

THE LASTING STRUGGLE FOR FREEDOM IN ERITREA

BY
KJETIL TRONVOLL

HUMAN RIGHTS AND POLITICAL
DEVELOPMENT, 1991-2009



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PREFACE

In my capacity as UN Special Humanitarian Envoy for the Horn of Africa (2006-2007) I visited Eritrea and met with President Isaias three times. Yet my first meeting with him was in the late 1970s when he, as a resistance leader fighting for independence for his country, met with young members of Parliament in Oslo. Thus my personal engagement for Eritrea dates back more than three decades.

Today Eritrea is sadly one of the most repressive and isolated regimes of the world: Eritrea is the only country in Africa that has no privately owned newspapers, journals or media outlets. The constitutional framework and human rights have been generally suspended under reference to the unresolved conflict with Ethiopia. No form of political opposition is allowed. Organised religion other than the approved Christian churches and Sunni Islam has been strictly prohibited since 2002. The domestic human rights context compels large segments of Eritrea's youth to flee the country, seeking asylum and better prospects abroad. On the regional level in the Horn of Africa, Eritrea continues to be involved in long-drawn-out conflicts, including in the Sudan and in Somalia.

In view of the tragic situation for the people of Eritrea and the fact that the country remains so isolated from the outside world, the Oslo Center for Peace and Human Rights has commissioned a report on the human rights situation aiming at stimulating dialogue between the Eritrean government and main international actors. The report addresses the human rights situation and its possible political consequences in a comprehensive manner.

The report has been authored by Professor Kjetil Tronvoll with juridical quality assurance by Njål Høstmælingen. Acknowledgement is also given to Annie Bersagel, Anette Frölich and Dag Rune Sameien, for their efforts in fact finding, analyzing data and contributions in finalizing the report. The project has been realised through financial support by the Strømme Foundation and Norwegian Mission to the East.

The Oslo Center for Peace and Human rights was founded in 2006 when I stepped down as Prime Minister after almost seven years all in all in that position. The Center is an independent, not-for-profit Foundation. The mission of the Center rests on two main pillars, Peace and Human Rights.



Kjell Magne Bondevik

President of the Oslo Center for Peace and Human Rights

ABOUT THE AUTHOR:

Kjetil Tronvoll is Professor of Human Rights (University of Oslo) and managing partner of the Inter-national Law and Policy Group, a newly established independent think-tank based in Oslo. He holds a doctoral degree in political anthropology from the London School of Economics and Political Science (LSE), and an MPhil research degree from the University of Oslo.

Tronvoll has carried out studies in Africa for about 20 years, and was the first foreign researcher to enter liberated Eritrea in August 1991. During his fieldwork in Eritrea from 1991 to 1993, he stayed in a remote highland village studying the local culture and the relationship between the liberation movement and the rural inhabitants. Since serving as a UN observer to the Eritrean referendum in 1993, Tronvoll has revisited the country several times and keenly followed the political development of Eritrea and the Horn of Africa.

Besides Eritrea, Tronvoll has undertaken extensive anthropological fieldwork in Ethiopia and Zanzibar, in addition to numerous field trips to various African countries. He has participated in and headed a number of election observer missions, and has carried out a wide range of international consultancies on human rights, democratisation and conflict. Tronvoll has lived and worked in several African countries, as well as in the UK and in the USA as a senior Fulbright scholar.

Tronvoll's research has mainly focused on democratisation and elections, conflict and identities, peace and reconciliation, and human rights. He has published a number of articles and reports, and his books include: *War and the Politics of Identity in Ethiopia: Making Enemies and Allies in the Horn of Africa* (Oxford, 2009), *Mai Weini: A Highland Village in Eritrea* (Lawrenceville NJ, 1998); *The Culture of Power in Contemporary Ethiopian Political Life* (co-author; Stockholm, 2003), *Brothers at War: Making Sense of the Eritrean-Ethiopian War* (co-author; Oxford, 2000); *The Ethiopian Red Terror Trials: Transitional Justice Challenged* (co-editor; Oxford, 2009), and *Ethiopia Since the Derg: A Decade of Democratic Pretension and Performance* (co-editor; London, 2002).

EXECUTIVE SUMMARY

Eritrea is Africa's youngest state, achieving international recognition as an independent country as recently as 1993. The aspirations and hopes for democracy and respect for human rights as expressed at that time, however, are today only bleak memories, as Eritrea has developed into one of the world's most totalitarian and human rights-abusing regimes. The purpose of this report is to assess the human rights situation in Eritrea in context, and try to explain why the country developed along the path it did.

Judicial development

The multiple politico-administrative and legal transitions in Eritrea's recent history have created a country with layers of overlapping legal traditions. As no full judicial revision has been carried out, laws from former regimes are still operative side by side with customary and religious legal traditions. At independence Eritrea adopted, with some exceptions, the laws of the ousted Ethiopian regime, and a subsequent minimal revision/adaptation process was carried out.

In order to create a new judicial framework for independent Eritrea inspired by EPLF's nationalistic ideology – and as a response to domestic and international pressure – a full-scale law reform programme was launched in 1997. This came as a follow-up to the new, although unimplemented, Eritrean Constitution. Under the law reform programme a number of new codes were drafted; Penal Code, Criminal Procedure Code, Civil Code, Civil Procedure Code and Commercial Code. The new draft codes built on the existing transitional codes inherited from Ethiopia, but were all updated and revised in accordance with international principles of law. The drafting process in itself may have been carried out adequately; however, the monopolisation of the process by the government party has undermined its legitimacy among certain segments of the population.

The Constitution of the independent Eritrea was ratified on 23 May 1997 by a government appointed Constituent Assembly. Government officials have explained that the Constitution will come into effect once new elections for the National Assembly are conducted. Initially scheduled for 1998, the elections have been repeatedly and indefinitely delayed by the Government, first due to the outbreak of the new war and then subsequently due to the post-war dissent process.

Beyond the Constitution, Eritrea is obliged to comply with a number of key international conventions it has ratified protecting the rule of law; most notably the International Covenant of Civil and Political Rights, and the regional African Union instrument, the African Charter on Human and Peoples' Rights.

Despite the existence in general of a theoretically adequate judicial framework in Eritrea, the value of the Constitution, supporting laws and international conventions are null and void as long as the authorities do not implement them or enforce them in practice.

Rule of law

At independence, 'rule of law' was understood as defined by the EPLF and in relation to the so-called particular history of the Eritrean struggle; and not in accordance with universal principles and international human rights standards. This led to the formalisation of a 'fighter' culture in the judiciary, although the Eritrean Constitution and laws declare the Eritrean judiciary independent from both the parliament (National Assembly) and the government. International human rights reports on Eritrea all conclude that the judiciary is weak and subject to executive control.

In principle, Eritrea has three types of courts, although their separate jurisdiction may at times be blurred; civil (three levels, including community and *shari'a* courts), military (two levels), and the special court. Furthermore, there are indications that there exists a parallel secret system of extra-judicial sentencing of political prisoners that is not anchored in any laws or presidential decrees.

Of particular concern is the Special Court established in 1996. The statute or law for the establishment of the Special Court is not available, and no published records of its procedures or cases are available, as the court generally operates in secrecy. The Special Court is not bound by the Code of Criminal Procedure or the Penal Code, nor precedents set by earlier court decisions. Judges generally base their decisions on 'conscience' – in relation to the particular history of the Eritrean struggle and EPLF fighter culture – without reference to the law. A number of formal and operational elements put the Special Court in stark contradiction with the Eritrean Constitution and laws, and international standards of fair trial. Of particular concern is the fact that the trials are conducted in secret and do not allow for any legal representation for the defendants. The judges serve as prosecutors and may request the individuals involved in the cases to represent themselves in person.

Eritrean law and the unimplemented Constitution provide safeguards and specific rights for defendants in the regular court system. Among other things, the law prohibits indefinite and arbitrary detention, requires arrested persons to be brought before a court within 48 hours, and sets a limit of 28 days in which an arrested person may be held without being charged with a criminal offence. However, this legal limit is routinely violated in regard to political and other arrests.

It seems clear that the political ideology of the regime in Eritrea, both prior to and after the political crack-down of 2001, has inhibited the development of the rule of law in the country. In particular the workings of the judiciary have suffered, as executive interference and lack of resources have seriously undermined its operational independence.

Democracy

Since coming to power in 1991, the EPLF/PFDJ has not allowed any organised political opposition to emerge within Eritrea. Eritrea today is a one-party state under siege by its own government. The pretext of external enemies is used as an excuse to deny people their basic rights and freedoms of opinion and expression, to organise and assemble, and to practise their religious beliefs. The Eritrean government does not allow any alternative voice or opinion to be heard, all resources and people are mobilised and canalized into maintaining the country's totalitarian and militaristic structure. No private or independent press or media houses exist. Not *one* non-governmental organisation (NGO) is allowed to operate outside the direct control of the government party.

The current reality grew out of a Marxist-Leninist inspired militaristic tradition inherited from the liberation struggle. Consequently, even at the incipient stage of Eritrean development, civil society initiatives were quelled and alternative voices muted or excluded from voicing their opinions. Even constitutional articles prescribe that democratic rights and freedoms are not freely given in Eritrea today, but need to be compliant with the overall political directions offered by the government.

Just prior to the outbreak of a new war with Ethiopia, Eritrea conducted its first regional elections in 1997. However, the purpose of the elections was a sham, as the *Proclamation for the Establishment of Regional Administrations* outlines a system of local governance which seems not to hold any decentralisation of power and authority, but rather the contrary; as it established a new system of surveillance controlled directly by the President's Office.

National elections were scheduled for 1998, but postponed due to the outbreak of war. After signing the ceasefire agreement in the summer of 2000, new plans for elections were made and draft laws were developed. Due to the post-war dissent process, the draft legislation on political parties and elections were annulled, and the conduct of general elections was postponed indefinitely.

Civil society

In the aftermath of the Eritrean-Ethiopian war (1998-2000), an internal dissent movement within the government party started to question the authority of and decisions made by the President. Eritrean

independent newspapers and civil society representatives joined in to challenge the monopolisation of power by the government party, and the lack of democratic development in the country. The dissent process culminated in September 2001, when the President ordered a nation-wide clamp-down, arresting hundreds of critics, closing down all private media-outlets and curtailing all civil society activities.

In rulings by the African Commission on Human and Peoples' Rights and the UN Working Group on Arbitrary Detention, the arrest of Eritrean journalists and dissenters have been severely criticised as unlawful and in breach with international human rights obligations that the Eritrean government has ratified.

By the end of 2001, all dissenting voices demanding democratic reform in Eritrea were quelled; either arrested, driven into exile, or cowed into silence. The nascent Eritrean civil society and independent press were shut down; their spokespersons and journalists and editors arrested. Thenceforth, no opposition or alternative voices have been allowed to be heard inside the country. Today, it is forbidden in Eritrea for any group of more than seven people to assemble without approval by the government

Prison conditions, torture and extrajudicial killings

Thousands of Eritreans are languishing in 'secret' detention camps throughout the country; government critics, veteran liberation fighters, civil servants, peasants, students, journalists, and religious believers alike. No group or individual is unaffected – men and women, young and old, Christian and Muslim, rural and urban, educated and uneducated, all are liable to be regarded as a threat to the regime and thus susceptible to arrest, torture and disappearance. Eritrea today is a nation held hostage by its own government, with a population denied basic human rights and freedoms. Estimates of the number of political prisoners, provided by Eritrean refugees and exiled civil society representatives, vary between 10,000 and 30,000.

The police are officially responsible for maintaining internal security and order in Eritrea; however the army, reserves and demobilised soldiers are also called upon to assist in operations targeting civilian citizens. The Eritrean police corps, many of whose officers are conscripts, are riddled with corruption and they typically use their influence as government officials to assist friends and family. It is also reported that the police demand bribes to release detainees. Military personnel have the authority to arrest and detain civilians.

Like a chain of islands, the Eritrean political prisons, detention centres, and labour camps are scattered throughout the country. They are under the control of the military or the internal security service. Some are purpose-built as centres of incarceration; others may be converted store houses and make-shift constructions (often metal shipping containers), or may double-up as military camps and detention centres. Many of the sites are underground, where detainees are kept hidden below ground in specially dug-out cells and 'dungeon' like structures. Reportedly, some political prisoners are held incommunicado in secret security sections of official police stations or of officially-designated prisons. The majority of the detention centres are secret, with access prohibited, and not officially designated as prisons. Several of the detention camps are located in some of the world's most inhospitable places, where soaring temperatures (above 50 degrees Celsius) and extremely rudimentary facilities make basic survival difficult. No outsiders are permitted access to these prisons/camps, and usually even close family members of detainees are denied visits. The International Committee of the Red Cross – which has access to political prisoners in many dictatorial regimes throughout the world – is denied access to any Eritrean prisoners or prisons.

The conditions in the detention camps and prisons are harsh and life threatening and the facilities are extremely primitive. Food and water supplies to detainees vary from prison to prison and depending on the season. Generally, however, the amount and quality of the food is inadequate. Likewise,

sanitation facilities vary, but are generally very poor. The handling of detainees, with inadequate facilities and mistreatment, are part of an interrogation strategy to weaken resistance among the detainees. Reportedly, scores of Eritreans die while in detention or under arrest. The severe physical and psychological stress in prisons has caused psychological problems for many detainees. Reportedly, many detainees have committed, or tried to commit, suicide to escape the gruesome prison conditions.

Former detainees tell of various types of torture and inhumane treatment inflicted upon them with or without a specific reason given. Despite the widespread reports of systematic torture in Eritrea, committed by police, army, intelligence, party and government officials, no known action has been taken to punish the perpetrators of torture and abuse.

There are also numerous reports of summary executions or people being tortured to death, carried out by military personnel in the many military detention camps throughout the country. Extrajudicial killings take place not only in detention centres and prisons, but also in the context of everyday life in rural and urban areas. A number of people have been shot near the Sudanese and Ethiopian borders, allegedly for attempting to cross the border illegally. Apparently, military personnel on the border have standing orders to shoot on sight if people are attempting to flee the country. Furthermore, the government has authorised the use of lethal force against anyone resisting or attempting to flee during military searches for deserters and draft evaders in the cities; a practice that reportedly has resulted in many deaths.

Detention and particularly vulnerable groups

No one knows exactly how many individuals – men and women, old and young – are kept in detention or under arrest in Eritrea today. Today, *anyone* in Eritrea is liable to arrest and detention, irrespective of their age, gender, religion or ethnicity. *Any* reason – or *no* reason at all – may be given for their arrest or detention. Old age or youth is not an excuse for avoiding detention. Reportedly, detainees of over 80 years of age and in poor health are held under rudimentary conditions in prisons. Children, too, are liable to arrest and detention in Eritrea. Reportedly, children as young as eight or nine years of age have been detained, with or without their parents. Having a trusted, high-profile position, or a distinguished record as a veteran liberation war hero, is no protection against the arbitrary punitive injustices committed by the government. Most famous and notable are the eleven top-level government ministers and party officials arrested in the September 2001 clamp-down; all prominent EPLF leaders and veteran liberation war heroes.

