) (unpublished senior thesis submitted to the Faculty of Law, University of Asmara). See also Beyene (n 78 above).

<sup>80</sup> Communication 250/2002 *Liesbeth Zegveld v Eritrea* (2003) AHRLR 84 (ACHPR 2003) 17 Annual Activity Report.

<sup>81</sup> Library of Congress – Federal Research Division 'Country Profile: Eritrea' (September 2005) 14 <<http://lcweb2.loc.gov/frd/cs/profiles/Eritrea.pdf>> (accessed 7 January 2007). See also Berhan Hagos 'Disunity' (March 2007) [http://selfi-democracy.com/?read=articles/articles/1172945107eda1\\_e.htm](http://selfi-democracy.com/?read=articles/articles/1172945107eda1_e.htm) (accessed 20 March 2007).

<sup>82</sup> For an overview of all the Eritrean political parties, see <http://www.awate.com/portal/content/view/4485/9/>.

<sup>83</sup> The Press Proclamation, Proclamation 90 of 1996 art 4(1)(a) & the Eritrean Constitution art 19(2).

<sup>84</sup> *Eritrea ranks last in Press Freedom Index*, United Press International (17 Oct 2007).

<sup>85</sup> As above.

<sup>86</sup> The Press Proclamation, art 4(1)(b).

*Hadas Ertra* (Tigrinya) *Eritrea Profile* (English) and *Eritrea Al Hadisa* (Arabic). The only radio and television stations are the two government-owned ones respectively known as the Voice of the Masses of Eritrea and Eritrea Television (ERI-TV).<sup>87</sup> According to a survey conducted by the Ministry of Information, 78 per cent of households in Eritrea have a radio receiver.<sup>88</sup> The radio station broadcasts in eleven languages (in each of the languages of the nine ethnic groups, Amharic, Oromo and English).<sup>89</sup> The television station broadcasts in five of these languages (Tigrinya, Tigre, Arabic, Amharic, Oromo and English). The airtime given to each language differs.

There is no independent civil society organisation in Eritrea.<sup>90</sup> There are very few local NGOs and the government has been strictly controlling the activities of international NGOs (INGOs). A law passed in 2005 has limited the activities of NGOs to relief and rehabilitation work, and NGOs wishing to change programmes may only do so after applying in writing and obtaining approval.<sup>91</sup> There are no NGOs working in the field of human rights, good governance or democratisation. Citizens for Peace, which is mainly engaged in the protection of the rights of Eritreans expelled from Ethiopia during the course of the border conflict, is hardly functional and mainly operates from outside Eritrea.<sup>92</sup> The few active ‘NGOs’ in Eritrea, affiliated to and advocating government policies and actions, do not pursue independent agendas and should rather be called GONGOs (government-operated non-governmental organisations).<sup>93</sup> The most prominent of these institutions are the National Union of Eritrean Youths and Students (NUEYS), the National Union of Eritrean Women (NUEW) and the National Confederation of Eritrean Workers (NCEW). An absolute lack of space for any genuine civil society organisation

---

<sup>87</sup> The Press Proclamation reserves the ownership of written press to Eritreans only and ownership of TV and radio stations to the government only. See arts 4(d) & 6(1).

<sup>88</sup> Dinucci (n 31 above).

<sup>89</sup> Library of Congress (n 69 above) 14.

<sup>90</sup> E Chyrum ‘Why there is no human rights organization in Eritrea?’ speech delivered at the Human Rights Defenders Conference for East and Horn of Africa, Entebbe, Uganda from 30 October 2005 to 4 November 2005 <http://zete9.asmarino.com/?itemid=226> (accessed on 30 January 2007).

<sup>91</sup> A Proclamation to Determine the Administration of Non-governmental Organizations, Proclamation No. 61/1994 later supplemented by Proclamation 145/2005 (art 3 and art 7, respectively).

<sup>92</sup> Chyrum (n 90 above).

<sup>93</sup> As above.

to operate, including human rights organisations, has forced Eritreans in the Diaspora to get organised abroad. Small civil society organisations have recently started to flourish abroad.<sup>94</sup>

### **3 Background to the legal system**

#### **3.1 Legal system**

The present legal system of Eritrea largely resembles the civil law system. The notion of ‘precedent’ is largely unknown. Decisions of one court, or even one bench of a court, are not available to another due to the absence of publications of legal materials and law reports. The use and development of case law are further hindered by the lack of capacity of the Eritrean judiciary which suffers from a severely limited budget. Modern litigation is non-existent; cases are not well-argued in court; judgments are not well-reasoned or articulated well. There are not many learned practicing lawyers as access to legal practice is often denied by the Minister of Justice, which has monopolised the power to issue practicing licences;<sup>95</sup> and, importantly, there is no form of association of members of the legal profession.

#### **3.2 Sources of law**

There was a strong tradition of rule of law in different Eritrean communities and after the 16th century there were codified laws in most parts of the highlands of Eritrea. The Codes were referred to as ‘*Debtors*’, which in Tigrinya means (large books), and the laws were called *Hgi Enda Aba* (the law of fathers). They are referred to as customary laws of Eritrea because they are predominantly the reflection of the prevailing customs. There are many of these laws that governed smaller localities. Though they have been subject to change and repeal by subsequent legislation of the colonisers and post independence authorities, it seems that they still govern in so far as they are not inconsistent with other legislation.

---

<sup>94</sup> As above. They include the Eritreans for Human and Democratic Rights - United Kingdom (EHDR-UK); Eritrean Movement for Democracy and Human Rights (EMDHR) - South Africa; Coordinating Committee For Eritrean Democrats – Italy; Eritreans For Peace and Democracy - Suisse (EFDPC) - Switzerland; Eritrean Unity Movement - Norway; Eritreans Human Rights E.V. - Germany; Eritreans for Peace – Germany; Eritreans for Justice and Democracy – Benelux (EJDB); Popular Movement for Democracy in Eritrean (PMDE) – Sweden; Snit Selam - Germany; Release Eritrea (Evangelical Church organization, defending church members in Eritrea) – Diaspora group; Eritrean Community for Human Rights and Refugee Protection – USA and Human Rights Concern - Eritrea (HRCE) – UK.

<sup>95</sup> The Advocates Proclamation: Proclamation 88 of 1996, art 6.

In the 1960s a marked legal development took place in Ethiopia. The Penal, Civil, Commercial, Civil and Criminal Procedure, and Maritime Codes – largely replicas of European codes – were officially adopted and applied in courts. As Eritrea was part of Ethiopia until May 1991, these modern sources of legislation governed parts of Eritrea that were under the control of Ethiopian forces. After the independence of Eritrea, these codes were adopted with minor changes.

In 1997, the Ministry of Justice initiated a comprehensive law reform project. The main purpose of the project was to draft codes that reflect Eritrean realities.<sup>96</sup> This law-drafting exercise was also anticipated to bring comprehensive legislation that would be consistent with the Constitution, which already had been ratified. However, it has not yet been presented to the National Assembly for its consideration.

At present the legal system of Eritrea is operating on the basis of transitional laws which are composed of the adopted codes and post-independence proclamations and legal notices.<sup>97</sup> The Constitution is the supreme law and is very concise (about 6,736 words). It lays down key constitutional principles and leaves much to be regulated by subsidiary legislation, many of which are yet to be adopted. Chapter 2 enumerates national objectives and directive principles. Chapter 3 contains a justiciable bill of rights.<sup>98</sup>

### 3.3 Court structure

At present the Eritrean judiciary has four hierarchies: the Communal Courts, the Regional Courts, the High Courts and a last resort *ad hoc* Appellate Division within the High Court based in Asmara. Communal Courts are established at village level, although in some localities a group of small villages share one Communal Court.<sup>99</sup> The Communal Courts are composed of a judge

---

<sup>96</sup> Hagos (n 40 above) 1063.

<sup>97</sup> Perhaps as a legacy from Ethiopia, legislation passed by the National Legislature (National Assembly) is called Proclamation. Legislation issued by delegated authorities, mostly ministries, is called Legal Notice. Both Proclamations and Legal Notices are sequentially numbered.

<sup>98</sup> Art 28(2) ‘... Any aggrieved person who claims that a fundamental right or freedom guaranteed by this Constitution has been denied or violated shall be entitled to petition a competent court for redress. Where it ascertains that such fundamental right or freedom has been denied or violated, the court shall have the power to make all such orders as shall be necessary to secure for such petitioner the enjoyment of such fundamental right or freedom, and where such applicant suffers damage, to include an award of monetary compensation.’

<sup>99</sup> Proclamation 132 of 2003, art 3(1).



and two jurors who have equal votes; their decisions need to be supported by any two judges.<sup>100</sup> Judges and jurors are elected directly from localities, mostly villages.

Communal Courts are courts of first instance. The Regional Courts, the High Courts and the last resort *ad hoc* Appellate Division within the High Court seated in Asmara are higher in the hierarchy than Communal Courts.<sup>101</sup> In Regional Courts a single judge hears fresh cases; appeals are heard by three judges. High Courts are composed of three judges.

### 3.4 Status of international law

Under the Constitution, treaties need to be ratified by the National Assembly if they are to bind Eritrea (articles 31, 32 and 42(6)). This issue is unclear in the transitional legal framework.<sup>102</sup> Courts do not make reference to international human rights treaties and no important human rights cases have been handled by the judiciary. The High Court in Asmara, for example, failed to entertain an application for a *writ of habeas corpus* lodged on behalf of the eleven detained former government officials.<sup>103</sup> According to the Constitution, treaties ratified by the National Assembly have a status equal to that of legislation enacted by the National Assembly, as it is the act of ratification that transforms international treaties into domestic law. Treaties become part of Eritrean law if the National Assembly ratifies and proclaims them as law of the state of Eritrea. This has not happened in respect to any human rights treaties.

### 3.5 Ratification of UN, ILO and regional instruments

#### UN human rights treaties

Instrument	Date of deposit of ratification/accession
ICCPR	22/01/2002
ICESCR	17/04/2001
Optional Protocol to ICCPR	-
CERD	31/07/2001
Art 14 of CERD	-

<sup>100</sup> As above, art 3(6).

<sup>101</sup> For jurisdiction of each court see Part II, section 5 of this report – access to justice.

<sup>102</sup> See Proclamation 37 of 1993.

<sup>103</sup> Communication 250/2002 (n 68 above) para 25.