Mass arrest and collective punishment has become a common phenomenon in Eritrea. This is in particular related to preventing and punishing protests against the government's militarisation of society in general, and its much-hated national service campaign.

Due to the enormity of human rights abuses in Eritrea, which affect the whole population, it may be difficult to single out certain individuals or groups which are more at risk of attack than the population at large. Nevertheless, certain groups of individuals are directly targeted by the government and exposed to grave human rights violations due to their particular status, profession or background. These prejudiced practices are partly a manifestation of the ideological underpinnings of the EPLF/PFDJ (stressing a militant nationalistic ideology), but is also somewhat arbitrary, as all 'new' groups perceived as a threat to the regime's power will routinely be sanctioned. Against the backdrop of a widespread, and at times arbitrary, detention policy, certain groups may be identified as particularly vulnerable to arrest and governmental harassment. This study has identified national service personnel, adherents of prohibited churches and religious organisations, individuals from the Kunama minority group, forcibly returned refugees, journalists and other human rights defenders, as well as government party dissenters, as being particularly prone to arrest.

Minority right concerns

Eritrea is officially described as being inhabited by nine ethnic groups, all diverse in culture, religion, and activities of production. In independent Eritrea, the government party sustained and even reinforced its strict nationalist ideology, as *national unity* became the principal guideline to which all government policies and development plans were aligned. Consequently, the cultural diversity of the country appears to suffer, as arguments and claims for the enhancement and protection of cultural or minority rights are interpreted as undermining and divisive in relation to the official nationalist policy

The legal protection of cultural and minority rights in Eritrea is inadequate, as no publicly known specific act or proclamation is drafted with the aim to protect minorities or their cultural traditions; and the Eritrean Constitution makes only limited references to cultural and minority rights.

Within certain areas, the Eritrean government's development policies reflect a socio-historical and cultural bias, as the highland culture and way of life are apparently dominating in influencing government development plans and policies. This entails, inter alia, that the way of life of sedentary agriculturists is taken as a 'national standard', placing restrictions upon the natural development and growth of lowland pastoral and nomadic cultures.

The Tigrinya highland culture is also dominating in the educational system and state affairs, as the language of the civil service and military is Tigrinya.

The case of the Kunama minority group

Of the many minority groups in Eritrea, the government has seemingly singled out the Kunama group as a special concern for the state. The Kunama is one of the smallest ethnic groups in Eritrea, and is estimated to number between 50,000 and 140,000 people, living in small scattered communities in western Eritrea along the border to Ethiopia. During the Eritrean liberation war, the Kunama were accused of being the only group which largely and consistently supported the Ethiopian government; a perception which has put them in peril in the post-independent period.

The outbreak of the new war between Eritrea and Ethiopia in May 1998 further worsened the already tense relations between the Kunama and central Eritrean authorities, as it revived the image of the Kunama as Ethiopian collaborators and spies. Unlike people of other ethnic groups, the Kunama did not flee their home villages when the Ethiopian forces occupied Eritrean territory during the war. They remained in their villages and the majority ignored the Ethiopian presence. Eritrean authorities thus accused the Kunama first of failing to resist the Ethiopian military offensive, later of allegedly assisting the Ethiopians in their warfare. A post-war retaliation campaign against the Kunama has reportedly led to many deaths and imprisonments, and made several thousands Kunama flee to Ethiopia in 2000.

The government has carried out widespread land confiscation in Kunama areas, in order to establish mechanised agricultural plants and resettlement camps for refugees. Furthermore, the Kunama argue that it is a deliberate strategy by the Eritrean government to confiscate land for military purposes and locate military facilities in civilian Kunama villages and on their holy sites, in order to dilute Kunama cohesion and cultural distinctness. The apparent governmental targeting of Kunama cultural sites and traditions, in addition to harassment, intimidation and detention of Kunama representatives which has driven several thousands of families into refuge in Ethiopia, is raising concern among the Kunama that their unique culture is under threat and dying off in Eritrea today.

METHODOLOGY

It is impossible today to undertake independent critical research in Eritrea. No official research permits are granted to independent researchers, and certainly not for the study of human rights and political development. Neither are there any organisations or environments in Eritrea which undertake research or monitoring of human rights in the country. The extensive security and intelligence surveillance in the country prohibits and impedes any clandestine gathering of information on human rights violations which would severely jeopardise the life and wellbeing of any informant.

Lack of access to primary data on the human rights situation in Eritrea is thus a key methodological constraint to any reporting on the human rights situation in the country.

In order to alleviate this situation, and for the purpose of this study, field trips were carried out in April-May 2008 at the Eritrean refugee camps in Kassala, Sudan, and the Shimelba refugee camp in Tigray, northern Ethiopia. Over two weeks, we conducted a number of interviews with recently arrived Eritrean refugees. Eritrean refugees living in Khartoum and Addis Ababa were also interviewed, as well as exiled Eritrean civil society representatives, academics and intellectuals, and representatives from the political opposition.

Several other interviews with informants knowledgeable about the situation in Eritrea –Eritreans in diaspora, international development aid workers, academics, and diplomats – have also been undertaken at various locations during the course of the work on this report.

In addition to primary interviews, an extensive open-sources search has been undertaken to obtain information from all relevant UN agencies, other bilateral and multilateral agencies, non-governmental organisations, human rights agencies, newspapers, and other reports on the situation in Eritrea. A large number of academic sources have also been consulted.

For the purpose of this study, two formal requests for interviews with government representatives were submitted to President Isaias Afwerki in 2008. No response to these requests was received. Official statements and the position of the government on various issues of concern have thus been taken from other government sources (such as official Eritrean websites, and the government newspaper Eritrea Profile), as well as interviews granted by government officials to international media organisations.

In order to trace the development trajectories of human rights in Eritrea, information obtained by the author through previous long-term fieldwork in the country has also been included.¹

All information presented in the report has been cross-checked with several sources. Written sources are referred to in the text or in footnotes. In a few instances where proper cross-checking of information has not been possible, this is indicated in the text.

Information obtained from refugees is in general made anonymous in the text due to possible repercussions against relatives and family remaining in Eritrea.

Work on this study was carried out between January 2008 and April 2009.

¹ I carried out fieldwork in Eritrea from August 1991 to October 1992; and January-June 1993. Shorter fieldwork exercises were carried out in 1996, 1997 and 1998.

INTRODUCTION

The People's Front [EPLF/PFDJ] struggled for the independence and liberation of the Eritrean people. If it does not ensure human rights of the people of Eritrea, independence alone has no meaning.

Yemane Gebremeskel²

Director, President's Office/Department of Political Affairs, EPLF/PFDJ (2008)

It was better during the Derg, At that time the Ethiopians tortured us, but that made us only more determined in our struggle to become independent. Today, it is our own people who torture us, something which breaks down our spirit as there is no hope for the future.

Eritrean refugee in Sudan (2008)

Eritrea is Africa's youngest state, achieving international recognition as an independent country as recently as 1993. The aspirations and hopes for democracy and respect for human rights as expressed at that time, however, are today only bleak memories, as Eritrea has developed into one of the world's most totalitarian and human rights-abusing regimes.

The purpose of this report is to assess the human rights situation in Eritrea in context, and try to explain why the country developed along the path it did. During the last few years, several human rights reports on Eritrea have been published by various international rights agencies (see bibliography and references in footnotes throughout the report). A few are general in-depth reports (published by Human Rights Watch and Amnesty International), but in general emphasis has been placed on reporting on freedom of expression and on religious persecution in Eritrea, as several international organisations are dedicated to these issues in particular. Few of the reports, however, aim to trace the trajectories of political development leading to the current human rights abuses in order to explain the abuse within the context in which it is perpetrated, as this study does.

The Eritrean Constitution (ratified in 1998, but still not implemented) establishes due principles of the rule of law in the country. The Eritrean government has also acceded to most of the relevant international human rights conventions (see annex for listing). Thus, there is an obligation on the Eritrean government to protect and defend human rights in the country. Likewise, there is a responsibility upon international actors to follow up and require compliance by the Eritrean government in this concern.

This report is divided into eight chapters covering various aspects of human rights in Eritrea: judicial development; rule of law; democratic development; freedom of organisation and expression; prison conditions, torture and extrajudicial killings; particularly vulnerable groups; minority policies; and a case study of the Kunama minority group. The chapters may be read independently of each other if the reader just seeks information pertaining to one specific topic. However, the chapters are organised in a manner which aims to present a coherent overall narrative of the Eritrean case, and as such the report may be read as a monograph.³

The report does not aim to present a full and comprehensive analysis of all human rights-related issues in Eritrea. Due to capacity and methodological constraints, certain topical limitations had to be imposed. Thus, for instance, aspects of the socio-economic development of independent Eritrea are

² From the official website of the government: 'Public Dialogue: Human Rights in Eritrea', posted 6 June 2006, at: <http://www.shaebia.org/cgi-bin/artman/exec/view.cgi?archive=14&num=4553>, accessed 5 November 2008.

³ There may, however, be some redundancies of information from one chapter to the next, in order to present a coherent argument within each chapter (as one strand of information may be used to explain several contexts).

not covered in the report, as this information may be easily available from other open sources (such as the UN and other international and bilateral development agencies). Furthermore, as this report strives to avoid falling into the dichotomising, simplistic and perilous ‘Eritrea at war’ rationalising discourse, issues related to the regional geopolitical context and the ensuing militarisation of society in Eritrea have in general not been treated as a specific and separate topic of analysis.⁴

The human rights context in Eritrea is so dire, widespread and encompassing that to cover all its facets in one report is an impossible task. This study provides analysis of some core issues of concern and may thus serve as a stepping-stone to further and more specific works to be carried out in the future.

POLITICAL BACKDROP

A 30-year long liberation war led by the popular Eritrean People’s Liberation Front (EPLF)⁵ against Ethiopian rule had, at the time of independence, moulded the Eritrean people into a determined and battle-hardened population. Although most of the country was in ruins in 1993, the Eritrean people strongly believed in a better and more prosperous future, as the liberation front established the first civilian government and appointed its much revered leader, Isaias Afwerki, as President of independent Eritrea. The absolute majority of the population looked upon EPLF with great esteem and admiration, as they had struggled and endured hardships and great sacrifices for the common good of the people. The leadership of the EPLF was at that time viewed as a ‘new generation’ of African leaders: they enjoyed popular support among their constituencies; they (rhetorically at least) endorsed liberal democracy, human rights and a free market economy, and they had a well-defined development policy based on their own priorities. As such, the EPLF heralded a clear breach with the former Ethiopian military regime dominating Eritrea.

The political history of Eritrea also gave hope for the development of a functioning multi-party democracy. During the 1940s and until the closure of the Eritrean parliament by Ethiopia in 1962, there were a number of organised political parties in Eritrea. Moreover, Eritrean society takes pride in being entrepreneurial, dedicated and hard-working. Hence, the former experiences with multi-party politics and democracy, a dedicated and conscientious political leadership, in combination with a hard-working and supportive population, were factors that boded well for the future development of a new Eritrean democracy.

The international community too was in need of an African success story, and Eritrea, with its tiny population and war-ridden history, came forward as a seemingly good candidate. The donor community, in particular, was positively surprised by EPLF’s will to reject donor-driven initiatives, instead emphasising its self-reliance and self-defined development objectives. The newly independent country, which had no foreign debt whatsoever in 1993, thus had the full backing of the international development community in its effort to deliver ‘development’ to its people.

Current realities

Assessing Eritrea today, however, the optimism displayed in the early 1990s has vanished, since the multiple promises given by the liberation leaders to the Eritrean people of a ‘prosperous and peaceful development’ have failed to materialise. Quite the contrary, the Eritrean leaders have, during 18 years in power, managed ruin the country’s reputation inasmuch as Eritrea today is perceived as a political pariah, a regional spoiler, and a totally unreliable and irresponsible regime.

⁴Some recent academic publications give an insight into the problems of the militarisation of Eritrean society; see, for instance, Kibreab (2009) and Müller (2008).

⁵EPLF was renamed the Popular Front for Democracy and Justice (PFDJ) in 1994. However, the government is still usually known by its original name, EPLF. In this study, EPLF and PFDJ will be used interchangeably.

During its term in power, the EPLF/PFDJ has, inter alia: managed to push Eritrea into armed clashes with three of its neighbouring countries (Sudan, Djibouti and Yemen); waged the biggest and most devastating bilateral war on the African continent in recent decades, with Ethiopia (1998–2000); sustained a total militarisation of society; clamped-down and suspended all independent and privately-owned newspapers and magazines; closed down national and international NGOs; closed down the only university in the country and curtailed academic freedom; arrested hundreds of dissenters; detained and tortured many thousands of ordinary Eritreans construed as a threat to the regime's survival; pushed hundred of thousands of Eritreans to flee their country as refugees; and devastated the state economy.

Eritrea's international ranking

Eritrea's dismal history as an independent state is also reflected in various international rankings of democracy and human rights development. In order to give a rapid summary of Eritrea's international standing in this regard, below is a brief overview of how the most renowned and reliable surveys rank the Eritrean government's performance:

- *United Nations Development Programme (UNDP):*
Eritrea is ranked as number 164 of 179 countries on the Human Development Index (HDI) scoring below 0.350.⁶ This score places Eritrea in the category of 'low human development'.
- *Freedom House:*
In the 'Freedom of the World' survey for 2008, which provides an annual evaluation of the state of global freedom as experienced by individuals, Eritrea is classified as being 'Not Free' and is grouped among the weakest performing nations in the world. Freedom House sees no movement towards developing pluralist political institutions in Eritrea.⁷ Freedom House also categorises Eritrea as the 'worst of the worst' and the country is included in the special report on the world's most repressive societies published in 2008.⁸ Furthermore, in Freedom House's 'Freedom of the Press 2009' ranking of press freedom globally, Eritrea is ranked as the worst country in Africa in terms of press freedom (no. 48 out of 48), and is ranked as number 190 in the world (out of 195 countries in total), only surpassed by Burma, Turkmenistan and North Korea.⁹
- *Mo Ibrahim Index:*
The Mo Ibrahim Index of African Governance of 2008 is based on data from 2006. It shows that between 2005 and 2006 Eritrea's overall score declined to 46.5 out of 100, as the country fell two places to rank 41st out of sub-Saharan Africa's 48 countries.¹⁰ The most notable movement was in the 'Rule of Law, Transparency and Corruption' category, in which Eritrea's score fell by 1.9 points. Eritrea's scores fell in four out of five categories of the Ibrahim Index. Within the category 'Participation and Human Rights', Eritrea is ranked as the second-worst performer in Africa: number 47 out of 48 sub-Saharan African countries.¹¹

⁶United Nations Development Programme (UNDP), 'Human Development Index 2008', accessed 5 May 2009 at: http://hdr.undp.org/en/media/HDI_2008_EN_Tables.pdf.

⁷Freedom House, 'Freedom in the World 2008', at: <http://www.freedomhouse.org/template.cfm?page=363&year=2008>, accessed 5 May 2009.

⁸Freedom House, 'The Worst of the Worst: The world's most repressive societies 2008', at: http://www.freedomhouse.org/uploads/special_report/62.pdf, accessed 7 May 2009.

⁹Freedom House, 'Freedom of the Press 2009: Table of Global Press Freedom Rankings', http://www.freedomhouse.org/uploads/fop/2009/FreedomofthePress2009_tables.pdf.

¹⁰Mo Ibrahim Foundation: 'The Ibrahim Index of African Governance 2008', at: <http://www.moibrahimfoundation.org/index-2008/index.asp>, accessed 6 May 2009.

- *Reporters Without Borders:*
On the Worldwide Press Freedom Index 2008, Eritrea occupied the last rank in the world (no. 173 out of 173 countries assessed) for the second year running.¹² Reporters Without Borders has 'reacted to the scandalous situation within the country by campaigning for the Eritrean president and his ministers to be declared personae non grata in Europe'.¹³
- *International Press Institute (IPI):*
In the World Press Freedom Review 2007, Eritrea is categorised as one of the world's most brutal suppressors of independent reporting.¹⁴
- *Committee to Protect Journalists (CPJ):*
With at least 13 journalists behind bars, CPJ characterises Eritrea as Africa's leading persecutor of the press and the world's fourth worst jailer of journalists.¹⁵
- *Polity IV index:*
The Polity IV Project continues the Polity research tradition of coding the authority characteristics of states in the world system. The Polity IV Project carries data collection and analysis through 2007.¹⁶ Some of this dataset is published in the Global Report 2008, where Eritrea scores 16 in the State Fragility Index 2007, placing it in the category of 'Serious' at number 141 out of 162 countries.¹⁷
- *Transparency International:*
On Transparency International's Corruption Perceptions Index for 2008, Eritrea was ranked 126 out of 180 countries surveyed.¹⁸

¹¹Mo Ibrahim Foundation, news release: 'Eritrea falls two places as performance declines in latest Ibrahim Index of African Governance', at: http://www.moibrahimfoundation.org/index-2008/pdf/press_release/Eritrea_english.pdf, accessed 6 May 2009.

¹²Reporters Without Borders: 'Worldwide Press Freedom Index 2008', at: http://www.rsf.org/IMG/pdf/cl_en_2008.pdf, accessed 6 May 2009.

¹³Reporters Without Borders: 'Eritrea World Report – 2009', at: http://www.rsf.org/article.php?id_article=31131, accessed 7 May 2009.

¹⁴International Press Institute: 'World Press Freedom Review 2007', at: http://www.freemedia.at/cms/ipi/freedom_detail.html?country=/KW0001/KW0006/KW0154/, accessed 5 May 2009.

¹⁵Committee to Protect Journalists: 'CPJ's 2008 Prison Census', at: <http://www.cpj.org/imprisoned/2008.php>, accessed 6 May 2009.

¹⁶The Center for Systematic Peace: 'Polity IV Project', 2008, at: <http://www.systemicpeace.org/polity/polity4.htm>, accessed 5 May 2009.

¹⁷The Center for Systematic Peace: 'Global Report on Conflict, Governance and State Fragility 2008', at: <http://www.systemicpeace.org/Global%20Report%202008.pdf>, accessed 6 May 2009.

¹⁸Transparency International: 'Corruption Perceptions Index 2008', at: http://www.transparency.org/policy_research/surveys_indices/cpi/2008, accessed 6 May 2009.

PRÉCIS

This study argues that it is possible to follow a pattern of political decision-making under the EPLF/PFDJ as the national government which gradually became more and more authoritarian. The climax of a societal clamp-down and the arrest of a number of key EPLF officials and cabinet ministers in September 2001 was just the last move in a long line of decisions carefully taken in order to quell all opposition to the personal rule of Isaias Afwerki.

The authoritarian outlook of the government also impinges directly on the development and workings of the wider civil society in Eritrea, both organisationally and economically. The extremely high military costs since the outbreak of the new war with Ethiopia in 1998 has led to a sharp decline in governmental investments in non-military sectors. Added to this is the partial cut, or sharp decline, in transfers of funds from the donor community, in addition to a decline in the transfer of remittances from the Eritrean diaspora. The combination of these three factors has ruined the Eritrean economy, which survives on international development aid, forced labour of conscripts in the army, and support from a few other 'like-minded' countries. The consequences of the weak state economy are particularly observable in the rural areas. High inflation, drought, weak harvest, reduction of the traditional grain imports from Ethiopia, and reduction of donor relief aid, have led to increasing rural poverty. The high level of military mobilisation, where the able-bodied population is drained from the villages, has compounded this dire situation.

The few international NGOs operating in Eritrea – there is only a handful left at the time of writing¹⁹ – have been forced to scale down their activities and have become very cautious about challenging the restrictive policies of the government. Due to the repressive and authoritarian context in Eritrea, the small and marginalised international community has opted for the same 'strategy of silence' as the majority of the population, in order not to be ejected from the country. Thus, the potential role of civil society as an agent of change is more or less non-existent.

The current situation in Eritrea regarding democratisation and human rights can only be described as an extremely totalitarian military dictatorship. The President is relying on just a handful of men to control the security and military apparatus in order to dominate and suppress the entire Eritrean population. As this is written, in April 2009, there are no signs of change of mind or policies among the Eritrean government, and the extremely dire human rights situation is sustained. The following points sum up the situation:

- Although the Constitution has been ratified, it is not implemented, and the constitutional provisions regarding democracy, human rights and good governance are not observed;
- Only the government party (the PFDJ/EPLF) is allowed;
- The government controls all mass media, the independent press has been shut down since September 2001;
- The government directly interferes with and controls the judiciary;
- Extrajudicial sentencing and killings occur regularly;
- There is widespread detention without trial of individuals associated with any kind of activity not prescribed or sanctioned by the authorities;
- Detainees are routinely tortured, and prison conditions are in general inhumane;
- Freedom of expression is severely curtailed, if it exists at all;
- Freedom of assembly is severely curtailed, prohibiting the gathering of more than a handful of people;

¹⁹These are; the Lutheran World Federation, Catholic Relief Society, Oxfam, Norwegian Church Aid, and the International Committee of the Red Cross (ICRC).

- Independent research and academic freedom are severely curtailed;
- The government restricts the development of an independent civil society. No independent human rights or civic rights organisations exist;
- Due to government priorities and mismanagement, there is escalating poverty and a sharp decline in economic activities;
- The government is nourishing a 'political culture of war' and enforces a continuous mobilisation of young men and women sustaining Africa's biggest army;
- The existence of an elaborate secret intelligence network, spying and informing on all sectors of society;
- Religious communities are restricted in the practice of their beliefs and 'new' Christian churches are banned and their followers persecuted;
- The relevance of the international society is weakened, as the government becomes more and more authoritarian;
- The Eritrean government is a regional 'spoiler' of peace, currently pursuing destabilising strategies in Somalia, militarily challenging Djibouti, and supporting the armed Ethiopian opposition.

1

JUDICIAL DEVELOPMENT IN INDEPENDENT ERITREA:

LEGAL PLURALISM AND POLITICAL CONTAINMENT

INTRODUCTION

The land of Eritrea has, over the centuries, been controlled by different powers, all of which have left an imprint on both official as well as informal sources of law and legal authority in the country. During the last century Eritrea has experienced five radical political transitions all involving shifts of judicial authority. Consequently, in order to achieve a comprehensive understanding of the workings of the judicial system and the rule of law in Eritrea, it is crucial to have knowledge about the historical trajectories of law in the country.

This chapter will thus first outline how the sources of law and legal authority in Eritrea have evolved historically. Thereafter the legal transition after independence in 1991 and the constitution-drafting process will be discussed. Emphasis is put on how human rights issues have been handled in these processes.

²¹ This section does not aim to give an elaborate outline of Eritrean history or war of liberation; for that please consult other academic works.

SOURCES OF LAW AND LEGAL AUTHORITY IN ERITREA

During pre-colonial times (prior to 1890), Eritrean territory generally fell under the political realm of the Abyssinian state (Ethiopia). The Eritrean highland society (*kebessa*) in particular was an integral part of the Abyssinian feudal structures, as the governor paid tribute to the prince (*ras*) of Tigray, who was in turn subject to the authority of the king of kings (*negus negast*), the emperor of Abyssinia. Hence, many of the customary sources of law still operating informally in Eritrea, derive from, or are influenced by, an Abyssinian tradition of law. This is particularly relevant to customary forms of land tenure (Tronvoll 1998a).

The Italian colonial period (1890–1941) established Eritrea, within the borders existing today, as a definite territorial polity for the first time (Negash 1987). Italy constructed the modern institutions of statehood in Eritrea and developed the formal judiciary system. As in other colonies, a juridical distinction was made between Italian colonial officers and settlers, and the native population.

During the Second World War, in 1941 the Italian colony of Eritrea fell to British-led Allied forces. Eritrea was thus placed under the British Military Administration (BMA) pending an international decision on the future status of Italy's colonies (Eritrea, Libya and Somalia). The BMA was only a caretaker administration for Eritrea as an occupied enemy territory following the principles of the Hague Convention of 1907. Basically, this mandated the BMA to 'govern humanely and maintain law and order' (Trevaskis 1960: 18-43).

After the war, the UN took upon itself the authority to decide the future of the former Italian colonies. In December 1950, the General Assembly voted to federate Eritrea with Ethiopia.²² In accordance with the UN-controlled federation process, elections were conducted for an electoral college in 1952 which then again elected the new multi-party Eritrean National Assembly. The Assembly adopted the new UN-drafted Eritrean Constitution in July 1952, whilst Ethiopia ratified the federal act in September the same year (lyob 1995: 87). The first Eritrean Constitution clearly stated that Eritrea should have internal autonomy, and the Eritrean Assembly passed laws applicable to the Eritrean citizens of the federation. Human rights were also incorporated into the Constitution, the 'idea of the citizen having any rights against the authorities being a startling innovation in Eritrea' (Smith 1955: 484). In the first years of the federation, several human rights cases were heard in Eritrean courts, and judgments were passed in support of the plaintiffs (Smith 1955). Soon, however, Ethiopia's expansionist's ambitions led to the violation of the principles of self-administration, as the federal government – i.e. the Emperor – intervened in internal Eritrean affairs. Finally, in November 1962, Ethiopia forced the Eritrean Assembly to annul the federation, and Eritrea was annexed as Ethiopia's fourteenth province (for various perspectives on Eritrea's annexation by Ethiopia, see Cliffe and Davidson 1988; Connell 1993; Gayim 1993; lyob 1995; Negash 1997).

The Eritrean war of resistance against Ethiopian oppression commenced in the early 1960s, first spearheaded by the Eritrean Liberation Front (ELF). The current government party in the country, the Eritrean People's Liberation Front (EPLF), was a splinter group of ELF and established itself as a separate organisation in 1973. Due to a better military strategy and more popular political ideology, the EPLF quickly positioned itself as the dominant resistance front in the country. By 1980, the EPLF (with help from the Tigray People's Liberation Front (TPLF) in Ethiopia) crushed ELF as a politico-military force within Eritrea and thus established a political hegemony defining the content and scope of Eritrean nationalism versus Ethiopia.

²²UN General Assembly Resolution 390, 2 December 1950.

From the late 1970s, the EPLF functioned both as a liberation army and a government, as it built a parallel governance structure – with ‘line ministries’ controlling and administering the liberated areas (lyob 1995; Pool 2001). The EPLF fighters, as well as civilians in the liberated areas, had to obey by EPLF laws. Written codes and general norms were developed regulating life in the EPLF-controlled liberated areas of Sahel, and also a fighters’ ‘code of conduct’ in relation to social relationships, gender equality, etc. The EPLF struggle was also conceived as a social revolution, where aspects of Marxist ideology emphasising equality were introduced to the highly segregated and hierarchical Eritrean society.

The EPLF entered Asmara on 24 May 1991, effectively liberating the country from Ethiopian control. A Provisional Government of Eritrea (PGE) was established, which immediately commenced the daunting task of establishing effective administration and rule of law throughout the territory. One of the first laws decreed by the PGE was the new Eritrean Nationality Proclamation (No. 21/1993), which clearly outlined the criteria of Eritrean citizenship as a prerequisite for participation in the upcoming referendum on independence (lyob 1995). A UN-monitored referendum on independence was conducted in April 1993. The highly affirmative outcome of the vote (99.8 per cent voted ‘yes’ to independence) paved the way for the formal declaration of independence on 24 May 1993 (Pausewang and Suhrke 1993; Tronvoll 1996). Just prior to the declaration of independence, the Central Committee of the EPLF discussed the formation of the first government of independent Eritrea, and decided to establish a four-year transitional government with the authority to run the country.²³

The multiple politico-administrative and legal transitions in Eritrea’s recent history have created a country with layers of overlapping legal traditions. As no full judicial revision has been carried out, laws from former regimes are still operative side by side with customary and religious legal traditions. Generally, however, Eritrea (like Ethiopia) follows in principle a civil law tradition, although some of its laws reflect a common law influence (see below for elaboration). For instance, sections of the civil procedure incorporate practices from inquisitorial systems, and likewise for its criminal law procedure.²⁴

LAW IN TRANSITION

At independence Eritrea adopted, with some exceptions, the laws of the ousted Ethiopian regime.²⁵ This was done with the intention of maintaining law and order and avoiding an administrative-legal vacuum (Gebremedhin 2004: 5). A committee composed of senior liberation fighters was given the mandate to review the old Ethiopian law regime, in order to adapt the law to the ‘current condition of the country’ and to make it compatible with the ‘values’ and ‘principles’ of the EPLF (Gebremedhin 2004: 85). Apparently, very few amendments were carried out (focusing mainly on personal law, family law, law of succession and criminal law), and the only major change was to make the laws gender neutral by stressing women’s equality.

²³Proclamation no. 37/1993 (see lyob 1995).

²⁴US Library of Congress: ‘Introduction to Eritrea’s Legal System’, at: <http://loc.gov/law/help/eritrea.html>, accessed 12 November 2008.

²⁵The majority of the Ethiopian laws were drafted by foreign experts during the 1950s, under Emperor Haile Selassie. The inherited Ethiopian Penal Code (of 1957), for instance, was originally drafted by a Swiss law professor, modelled on continental penal codes under a civil law doctrine. The inherited Ethiopian Criminal Procedure Code (of 1961), on the other hand, was influenced by a common law approach, since an English jurist had, upon Emperor Haile Selassie’s request, revised and reworked the original draft presented by the same Swiss law professor. The new draft Criminal Procedure Code is based on an adversarial system of justice of common law, but without jury trial (Rosen 2001: 86). For a discussion of the implications of the effectiveness of inherited legal systems on the rule of law in common law and civil law countries in Africa, see Joireman (2001).