CEDAW	5/09/1995
Protocol to CEDAW	-
CRC	3/08/1994
Protocol to CRC- Armed Conflict	16/02/2005
Protocol to CRC - Sexual Exploitation	16/02/2005
Genocide Convention	-
Slavery Convention 1927	-
Supplementary Slavery Convention 1956	-
CAT	-
Art 22 of CAT	-
CMW	-
Art 77 of CMW	-
Convention on Biological Diversity	10/03/2005

### **ILO Conventions**

<b>Convention</b>	<b>Date of ratification</b>
ILO 29 (Forced Labour)	22/02/2000
ILO 105 (Abolition of Forced Labour)	22/02/2000
ILO 100 (Equal Remuneration)	22/02/2000
ILO 111 (Discrimination in Employment and Occupation)	22/02/2000
ILO 107 (Indigenous and Tribal Populations)	-
ILO 169 (Indigenous Peoples)	-
ILO 138 (Minimum age)	22/02/2000
ILO 182 (Worst Forms of Child Labour)	-

### **AU human rights treaties**

<b>Instrument</b>	<b>Date of deposit of ratification/accession</b>
African Charter on Human and Peoples' Rights	14/01/1999

African Charter on the Rights of the Child	22/12/1999
Protocol on the Rights of Women	-
Protocol on the African Court	-
Convention on Nature and Natural Resources, 1968	-
Revised Version of Convention on Nature and Natural Resources, 2003	-
OAU Refugee Convention 1969	-
Cultural Charter for Africa	-

### 3.6 Status of reporting and communications

Eritrea submitted only two reports under UN human rights treaties: under CRC (examined in 2003)<sup>104</sup> and CEDAW (examined in 2006).<sup>105</sup> Eritrea has not submitted any other reports in fulfilment of its obligation under the other UN treaties it has ratified, or under the African Charter. At least nine reports are overdue, including all reports under CERD, which is of particular relevance to indigenous peoples.

A communication concerning the detention and treatment of eleven former Eritrean government officials who were arrested in September 2001 was submitted to the African Commission.<sup>106</sup> The group of eleven had been held incommunicado, and attempts to use domestic *habeas corpus* procedures to secure their appearance or release had been unsuccessful. The African Commission found that the Eritrean government had violated numerous provisions of the African Charter, and recommended the release of the detainees. In its finding, the Commission describes the extent of the government's (and President's) dismissive attitude towards the African Commission. In May 2002, the Minister of Foreign Affairs responded in a *note verbale* that the government 'was making every effort to bring them before an appropriate court of law as early as possible'.<sup>107</sup> To date, this has not happened. In November 2005, the Commission adopted a

<sup>104</sup> See Concluding observation (UN Doc CRC/C/15/Add.204, 2 July 2003).

<sup>105</sup> See Concluding observations (UN Doc CEDAW/C/ERI/CO/3, 3 February 2006).

<sup>106</sup> Communication 250/2002 *Liesbeth Zegveld v Eritrea* (2003) AHRLR 84 (ACHPR 2003) 17 Annual Activity Report.

<sup>107</sup> As above, para 54.

resolution, once again calling on the Eritrean government to free the political leaders, journalists and others who have been arrested and detained for many years.<sup>108</sup>

### **3.7 National human rights institutions**

There are no human rights institutions in Eritrea.

---

<sup>108</sup> Resolution on the Human Rights Situation in Eritrea, contained in the 19th Activity Report of the African Commission on Human and Peoples' Rights, but not been made public.

## Part II: Legal protection of indigenous peoples in Eritrea

### 1 Recognition and identification

There is no express recognition by the government of indigenous peoples as the concept is used in the context of this report, even though the existence of all ethnic groups – except the Tekurir and Jeberti – is recognised. In various governmental cultural displays, the traditional and modernised lifestyles of each ethnic group are presented. The national currency also bears a representative symbol of each ethnic group. Various government documents and forms make reference to ethnic origin in their entries and it is common practice for Eritreans to be asked to reveal their religion and ethnic origin, for example during enlistment for military service conscription in the Sawa Military Camp.

The government, at least in its rhetoric, is against any form of discrimination (particularly ethnically-based) and it also sharply denies any allegation that any ethnic group is facing marginalisation and discrimination. Nevertheless, since the days of the independence struggle, a tendency towards cultural and ethnic assimilation has taken root. Since independence, the government has developed a policy of eradicating identification along regional and religious lines, and has started cultivating a common national identity.

The draft Proclamation on the Formation of Political Parties and Organisations is a further example of attempts to erode ethnic diversity. This Proclamation prohibits the formation of political parties purely along religious, regional or ethnic lines. Instead it requires, *inter alia*, that 85 per cent of the founders of a political party or organisation shall be permanent residents of Eritrea, the majority of whom must be residents in four administrative regions; and in order that the composition and unity of the founders as well as their ethnic and religious identities may reflect the pluralistic nature of the Eritrean society, at least two-thirds of them must originate from five nationalities at a minimum and at least a third of them must be followers of the Islamic or Christian faiths (article 6). The requirement that the majority of a party's membership should come from four regions places small, predominantly single region-based groups such as the Kunama, Nara and Tekurir at a disadvantage. In fact, the requirement favours only the two dominant groups, the Tigrinya and Tigre.

The Constitution contains provisions which are essential for communities to identify themselves, yet the government has failed to put these provisions into effect. Anyone who was a resident of Eritrea in 1933 is an Eritrean by origin and one born there is entitled to Eritrean nationality by birth (Proclamation 21/1992: The Nationality Proclamation, article 2). Such Eritrean is entitled to the Eritrean national identity card (Proclamation 21/1992, article 2). The law requires that anyone born must be given a name and is entitled to use his or her father's and grandfather's name (EPLF article 4: Proclamation 2/1991).<sup>109</sup> Choice of name is unrestricted in so far as it does not affect culture, religion or other societal values. In principle, all these provisions apply equally to the groups identified as 'indigenous' in this study.

## **2 Non-discrimination**

The Constitution includes a number of provisions that could be used to protect indigenous peoples from discrimination, but unfortunately they remain meaningless until the government adheres to the document. For example, the Constitution provides that all persons are equal under the law; that no person may be discriminated against on account of race, ethnic origin, language, colour, gender, religion, disability, age, political view, or social or economic status or any other improper factor; and stipulates that the National Assembly must enact laws that can assist in eliminating inequalities existing in Eritrean society (article 14). Any act that violates the human rights of women or limits or otherwise thwarts their role and participation is prohibited; and pursuant to the provisions of the Constitution and laws enacted pursuant thereto, all Eritreans without distinction, are guaranteed equal an opportunity to participate in any position in the country (article 7). The state is required to work to bring about balanced and sustainable development throughout the country, and shall use all available means to enable all citizens to improve their livelihood in a sustainable manner, through their participation (article 8(2)). In rendering their judgement, judges shall make no distinction among persons (article 10(3)). In addition, article 4 of the Transitional Penal Code provides that criminal law applies to all alike without discrimination as regards persons, social conditions, race or religion.

---

<sup>109</sup> There is no tradition of calling an Eritrean by his or her surname as a matter of courtesy. Indeed Eritreans have no surnames. Everybody has one (in rare cases more than one) name and is called by that name no matter ones social status. One uses his or her father's and grandfather's names purely for identification purposes.

### 3 Self-management

The Constitution provides that Eritrea is a unitary state and leaves the powers local governments must have to be governed by law (article 1(5)). At present there are four administrative levels: the village/locality, sub-regional, regional and national. A village or locality is the most customary organisational unit which many Eritreans argue should be preserved with some level of autonomy.<sup>110</sup> However, at least since the last half of the 20th century, strict central administration has extended to the level of villages. The military government that ruled Ethiopia since 1974 had at times introduced at the village level an administrative structure similar to that at the national level. After Eritrean independence there has been a village administrative office at times filled by government-appointed administrators and at times elected by villagers. Recently, there have been popular elections for village administrators.

As part of the drive towards nation-building, the post-independence government changed the structure and powers of local government, attempting to undo ties of kinship and descent, and replacing tribal with a more centralised authority. In 1994, the governing elite abolished the then-existing division of the country into eight provinces (*awraja*), roughly corresponding with ethnic homogeneity. It replaced the eight provinces with six administrative regions (*zoba*), as part of a process of ‘ethnic integration’. All ethnic minorities, including those identified here as ‘indigenous’, are therefore increasingly being assimilated into the majority groups.

The Proclamation for the Establishment of Local Governments 86/1996 has maintained the traditional village assemblies called *Baito*<sup>111</sup> - albeit with some modern adaptations. Under the Proclamation it is called *Megabaeya* (a term similar to *Baito*) and is composed of all villagers above the age of 18 (article 8(a)(2)). The *Megabaeya* is modernised in the sense that it is required to have regular sessions every two or three months and is chaired by the Village

---

<sup>110</sup> K Mengsteab ‘Eritrean land reform proclamation: A critical appraisal’ (1998) 2 *Eritrean Studies Review* 12.

<sup>111</sup> *Baito* in Tigrinya refers to a public meeting of villagers where points of common concern are openly debated and decided. *Baito*, however, was not only a meeting but also a constituted body. Yet, it was less formal than today’s assemblies and their advanced procedure. Generally, there was no specific means of calling *Baito*, no specified quorum or requirement. In fact, it was not a question of majority, but rather a question of friendly consensus that govern traditional *Baitos*. Most of the time unanimous agreement is the product of such *Baitos*. There was no formal chairman for *Baitos*, though most of the time elderly people were asked to open and close *Baito* sessions as a sign of societal respect for elders and religious leaders.

Administrator (article 30). The *Megabaeya* is convened on the initiation of the Village Administrator, or at the insistence of villagers.<sup>112</sup>

The *Megabaeya* is empowered to discuss issues that concern its village, propose opinions and recommendations, and approve things within its powers that require its approval (article 30). In addition, the *Megabaeya* is also empowered to consider and investigate reports presented by the administrator on issues within its local and material jurisdiction (article 30). This modern change is yet to be internalised, and thus the most important task of the *Megabaeya* has been to assist the Village Administrator, by establishing committees of various nature that actually run village affairs such as the administration of agricultural affairs of a village.

The most significant change brought about by the 1996 Proclamation was the greater centralisation of power, exemplified by the ‘discontinuation of elected peoples’ assemblies at the lower levels of administration’.<sup>113</sup> With an ‘executive line of command from the president’s office all the way down to the village/area level’,<sup>114</sup> the village administrators for all purposes became executives and mouthpieces of the central authority. With the regional administrators responsible ‘upwards’, to their immediate supervisor, and not ‘downwards’, to their constituencies, the interests of minority groups play second fiddle, and the importance of local issues has diminished further.

#### **4 Participation and consultation**

In discussing public participation it becomes apparent that the principles embodied in the Constitution bear little resemblance to reality. The Constitution obliges the state, through participation of all citizens, to ensure national stability and development by encouraging democratic dialogue and national consensus, and by laying a firm political, cultural and moral foundation of national unity and social harmony (article 6(2)). It is a fundamental principle of the state of Eritrea to guarantee its citizens broad and active participation in the political, economic, social and cultural life of the country (article 7(1)). The Constitution further requires that there

---

<sup>112</sup> The Proclamation provides that, in case of necessity, majority of the Villagers can formally convene the *Megabaeya* (art 30(6)).

<sup>113</sup> K Tronvoll ‘The process of nation-building in post-war Eritrea: Created from below or directed from above?’ (1998) 36 *Journal of Modern African Studies* 461 466.

<sup>114</sup> As above.



shall be established appropriate institutions to encourage and develop people's initiative and participation in their communities (article 7(3)).

The Constitution also guarantees fundamental rights that are essential to promote public participation: freedom of speech and expression, the right to assemble and to demonstrate peacefully and the right to form organisations for political, social, economic and cultural ends (article 19).

Pursuant to the provisions of the Constitution and laws enacted pursuant thereto, all Eritreans, without distinction, are guaranteed an equal opportunity to participate in any position of leadership in the country (article 7(4)). The Constitution provides for every citizen who fulfils the requirements of the electoral laws the right to vote and to seek elective office (article 20). As well, all Eritrean citizens older than eighteen have the right to vote and the National Assembly is required to enact an electoral law to ensure the representation and participation of the Eritrean people (article 30).

At present the national representative body is the Transitional National Assembly, composed of 165 members, most appointed in 1993, but some elected in 1997. Since then there has not been a national election for the National Assembly.

In 2004, nation-wide elections for the local Regional Assemblies were conducted. In addition, elections for the newly-introduced first instance Communal Courts, City Councils and Village Administrators were conducted. Elections for Regional Assemblies were conducted on the basis of Proclamation 140/2004. The Proclamation reserved 30 per cent of the seats in each Assembly for women and permitted women to equally compete for the remaining 70 per cent (article 2(b)). The electoral system was a Single Member District Plurality (SMDP): any Eritrean over 18 was eligible, election was by secret ballots, each voter was eligible to vote once and only in the locality where he or she resides.

Having regard to the population ratio and distribution pattern, it is evident that every electoral district is dominated by the Tigrinya ethnic group and thus the Regional Assemblies are less

likely to reflect proportional ethnic representation. Moreover, ethnic representation was not at all favoured as is apparent in some provisions of the Proclamation.<sup>115</sup>

Elections for Village Administrators were also conducted in each village. Generally, villagers elected three officials for three positions which are all related to the management of village affairs. Villagers also elected one judge and two jurors that would constitute the Communal Court of each village.<sup>116</sup> National elections for the National Assembly, which could have been a springboard for the implementation of the Constitution, were initially scheduled in 2001 but never took place.

Apart from these elections, there has been no genuine avenue for democratic participation of the Eritrean peoples in the governance of their country. Whereas policies often descend from the top leadership, often from the office of the President, public participation has been limited to applauding and co-operating in the enforcement of these policies.

## **5 Access to justice**

The Constitution contains a number of provisions, which, if in effect, would ensure that the necessary mechanisms are in place so that all Eritreans, including indigenous peoples, would have access to justice. It clearly states that any aggrieved person who claims that a fundamental right or freedom guaranteed by the Constitution has been denied or violated is entitled to petition a competent court for redress and where the court ascertains that such fundamental right or freedom has been denied or violated, the court has the power to make all such orders as are necessary to secure the enjoyment of such fundamental right or freedom, and where damage is suffered, to include an award of monetary compensation (article 28(2)). The justiciability of the rights, freedoms and perhaps duties in Chapter 3 of the Constitution is beyond doubt clarified by article 28. Perhaps a weakness of article 28 is that standing in human rights litigation is limited to an aggrieved person.<sup>117</sup> In civil matters any person with a vested interest in the subject matter of

---

<sup>115</sup> See for example art 4(2)(b), which in the Eritrean political context unequivocally prohibits agitation and candidacy along the interests of ethnic groups.

<sup>116</sup> Proclamation 132 of 2003, art 3(1).

<sup>117</sup> The requirement of an ‘aggrieved person’ appears equivalent to the growing ‘doctrine’ of ‘victim requirement’ as is being used by the United Nations Treaty Bodies and especially the Human Rights Committee.

the suit can be a plaintiff (article 33(2)) of the Transitional Civil Procedure Code of Eritrea (CPC)).

Thus, both constitutional and legislative provisions tend to limit standing in civil matters to those aggrieved or having a vested interest. However, the Office of the Attorney-General can institute a suit at any stage in a case when the public interest is affected (article 42 CPC). Moreover, an aggrieved person or a party with a vested interest is free to hire the services of legal experts with the exception of cases heard before the Communal Courts. The Ministry of Justice has set up a public Defender's Office as of January 2007, supplanting the earlier practice of requesting private attorneys to work *pro bono* on defence cases of the accused.

The Constitution states that the justice system shall be independent, competent and accountable, and that courts must work under a judicial system that is capable of producing quick and equitable judgments that can be understood easily by and are accessible to all the people.<sup>118</sup> In addition, the Constitution provides that every person who is held in detention must be brought before a court within 48 hours (article 17(4)); every person shall have the right to petition a court of law for a *writ of habeas corpus* (article 17(5)) and every person charged with an offence shall be entitled to a fair, speedy and public hearing by a court of law (article 17(6)).<sup>119</sup>

All courts are obliged to provide an interpreter for a party that cannot understand the language in use (EPLF article 6, Proclamation 3 of 1991). Article 7(1) also states that civil trials should be open to the public.

At present there are multiple regional courts in each region and thus geographic accessibility is not a problem. Appeals can be lodged to the High Court established only in the capitals of three of the six regions. However, it is important to note that, as the rule of law is not respected, the Eritrean judiciary has remained weak, public confidence in the judiciary as the defender of

---

<sup>118</sup> Art 10 (1) & (2).

<sup>119</sup> It is only under exceptional circumstances and specifically in matters that affect public morals or national security that a court may exclude the press and the public from all or any part of the trial as may be necessary in a just and democratic society (art 17(6)).

human rights is absent and the public generally does not challenge the government before the judiciary.<sup>120</sup>

Traditionally, many of the ethnic groups – including the Kunama, Nara and Tekurir – have settled disputes through non-judicial and more conciliatory means. The Civil Code recognises the out-of-court settlement of disputes by way of compromises, conciliation and arbitration.<sup>121</sup> The recently introduced Communal Courts, established in most cases at the village level, deal with smaller civil claims and less serious criminal cases.<sup>122</sup> However, these courts are not specifically attuned to traditional forms of dispute settlement.

## **6 Cultural and language rights**

The government encourages all ethnic groups to promote and manifest their cultures. In various national cultural events the government ensures that each ethnic group's culture is represented. The ruling party has a department of Cultural Affairs, which is actively promoting the different cultural values of all Eritrean communities.

The Constitution provides for the right to freedom of belief (article 19(1)) and to practice any religion and to manifest such practice (article 19(4)). The right of citizens to form organisations, *inter alia*, for cultural ends is guaranteed (article 19(6)). These provisions are contained in Chapter 3 of the Constitution, which is justiciable. Relevant directive principles in the Constitution include that the state is responsible for creating and promoting conditions conducive to the development of a national culture capable of expressing national identity, unity and the progress of the Eritrean people (article 9(1)); that the state must encourage values of community solidarity and love and respect of the family (article 9(2)). Moreover, the state and society must

---

<sup>120</sup> Beyene (n 78 above).

<sup>121</sup> Book V, Title XX of the Civil Code, arts 3307-3346.

<sup>122</sup> In civil matters, the material jurisdiction of Communal Courts extends, where the subject matter of litigation relates to movable property, to all matters less than 50 000 Nackfa (around 3 300 US\$) value, and where the subject matter of litigation relates to immovable property, to all matters less than 100,000 Nackfa (7 700 US\$) (Proclamation 132 2003, art 5(1)(a) & (b)). The Communal Court also has specific jurisdiction on matters relating to the right to fence and delimit land and the right to protect land on which one has usufruct right (art 5(1)(c)). According article 8(1) of Proclamation 132 of 2003, in criminal matters the Communal Courts have jurisdiction related to petty offences of intimidation (art 552 PC), damage to property of another caused by herds or flocks (art 649 PC), disturbance of possession of land (art 650 (1) PC), assault and minor acts of violence (art 794 PC) and petty offences against honour (art 798 PC).

have the responsibility of identifying, preserving and developing, as need be, and bequeathing to succeeding generations, historical and cultural heritage (article 21(4)). The Constitution further states that as the people and government strive to establish a united and advanced country, within the context of the diversity of Eritrea, they shall be guided by the basic principle of ‘unity in diversity’ (article 6(1)). It is a fundamental principle of the state of Eritrea to guarantee its citizens broad active participation in the cultural life of the country (article 7(1)). Once again it bears reminding that these provisions currently exist in the theoretical sense only as the government is not adhering to the Constitution.

Legislation gives consideration to cultural and religious values. In family-related matters, two kinds of laws are applied. For the Muslim communities of Eritrea, the *Shari’ah* governs; whereas Book II of the Transitional Civil Code of Eritrea (CC) applies to Christian communities. Various provisions of the CC, such as the definition of the degree of relationship by consanguinity and affinity and the intermarriage between individuals with certain bonds of relationship, all reflect cultural values (articles 550-559 and 582-585 of the CC). Importantly, Book II recognises marriage contracted according to the religion or local custom of the parties (articles 577(2), 579, 580, 605(1) and 606(1) of the CC). The same Book also allows proof of marriage celebrated in a cultural way such that when two persons mutually consider and treat themselves as spouses and when they are considered and treated as such by their family and their society, their status is proved (article 699(2) of the CC). Filiation can also be proved likewise (article 770(2) of the CC).