After independence, the EPLF put emphasis on *social justice* as a concept going beyond mere legal principles, in order to transcend class and other social barriers in the strongly hierarchical and diverse Eritrean society. Social justice, as it was theoretically explained by the EPLF, was instrumental in 'narrowing the gap between the haves and have-nots, ensuring that all people have their fair share of the national wealth, and can participate in the political, social, and cultural life of the country, creating balanced development, respecting human rights, and advancing democracy'.²⁶

The basic principles of human rights were not emphasised in the law review; neither were procedures of due process and models of judicial independence. Apparently the Ethiopian codes were considered as adequate in this respect. Beyond gender rights, the only human rights concern revised was a stronger protection of the rights of the accused in criminal cases (Gebremedhin 2004: 91).²⁷ The fact that the committee entrusted with the task of revising the laws inherited from Ethiopia was composed solely of EPLF fighters, excluding members of the legal profession and civil society in Eritrea, clearly restricted the scope and substance of their work. International legal experts were not consulted or invited to participate in the process at this early stage, as is quite normal in transitional societies. The EPLF/PFDJ government assumed direct and exclusive control over the schedule and substance of legal development in independent Eritrea. The incremental legal reforms carried out since independence can thus be viewed as a response to the economic and political development of the new state, and as symbolic measures undertaken by a regime which considers 'law as one of the most important means for reconstructing the past and projecting a new future' (Gebremedhin 2004: 6). However, on this basis, there has been criticism of the lack of clarity of the new state legislation, as it is sometimes not clear which law pertains to any particular matter (Favali and Pateman 2003: 58) (see below for elaboration).

During the first transitional period (1991–1993; after military liberation but before formal independence), the Central Committee of the EPLF was the supreme legislative body in Eritrea (Gebremedhin 2004: 135). In 1992, a new proclamation established the structure, power and functions of the Provisional Government (PGE),²⁸ and outlined a formal division of power between the legislative, the executive, and the judiciary. However, the proclamation authorised the executive branch of the PGE with law-making powers as well, and in practice all new legislation was initiated by the President's Office alone, or in cooperation with the line ministry concerned (Gebremedhin 2004: 135). During the interim period, there was apparently no tension between the executive and legislative bodies in relation to law-making. This was probably because top EPLF/PFDJ officials held dual membership in both sectors of governance (Iyob 1995: 141).

After formal independence and international sovereignty was achieved in May 1993, a new proclamation reconfirmed the structure, function, and powers of the government of independent Eritrea and *de jure* maintained the division of powers between the three branches of government.²⁹ An amendment was made in 1994 which reserved the lawmaking powers to the legislative body, the National Assembly, and abolished the formal legislative powers of the President.³⁰ The proclamation further entrusted the National Assembly with powers to establish relevant Committees to enact the laws of Eritrea (Gebremedhin 2004: 136).

²⁶The National Charter of Eritrea, adopted at EPLF's Third Congress, 1994.

²⁷The new Article 1 of the Transitional Criminal Procedure Code (amended by proclamation no. 5, 1991) emphasises a new purpose of the law in order to create the necessary breach with the legal regime of the past: 'The purpose of criminal procedure is to provide a just and efficient investigation and judgement, to ascertain the proper application of the law, to save innocent persons from unnecessary criminal investigation or court proceedings, to punish criminals; [and] to cause persons to comply with the law and fight criminal acts consciously' (quoted from Gebremedhin 2004: 94-95).

²⁸Proclamation No. 23/1992.

²⁹Proclamation No. 37/1993 (which repealed Proclamation No. 23/1992).

³⁰Proclamation No. 52/1994, Article 4(15) h.

In order to create a new judicial framework for independent Eritrea inspired by EPLF's nationalistic ideology – and as a response to domestic and international pressure – a full-scale law reform programme was launched in 1997. This came as a follow-up to the new, although unimplemented, Eritrean Constitution which was ratified by the EPLF/PFDJ appointed Constituent Assembly on 23 May 1997 (see below for discussion on the Constitution). Under the law reform programme, inter alia, a number of new codes were drafted; Penal Code, Criminal Procedure Code, Civil Code, Civil Procedure Code and Commercial Code (Gebremedhin 2004: 6-7).³¹ The new draft codes built on the existing transitional codes inherited from Ethiopia, but were all updated and revised in accordance with international principles of law (Rosen 2001). Only the draft criminal procedure code, was completely revised, however, due to human rights concerns which were not reflected in the old Ethiopian criminal procedure code (Gebremedhin 2004: 119 ff.). Apparently, the other codes were deemed to be adequate in their protection of human rights standards.

The drafting process of the new codes, creating the potential for a solid legal foundation for the rule of law in the country, was seemingly a sound and dedicated endeavour (Rosen 2001). However, due to the EPLF's monopolisation of political power in the country, the law-making process – no matter its sound judicial objective – would inevitably be criticised by segments of the population who for one reason or another feel ostracised from the process. Criticism has in particular been raised by the banned and exiled political opposition. More important, though, is the fact that the laws under consideration are not even formally adopted;³² their effect in Eritrea is thus null and void. Furthermore, some laws which the National Assembly has enacted seem to undermine or restrict rights and liberties enshrined in the Eritrean Constitution and in international instruments ratified by the country.³³

Frustrating any overview or analysis of effective Eritrean laws is the fact that even the validity of the transitional codes, as well as other proclamations issued by the transitional government, technically ceased with the ratification of the Constitution in May 1997, as this marked the end of the government's transition period. Since then, the Eritrean judicial system has been in a *de jure* legal limbo, since the Constitution is not yet in force (Favali and Pateman 2003: 58).³⁴ Thus, in practice, law-making in Eritrea today is not a formal and technical legislative process evolving in accordance with established and transparent procedures. The President, in the name of the government, issues most of the laws, more or less by personal decree. The National Assembly, which is formally vested with sole legislative powers, does not, according to Yohannes Gebremedhin, 'even have the luxury of "rubberstamping" new laws (2004: 136). Thus, both the formal law-making process and – as we shall see below – the implementation and protection of the laws, are arbitrary and inconsistently applied.

Paradoxically, the post-independence history of the legal system in Eritrea appears to stand in sharp contrast to the political history of the period; as the legal system – close to two decades after liberation – remains principally grounded on legal traditions inherited from Ethiopia (Gebremedhin 2004: 77-78).

³¹The new codes were initially drafted by foreign legal experts and subsequently revised by local law committees appointed by the government (Rosen 2001; Gebremedhin 2004).

³²As, to my knowledge, none of these draft codes have been formally adopted, the transitional codes (modified Ethiopian law) still apply in Eritrea.

³³According to Amnesty International, these include laws governing religion (adopted in 1994) and the Press Law (of 1996). In addition, there have been regulations promulgated on the registration of religions (March 2002) and censorship of publications, performances and artistic representations by a Censorship Committee (2003), which both apparently are in contradiction with the Constitution (AI 2004).

³⁴Usually, a 'ratified' constitution means that it is operative; if not, a specific procedure of enactment is stated in its preamble or ratifying act. The Eritrean government has stated that the Constitution will be operational after the first general elections to the National Assembly. I am not cognisant of the legal basis for this clause

DOMESTIC SOURCES OF LAW

Based on its peculiar politico-historical development, legal pluralism prevails in Eritrea in the sense that there exist several socio-political bodies which produce laws or represent legal authority. The formal state authorities, ethnic groups, religious groups, and international society all influence one way or another the formal legal regime in the country (Favali and Pateman 2003: 2). It is important to note, however, that this is basically a theoretical discussion aloof from the 'practice of law', which totally disregards the written or theoretical legal regime (as the next chapter will illustrate).

The *official sources* of law can formally be ranked in accordance with their stature.³⁵ The Eritrean Constitution ratified in 1997, but awaiting implementation, theoretically rests at the top of the hierarchy of Eritrean laws (see below, on the Constitution). The modified transitional codes inherited from Ethiopia together with new proclamations compiled by the National Assembly and signed by the government/President are next in the hierarchy. Thereafter follow legal notices issued by line ministries by powers delegated under the proclamations. Both proclamations and legal notices formally enter into force from the day of their publication in the official gazette, *Gazeta Awagiat Eritra*.³⁶ By 2002, some 110 proclamations and some 46 regulations (legal notices) had been enacted in independent Eritrea (Favali and Pateman 2003: 57-58).

At the bottom of the law hierarchy sit administrative acts, directives and regulations issued by ministries and other public authorities. Of particular importance are regulations and directives issued by military authorities in the country, as the prominence of the army and security forces are increasing as a consequence of the profound militarisation of Eritrean society. However, since the President functions as the premier *de facto* law-making body in the country, official statements issued by his office are likely to overrule all other legislation. Additionally, the President's personal and informal intervention and statements regarding principles of law may also carry more weight than formally-adopted proclamations.³⁷ This overview of the sources of law in the country is thus more of a theoretical abstraction than an empirical reality.

Customary law

Beyond the official sources of law, both *customary*³⁸ and *religious law* play an important part in contemporary Eritrean society. Although customary or traditional law is not in itself recognised as an official source of law in Eritrea, it nevertheless plays an important complementary role in the formal legal system through incorporation (see below). Furthermore, in the highly traditional and predominantly rural Eritrean society, customary law enjoys great importance in the everyday life of villagers (Tronvoll 1998a; Favali and Pateman 2003). There are multiple sources of customary law in Eritrea, both written and oral, with variations along ethnic, clan and regional lines, anchored both in cultural and religious rationalities (for a schematic overview, see Favali and Pateman 2003: 20-38; Keika and Asmerom n.d.).

Tigrinya-speaking Eritreans usually refer to their customary laws as the 'law of the forefather/ancestral home' (*heggi endabba*). The laws are generally developed through a consensus-oriented process, where male inhabitants of an area agree to a certain set of procedures and rules to regulate their legal relations, such as; marriage or vengeance, access to land, and property rights over houses and livestock. As such, the process is hardly 'democratic' as it excludes women, newcomers to the area,

³⁵This 'ranking' is adapted from US Library of Congress: 'Introduction to Eritrea's Legal System', at: <http://loc.gov/law/help/eritrea.html>, accessed 12 November 2008.

³⁶*Gazeta Awagiat Eritra* superseded the Ethiopian *Negarit Gazeta* in 1991 (proclamation no. 9/1991).

³⁷Reportedly, President Isaias Afwerki has on several occasions intervened in court proceedings in favour of the accused in cases involving veterans of the war of independence or individuals close to the EPLF 'culture'.

³⁸In the meaning of traditional 'cultural' codes and norms.

and certain despised groups (such as smiths and tanners), but nevertheless reflects and represents a broadly popular demotic consent.

The lack of uniformity of customary law in Eritrea makes the blanket application of customary law impossible. Due to a shortage of professional legal experts in the country, however, President Isaias Afwerki early on encouraged the use of customary law in order to ease the pressure on the formal judiciary by 'introducing the practice of solving legal cases out of court through the intervention of village elders, families or relatives'.³⁹ Reportedly, customary law maintains an important role in relation to the formal legal system through informal incorporation in new legislation. For instance, while the age of maturity according to the Civil Code is 18 years of age, the code also recognises marriages from the age of 15 in recognition of Eritrean customary marriage practices. Furthermore, the establishment of Community Courts in 2001 with the mandate to apply customary law as a supplement to other laws is further testimony to the importance of customary law in Eritrea.⁴⁰ The establishment of the Community Courts may also be seen as a consequence of the political crack-down in the aftermath of the Ethiopian war (see chapter 4), as new formal legislation has been put on hold and the government seems 'resigned and willing to allow more space for other legal actors to manoeuvre' (Favali and Pateman 2003: 8). In other words, the majority of Eritrean trained lawyers have fled the country, are serving in the armed forces, or languishing in detention; consequently the formal judicial system is severely understaffed.

Religious law

Eritrean society is also deeply religious, and Christianity, Islam and traditional beliefs have co-existed for centuries. Religious institutions are also important in producing and overseeing law which regulates individual as well as collective behaviour. The Orthodox (Coptic) Church in Eritrea has a prominent role in the highland villagers' life, as this is the predominant faith of the Tigrinya speakers.⁴¹ Traditionally, the Orthodox Christian society of Eritrea (and Ethiopia) was guided by the *Fewuse Menfessawi* ('Canonical Penance') and later *Fetha Negest*, the 'Law of the King' (Jembere 1998: 183-190). These laws were compiled during the reign of Emperor Zära Yaeqob (1434–1468 CE) in order to bridge the many customary law regimes existing in his realm. The Emperor thus ordered the Ethiopian Orthodox Church to compile an authoritative written law (the 'Canonical Penance'), whose major sources were religious precepts advanced by the Church (Jembere 1998: 183-84). The Emperor was not satisfied with the limited scope of the basically spiritual code, as it did not deal with the prevalent legal issues. A new code was thus suggested, the 'Law of Kings' used by the Coptic Church of Alexandria, which was translated from Arabic to Ge'ez.⁴² The origin of this code is disputed (Jembere 1998: 185-189), however some claim that it was originally compiled by an Egyptian scholar in the mid thirteenth century, based on more ancient texts of Syrian/Roman origin (Favali and Pateman 2003: 33). It is plausible that the *Fetha Negest* has had an influence on the development of customary law in the Orthodox society in Eritrea, although in practical use its value was meagre. More than a legal code for everyday life, some argue that it was a quasi-religious text used to give legitimacy to the authority of the state and the emperor (Favali and Pateman 2003: 33).⁴³

³⁹Interview with President Isaias Afwerki published in the government daily, *Eritrea Profile*, 7 March 1998, p. 3.

⁴⁰Cf. US Library of Congress: 'Introduction to Eritrea's Legal System', at: <http://loc.gov/law/help/eritrea.html>, accessed 12 November 2008.

⁴¹The Catholic and Protestant Churches are also represented in the highlands, as well as new evangelical churches (Pentecostal). A small group of Tigrinya-speakers are Muslims (the Jeberti).

⁴²Ge'ez is an ancient Ethiopian language (Semitic) which is still used as the liturgical language of the Orthodox Church.

⁴³The *Fetha Negest* was formally incorporated into the legal system of Ethiopia in 1908 by Emperor Menelik II, and the criminal provisions of the law were applied in Ethiopia until they were replaced by the 1930 Penal Code (Jembere 1998). In order to make proper deference to this historical legacy, Emperor Haile-Selassie referred to the *Fetha Negest* in the Penal Code, 'in order to avoid the accusation that he wanted to change, through codification, established religious and traditional rules' (Favali and Pateman 2003).

Nevertheless, the clergy of the Orthodox Church wield an important influence in village affairs in modern Eritrea, as they are held in high esteem due to their holy work. The village priests may also impose penalties on villagers who violate the law of the Church, as for instance, ploughing the fields on religious non-working days.⁴⁴ This penalty may be in the form of a fee to the Church, in kind (i.e., grain) or in money, or that the violator has to offer a specific number of prayers in the Church. Beyond the village priest, it is also believed that God may punish any villager who disobeys his law, by destroying the harvest by 'hailstorms, locusts, army worms or things like that', as it was explained by a villager (Tronvoll 1998a: 169).