Generally, bigamy is prohibited within Christian communities and it is a crime under the Penal Code (article 616 of the CC). Polygamy is recognised as being in conformity with tradition or moral usage when certain criteria are met.<sup>123</sup>

The Cultural Affairs department of the PFDJ has also been active in promoting and preserving the diverse culture of the Eritrean peoples.

---

<sup>123</sup> Penal Code, art 617.

**Language rights:** The Constitution guarantees equality of all Eritrean languages (article 4(3)). It was deliberately left to the wisdom of the courts and, more importantly, to future generations to decide as the situation warrants whether there shall be an official language or not.<sup>124</sup> According to the chairman of the Constitutional Commission of Eritrea, equality of all Eritrean languages ‘was grounded on the principle of the equality of all ethnic groups and on the consequent need (and right) of every citizen to use the language of his/her choice for educational and other purposes’.<sup>125</sup>

In a historical perspective, the Italians encouraged the use of their language rather than the native languages while the British encouraged both Tigrinya and Arabic as co-official languages and languages of education.<sup>126</sup> Linguistically, the nine most widely-spoken languages in Eritrea fall into three major language families. Afar, Bilen, Hidareb and Saho are Cushitic languages, Tigrinya, Tigre and Arabic belong to the Semitic group, and Nara and Kunama are Nilo-Saharan. As far as the nature of bilingualism is concerned, it can generally be argued that the majority of the western lowland-dwellers speak Tigre as either their first or second language.<sup>127</sup> Arabic is not as a matter of fact a real *lingua franca* at a national or sub-national level and it is naive to generalise that all Eritrean Muslims understand Arabic, in terms of the level of understanding and the domains of use.<sup>128</sup> However, it is a sacred and prestigious language for Muslims in Eritrea and is the preferred spoken language among the Muslim elite.<sup>129</sup> As a result, Arabic remains a language of official ceremonies, national gatherings and government declarations.<sup>130</sup> In this sense, therefore, both Tigrinya and Arabic enjoy both statutory and official status.<sup>131</sup>

---

<sup>124</sup> GH Tesfagiorgis ‘When the drafting of a constitution is not confined to men of stature or legal experts: The Eritrean experience’ (1998) 2 *Eritrean Studies Review* 154.

<sup>125</sup> Awate.Com ‘An Exclusive Interview With Dr. Bereket Habte Selassie’ (2001) <[http://www.awate.com/artman/publish/article\\_81.shtml](http://www.awate.com/artman/publish/article_81.shtml)> (accessed 5 December 2005).

<sup>126</sup> C Hailemariam, S Kroon & J Walters ‘Multilingualism and nation building: Language and education in Eritrea’ (1999) 20 *Journal of Multilingual and Multicultural Development* 486.

<sup>127</sup> Hailemariam (n 126 above) 485.

<sup>128</sup> As above.

<sup>129</sup> See generally M Araya ‘The Eritrean question: An alternative explanation’ (1990) 28 *The Journal of Modern African Studies* 79–100.

<sup>130</sup> Hailemariam (n 126 above) 487.

<sup>131</sup> As above.

In general it can be said that Tigrinya and Tigre together are spoken by about 83 per cent of the total population and are widely distributed throughout the country.<sup>132</sup> Both languages serve as languages of inter-ethnic communication in that many members of other nationalities use one of the languages as a second language.<sup>133</sup> Multilingualism is common as most of the numerical minority groups speak Tigre or Tigrinya or both in addition to their mother-tongue.<sup>134</sup>

The Eritrean language policy has its ideological roots in the EPLF's National Democratic Programme adopted at its first congress in 1977.<sup>135</sup> This program, which was also endorsed at the second congress in 1987, takes the language issue as an important element of its commitment to ensuring equality of all nationalities.<sup>136</sup> Accordingly, no official status is offered to any one language in order not to marginalise the speakers of other languages. The essence of Eritrea's language policy is its recognition of multilingualism and its decision to deal with its complexities. The present government, aware of the problems of other multi-lingual nations, seems committed to ensuring equality of nationalities, and considers equality a right that is to be secured through public policy. As a matter of fact, however, the government uses Tigrinya and Arabic in most government functions.<sup>137</sup>

In the government-owned media (the only media in the country), all nine languages of Eritrea are used in radio broadcasts. The National TV station broadcasts in Tigrinya, Tigre, Arabic, Amharic, Oromo and English only. Kunama and Nara are not used as languages of TV broadcasting.

## **7 Education**

The Constitution guarantees every citizen the right of equal access to publicly-funded social services and the state is obliged to endeavour, within the limit of its resources, to make education available to all citizens (article 21(1)).

---

<sup>132</sup> Hailemariam (n 126 above) 486.

<sup>133</sup> As above.

<sup>134</sup> Hailemariam (n 126 above).

<sup>135</sup> EPLF 'National Democratic Programme' adopted at the First National Congress of EPLF in 1977.

<sup>136</sup> EPLF 'Political Report and National Democratic Programme' adopted in 1987 at the Second and Unity Congress of the EPLF and the ELF-Central Leadership.

<sup>137</sup> Hailemariam (n 126 above) 486.

The policy of the government is to make education at the elementary level compulsory. Education at all levels, including at university, is free. Since Eritrea's independence, the government has built many schools at different levels (mainly elementary, junior elementary and high schools). Most of these schools have been built in remote and previously-marginalised areas. The government has never resorted to mobile schools in response to the pastoralist way of life, but rather advocated the sedentarisation of pastoralists in order for them to get an education and other social services. This is one of the factors that contributed to a change in the lifestyle of the Kunama and Nara.

From 1995 to 2005, the number of schools and teachers significantly increased and the number of school-going children doubled.<sup>138</sup> In 2001/2002 there were a total of 183 schools in Gash-Barka with 76 684 pupils (16 per cent of the total number of children attending school in Eritrea during the same year): seven secondary schools, 29 middle schools and 147 elementary schools.<sup>139</sup> When compared to the total number of schools in the country this accounts for 15.9 per cent, 19.1 per cent and 21.2 per cent respectively.<sup>140</sup> Gash-Barka accounts for 14 per cent of the total population of Eritrea and the national and regional number of schools per 1000 inhabitants is 3.9 and 2.8 respectively.<sup>141</sup>

The education policy of the government of Eritrea provides the following regarding language:<sup>142</sup>

1. Each ethnic group has the right to use its language as the language of instruction at elementary school level.
2. The language of instruction at post elementary school level must be English, while other languages could be introduced as subjects.
3. At the elementary school all those students whose medium of instruction is Arabic will take up Tigrinya as a subject, and those whose medium of instruction is Tigrinya will take up Arabic as a subject.

---

<sup>138</sup> As above.

<sup>139</sup> As above.

<sup>140</sup> As above.

<sup>141</sup> As above.

<sup>142</sup> T Gerahtu 'Language policy and mother tongue instruction' (1996) Tigrinya version of paper presented at the First National Conference on Eritrean Languages, Asmara, Eritrea, 16–18 August 1996.



Until 2005, there were ten different languages used as mediums of instruction in Eritrea of which only two are foreign languages.<sup>143</sup> In the Gash-Barka region, for instance, 651 522 children were taught in six different languages during the school year 2001/2002; 16 909 in Arabic; 2 651 in Kunama; 1 740 in Nara; 6 317 in Tigre; 34 707 in Tigrinya; and 198 in Saho.<sup>144</sup>

Mother-tongue education is not universally regarded as preferable. At least in some communities, the policy of mother-tongue education was resisted on the basis that it would be more beneficial to members of minority groups to be educated in the dominant national or some internationally-recognised language. However, it is not clear that the Kunama, Nara and Tekurir, in particular, share such sentiments.

## **8 Land, natural resources and environment**

As only about 20 per cent of the Eritrean population is urbanised,<sup>145</sup> access to land is central to the survival of most of the people of Eritrea. There is therefore a strong attachment to land among all ethnic groups.<sup>146</sup>

Article 23(2) of the Constitution states that all land and natural resources below and above the surface of the territory of Eritrea belong to the state and that the interests citizens have in land shall be determined by law. Article 8(3) also states that in the interest of present and future generations, the state is responsible for managing all land, water, air and natural resources and for ensuring their management in a balanced and sustainable manner; and for creating the right conditions to secure the participation of the people in safeguarding the environment. Without prejudice to the state ownership of all land and all natural resources below and above the surface of the territory of Eritrea, the Constitution guarantees every citizen the right, anywhere in Eritrea, to acquire and dispose of property, individually or in association with others, and to bequeath it to their heirs or legatees (article 23(1)). The state may, in the national or public interest, take

---

<sup>143</sup> National Food Information System of Eritrea (NFIS) 'Baseline study on livelihood systems in Eritrea: Phase I: Preliminary identification of livelihood systems through research on secondary sources - Zoba (Region) Gash-Barka' (2005) 2; <http://www.fivims.net/documents/pdf/Preliminary%20Identification%20LS%20Gash%20Barka%20FINAL.pdf> (accessed on 5 January 2007) (NFIS study).

<sup>144</sup> As above.

<sup>145</sup> Encarta Encyclopaedia 2004 (electronic version), 'Eritrea: Facts and figures'.

<sup>146</sup> Markakis (n 10 above) 73-103.

property, subject to the payment of just compensation and in accordance with due process of law (article 23(3)).

Land Proclamation 58/1994 confirms that all land is owned by the state (article 3(1)). Where the government deems it necessary, it may allow the lease of *usufruct* or other similar rights over land and it may provide preconditions and criteria pertaining to the use and management of the land (articles 3(3) and (4)). Every Eritrean citizen<sup>147</sup> has a *usufruct* right over land (article 4(1)). An important *usufruct* right is the right to obtain *tiesa* land (land for housing) in one's home village (article 6(3)). Another main *usufruct* right is the right to obtain land for housing or farming or both activities in existing villages, or villages or other places to be established henceforth (article 4(20)). According to the Land Proclamation, a 'village' means a place customarily known as an organised village or a site or area classified as such for purposes of administrative efficiency and it may be an existing one or any village that may be formed henceforth (article 2(7)).

The government is empowered to classify land for housing and *farming activities*<sup>148</sup> in the villages of Eritrea for village residents and persons whose livelihood depends on land. The Land Proclamation defines 'farming activities' as including farming and pastoralism (article 2(6)). The government is also empowered to distribute rural land in accordance with the Land Proclamation and rules and regulations to be issued by the Land Commission (article 6(1)). *Usufruct* rights to land for farming activities in village areas of Eritrea are granted only to those Eritrean citizens who are permanent residents of Eritrean villages and whose livelihoods depend on land, and to those Eritrean citizens who are granted government permission to settle in villages and live off the land (article 6(2)).

---

<sup>147</sup> Any person who has attained the age of majority or a person who is deemed as emancipated pursuant to Articles 329-334 of the Transitional Civil Code of Eritrea, is entitled to the right to land (art 7 of the Land Proclamation).

<sup>148</sup> Emphasis added.

A body called the Land Administrative Body<sup>149</sup> is empowered to classify land (presumably in all Eritrean villages) into arable and non-arable land (article 9(1)) and prepare for distribution of the arable land on the basis of its quality (article 9(2)). The Land Administrative Body is required to adequately classify non-arable land for housing and buildings and areas required for various social and development activities, such as a cemetery, mosque, church, school, village assembly hall, road, forestry, *pasture*<sup>150</sup> and sites required by the government for governmental works (article 9(2)). These two provisions give sufficient indication that arable land is dedicated to crop-related farming, and most give rise to the closure of animal farms.

A major deficiency of the new land legislation is its total neglect of pastoral and nomadic rights. The traditional position was that villages control the land surrounding them, usually spanning a radius of less than ten kilometres. Due to their sparse population, villages in the areas where nomadic or sedentary pastoralism is practised often had bigger areas. Assuming nomadic pastoralists would settle in one village, it is unlikely that the government would grant them land that is sufficient to allow effective semi-nomadic pastoralism. Considering the low pasture potential of such areas, it is very unlikely that effective semi-pastoralism could be practised in areas with a limited geographic scope.

The Land Proclamation provides that all land left over after distribution must be administered by the government and that such land must be used in accordance with directives and formalities issued by the Land Commission (article 6(6)). It is very likely that in many localities of Eritrea where villages are sparse or non-existent, wide areas (mostly arid) would remain under the administration of the government. Although the government could grant pasture rights over such areas, this cannot, however, be a solution to the fate of pastoralism.

---

<sup>149</sup> The Land Proclamation provides that the Land Administrative Body (a body established to manage land use and allotment in accordance with this proclamation and governmental and administrative directives issued based on the Land Proclamation) shall be headed by a representative of the Land Commission, and shall be constituted of members from the village assembly and various governmental bodies of the locality. The Land Administrative Body, being a subordinate executive body with respect to land distribution, is required to carry out its functions in accordance with orders and directives of the Land Commission. The Land Commission in return is a government body established by and to implement the Land Proclamation.

<sup>150</sup> Emphasis added.

The effect of these provisions is, therefore, that nomadic pastoralists are not entitled to rights to land unless they permanently settle in villages. Once settled, they cannot perpetuate nomadic or semi-nomadic pastoralism.<sup>151</sup> In this way, the Land Proclamation forces pastoralists to shift to sedentary crop farming.

The Land Proclamation further provides that the government can also grant land by special authorisation and in such forms as lease, concession or other forms of governmental contract or permit, for purposes of commercial agriculture, industry, tourism or other kinds of capital investment (article 11(2)). The government is empowered to expropriate land, where people have settled or land that has been used by others, for purposes of various developments and capital investment projects aimed at national reconstruction or other similar purposes; and that this power can only be enforced upon the approval of the Office of the President or a body delegated by the President (article 50(1)). In agreement to this provision, article 22(1) of Proclamation 68 of 1995 indicates that a certain government body can expropriate land in order to enable a licensed investor (miner) to proceed with the licensed work.

The Land Proclamation requires the government, prior to expropriating such land to undertake the necessary study to ascertain that the land is fit for the purpose it is to be expropriated (article 5-(2)). Where it is decided that such land is to be expropriated, the holder of the right shall be obligated to leave the land; the decision of the government is final and subject to no appeal in any court (article 50(3)). The Land Proclamation requires the government to pay compensation (article 50(4)). The compensation, which must be in cash or substitute land, must be commensurate to the loss accruing to the holder of the right and must be reached by the agreement of both parties and failing agreement, the determination of the compensation could be taken to the High Court (article 51).

These provisions would enable the government to take land traditionally occupied by pastoralists without consultation or consent. The relocation of sedentary highland farmers from the densely populated highland villages to the western lowlands and particularly to the Gash-Barka region, where the Kunama and Nara mostly live, is a likely scenario. While the central and southern

---

<sup>151</sup> For detailed analysis of this ramification see generally Wilson (n 29 above) and Joireman (n 56 above).

highland plateaus of Eritrea are losing land to urban establishments and are getting overcrowded and degraded due to the population density, the government with its aggressive policy of securing self-sufficiency in food production will most likely relocate more highland farmers and permit more commercial farming establishments – often members of the dominant Tigrinya group.<sup>152</sup> No special protection is accorded to grazing rights or rights of movement of herds of the lowland groups, who traditionally practice pastoral nomadism and agro-pastoralism.<sup>153</sup>

The land reform of 1994 also replaces communal land tenure with individual title. Traditionally, land was regarded the common property of villages, and individuals gained access or were allowed *usufruct* rights on the basis of their residence in the village and descent.<sup>154</sup> During the liberation struggle, the EPLF aligned itself with these traditional tenure arrangements. After independence, the EPLF ‘accused the communal tenure form of being backward and an obstacle to development’.<sup>155</sup> The new law abolishes all previously-existing land tenure arrangements, replacing them with exclusive state ownership. It is no longer the ties of ‘blood’ that bind people to ‘soil’. Instead, any person living in any (reconstituted) area is eligible to acquire land irrespective of his or her affiliation. This modernising approach encourages commercial farming. Increased commercialisation is likely to lead to further marginalisation of the poor who are most dependent on the land for their survival, in particular members of indigenous groups identified in this study.

Hundreds of thousands of Internally Displaced Persons (IDPs), persons expelled from Ethiopia (expellees) and repatriated refugees who have in the past decade already been resettled have been given lands for agriculture in the Gash-Barka region. As a consequence of the border conflict and recurrent droughts, many persons in Eritrea became IDPs. Gash-Barka is accommodating most of them. Of the 22 IDP and expellee camps in the country, nine are located in Gash-Barka, with 52 732 persons accounting for 69.6 per cent of the total number of expellees and IDPs in the country.<sup>156</sup> Between 2000 and mid-2004, a total of 119 903 Eritrean refugees have returned from

---

<sup>152</sup> Refugees International, n 9 above.

<sup>153</sup> Tronvoll, n 113 above, 472-3.

<sup>154</sup> Tronvoll, n 113 above, 470.

<sup>155</sup> Tronvoll, n 113 above, 471.

<sup>156</sup> NFIS study, n 143 above, 1.

the Sudan under the voluntary repatriation programme.<sup>157</sup> A total of 59 438 persons, accounting for 49.6 per cent of the returned refugees, have settled in the different sub-regions of Gash-Barka.<sup>158</sup> These resettlements have caused a serious disruption in the living patterns of and available agricultural land of the Kunama and Nara.

Since the Land Proclamation attributes no land rights to unsettled pastoralists, it is very unlikely that the government would pay compensation when it takes land for the above purposes. However, the land laws have remained largely unimplemented and thus their effect on the pastoral communities is so far minimal.

The Investment Proclamation does not contain provisions that allow indigenous peoples to be involved in negotiation for the determination of the size, location, purpose, terms and conditions of the allocation of land and/or water for investment purposes. Such issues are determined by negotiation between the investors and the Investment Centre which is supposedly an autonomous entity with juridical personality empowered with the duties of implementing and facilitating the provisions of the Proclamation.<sup>159</sup>

With regards to the environment, the most relevant provision of the Constitution is article 8(3), which reads that ‘in the interests of present and future generations, the state shall be responsible for managing all land, water, air and natural resources and for ensuring their management in a balanced and sustainable manner; and for creating the right conditions to secure the participation of the people in safeguarding the environment’.

Different legislative provisions relate to the environment. Important particularly for the purposes of this report are those related to investment and mining operations.<sup>160</sup> Those that are related to

---

<sup>157</sup> As above.

<sup>158</sup> As above.

<sup>159</sup> The Investment Proclamation, Proclamation No 18/199, arts 7(1) & 28(1). See also the Investment Proclamation, Proclamation 59 of 1994, art 6.

<sup>160</sup> A Proclamation to Govern Petroleum Operations, Proclamation No 40/1993 repealed by A Revised Proclamation to Govern Petroleum Operations, Proclamation No 108/2000; Regulations on Mining Operations, Legal Notice No 19/1995; Proclamation to Promote the Development of Mineral Resources, Proclamation No 68/1995; and Regulations on Petroleum Operations, Legal Notice No 24/1995 repealed by the Revised Regulations on Petroleum Operations, Legal Notice No 45/2000. In addition to these, other relevant legislation includes the Regulations to Prohibit the Production, Importation, Sale or Distribution of

mining, specifically petroleum operations, provided a whole range of provisions intended to protect the environment and its inhabitants and, if implemented accordingly, that can indeed protect the environment effectively. The law defines ‘environmental damage’ as, *inter alia*, including soil erosion, removal of vegetation, destruction of wild life and marine organisms, pollution of groundwater, pollution of surface water, land or sea contamination, air pollution, noise pollution, bush fire, disruption to water supplies, disruption to natural drainage and damage to archaeological, paleontological and cultural sites.<sup>161</sup> (The Revised Regulations on Petroleum Operations, Legal Notice 45 of 2000, article 2).

The carrying out of petroleum operations is also regulated, but is yet to be invoked.<sup>162</sup> General state policies require an investor to carry out environmental impact assessments before making an investment.<sup>163</sup> An application for a mining license must be registered and within 14 days after registration the applicant is required to publish a notice of the planned mining work in a newspaper (articles 7(1) and (2)). Within 30 days after publication of such notice any person may file at the office of the Licensing Authority a written objection to the grant of such license (articles 7(3), (4) and 8(1)). The grounds for objection are left open; thus indigenous communities can arguably use this provision to forward their grievances caused by investors.