The Muslim groups in Eritrea also follow *Shari'a law*. *Shari'a law* is recognised in Muslim areas of the country to regulate certain civil and family law matters, which are enforced through separate *Shari'a* chambers in the civil court system.⁴⁵ Eritrean Muslims are Sunnis and overwhelmingly Sufis. Three out of the four Sunni schools are present in the country.⁴⁶ *Shari'a law* has also been influenced by customary law and traditions, and the adherence to the religious law varies considerably between the Eritrean groups. The Afar and Kunama, for example, allegedly have a slightly more esoteric perception of Islamic culture, influencing their interpretation of Quranic precepts such as fasting (Favali and Pateman 2003: 35). With the growth of *salafism* and political Islam in the Horn of Africa, it seems likely that *Shari'a law* will increase its importance among Eritrean Islamic communities (Østebø 2008).⁴⁷

Finally, among some of the Eritrean ethnic groups, there are individuals believed to be endowed with special powers to communicate with the spirit worlds (shaman cults), or who possess some other specific quality which makes them ritual leaders. These individuals may prescribe rules that influence or regulate social behaviour, like, for instance, the traditional peacemakers among the Kunama group, the *Sanga-Na'ne* (see chapter 8). Traditional beliefs may thus also be sources of law and authority in the local community.

The judicial development in independent Eritrea seems to embody both political and legal contradictions. Apparently, legal pluralism is used deliberately to diffuse and dilute a coherent system of law which might effectively be used to establish a sound juridical foundation for legal accountability and proper mechanisms and procedures of the rule of law. In effect legal pluralism has been used as a tool for political containment by the regime, which is itself the worst violator of the country's laws.

⁴⁴The Orthodox Church prescribes that saints' days should be revered as non-working days. There may be as many as three or four saints' days per week (for an overview of the Orthodox religious calendar and its implications on the peasantry, see Tronvoll 1998: 166-169).

⁴⁵Cf. US Library of Congress: 'Introduction to Eritrea's Legal System', at: <http://loc.gov/law/help/eritrea.html>, accessed 12 November 2008.

⁴⁶The Maleki school is the largest (65 per cent), followed by Hanafi (26 per cent) and Shāfi'i (9 per cent) (Favali and Pateman 2003: 34-35).

⁴⁷Some Eritrean opposition movements are allegedly fighting for an Islamic state in Eritrea. However, their overall importance, and politico-military capacity, seems rather limited (Connell 2005). If President Isaias Afwerki remains in power, political Islam may be used as a mobilising factor against him.

THE MAKING OF THE ERITREAN CONSTITUTION

The Constitution of the independent Eritrea was ratified on 23 May 1997 by the Constituent Assembly.⁴⁸ In principle, and as is conventional, it is thus a legally binding document, since the Constitution does not incorporate any specific date on which it should come into effect, nor is any specific procedure outlined in its preamble for its proper implementation. However, government officials have explained that the Constitution will come into effect once new elections for the National Assembly are conducted (Connell 2007). Initially scheduled for 1998, the elections have been repeatedly delayed by the Government, first due to the outbreak of the new war and then subsequently due to the post-war dissent process (see chapters 3 and 4 for elaboration). President Isaias Afwerki announced in May 2008 that elections would be postponed for 'three or four decades' or longer because they 'polarise society' (see chapters 3 and 4).⁴⁹ The apparent formal implementation of the Eritrean Constitution is thus a distant event.

The constitution-drafting process aroused public debate, but the ratification event was not celebrated or publicised, and was carried out more or less unnoticed by Eritreans and foreigners alike. Considering the fact that the Constitution – more than a decade after its ratification – is not yet implemented, the lack of festivities surrounding its ratification was warranted.

A commission mandated to produce a draft constitution was established in 1994, composed of 50 individuals handpicked by the EPLF and supposedly 'representing a wide spectrum of the society, ethnically and politically' (Connell 1997: 140).⁵⁰ It was headed by Dr Bereket Habte Selassie, a respected legal scholar residing in the US, with a background as the former Attorney-General of Ethiopia, who turned EPLF member in the early 1970s.⁵¹ Equally important was the secretary to the commission, Zemhret Yohannes, an obdurate senior EPLF cadre.

The constitution-making process was seen as an integral part of the overall process of nation-building in the incipient country (Yohannes 1996).⁵² A broad-based civic consultation process was carried out, where constitutional commission members visited villages throughout Eritrea, and Eritrean communities in diaspora, to present and discuss key principles of the new Constitution: the separation of powers; the type of government; the role of the military and political parties; and how human rights should be protected and enforced (Connell 1997: 140). Seminars were further conducted with key stakeholders and constituencies, and the first draft was presented for public consumption in 1996.

Apparently, the process leading up to the draft constitution was carried out in an open and inclusive manner, despite the fact that the organised, and exiled, political opposition was denied representation in the process (Rosen 1999). The absence of a free press and organised opposition in the country, however, 'limited popular influence in shaping the content of the constitution' (Mengisteab and Yohannes 2005: 139).⁵³ Many of the suggestions and important revisions recommended by the public and commission members were reportedly not reflected in the final draft version (Hedru 2003: 436).

⁴⁸The Constituent Assembly, composed of 550 members, consisted of the EPLF/PFDJ-appointed interim National Assembly (parliament), members of the six Regional Assemblies and 75 diaspora representatives (Article 2, 'Constituent Assembly Proclamation', No. 92/1996, Gazette of Eritrean Laws, Vol. 6, No. 8, 27 December 1996).

⁴⁹'The World's 10 Worst Dictators', Parade Magazine, 22 March 2009, at: <http://www.parade.com/dictators/2009/the-worlds-10-worst-dictators.html?index=8>, accessed 25 March 2009.

⁵⁰Pursuant to the 'Constitutional Commission (Establishment) Proclamation', No. 5/1994. Gazette of Eritrean Laws, No. 4/1994.

⁵¹For Bereket Habte Selassie's own account of the constitution-making process, see Selassie (1998).

⁵²See, for instance, the speech by President Isaias Afwerki on the launching of the work of the Constitutional Commission, reproduced in full in the government daily, Eritrea Profile (1994) vol. 1, no. 6, pp. 2 and 7. Eritrea Profile carried a number of articles on the constitution-making process between 1994 and 1996; see, for instance, a Q&A article titled, 'Constitution-making: A people's project', in the issue of 4 November 1995, p. 3; and an interview with Zemhret Yohannes, 'A constitution from the people to the people', in the issue of 26 October 1996, p. 2.

⁵³Some Eritrean scholars characterise the constitution-making process as 'undemocratic', since the organised political

Apparently, the secretary to the commission personally oversaw that the final version was in line with the interests and ideology of the EPLF/PFDJ, and hence it did not necessarily reflect the opinions and interests advanced by the Eritrean public during the process.⁵⁴ Criticism has thus been made of the constitution-making process on the basis that it was 'designed to legitimise the exclusive role of the EPLF' in drafting a constitution fitting for its future role in Eritrea (Medhanie 1994: 65; Hedru 2003: 436).

Human Rights in the Constitution

The Eritrean Constitution does not explicitly make reference to the Universal Declaration of Human Rights, the Charter of the United Nations or the African Union's Charter. Neither does it incorporate any international human rights instruments. Its preamble, however, states:

Convinced that the establishment of a democratic order, through the participation of and in response to the needs and interests of citizens, *which guarantees the recognition and protection of the rights of citizens*, human dignity, equality, balanced development and the satisfaction of the material and spiritual needs of citizens, is the foundation of economic growth, social harmony and progress. (Emphasis added.)

In Chapter 3 of the Constitution, titled 'Fundamental Rights, Freedoms and Duties', explicit and prominent references are made to protection of fundamental human rights and freedoms and the rule of law. These human rights articles must be considered to be in force (as they also form part of international customary law) and are thus not dependent on the institution-building and democratisation measures not yet implemented, although the latter could be expected to provide fuller protection of human rights (AI 2004: 35).

Potentially curbing these articulated rights, however, and the main weaknesses of the Constitution, is the strong executive powers given to the President (Arts. 42, 43, 46, 47, as well as Art. 27, the emergency clause). The executive power is constitutionally enshrined, seemingly without developing correspondingly proper institutions of checks-and-balances (Medhanie 2008). Furthermore, explicit constitutional limitations upon 'fundamental rights and freedoms' in cases of 'the interests of national security, public safety or the economic well-being of the country, health and morals, for the prevention of public disorder or crime or for the protection of the rights and freedoms of others' (Art. 26.1), may in effect constitute a clear breach of international standards.⁵⁵

Constitutional rights related to rule of law

The fundamental *right to life and liberty* (Art. 15), as well as human dignity (Art. 16), are guaranteed as constitutional safeguards against torture or other inhumane treatment or punishment (Art. 16.2). Article 16.3 also prohibits slavery and forced labour. Likewise the right to privacy is protected (Art. 18.1) and 'no person shall be subjected to unlawful search' (Art. 18.2).

Important safeguards against *arbitrary detention* are provided, such as that no person shall 'be deprived of liberty without due process of law' (Art. 15.2) or 'be arrested or detained save pursuant to

opposition was banned from participating, and on that ground they dismiss the legitimacy of the Constitution altogether (Medhanie 2008).

⁵⁴Interviews by the author with Taha Mohammed Nur, Constitutional Commission member in Asmara, October 1996. Taha Mohammed Nur was arrested by the government in November 2005, without any formal charges being made. He died in prison in early 2008 (see www.awate.com, 16 February 2008).

⁵⁵This clause was used by the government in its communication with the UN Working Group on Arbitrary Detention and the African Commission on Human and Peoples' Rights as a justification for detaining top-level government officials and journalists in the 2001 crack-down. See chapter 4.

due process of law' (Art. 17.1). If detained, the detainee 'shall be brought before a court of law within 48 hours of his arrest [...] and no such person shall be held in custody beyond such period without the authority of the court' (Art. 17.4).⁵⁶ Furthermore, both habeas corpus and the entitlement to a 'fair and public trial by a court of law' is guaranteed (Art. 17.6), with the presumption of innocence (Art. 17.7) and the right of appeal (Art. 17.8).⁵⁷

If any Eritrean feels that his/her rights are violated, the Constitution guarantees that their complaint shall be 'heard respectfully' and that they should 'receive appropriate and quick answers' from the relevant authority (Art. 24.1). If one's rights or interests are interfered with or threatened, one has the right to seek due administrative redress (Art. 24.2).

Constitutional rights related to democracy

Article 19 of the Constitution is titled 'Freedom of Conscience, Religion, Expression of Opinion, Movement, Assembly and Organisation', and guarantees all basic freedoms necessary for an open society and a functioning democracy. Every person's right to freedom of thought, conscience and belief (Art. 19.1) is articulated, as well as the freedom to practise any religion (Art. 19.4). Freedom of expression and of the media is guaranteed (Art. 19.2). All persons also have the right to assemble and demonstrate peacefully (Art. 19.5), as well as to form political, social, economic and cultural organisations (Art. 19.6). Furthermore, any citizen fulfilling the requirements of the electoral law has the right to vote and to stand for election if they so wish (Art. 20).

Why a non-implemented Constitution?

Despite its ratification in May 1997, over ten years later, the Eritrean Constitution has not yet been implemented. Furthermore, the institutions required to give the Constitution full effect are not yet established either. Various reasons may be cited to explain why the Eritrean government and its President have denied the citizens enjoyment of the realisation of the rights enshrined in the dormant Constitution. The US-based Eritrean scholars Kidane Mengisteab and Okbazghi Yohannes suggest four main reasons (Mengisteab and Yohannes 2005: 151-159). First, and the reason usually offered by the regime, is that the implementation of the Constitution and all other politically liberalising policies must await the final settlement of the border conflict with Ethiopia,⁵⁸ since the current state of affairs is too fragile and threatening for Eritrea's sovereignty. Secondly, the problems of internal stability caused by the post-war dissent process and the call for democratic reforms by EPLF/PFDJ dissenters (the so-called G-15) and others (see chapter 4), have forced the authorities to disregard constitutional principles in order to reconsolidate their power. Thirdly, the displacement of a large number of people by the war, and the massive destruction of infrastructure, in combination with looming drought and famine, has pushed the government to take drastic measures in order to concentrate first and foremost on providing basic services to the population. Fourthly and finally, the decision by the National Assembly in its fourteenth session to shelve the draft party and election laws condoned the suspension of the Constitution. The excuse given by the government for this action was that the 'overwhelming majority of Eritreans did not support the formation of political parties at the time', and that the country was not yet ready for democracy (Mengisteab and Yohannes 2005: 156) (see chapter 3).

⁵⁶The Eritrean penal code also places a limit of 28 days within which an arrested person brought to court should be charged or released, although this is not adhered to in practice (AI 2004: 35).

⁵⁷At a more detailed level, however, Amnesty International points out that the Constitution is deficient in not clearly specifying the right to legal defence representation and that the right of appeal should be to a higher court of law (AI 2004). However, this point may be said to be subsumed under the guarantee of 'due process of law'.

⁵⁸I.e., Ethiopia must give Eritrea the control of Badme village and other territories granted to Eritrea by the Eritrean-Ethiopian Boundary Commission. On the border war and subsequent peace agreement, see Negash and Tronvoll (2000); Nystuen and Tronvoll (2008).

Presidential advisor and top-ranking cadre, Yemane Gebhreib, elaborates on these issues in a recent interview:

The war created obstacles and in some aspects did not enable us to move at the pace we would have wanted to move. Now there is relative peace and even in the last two years there has been a lot of progress in terms of elections for local government. This time round there will be elections for regional assemblies etc. So wherever there is an opportunity, the government embarks on this process. But at the end of the day, survival is paramount. It all depends on whether we'll be allowed to live in peace or not. And if we have to postpone certain issues, then they will be postponed. This is not like baking a cake, it's nation building and what do we care whether something happens today or next year as long as the process is right. [...] Frankly our preoccupation now is whether we will have peace or war. That is paramount. You cannot see these issues in isolation. The way the country reorganises itself in times of hostility is different to when there is normality. The situation now is mixed. The clouds of war are still hanging over us. It's a question of priorities for a young nation.⁵⁹

Caution is due when speculating on the true motives behind the Eritrean government's suspension of its own Constitution, however, the reasons offered in various interviews by President Isaias Afwerki and his closest accomplices do not come forward as convincing. Kidane Mengisteab and Okbazghi Yohannes' explanations seem more plausible in that respect, as they point to the internal nature of the Front's leadership and its political culture, nourished through decades of war, as the direct cause for the development of totalitarianism in the country (Mengisteab and Yohannes 2005: 157) (see chapter 3).

The widespread political crack-down in the autumn of 2001 and subsequent decisions by the regime suspended all legislative and political processes leading to the realisation of the rights enshrined in the Constitution and additional international human rights instruments ratified by the Eritrean government. The two sections below, on constitutional rights and the international human rights obligations of Eritrea, are thus a mere theoretical exercise in order to present the formal judicial context of human rights in the country, and should not be read as reflecting empirical reality.