---

the Plastic Bags in Eritrea: Legal Notice No 63/2002; Regulations to Amend the Production, Importation, Sale or Distribution of Thin Plastic Bags Prohibition in Eritrea: Legal Notice No. 99/2004; and the Investment Proclamation: Proclamation No 18/1991 repealed by the Investment Proclamation: Proclamation 59 of 1994.

<sup>161</sup> Emphasis added.

<sup>162</sup> Work practices and directions require every contractor, in carrying out petroleum operations, to always act in accordance with generally accepted practices in the international petroleum industry (Legal Notice 45/2000, art 10(1)). Specifically, contractors are required to conduct petroleum operations in accordance with generally accepted international petroleum industry standards and practices and in a manner which is compatible with the protection of human life, property and the environment (Revised Proclamation to Govern Petroleum Operations, Proclamation 108 of 2000, art 16). The Minister is empowered and duty bound to ensure that all petroleum operations comply with the requirements of environmental standards and the relevant laws of Eritrea; and each contractor is required to take necessary and adequate steps to ensure adequate compensation for injury to persons or damage to property caused by the effect of petroleum operations and minimize environmental damage to the contract area (Legal Notice 45/2000, art 11(1)). If the Minister reasonably determines that any works or installations erected by the contractor or any operations conducted by the contractor endanger or may endanger persons or third-party property, or cause pollution or harm to wildlife and marine organisms or the environment to a degree which the Minister deems unacceptable, the Minister may require the contractor to take remedial measures within a reasonable period established by the Minister, and to repair any damage to the environment (Legal Notice 45/2000, art 11(3)). If the Minister deems it necessary, he may also require the contractor to discontinue petroleum operations in whole or in part until the contractor has taken such remedial measures or has repaired any damage (Legal Notice 45/2000, art 11(3)).

<sup>163</sup> See generally Government of Eritrea ‘National environmental management plan for Eritrea’ (Asmara: Government of Eritrea, 1995). See also the Macro-Policy of the Government of the State of Eritrea.

The government may designate any area or mineral as reserved or excluded for particular mining operations, particularly when it regards sites of historical, cultural or religious interest.<sup>164</sup> Unless the Licensing Authority decides otherwise, no license can be issued for any area which is within 100 meters of a site of archaeological, cultural or religious importance (article 13(1)). However, the Revised Proclamation to Govern Petroleum Operations, Proclamation 108 of 2000, states that ‘the Minister shall, in consultation with the appropriate state organs, determine the areas in which Petroleum Operations may not be permitted for reasons of national interest and security’ (article 12(1)). This seems to imply that only for reasons of national interest and security and to protect culturally, religiously and historically important places can the exclusion of petroleum operations from certain areas be allowed. Nevertheless, the same legislation also requires the contractor to conduct petroleum operations in a manner designed to protect anthropological, archaeological or historical objects and sites, to notify the Minister, as soon as practicable, in the event of discovery of anthropological, archaeological or historical objects or sites or other minerals, and to not remove them from their locations, without the prior authorisation of the Minister (article 19).

No notable mining operations have been undertaken in Eritrea. As such, the indigenous communities have hitherto remained unaffected. However, a Canadian-based exploration company recently announced that it had been ‘awarded a mining license for the Bisha gold and base metals concession, 150 kilometres west of Asmara’.<sup>165</sup> Should damage ensue, the legal basis on which indigenous communities may make a claim is article 2027(2) of the Civil Code, which states that a person is liable for the damage he causes to another by an activity in which he engages or by an object he possess. Equally, a person is liable for the damage he causes to another by fault (article 2027 (1)) and vicariously for others (article 2027(3)). In general, Book IV, Title XIII of the Civil Code provides elaborate provisions on tort law. The Penal Code also provides important provisions that could be invoked to protect the environs of indigenous communities. Whosoever, intentionally or by negligence, propagates a parasite or germ harmful to agricultural or forest crops, is punishable (article 505 of the Transitional Penal Code of Eritrea (PC)). Whosoever intentionally contaminates by means of substances harmful to drinking water

---

<sup>164</sup> Proclamation to Promote the Development of Mineral Resources, Proclamation 68 of 1995, art 6.

<sup>165</sup> Eritrea industry: Mining permit issued for Bisha, Access World News (1 Feb 2008).



serving the needs of man or beast is punishable, according to the circumstances and to the extent of the damage, with a fine or with simple imprisonment for not less than one month, or in more serious cases with rigorous imprisonment not exceeding 5 years (article 506 PC). The contamination of pastureland with poisonous or harmful substances so as to endanger the life or health of animals is a crime punishable with rigorous imprisonment not exceeding 5 years (article 507 PC).

## **9 Socio-economic rights**

Although not in effect, the Constitution provides that every citizen has the right of equal access to publicly-funded social services and that the state is obligated to endeavour, within the limits of its resources, to make available to all citizens health, education, cultural and other social services (article 21(1)); to secure, within available means, the social welfare of all citizens and particularly those disadvantaged (article 21(2)); and to work to bring about a balanced and sustainable development throughout the country, and to use all available means to enable all citizens to improve their livelihood in a sustainable manner (article 8(2)).

The policy of the government is to make available social services including health equally to all parts of Eritrea. Since Eritrea's independence, the government has built numerous hospitals and clinics. Many of these are in remote and previously-marginalised areas.

By the time of its independence from Ethiopia in 1991, Eritrea's economy had been destroyed by war and was dependent on income from ports and its small agricultural base. The onset of the conflict with Ethiopia in 1998 halted all bilateral trade, severely reducing port activity and income in Eritrea; and, according to some sources, Eritrea lost US\$ 225 million worth of livestock and 55 000 homes during the war.<sup>166</sup> The pastoralists of Gash-Barka region were the most hit. The 2005 estimate of GNI per capita was \$ 180; GDP annual growth was 2 per cent and budget expenditure allocated to defence was 17.7 per cent of GDP.<sup>167</sup>

---

<sup>166</sup> Library of Congress (n 20 above) 8.

<sup>167</sup> <http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/AFRICAEXT/ERITREAEXT/0,,menuPK:351396~pagePK:141132~piPK:141107~theSitePK:351386,00.html> (accessed 28 January 2006), last updated August 2006.

According to its modernising and developmental agenda, the government is committed to extending development to remote parts of the country. These programmes have had a positive impact on the socio-economic rights of those living in these regions – including the indigenous groups identified in this study.

The health service in Eritrea is structured on three levels: health stations, health centres and hospitals. Health facilities in the Gash-Barka region, where most of the Kunama and Nara live, have over the last ten years gradually improved in quantity and quality, in spite of the disruptions and destruction of health facilities during the border war of 1998 to 2000. As of January 2005, there were 62 health facilities in the Gash-Barka region.<sup>168</sup> These account for 23 per cent of the total health facilities in the country.<sup>169</sup> There are three main hospitals, 15 health centres and 44 health stations.<sup>170</sup> The three health stations are temporarily set up at camps for the IDPs while the rest are scattered throughout the region and provide the basic health service needed by the rural communities.<sup>171</sup>

Despite the improvements, Gash-Barka has the highest neonatal mortality (29 per 1 000 live births), still birth (92 per cent per 1 000 live births) and maternal mortality rates (742 per 100 000 live births).<sup>172</sup> In the Gash-Barka region the major health problems in terms of severity are malaria, tuberculosis, diarrhoea and respiratory infections.<sup>173</sup>

Since independence the government has done a commendable job in completely eradicating polio from Eritrea. The government is providing free vaccinations to all children under five years of age, twice annually, as a precaution to avoid the prevalence of polio in neighbouring countries. Only 2.4 per cent of the Eritrean population is infected with HIV,<sup>174</sup> a relatively low number compared to countries in Southern Africa. Awareness-raising campaigns and the availability and affordability of condoms are satisfactory.

---

<sup>168</sup> NFIS study, n 143 above, 3.

<sup>169</sup> n 125 above, 4.

<sup>170</sup> As above.

<sup>171</sup> As above .

<sup>172</sup> As above.

<sup>173</sup> As above.

<sup>174</sup> UNAIDS 2006 Report on the global AIDS epidemic.

Although the Constitution grants every citizen the right to participate freely in any economic activity, to engage in any lawful business (article 21(3)) and equal access to publicly-funded social services (article 21(2)), these rights are not reflected in reality due to the lack of adherence to the Constitutional provisions. A person who wants to engage in a business must have a business license;<sup>175</sup> those who are engaged in subsistence farming, subsistence pastoral or fishing activities to sustain themselves or their family's livelihood, even though they sell occasionally their products in the market to supplement their livelihood, are exempted from getting a license.<sup>176</sup> There is no specific law (except the inadequate provisions of the Civil Code) that protects traditional creations such as folk art and traditional medicine.

## **10 Gender equality**

There is no specific legal provision related to indigenous women. However, equality of all persons under the law is constitutionally guaranteed (see paragraph 2 above). The Constitution does prohibit any violation of or limitation on women's human rights,<sup>177</sup> but the provision fails to meet the standards found in CEDAW, and in any event women cannot rely on this provision until the Constitution comes into force. Subsidiary legislation has taken affirmative actions aimed at empowering women. In the regional assemblies, 30 per cent of the seats are reserved for women, while the remaining 79 per cent are open to all, including women.<sup>178</sup> Women are encouraged to run for any public position. In the most recently-conducted elections for regional assemblies and city councils, a considerable number of women were elected. Many women were also elected as jurors and judges of the Communal Courts.

The government is pursuing a policy of extending development to remote parts of the country where indigenous women live. Such developmental endeavours, which focus on the supply of clean water in nearby areas and the establishment of small enterprises, education and health facilities, could improve the living conditions of indigenous women. Proclamation 58/1994 gives every citizen a right to land use without discrimination, though the proclamation's narrow focus

---

<sup>175</sup> A Proclamation to Provide for the Control of the Business Licensing System and for the Establishment of a Business Licensing Office, Proclamation 72 of 1995, art 6.

<sup>176</sup> Proclamation 72 of 1995, art 7(1). See also A Proclamation to Amend the Business Licensing System Control and the Business Licensing Office Establishment Proclamation 72 of 1995: Proclamation 128 of 2002, art 7(1).

<sup>177</sup> Art 7(2).

<sup>178</sup> Proclamation for Regional Assembly election: Proclamation 140 of 2004, art 2(b).

on land rights of sedentary communities may leave some indigenous women without recourse. The National Union of Eritrean Women, although very much subservient to policies of the government which could at times even happen to be harmful to women, generally endeavours to alleviate the suffering of women and it has been fairly effective in combating harmful traditions and practices with adversely impact on women. There is no other institution working to assist indigenous women in any way.

Although the Eritrean government has taken some steps to affirm the rights of women, CEDAW Committee has pointed out a number of concerns which are likely to be applicable to the situation of indigenous women. As a general matter, the Eritrean government has yet to pass legislation making the provisions of the Convention enforceable in domestic courts.<sup>179</sup> The government is not sufficiently addressing the ‘persistence of patriarchal attitudes and deep-rooted stereotypes’, which help justify negative cultural practices and traditions harmful to women.<sup>180</sup> The Committee noted that married women lose their eligibility for access to land and other resources.<sup>181</sup> Further, the government has not developed any policies or legislation prohibiting violence against women.<sup>182</sup>

## **11 Indigenous children**

There is no specific recognition of the problems or rights of indigenous children. Customary laws and traditions, and in some cases legislation and transitional codes, do not reflect the protections guaranteed by the Convention on the Rights of the Child, to which Eritrea is party.<sup>183</sup> Labour law prohibits the employment of children under the age of 14; it further stipulates special employment conditions for employed children between 14 and 18 years of age.<sup>184</sup> Indigenous children could benefit from the government’s endeavours to provide education to remote and previously-marginalised areas of the country.<sup>185</sup> The government policy of mother-tongue as a

---

<sup>179</sup> Committee on the Elimination of Discrimination Against Women, Concluding comments of the Committee on the Elimination of Discrimination against Women: Eritrea, UN Doc CEDAW/C/ERI/CO/3, para 5 (3 Feb 2006).

<sup>180</sup> As above, para 14.

<sup>181</sup> As above.

<sup>182</sup> As above, para 16.

<sup>183</sup> Committee on the Rights of the Child, Concluding observations: Eritrea, UN Doc CRC/C/15/Add.204, para 6 (2 July 2003).

<sup>184</sup> The Labour Proclamation of Eritrea: Proclamation 118 of 2001, arts 68 & 69.

<sup>185</sup> See the section of this report on education.

medium of instruction at the elementary level ensures that Kunama and Nara children are taught in their mother-tongue.

The Ministry of Labour and Social Welfare has been responsible for the causes of some disadvantaged children such as orphans and abandoned ones. Its targets, however, have been children in urban centres where their situation is visible to the public. The government generally works to eradicate harmful practices such as FGM and early child marriage and recently a legislation outlawing FGM was passed (Proclamation 158 of 2007: A Proclamation to Abolish Female Circumcision). In this area, the National Union of Eritrean Women and the Ministry of Health have been very active. This legislation illustrates the clash between the imperatives of modernity and traditionalism. In the process, aspects of indigenous peoples' culture and tradition may be changed. Examples of FGM and child marriage show that the modernising effect of government policies may have beneficial effects on the rights of indigenous peoples, such as a girl or young woman's right to autonomy or health.<sup>186</sup>

## 12 Indigenous peoples in border areas

As for the boundary between Ethiopia and Eritrea, the Kunama people were considered when the border was delimited such that most of the Kunama in their territories were included within Eritrea.<sup>187</sup> The Eritrean Ethiopian Boundary Commission did consider this fact in delimiting the boundary.<sup>188</sup> Nevertheless, the Commission was not authorised to consider subsequent developments pertaining to the movement or resettlement of communities in the border areas to influence the delimitation and demarcation of the boundary.<sup>189</sup> In the highly-politicised post-war context it seems that Ethiopia has been arguing for the consideration of communities in the

---

<sup>186</sup> See DR Mokonnen 'Hasty criminalisation of FGM in Eritrea: A frail response to a formidable challenge' forthcoming (AHLJ).

<sup>187</sup> GA Asmerom & OA Asmerom 'A study of the evolution of the Eritrean Ethiopian border through treaties and official maps' (1999) 3 *Eritrean Studies Review* 59 – 61.

<sup>188</sup> Eritrea - Ethiopia Boundary Commission decision regarding delimitation of the border between the State of Eritrea and the Federal Democratic Republic of Ethiopia (13 April 2002) APPENDIX B: The Location of the Kunama 119 & 120.

<sup>189</sup> See the Framework for Comprehensive Peace Agreement between Eritrea and Ethiopia (Algiers Peace Agreement) of December 2000 art 4.15.

process of demarcation of the border. The Irob people of the Irob *wereda*, whose land has been delimited as belonging to Eritrea, are an example.<sup>190</sup>

The Kunama traditionally live in the border area with Ethiopia, the site of the Ethiopian Eritrean war of 1998, which arose from a dispute over the contested town of Badme. As the Kunama live on both sides of the border, it is perhaps understandable that their loyalties would be less fixed and forceful than that of, for example, the majority ethnic groups in Eritrea. Especially during and after the Ethiopian Eritrean war, many Kunama left Eritrea to evade conscription into the army and flee the consequences of the war. At the end of December 2003, more than 4 000 Kunama were living in a temporary refugee camp in Ethiopia, only 20 kilometres from the Eritrean border.<sup>191</sup> Numerous problems beset these refugees, including the burning of their shelters, water shortages and inadequate sanitation. the resettlement of these refugees is not really viable, given the perception that returnees will be victimised, and their persistent reluctance to be conscripted into military service. As a result of these factors, the UN 'nominated' the Kunama as an 'oppressed minority' eligible for resettlement in the USA.<sup>192</sup> Few of the Kunama made use of this offer, partly because they feel, due to illiteracy, for example, unprepared and lacking in skills and sophistication to settle successfully in a developed country, partly because of their deep attachment to the land, and partly due to intimidation by a small rebel movement (the Democratic Movement for the Liberation of Eritrean Kunama) opposing resettlement in the USA.<sup>193</sup>

---

<sup>190</sup> The Irob people 'The Ethio - Eritrea Boundary Commission's decision regarding the Irob land and people' < <http://www.waltainfo.com/Conflict/Articles/2002/May/article3.htm>> (accessed on 12 March 2007).

<sup>191</sup> Refugees International (n 9 above) 2.

<sup>192</sup> P Salopek 'Refugees fear sharing same fate as Kunta Kinte' 17 July 2007 *Chicago Tribune*, [http://www.chicagotribune.com/services/newspaper/premium/printedition/Tuesday/chi-refugees\\_salopekjul17,0,4465638.story](http://www.chicagotribune.com/services/newspaper/premium/printedition/Tuesday/chi-refugees_salopekjul17,0,4465638.story).

<sup>193</sup> As above.

## **Part III: Conclusions and recommendations**

### **1 Conclusions**

As communities, the Kunama, Nara and Tekurir may be regarded as indigenous peoples. They face marginalisation not only because of their small numbers but also due to societal attitudes that regard them as uncivilised and inferior. The legal framework does not explicitly recognise indigenous peoples, although the Constitution in particular provides for an elaborate bill of rights provision that, if implemented, could safeguard the rights of minorities – including indigenous peoples.

Very little positive legal protection of these groups has been noted. Certain legislation tends to ignore the lifestyle of these indigenous peoples and has the effect of forcing indigenous peoples to change their pastoral ways of life. When it comes to access to land, the confluence of nation-building, development, centralisation and nationalisation are acutely felt and work to the detriment of indigenous peoples. Similarly, the domination of these communities by others and thus the resultant loss of identity are additional problems. Often, laws that may potentially protect or advance the rights of indigenous peoples lack implementation. As far as the law has been applied, it has mostly served as an instrument of assimilation and further marginalisation of indigenous groups. Legal reform, for example, facilitated the dispossession of land by the Kunama, allowing the relocation of returned refugees, demobilised soldiers and internally-displaced persons, and further allowing commercial farmers to displace traditional inhabitants in the name of development and progress.

The main contribution of this study may be its insights concerning the difficulties of employing the concept of ‘indigenouness’ to a context such as that of Eritrea. Some of the reasons for and dimensions of these difficulties are now explored.

Firstly, the issue of indigenous peoples’ rights is submerged into larger, more general human rights issues affecting everyone in Eritrea. In general terms, due to the absence of the rule of law, the legal protection of almost all Eritreans is very precarious. Soon after independence, it became clear that the new government was prone to repeat the authoritarian tendencies of the past. Since

its crackdown on all forms of dissent in September 2001, the Eritrean political scene has been dominated by the torture, incommunicado and prolonged detention, and enforced disappearance of political leaders, journalists, members of religious minorities and others. A clear example of the country's flagrant disregard for international human rights law and standards is the government's refusal to abide by the decision of the African Commission to release eleven imprisoned leaders. It is inevitable that these fundamental concerns dwarf the more specific issues affecting ethnic minorities.

Secondly, a common national identity has become prioritised above different ethnicities, both as a result of the liberation struggle and due to steps taken by the new government after independence. During the thirty year-long liberation struggle and dominance by Ethiopia, an inclusive Eritrean nationality developed as a counter-hegemonic response to Ethiopian cultural imperialism, as exemplified by the imposition of the Amharic language. A sense of a collective identity was also pursued in response to the divisive actions of ELF leaders and soldiers in the 1960s. This emphasis on a national identity made minority identity subservient to national loyalty. This context allowed little room for the assertion of divergent ethno-linguistic claims, or for the emergence of indigenous peoples' rights as an issue of national concern. The emphasis on national identity did not halt when independence was attained in 1993. The government emphasised the need for national identity and nation-building. As border disputes persisted, for example about the contested area of Badme, compulsory military conscription was strengthened. Conscription further served to solidify national loyalty, and simultaneously to erode cultural identity. The government adopted a very conscious policy of centralisation, which eroded ethnic entities and loyalties. Given the level of repression, and the government's embrace of an all-inclusive nationalism, the assertion of ethno-linguistic claims has thus been and still is being stifled within Eritrea. This observation does not seem to be true equally for political parties within the Diaspora that have to a much greater extent espoused the concerns of minorities.

Nation-building has gone hand in hand with a developmental imperative, which has made it difficult for minorities to raise concerns. Asserting interests that do not advance the progress of nationhood and national development are met by the suspicion that minorities are obstructing progress in the name of parochial interests.