ERITREA'S INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

Beyond the Constitution, Eritrea is obliged to comply with a number of key international conventions it has ratified protecting the rule of law; most notably the International Covenant of Civil and Political Rights (ICCPR, acceded 23 January 2002), and the regional African Union instrument, the African Charter on Human and Peoples' Rights (ratified in 1999). However, other conventions of importance to the rule of law have not yet been ratified by Eritrea, including the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984).⁶⁰ The Eritrean government, which after independence did not show any great eagerness to ratify international human rights instruments, apparently changed its strategy as a consequence of the new war with Ethiopia (1998–2000), and started to accede to international instruments as part of the propaganda war against Ethiopia.⁶¹ Such a blatantly pragmatic approach to acceding to international human rights instruments will, of course,

⁵⁹IRIN News: 'ERITREA: Interview with Yemane Gebremeskel, Director of the President's Office' Asmara, 1 April 2004, at: <http://www.irinnews.org/Report.aspx?ReportId=49359>, accessed 6 January 2009.

⁶⁰Neither has it acceded to the Convention's optional protocol, the two optional protocols to the International Covenant on Civil and Political Rights, the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, or the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

⁶¹The Ethiopians tried to undermine Eritrea's legitimacy and political posture during the war by claiming that Eritrea was 'undemocratic' and 'denied human rights', as opposed to themselves who had implemented a democratic constitution and ratified all major human rights instruments. To counter these accusations, the Eritrean government rapidly acceded to various international conventions, portraying itself as a 'law-abiding' member of international society. See Tronvoll (2009b) for an elaboration on the Ethiopian discourse.

influence the government's interest and willingness to comply with the obligations enshrined in the very same conventions. In this respect, Amnesty International observes that 'international and regional human rights treaty safeguards seem to mean nothing in Eritrea', as they are routinely ignored or contravened (AI 2004: 36). Eritrea was represented for several years in the UN Commission on Human Rights (until 2006). However, with regard to its treaty obligations, Eritrea has only selectively submitted its state party reports under those UN conventions deemed not 'threatening' to its political order.⁶² The state party report under the ICCPR was due in 2003, but no action had yet been taken as this was written in the beginning of 2009. Neither has Eritrea submitted any state party reports to the African Commission on Human and Peoples' Rights, as it is obliged to do.⁶³

Formal complaints and/or communications on human rights violations pertaining to the rule of law in Eritrea have been made on several occasions to various international and regional human rights mechanisms. For instance, the UN treaty body system has dealt with several complaints against Eritrea within the field of torture,⁶⁴ arbitrary detention,⁶⁵ and enforced or involuntary disappearances.⁶⁶ Also, the African Commission on Human and Peoples' Rights has issued critical decisions ('communications') against Eritrea on violations of arbitrary arrest and detention and lack of fair trial (see chapter 4).⁶⁷ Furthermore, in 2005, the African Commission issued a separate resolution condemning the human rights situation in Eritrea and calling for the country to 'guarantee, at all times, the right to a fair trial, freedom of opinion and expression as well as the right to peaceful assembly' and the release of political prisoners in the country.⁶⁸ As a party to the AU Charter, Eritrea is obliged to receive fact-finding missions from the African Commission on Human and Peoples' Rights, is investigating accusations and claims of human rights violations in the country. Eritrea has, however, repeatedly barred the Commission access to the country, and as of yet – despite several requests – no fact-finding mission has been undertaken.⁶⁹

FINAL REMARKS: LAW IN THEORY AND PRACTICE

Judicial development in independent Eritrea gives mixed signals on how to interpret and understand the interests and genuine will of the Eritrean government. The constitution-making process was in general participatory and various constitutional issues were debated throughout Eritrea. The end result, however, seems to be a constitution tailor-made for the EPLF which vests strong executive powers in the President, and has weak institutions of checks-and-balances. The human rights components in the Constitution are adequate, but leave room for local interpretation. During certain phases, the government has seemed interested in establishing a proper judicial framework, like during the law revision programme carried out in the 1990s, and drawing on a number of foreign experts; however at other times opportunistic tendencies undermine an accountable and transparent process of law making. Moreover, the ratification of several international human rights instruments – as part of the propaganda war against Ethiopia – gives evidence of the pragmatic and opportunistic approach the authorities have to law and its implications.

⁶²Eritrea has only submitted two state party reports to the UN treaty system: under the Conventions on the Elimination of All Forms of Discrimination Against Women (reported in 2004) and the Convention of the Rights of the Child (reported in 2007).

⁶³See http://www.achpr.org/english/_info/statereport_considered_en.html, accessed 1 December 2008.

⁶⁴See: A/HRC/7/10/Add.1, 2008; A/HRC/4/33/Add.1, 2007; A/HRC/4/21/Add.1, 2007; E/CN.4/2006/55/Add.1; E/CN.4/2005/60/Add.1; E/CN.4/2006/5/Add.1; E/CN.4/2006/95/Add.1; E/CN.4/2006/6/Add.1.

⁶⁵See: A/HRC/7/10/Add.1, 2008; A/HRC/4/27/Add.1, 2007; A/HRC/4/21/Add.1, 2007; E/CN.4/2006/55/Add.1; E/CN.4/2005/60/Add.1; E/CN.4/2006/5/Add.1; E/CN.4/2006/95/Add.1.

⁶⁶See: A/HRC/4/41, 2007; E/CN.4/2006/56; E/CN.4/2000/64.

⁶⁷African Commission on Human and Peoples' Rights, Communication 275/2002 – *Liesbeth Zegveld and Mussie Ephrem v Eritrea*; and Communication 275/2003 – *Article 19 v The State of Eritrea* (EX.CL/364 (XI)).

⁶⁸ACHPR/Res.91(XXXVIII)05: 'Resolution on the human rights situation in Eritrea', Banjul, 5 December 2005.

⁶⁹Videotaped interview with Commissioner Bahame Tom Nyanduga, special rapporteur on Eritrea in the African Commission on Human and Peoples' Rights (Dar es Salaam, 6 August 2008, conducted by Anna Little).

Despite the existence in general of a theoretically adequate judicial framework in Eritrea, the value of the Constitution and supporting laws are null and void as long as the authorities do not implement them or enforce them in practice. As this study illustrates, the blatant disregard for the legal regime the government itself has developed illustrates the moral, political and legal demise of the once popular liberation front.

2

RULE OF LAW (LESSNESS) IN ERITREA:

SPECIAL COURTS AND THE JUDICIARY

*Rights are not things that are given or denied at will.
We all should understand that rights are earned through struggle.*

Ms. Fawzia Hashim,⁷⁰

Minister of Justice, Eritrean Government

You have no right to ask!

EPLF security officer,

responding to a group of mothers asking about the unlawful
detention of their children (AI 2004)

INTRODUCTION

The young Eritrean nation was established in 1991 with one great drawback: its freedom was secured from a dictatorship by a Marxist-Leninist-inspired liberation movement which was devoid of democratic experience and which abhorred dissent and divergent opinions. The political culture in the country at the time of independence was thus moulded by decades of war and driven by a government whose policies were anchored in ideological doctrines lacking regard for human rights. Consequently, as is illuminatingly described by an exiled Eritrean academic:

⁷⁰From the official website of the Government party PFDJ, www.shabeia.org: 'Public Dialogue: Human Rights in Eritrea', posted 6 June 2006 at: <http://www.shabeia.org/cgi-bin/artman/exec/view.cgi?archive=14&num=4553>, accessed 5 November 2008.

Eritreans became prisoners of the warrior culture that brought them independence. By the end of the first decade of independence, values such as dialogue, compromise and consensus needed to build a democratic society came to be regarded as symbols of weakness, even treason. (Hedru 2003: 436).

In order to understand how the contemporary rule of law(lessness) in Eritrea developed, one needs thus to understand how the Eritrean People's Liberation Front (EPLF) handled such matters during their long struggle to liberate Eritrea from Ethiopian rule. For instance, it is plausible to argue, as Gaim Kibreab elaborates in his voluminous book, that the 'seeds of dictatorship' in Eritrea were sown already at the incipient stage of the EPLF in 1973 when an internal dissent movement (called *Menqaē*) was brutally crushed. This paved the way for the current leadership of Isaias Afwerki of the EPLF, which subsequently 'adopted violence and arbitrary detention without due process as major means of dealing with internal dissent' (Kibreab 2008: 277).

A war of liberation is not won by democratic means and open deliberation of politico-military strategies, but through stern leadership willing to sacrifice its own supporters, and annihilate opponents of all kinds. The EPLF leadership under Isaias Afwerki embodied such characteristics, as internal dissent was ruthlessly crushed. No initiative or process was allowed to operate autonomous of the Front; the leadership centralised all power at the top of the organisation. The security apparatus constantly surveyed individuals or groups questioning decisions by the leadership and brutally eliminated perceived opponents both internal and external to the Front (Kibreab 2008: 277-291). When such operational rigorousness in pursuing political goals is matched with pragmatic and opportunistic qualities in relation to legal principles – and anchored in a society with a politico-historical tradition of authoritarianism and inequality – the resulting process of developing the rule of law in independent Eritrea was side-tracked at its start.

When EPLF took power in May 1991, the same perceptions and negative attitudes towards political pluralism, transparency and human rights held by the leadership, moved into the government offices. Although some alternative voices were heard, they did not manage to swat or modify the ingrained political culture wielded by President Isaias Afwerki and his loyal supporters. The informal legal culture of the EPLF defined 'rights' and 'duties' differently in relation to an individual's status (the main distinction being between fighters and civilians) (Gebremedhin 2004: 103).⁷¹ 'Rule of law' was thus understood as defined by the EPLF and in relation to the so-called peculiar history of the Eritrean struggle; and not in accordance with universal principles and international human rights standards. In the view of UN,⁷² on the other hand, a country's national legislation constitutes the legal framework both for the realisation and enjoyment of human rights and for the activities of the promotion and protection of human right. The duty-bearer in relation to respecting, promoting, and protecting human rights is the state. Individuals, groups and institutions of civil society all have a role to play in protecting and implementing human rights,⁷³ but the main responsibility rests with the government in power.

A lenient and perhaps naïve international society, content with the 'final' end of the troublesome Eritrean issue in international politics, applauded the stern principles of self-reliance and nationalism expressed by EPLF at independence, as it marked the dawn of a 'new generation' of African

⁷¹Aspects of ethnicity and religion also influenced the 'ranking' of citizens in the post-independence period (see chapters 6, 7, and 8).

⁷²See the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, UN General Assembly, A/RES/53/144, 8 March 1999.

⁷³Cf. UN Commission on Human Rights, E/CN.4/2005/61/Add.1, 15 March 2005, Sixty-first session, Agenda item 11(e).

leadership⁷⁴ hitherto considered to be donor-driven and corrupt. Hence, since the international community applauded the EPLF's 'model of development', no checks and balances on the omnipresent power of the top EPLF leadership existed. It was thus allowed to evolve into the current state of affairs – a one-man dictatorship antithetic to the rule of law. In Freedom House's index of the category of 'Rule of Law', Eritrea receives an extremely weak score of 0.71, out of a possible best performance score of 7.00!⁷⁵

This chapter will assess the workings of the judiciary in Eritrea, and critically present the administration of the civil, military and special courts.

THE ERITREAN JUDICIARY

The Eritrean Constitution (Article 48) and laws declare the Eritrean judiciary (*Ferdawi Akal*) independent from both the parliament (National Assembly) and the government.⁷⁶ In principle, the judiciary is mandated with 'protecting the rights (*mesel'at*), interests (*rebha'tat*), and freedoms (*natznet'at*) of the government, organizations, associations and individuals' (Iyob 1995: 141). However, in its 2009 World Report, Human Rights Watch states that the Eritrean 'judiciary exists only as an instrument of control' (HRW 2009: 66), and Amnesty International reported in 2008 that 'there was no recognizable rule of law or justice system, civilian or military' in the country (AI 2008b).

International human rights reports on Eritrea all conclude that the judiciary is weak and subject to executive control (AI 2004; Connell 2007; AI 2008b; USSD 2008a; HRW 2009). Judicial corruption is widespread, and the EPLF 'fighter-culture' influences the outcome of court cases, as many of the judges are veteran fighters (USSD 2008a). Obscuring the role of the judiciary in Eritrea further is the fact that the President's Office often serves as a clearinghouse for citizens' court petitions, where the President personally interferes in the court's jurisdiction, passing decisions based on personal favours or in accordance with EPLF 'fighter culture' and not the letter of the law (USSD 2008a).

THE COURT SYSTEM IN ERITREA

In principle, Eritrea has three types of courts, although their separate jurisdiction may at times be blurred; civil (three levels, including community and *shari'a* courts), military (two levels), and the special court. Furthermore, there are indications that there exists a parallel secret system of extra-judicial sentencing of political prisoners that is not anchored in any laws or presidential decrees (AI 2004: 38).

⁷⁴Isaias Afwerki of Eritrea, Meles Zenawi of Ethiopia, Yoweri Museveni of Uganda and Paul Kagame of Rwanda all came to power through violent means, but were – paradoxically – still considered by the international community to represent 'something new' in terms of political accountability and development in Africa.

⁷⁵The score of the various indicators under the category 'Rule of law' are: 'primacy of rule of law in civil and criminal matters' scores 0.00; 'independent judiciary' scores 1.20; 'accountability of security forces and military to civilian authorities' scores 0.00; 'protection of property rights' scores 1.33; and 'equal treatment under the law' scores 1.00. See Freedom House 'Countries at a Crossroads' 2007 report, Eritrea chapter (at: <http://www.freedomhouse.org/template.cfm?page=140&edition=8&ccrpage=37&ccrcountry=155>, accessed 5 February 2009).

⁷⁶Proclamation No. 23/1992 established the functions of the judiciary during the transitional period prior to formal independence. The judiciary was declared to be independent of the executive, but did not hold any powers to act as checks-and-balances to the non-elected executive or government (Gebremedhin 2004). After independence, proclamation no. 37/1993 established the structure, functions and powers of the Eritrean government, and ensures a division of powers between the executive, legislative and judicial bodies. However, the proclamation does not go beyond stating that the judiciary shall function independently of other bodies of the government, and it is not vested with the power to act as a proper independent check to other state or political organs (ibid.).

⁷⁷This section builds on US Library of Congress: 'Introduction to Eritrea's Legal System', at: <http://loc.gov/law/help/eritrea.html>, accessed 12 November 2008.

The Civil Courts⁷⁷

The civil court structure in Eritrea has three levels of authority.

The *Community Court* system was formally established in 2001 to ease the pressure on the higher courts. It has a single-judge bench system filled by elected judges who hold jurisdiction over cases relating to minor infractions of the law, involving sums of less than approximately US\$7300 (110,000 nakfa) (USSD 2008a). The elected judges do not have any formal legal training, but base their decisions on traditions of customary law in the area in which they serve.⁷⁸ It is reported, however, that magistrates versed in criminal law also hear criminal cases at the level of the community courts (USSD 2008a). All decisions made by the community courts may be appealed to provincial (*zoba*) courts.⁷⁹ Most people's only contact with the legal system is with the traditional community courts (USSD 2008a). As the higher levels of the Eritrean judiciary are wholly inept and politically corrupted, the importance of the customary law-based village courts as providers of justice is increasing.

The *Zoba Court* is generally the court of first instance. It has civil, criminal, and *shari'a* benches. All first instance cases are heard by a single-judge bench system, but the *Zoba Court* has a three-judge appellate bench that hears cases appealed from determinations made by the Labour Office on employer-employee relations. The *shari'a* bench adjudicates matters of personal status of followers of Islam only. Decisions rendered by any of the benches at the *Zoba Court* can be appealed to the appropriate benches at the High Court.

The *High Court*, although primarily an appellate court, is the court of first instance for a significant proportion of cases involving murder, rape, and other serious felonies (USSD 2008a). It has a three-judge bench system with jurisdiction in civil, criminal and commercial cases, and *shari'a* benches. Eritrea also has a five-judge bench that hears final appeals in lieu of a Supreme Court.⁸⁰ Although at the same level of all other benches in the High Court, the final appeals panel functions much as a Supreme Court does and it is the bench of last resort. The president of this bench is the President of the High Court and four other judges from the other benches at the High Court. The President of the High Court functions as Chief Justice (AI 2004: 37).

Although serving the civilian community, civil courts judges include former senior military officers with no formal legal training (USSD 2008a). Judges are routinely appointed and dismissed at the will of the government (AI 2004; Connell 2007); despite the constitutional requirement that such actions are supposed to be based on the recommendations of an independent Judicial Service Commission (Articles 52 and 53 of the Constitution). Such a commission has yet to be established in the country.

The Military Court⁸¹

The Military Court has jurisdiction over penal cases brought against members of the armed forces in addition to crimes committed by and against the members of the armed forces. The presiding judges in the Military Court are all senior military officers. The Court is structured in two levels (higher and lower); the jurisdiction of these two levels depends on the seriousness of the offences in question. Neither level, however, affords the right of appeal to the accused. The higher level of the Military Court is part of the Eritrean High Court.

It might be questioned whether the Military Court also functions as a political court in certain

⁷⁸The traditional village judge (*dagna*) was generally held in high esteem by the villagers, as he protected the 'inheritance from the forefathers' (i.e., the local cultural traditions), as well as trying to achieve decisions which restored peace in the village (Tronvoll 1998a).

⁷⁹'Zoba' is Tigrinya for province.

⁸⁰Eritrea does not yet have a Supreme Court although the Eritrean Constitution (Article 49) envisages one.

⁸¹This section builds on US Library of Congress: 'Introduction to Eritrea's Legal System', at: <http://loc.gov/law/help/eritrea.html>, accessed 12 November 2008.

circumstances, as it also passes sentence on military personnel expressing criticism of the regime. For instance, after the so-called fighter rebellion on the eve of independence in May 1993 – when a group of EPLF fighters took control of certain venues in Asmara protesting against the unilateral decision of the government to prolong their unpaid service for another two years – 130 ringleaders of the rebellion were sentenced by the Military Court. Considering the militarisation of society in Eritrea, where about 320,000 people are enlisted in the armed forces, the Military Courts wield an enormous – and unchecked – judicial importance in the country. There might also be a blurred distinction in jurisdiction between the military courts and the special court.⁸²

The Special Court

The Special Court was established in 1996 by President Isaias Afwerki, in the aftermath of Eritrea's first publicly known corruption scandal in the mid 1990s, involving officials in the EPLF-owned Red Sea Trading Corporation. The statute or law for the establishment of the Special Court is not available, and no published records of its procedures or cases are available, as the court generally operates in secrecy (AI 2002: 19). The rationale for the establishment of the Special Court was reportedly the impression that the 'moral values' of EPLF cadres were in decline after independence, as corruption increased when EPLF members assumed formal positions of power. An additional concern was the President's wish for more stern measures against corruption than the 'lenient decisions' – in the eyes of the battle-hardened President – of the civil courts.

The judges of the Special Court are predominantly senior military officers and EPLF commanders hand-picked by the President and accountable to his office only (Hedru 2003: 437; Connell 2007: 17). Their recruitment to the Court is likely to be based on personal affiliations and loyalty to the President, and their proven 'toughness' in disciplining their troops. There are no formal requirements of judicial training or competence, and many of the judges have little or no legal training whatsoever (AI 2002: 19; USSD 2003). It is not known how many 'benches' operate under the Special Court.

The Special Court is an executive-controlled separate jurisdiction, not under the authority of the President of the High Court (AI 2002: 18). The Office of the Attorney-General decides which cases are to be tried by a Special Court (USSD 2008a). The Court primarily has jurisdiction over criminal cases involving capital offences, theft, embezzlement, and corruption (USSD 2008a), and other unspecified abuses by government and party officials (Connell 2007: 17). The Special Court also issues directives to other courts regarding administrative matters (USSD 2008a). Allegedly, the Special Court has also tried cases of a political nature (AI 2004: 39); and reportedly supporters of the Islamist movement, Eritrean Islamic Jihad, and other opposition activists abducted by Eritrean security services from the Sudan and Ethiopia have been tried by the Court (Hedru 2003: 437).

The Special Court is not bound by the Code of Criminal Procedure or the Penal Code, nor precedents set by earlier court decisions. Judges generally base their decisions on 'conscience' – in relation to the particular history of the Eritrean struggle and EPLF fighter culture – without reference to the law (USSD 2008a). The Special Court also has the power to re-open and adjudicate cases that have already been processed through the civil courts (USSD 2003). The Special Court can also overrule existing court decisions and increase without limit the penalties for existing relevant offences the government regards as being inadequately prosecuted and punished (AI 2002: 18), thereby subjecting defendants to double jeopardy (USSD 2008a).

⁸²This was confirmed by President Isaias Afwerki in an interview he gave to the government daily, *Eritrea Profile*. According to the President, as quoted in the interview, one of the fighters was set free and four were warned. A further 19 were dishonourably discharged from the army. The remainder were sent to prison; 21 were sentenced to a year and a half, 33 were sentenced to between one and a half and three years in prison, 36 for between four and six years, eight for six to ten years, and the remaining eight were sentenced for more than ten years (*Eritrea Profile*, 17 September 1994, p. 4).

A number of formal and operational elements put the Special Court in stark contradiction with the Eritrean Constitution and laws, and international standards of fair trial. Of particular concern is the fact that the trials are conducted in secret and do not allow for any legal representation for the defendants. The judges serve as the prosecutors and may request the individuals involved in the cases to represent themselves in person (USSD 2008a). Individuals arrested under the Special Court are kept in detention incommunicado, usually in a secret location, and there is no time limit on pre-trial detention (AI 2002). After the Court has decided upon a case, the detainee is transferred to an official prison or one of the many detention camps scattered throughout Eritrea (see chapter 5). All decisions passed by the court are final and binding, as there is no appellate court. However, reportedly, in rare instances, appeals made to the Office of the President have resulted in Special Courts rehearing certain cases (USSD 2008a).

A few Special Court cases have come to public knowledge. One involved the senior EPLF cadre Ermias Debessai, a former EPLF representative to the United Kingdom, and, at the time of his arrest in 1997, Eritrea's Ambassador to China. Amnesty International reports that he was held for three years in pre-trial detention before he was brought before the court in 2000. The Special Court convicted him of embezzling government funds and sentenced him to seven years imprisonment. Amnesty International received allegations that he was prevented from presenting his own case properly and was unfairly convicted, possibly for political reasons (AI 2002: 19).

In 1997, the government daily, *Eritrea Profile*, carried a front-page story reporting on the cases heard by the Special Court. Up to the middle of February 1997, the Special Court had passed decisions on 1331 cases involving corruption, embezzlement and fraud. Out of these, 34 people were accused of abuse of power and 78 charged with 'drug dealing'. The court acquitted 360 persons, and set free 237 others with a stern warning. Furthermore, the court ruled that among 1279 individuals, some would pay a fine only, while others were sentenced to both fine and imprisonment. Reportedly, the highest penalty given at that time was 12 years imprisonment.⁸³

In 1999, the Attorney-General of Eritrea informed Amnesty International that the Special Court was a 'temporary measure'; and the Minister of Justice reported that there were 450 people in detention awaiting trial at that time (AI 2002: 18). However, there are still no signs that the government is rescinding the Special Court, and the 2001 political reform protest has possibly convinced the President of the Courts' continued importance. In July 2001, just prior to the mass arrest of EPLF reformists and civil society leaders, the chief judge (or President) of the High Court, Teame Beyene, was dismissed from his position after calling for the dismantling of the Special Courts and complaining in general about executive interference in judicial proceedings (see chapter 4).⁸⁴ He criticised the Special Courts in particular for their 'illegality and unconstitutionality', saying 'No legal mind can condone and be comfortable with such a disturbing legislation' (AI 2002: 18).

Extrajudicial sentencing

Since it is impossible for outsiders to gain independent access to case information from the Eritrean court system, it is difficult to obtain a full overview of the structure and workings of sentencing in the country. Amnesty International has, however, been informed by released prisoners and other sources that some detainees have been sentenced to prison terms extra-judicially (AI 2004: 39). Allegedly, secret committees of security, police and military officers have passed judgment and delivered

⁸³'Special Court decides on more than 1,300 cases', *Eritrea Profile*, 12 April 1997, p.1.

⁸⁴Cf. US State Department Country Reports on Human Rights Practices 2001; Human Rights Watch: 'Escalating crackdown in Eritrea: Reformists, journalists, students at risk', 21 September 2001; and Amnesty International 'Eritrea: Arbitrary detention of government critics and journalists.' Pp. 22. London: Amnesty International, 2002. See also Connell (2007).

sentences after reviewing statements taken from prisoners after interrogation (and possible torture), and on advice from the interrogators. In these cases, according to Amnesty International, there was no hearing or opportunity for the detainee to present a defence or submit an appeal.⁸⁵

EPLF's practice of extra-judicial sentencing started immediately after it took power in 1991. According to Amnesty International, about 150 Eritrean officials and collaborators of the former Ethiopian military regime (Derg) were detained when Asmara was liberated in May 1991.⁸⁶ Apparently, the EPLF did not want to stage open trials of the former collaborators, instead they were administratively sentenced to imprisonment (mostly for 10_15 years) (AI 2004: 39). President Isaias Afwerki admitted later that various people were being 'punished' after the EPLF takeover, for working too closely with the Ethiopians and due to their 'ossified attitudes'.⁸⁷ Due to the secretive and arbitrary nature of extra-judicial sentencing, it is difficult to obtain verified information on the nature of such processes in Eritrea.

Obviously, the practice of secret administrative sentencing contravenes the Eritrean Constitution and laws, and international human rights law.

THE ADMINISTRATION OF (IN)JUSTICE

The unimplemented Eritrean Constitution states that the 'justice system of Eritrea shall be independent, competent and accountable' (Article 10.1); sadly the reality is far from this, as the 'administration of justice in Eritrea provides no protection for the rule of law' according to Amnesty International (AI 2004: 37). No doubt, the Eritrean court system is seriously inept, not only due to political interference as mentioned above, but also for the lack of resources and skilled personnel. The EPLF has never been dedicated to strengthening juridical academic knowledge and capacity-building per se;⁸⁸ 'fighter-skills' obtained through the war of independence usually out-rank scholarly expertise obtained through university education. Hence, the posts of judges and other formal positions in the judiciary are often filled by uneducated individuals drawn from the military forces.

Compounding this initial lack of law expertise in the Eritrean judiciary is the drastic effect of the full military mobilisation in the country since the start of the Eritrean-Ethiopian war in 1998. The drafting into the army (through the compulsory national service programme) of court administrators, defendants, judges, lawyers, and others involved in the legal system, continues to have a significant negative impact on the judiciary (USSD 2002; AI 2004; UNHCR 2004; USSD 2008a). Consequently, in 2001, the High Court was reduced from seven benches to three, and the personnel of the *zoba* and community courts were reduced by 40 per cent (USSD 2002). Thus, beyond the political infringements, the lack of trained personnel, inadequate funding, and poor legal infrastructure in the country restrict the Eritrean judiciary's ability to grant accused persons a fair trial (AI 2004; USSD 2008a). Public trials are held, but virtually no cases involving individuals detained for alleged national security or political reasons have been brought to public trial since the political crack-down in 2001.

⁸⁵These cases might also refer to the workings of the Special Court.

⁸⁶The most prominent being Isaac Tseggai, former Chief Administrator of Eritrea, and Tesfaye Ma'asho, his deputy. Tens of thousands of other so-called collaborators, i.e. Eritrean women who married or had children with Ethiopian administrators/soldiers, were forcibly expelled from Eritrea in June/July 1991 and ended up as refugees in Ethiopia (the estimated numbers are 80,000–90,000).

⁸⁷President Isaias Afwerki gave this explanation to Robert M. Press, an American journalist working for Christian Science Monitor in 1993 (Medhanie 1994).

⁸⁸As a case in point, it can be mentioned that prior to the outbreak of war in 1998, the Norwegian Centre for Human Rights at the University of Oslo offered several MA scholarships in human rights law to students at the Asmara University, with an expression of interest to enter into an institutional cooperation agreement with the university in order to strengthen its law education programme and library. The offer, however, was rejected by Asmara University as it was not in accordance with 'their priorities'.

Trial procedures

As described earlier, Eritrean law and the unimplemented Constitution provide safeguards and specific rights to defendants in the regular court system. Among other things, the law prohibits indefinite and arbitrary detention, requires arrested persons to be brought before a court within 48 hours, and sets a limit of 28 days in which an arrested person may be held without being charged with a criminal offence. However, this legal limit is routinely violated in regard to political and other arrests (AI 2004: 37).

Defendants also have the right in principle to be present during the trial and to consult with an attorney; however, many defendants lack the resources to retain a lawyer, and government legal aid is limited to defendants accused of serious crimes punishable by more than 10 years in prison (USSD 2008a). Moreover, Eritrea is seriously lacking in qualified lawyers who can serve as defence attorneys in court; and since 2000 the government has refused to issue licences to lawyers wishing to enter private practice (USSD 2008a). Contrary to the Special Courts, the High Court trial procedures formally grant defendants the right to confront and question witnesses, present evidence, gain access to government-held evidence, and to appeal against a decision. The US State Department claims that these rights were upheld in practice (USSD 2008a), an assertion disputed by other observers of the judiciary (AI 2004; Connell 2007). Nonetheless, the lack of juridical accountability among judges lacking formal training in law has undermined these safeguards, as court decisions are often based on the particular judge's 'conscience' without reference to the law (USSD 2008a).