Linked to and arising from these two factors, the study has – in the third place – been constrained by a lack of a discourse of indigenusness. No group self-identifies as ‘indigenous’, or attends sessions of, for example, the UN Working Group on Indigenous Peoples. Reasons for this state of affairs are: (i) the limited space for the articulation of counter-hegemonic voices on any issue whatsoever; (ii) the limited role of and constraints on civil society; (iii) the isolation from the international community, reinforced by travel bans and restrictions on individuals. In the absence of national discourse, an analysis driven by an exogenous framework is at risk of becoming an intellectual imposition.

Fourthly, when the two human rights reports submitted by the government were examined, the examining treaty bodies identified the lack of data as a recurring problem.<sup>194</sup> The government’s inability to provide reliable data should come as little surprise given the years of struggle, war and conflict that have ravaged the country, the weakness of fledgling state institutions and the dire economic situation, poverty and drought that call for resource allocation to address – rather than assess – crucial issues.

## **2 Recommendations**

The human rights concerns of indigenous communities can be improved only if the generally-deplorable human rights situation in the country is addressed. At the core of the problem is the democratic deficit in the governance of the country. The Constitution should enter into force and parliamentary and presidential elections should be held. The establishment of a truly-constitutional democracy is an essential platform on which improvements in the human rights situation of all Eritreans, including indigenous peoples, could be based.

---

<sup>194</sup> UN Doc CRC/C/15/Add.204, para 14; and UN Doc CEDAW/C/ERI/CO/3 paras 30 and 31.

## Part IV: Bibliography

ACHPR & IWGIA *Report of the African Commission's Working Group of Expert on Indigenous Populations/Communities* (2005) Copenhagen: Eks/Skolens Trykkeri

Araya, M 'The Eritrean question: An alternative explanation' 28 (1990) *The Journal of Modern African Studies* 79

Bender, L M *Kunama* (1996) München: Lincom Europa

Cassese, A *Self-determination of peoples: A legal reappraisal* (1995) (London: Cambridge University Press

Connell, D *Against all odds: A chronicle of the Eritrean revolution* (1993) Trenton: Red Sea Press

Connell, D *Conversation with Eritrean political prisoners* (2005) Trenton: the Red Sea Press

Darkwah, RH *Shewa, Menilek and the Ethiopian Empire 1813-1889* (1975) London: Heinemann Education Books Ltd

Geberemedhin, Y *The challenges of a society in transition: Legal development in Eritrea* (2004)

Greenfield, R *Ethiopia: A new political history* (1965) London: Pall Mall Press

Hailemariam, C; Kroon, S & Walters, J 'Multilingualism and nation building: Language and education in Eritrea' 20 (1999) *Journal of Multilingual and Multicultural Development* 486

Heyns, C (ed) *Human rights law in Africa (vol 1)* (2005) Leiden: Martinus Nijhoff

Joireman, SF 'The minefield of land reform: Comments on the Eritrean Land Proclamation' 95 (1996) *African Affairs* 273

Lawrence, JT (ed) *Human rights in Africa* (2004) New York: Nova Science Publishers

Levine, DN *Greater Ethiopia: The evolution of multiethnic society* (1974) Chicago: The University of Chicago Press

Lewis, IM *Peoples of the Horn of Africa: Somali, Afar and Saho* (1955) London: International African Institute

Markakis, J *Ethiopia: Anatomy of a traditional polity* (1974) London: Clarendon Press

Mekonnen, DR 'The reply of the Eritrean government to ACHPR's landmark ruling on Eritrea: A critical appraisal' 31 (2006) *Journal for Juridical Science* 35

Mekonnen, DR 'Hasty criminalisation of FGM in Eritrea: A frail response to a formidable challenge' (forthcoming *AHRLJ*)

Mengsteab, K 'Eritrean land reform proclamation: A critical appraisal' 2 (1998) *Eritrean Studies Review* 1-18

Nadel, SF *Races and tribes of Eritrea* (1943) Asmara: BMA

Negash, M 'Investment laws in Eritrea' 24 (2001) *North Carolina Journal of International Law and Commercial Regulation* 313-379

Negash, T *Eritrea and Ethiopia: The federal experience* (1997) Uppsala: Nordiska Afrikainstitutet

Rosen, RA 'Constitutional process, constitutionalism, and the Eritrean experience' 24 (1999) *North Carolina Journal of International Law and Commercial Regulation* 271

Rosen, RA & Selassie, BH 'The Eritrean Constitutional Process: An Interview with Dr. Bereket Habte Selassie' 3 (1999) *Eritrean Studies Review* 172

Shack, WA *The central Ethiopians: Amhara, Tigrinya and related peoples* (1974) London: International African Institute

Selassie, BH *Conflict and intervention in the Horn of Africa* (1980) New York: Monthly Press

Selassie, BH 'Self-determination in principle and practice: The Ethiopian-Eritrean experience' 29 (1997) *Columbia Human Rights Law Review* 101

Selassie, BH *The making of the Eritrean Constitution: The dialectic of process and substance* (2003) New Jersey: Red Sea Press

Tesfagiorgis, GH 'When the drafting of a constitution is not confined to men of stature or legal experts: The Eritrean experience' 2 (1998) *Eritrean Studies Review* 154

Wilson, JR 'Eritrean land reform: The forgotten masses' 24 (1999) *North Carolina Journal of International Law and Commercial Regulation* 503

Tiruneh, A *The Ethiopian revolution 1974-1987* (1993) London: Cambridge University Press

Trevaskis, GK *Eritrea: A colony in transition: 1941-52* (1960) London: Oxford University Press

Woldemikael, TM 'The cultural construction of the Eritrean nationalist movements' in Young, C (ed) *The rising tide of cultural pluralism* (1993) Madison: University of Wisconsin Press 179

Wubneh, M & Abate, Y *Ethiopia: Transition and development in the Horn of Africa* (1988)  
Westview Press, Boulder, Co

Zerai, W *Women and land rights in Eritrea* (2002) Kampala: Eastern African Sub-Regional  
Support Initiative for the Advancement of Women (Eassi)

### **Relevant legislation and policy papers**

National Environmental Management Plan for Eritrea

Macro-Policy of the Government of the State of Eritrea

The Constitution of Eritrea, 1997

The Transitional Civil Code of Eritrea

The Transitional Penal Code of Eritrea

The Transitional Criminal Procedure Code of Eritrea

The Transitional Civil Procedure Code of Eritrea

Investment Proclamation: Proclamation No 18/1991

Proclamation to Determine the Structure, Powers and Responsibilities of the Eritrean  
Government: Proclamation No 37/1993 – Interim Constitution

A Proclamation to Govern Petroleum Operations: Proclamation No 40/1993

Proclamation to Amend the Interim Constitution: Proclamation No 52/1994

The Land Proclamation: Proclamation No 54/1994

A Proclamation to Provide for the Establishment of the Constitutional Commission:  
Proclamation No 55/1994

Investment Proclamation: Proclamation No 59/1994

Legal Notice to Register Non-Governmental Organisations: Legal Notice No 17/1994

Regulations on Mining Operations: Legal Notice No 19/1995

Regulations on Petroleum Operations, Legal Notice No. 24/1995

A Proclamation to Determine the Administration of Non-Governmental Organizations:  
Proclamation No 61/1994

Proclamation to Promote the Development of Mineral Resources: Proclamation No 68/1995

A Proclamation to Provide for the Control of the Business Licensing System and for the  
Establishment of a Business Licensing Office: Proclamation No 72/1995

Proclamation to Regulate Religion and the Activities of Religious Institutions by Law:  
Proclamation No 73/1995

The Advocates Proclamation: Proclamation No 88/1996

The Constituent Assembly Proclamation: Proclamation No 92/1996

Proclamation for the Establishment of Local Governments: Proclamation No 86/1996

The Press Proclamation: Proclamation No 90/1996

Revised Regulations on Petroleum Operations: Legal Notice No. 45/2000

A Revised Proclamation to Govern Petroleum Operations: Proclamation No 108/2000

The Labour Proclamation of Eritrea: Proclamation No. 118/2001

Regulations to Prohibit the Production, Importation, Sale or Distribution of the Plastic Bags in  
Eritrea: Legal Notice No 63/2002

A Proclamation to Amend the Business Licensing System Control and the Business Licensing  
Office Establishment Proclamation No.72/1995: Proclamation No. 128/2002

Proclamation for the Establishment of Communal Courts: Proclamation No 132/2003

Regulations to Amend the Production, Importation, Sale or Distribution of Thin Plastic Bags  
Prohibition in Eritrea: Legal Notice No. 99/2004

Proclamation to Determine the Structure, Powers and Responsibilities and Rights of Regional  
Assemblies: Proclamation No 139/2004

Proclamation for Regional Assemblies Election: Proclamation No 140/2004

A Proclamation to Determine the Administration of Non-Governmental Organizations:  
Proclamation No. 145/2005

A proclamation to abolish female circumcision: Proclamation No 158/2007

Draft Proclamation on the Formation of Political Parties and Organizations 2001

## **Cases**

Award of the Arbitral Tribunal between the Government of the State of Eritrea and the  
Government of the Republic of Yemen on the Territorial Sovereignty of Contested Islands in the  
Red Sea (first stage) (9 October 1998)

Award of the Arbitral Tribunal in the Second Stage of the Proceedings (Maritime Delimitation)  
(17 December 1999)

Communication 250/2002 *Liesbeth Zegveld v Eritrea* (2003) AHRLR 84 (ACHPR 2003) 17  
Annual Activity Report

Eritrea Ethiopia Boundary Commission Decision Regarding Delimitation of the Border between  
the State of Eritrea and the Federal Democratic Republic of Ethiopia (13 April 2002)

### **Websites**

<http://www1.umn.edu/humanrts/research/ratification-malaysia.html>

<https://www.cia.gov/cia/publications/factbook/geos/er.html>

[http://www.unicef.org/infobycountry/eritrea\\_statistics.html](http://www.unicef.org/infobycountry/eritrea_statistics.html)

<http://www.ilo.org/ilolex/english/convdisp1.htm>

[www.devbank.worldbank.org/external](http://www.devbank.worldbank.org/external)

[www.africa-union.org](http://www.africa-union.org)

[www.ohchr.org](http://www.ohchr.org)

[www.achpr.org](http://www.achpr.org)