There are no civil judicial procedures established for individuals claiming human rights violations by the government; despite the fact that the unimplemented Constitution enshrines the principle of administrative redress for citizens whose rights are violated (Article 24). According to Amnesty International, there has not been any legal challenge or redress through the courts for violations of human rights (AI 2004). In the aftermath of the political crack-down in 2001, however, the High Court granted a *habeas corpus* application against the Prisons Commissioner in respect of the detained student leader Semere Kesete, who was allegedly not produced in court (AI 2004: 37). The President of the High Court was subsequently dismissed; and since then '*the habeas corpus* safeguard against arbitrary detention has been defunct, with no lawyer daring to make an application and no court challenging any detention as unconstitutional or unlawful or contrary to Eritrea's treaty obligations' (AI 2004: 37) (see chapter 4 for elaboration). Thus, for the majority of the Eritrean population there are few remedies available for enforcing court orders or their rights. Persons affiliated with high-ranking party or government officials, former EPLF fighters and the rich, however, can use their influence with the court to secure civil remedies before the law (USSD 2008a).

FINAL REMARKS

It seems clear that the political ideology of the regime in Eritrea, both prior to and after the political crack-down of 2001, has inhibited the development of the rule of law in the country. In particular the workings of the judiciary have suffered, as executive interference and lack of resources have seriously undermined its operational independence. The workings of the Special Courts are particularly worrying in this regard. The 2001 crack-down augmented this negative trend and basically rendered the Eritrean judiciary meaningless in fulfilling its stated and formal objectives. The concept of the rule of law is in fact antithetical to the reality in Eritrea today.

3

DEMOCRATIC CURTAILMENT IN ERITREA:

'NEVER DEMOCRACY, ALWAYS CONTROL!'

Just as the People's Front [EPLF] had a clear vision during the liberation struggle that enabled it to realize the dream of establishing a free and peaceful Eritrea, likewise in the new post-independence period it had a clear vision for the future development of Eritrea. This vision aims at establishing a country where justice, democracy and prosperity prevail.

Eritrean Government, Ministry of Information, 19 April 2005.⁸⁹

What kind of country is that which everyday throws its sons and daughters to the furnaces of war? Whoever is spared from that is thrown in jail because they pronounced truth and demanded justice. Whoever escapes that fate is stranded in the diaspora, always suffering the distance, missing his country and living in hope of returning.

Mohammed Nur Ahmed, former Eritrean ambassador to China,
Extracts from a letter sent to the Eritrean Ministry of Foreign Affairs.⁹⁰

INTRODUCTION

Eritrea today is a country under siege by its own government, the Eritrean People's Liberation Front (EPLF).⁹¹ The pretext of external enemies is used as an excuse to deny people their basic rights and freedoms of opinion and expression, to organise and assemble, and to practise their religious beliefs (Connell 2007; AI 2008b; RWB 2008; USSD 2008a, 2008b; HRW 2009; USSD 2009). The Eritrean government does not allow any alternative voice or opinion to be heard, all resources and people are mobilised and channelled into maintaining the country's totalitarian and militaristic structure. No private or independent press or media houses exist. Not *one* non-governmental organisation (NGO) is

⁸⁹Taken from an editorial at the Ministry of Information's webpage: 'Reaffirming our values', at: http://www.shabait.com/staging/publish/article_003357.html, accessed 26 March 2009.

⁹⁰Cited from Hedru (2003).

⁹¹Officially the EPLF was renamed the People's Front for Democracy and Justice (PFDJ) at the third congress in 1994; however the government is still commonly known as the EPLF.

allowed to operate outside the direct control of the government party, the EPLF/PFDJ. The government even sanctions and controls all religious communities and churches, and dismisses at will Church leaders who become outspoken or try to defend the rights of their fellow believers. Churches – and other civil society organisations – which the government cannot control are prohibited. Institutions and organisations associated with the sphere of ‘civil society’ plainly do not exist in Eritrea today. The government aims to control all sectors and actors of society through a total mobilisation and harnessing of the country’s human resources in favour of its policies, or incarceration and elimination if that is not possible.

The current context of human rights abuse in Eritrea did not come about all of a sudden, but originates in praxis and ideologies adopted by EPLF during the war of liberation, and evolved progressively since independence in 1991, culminating in the widespread national political crack-down in September 2001. The lack of democratic development and respect for human rights in post-independence Eritrea is as such not a unique case, it has developed in a similar way to many other Marxist-Leninist liberation movements coming to power by violence.

Comparative politics has taught us that the establishment and endurance of any armed liberation movement necessary to win the struggle against a suppressive regime has to involve extraordinary measures and stern strategies. In its formative years, the EPLF had to develop its armed capability and a strict politico-military hierarchy where no disobedience or alternative opinions were allowed came to the fore (Kibreab 2008). A highly centralised and authoritarian organisational model evolved, where discipline, loyalty, and political indoctrination managed to foster one of the most efficient and capable liberation armies in the world (Pool 2001). It must be remembered that the EPLF and its leadership did not only fight the Ethiopian regime; they fought other Eritrean and Ethiopian resistance movements too, as well as internal dissent and competing leadership figures, in order to establish hegemony – internally as well as externally – within their political realm. The organisational ‘purity’ and monolithic ideology of EPLF was enforced from the top by a handful of dedicated men, led by the former liberation leader and current President Isaias Afwerki.

The organisational supremacy of EPLF, however, came at a cost. Individual autonomy, leadership accountability and organisational transparency were qualities which were deliberately ignored in order to concentrate solely on one goal: the liberation of Eritrea from Ethiopian domination. The civilian government established in independent Eritrea in 1993 was thus far from ‘civilian’; it was a direct continuation of the political culture fostered during the liberation war. In the words of the Eritrean scholar Gaim Kibreab: ‘the seeds of tyrannical rule and control-freakery were sown in the process of building a monolithic military organisation’ during the war of liberation (Kibreab 2008: 214).⁹² This chapter will outline the gradual ‘de-democratisation’ of Eritrean society, as the EPLF constructed its structures of a totalitarianism which denies democracy and the right to assembly in the country.

‘NEVER DEMOCRACY, ALWAYS CONTROL’: DENYING POLITICAL RIGHTS

‘Never democracy, always control’ was a phrase used by a veteran EPLF liberation fighter to illustrate the enduring core interests and mentality of the EPLF leadership in the post-independence period.⁹³

⁹²Professor Gaim Kibreab’s magisterial book of 450 pages, *Critical reflections on the Eritrean war of independence* (2008) is a groundbreaking critique of EPLF’s development and the machinations of the Eritrean political elite. It provides a massive amount of information on the formative years of the EPLF and its internal conflicts and ideological positions. It should be noted, however, that it has been written in a context where the liberation front had already developed into a one-man dictatorship, i.e., current realities may have been projected back to interpret historical data. Although the book presents a plausible interpretation of the development of EPLF, it does not properly include and reflect upon alternative models and explanations.

⁹³Interviewed in Asmara, 3 February 1997.

'The EPLF's political culture has long been predicated on secrecy and the exercise of absolute power, often by violent means', explains the American journalist Dan Connell, a long-term observer and supporter of the EPLF cause (Connell 2007: 3). Illustrative of this point is the fact that throughout the war of independence, the broad-based liberation movement was led by a clandestine inner party, called the Eritrean People's Revolutionary Party (EPRP).⁹⁴ This structure was established in the early 1970s and headed by Isaias Afwerki. Strongly influenced by Maoist ideology⁹⁵ and principles of 'democratic centralism', it worked as an inner decision-making unit, providing ideological guidance to the struggle and defining the premises for EPLF's operational policies (Connell 2001; Pool 2001: 91; Mengisteab and Yohannes 2005: 52-53).

In its formative years, the leadership of the EPRP also formed the leadership of the EPLF. The EPRP secretly conferred ahead of every important EPLF congress or gathering, deciding on the formulation of the EPLF programme and slotting the 'correct' individuals in place for so-called 'elected' positions in the EPLF (Connell 2007: 3). The EPRP was instrumental in the propagandisation and indoctrination of EPLF cadres. Through ideological training courses offered by a special cadre school to a selected group of particularly loyal individuals it maintained political control of all activities of the EPLF and its mass movements.⁹⁶ Disobedience or questioning of the decisions passed by EPRP was ruthlessly punished with long-term imprisonment and rehabilitation, or summary execution (Connell 2007: 3). The establishment of EPRP thus 'guaranteed the ubiquity of internal repression of dissent, unmistakably putting the trajectory of the liberation struggle on the classic road to dictatorship', observe the Eritrean scholars Mengisteab and Yohannes (2005: 53).

The clandestine workings of the EPRP were supposedly suspended in 1989, but the inner party was not officially abandoned until after independence in February 1994.⁹⁷ Its 'secretive pattern of rule' – possibly even sustained to this day – thus remained during the design of post-independent governance policies in Eritrea, and the construction of state institutions (Connell 2007: 3). It should therefore come as no surprise that when the Eritrean government drafted its first post-liberation policy paper on 'State, Government and Party' in 1992 – discussing various models and theories of democracy and governance applicable to the Eritrean case – it concluded its deliberation with the following assertion:

As has been seen in the experience of Third World countries, when political parties are influenced by religion or ethnicity, or when they serve the interests of foreigners, let alone to serve for democracy, they lead the country into chaos and destruction. Therefore, the question of democracy should not be seen in relation to the number of political parties established.⁹⁸

The position paper was unnoticed by most local and international observers of Eritrean liberation; however, it should have been read as a clear warning of what was to come in the country. The first practical 'test' for pluralism through voting was the Eritrean referendum on independence, conducted in April 1993.⁹⁹ There was never any doubt that the overwhelming majority of Eritreans

⁹⁴Some translate it as the Eritrean People's Socialist Party.

⁹⁵Isaias Afwerki underwent political training in China in 1968-69, at the height of the Cultural Revolution.

⁹⁶The head of the political department of the party and the cadre school, the former Minister of Foreign Affairs, Haile Wolde-temesai, was instrumental in organising this indoctrination culture of EPLF (Pool 2001). Ironically, he is now languishing in jail, arrested by Isaias Afwerki in the 2001 crack-down.

⁹⁷Isaias Afwerki disclosed this information during the Third Congress of the EPLF in 1994, when the military front EPLF was officially transformed into the 'civilian party', the PFDJ (Connell 2001).

⁹⁸Provisional Government of Eritrea: State, Government and Party, issued by Department of Information and Culture, Asmara, 1992, p. 56 in original. Unofficial translation from the original version in Tigrinya.

⁹⁹Eritrea carried out its first local (village and district) elections during 1992. Political parties were prohibited and the individual candidates were not allowed to communicate any political programme or platform to their 'constituency'. Furthermore, there were no secret ballots and the EPLF changed the 'electoral procedures' during the process due to a lot of confusion

would vote 'yes' to independence; they had clearly articulated such a wish through the 30-year long war of liberation. Thus, the EPLF could have opened the way for true and realistic alternatives (as they argued prior to 1991), i.e., to have ballots reflecting the three alternatives of 'independence', 'federation with Ethiopia', or 'integral part of Ethiopia'. However, when they organised the referendum process, the alternatives were only 'yes' or 'no' to independence, without defining the content of the 'no' alternative. Through an elaborate information campaign, the meaning of a possible 'no' vote became clear for the electorate: a 'no' voted implied a recommencement of the war and a prolongation of the people's sufferings (for elaboration see Tronvoll 1993b, 1996).¹⁰⁰ Furthermore, groups who were believed to be critical to the referendum process were actively suppressed, for instance, the Jehovah's Witnesses who were persecuted, arrested and stripped of their citizenship when they expressed that they would not register to vote due to their faith which prohibits them from actively engaging in politics (see chapter 6). Other parts of the Eritrean population believed to be ambivalent in their support for EPLF – namely the Afar and Kunama ethnic groups straddling the Eritrean-Ethiopian border – were kept under surveillance and a noticeable military presence was mobilised in Afar region as a preparation for possible unrest instigated by the Afar resistance movement or other factions not supportive of EPLF (Tronvoll 1994).

At this incipient stage of Eritrean development, civil society initiatives were also quelled. A case in point is the closure and prohibition of the dissemination of independent information during the referendum process, as the only 'independent' NGO established in the country after EPLF takeover was suddenly closed down when it wanted to publish a newspaper debating the referendum and Eritrea's future development plans.¹⁰¹ Later initiatives to establish independent newspapers were also repressed.¹⁰²

No doubt the Eritrean people wanted independence in 1993; but the reality behind the 99.8 per cent 'yes' vote may be questioned.¹⁰³ Segments of certain ethnic constituencies (the Afar and Kunama) had previously displayed support for Ethiopia during the war of liberation; segments of the merchant and trading class would favour a stronger affiliation to Ethiopia as a safeguard for market access; and the Orthodox Christian Church and highland society had historically expressed interest in remaining within Ethiopia (Negash 1997); these are all factors which presumably ought to be reflected in a vote on independence or continued affiliation with a 'friendly' TPLF/EPRDF government in power in Ethiopia. However, this did not manifest itself in the outcome of a 99.8 per cent 'yes' to independence; and should again raise some questions on how the medium of 'elections' and 'free opinions' were communicated by EPLF during the transitional period (see also Pausewang 1993; Tronvoll 1993a). The referendum process – in the eyes of the rural electorate – appeared to be a well-orchestrated exercise without any meaningful choice of alternatives; but it is worthy of note that the absolute majority of the electorate had no interest in a meaningful choice. The referendum was merely a symbolic act manifesting what the Eritrean people had achieved on the battlefield.

on the registration/nomination of candidates. Thus, the 1992 local elections cannot be characterised as a formal electoral exercise.

¹⁰⁰I carried out field work in Eritrea from August 1991 to June 1993, and actively researched the referendum process during all of its phases (as opposed to the UN observers or international journalists who arrived some few months, or even days, prior to voting day).

¹⁰¹The Regional Centre for Human Rights and Development was established in April 1992 by Paulos Tesfagiorgis, founding chairman of EPLF's humanitarian wing, the Eritrean Relief Association (ERA). It was closed down by the Eritrean security service upon Presidential orders at the beginning of 1993, and Paulos was confined in house arrest for three months. The first shoot of an independent civil society was thus crushed before it had taken root.

¹⁰²The respected elder and Eritrean nationalist, Taha Mohammed Nur, asked for permission to establish a newspaper in the mid 1990s in accordance with the press law, but was then ordered by the Minister of Information to let 'them read everything before it was printed'. Taha rejected this type of censorship and had to give up the initiative of establishing an independent paper. (Information given in interview conducted 26 February 1997 in Asmara).

¹⁰³The outcome of the Eritrean referendum is one of the most affirmative in the history of elections, with a turnout of 98.5 per cent of registered voters of which 99.8 per cent voted 'yes'.

IDEAS AND POLICIES ON 'DEMOCRACY' IN INDEPENDENT ERITREA

In its National Democratic Programmes formulated during the war of liberation, the EPLF officially endorsed 'people's democratic rights – freedom of speech, the press, assembly, worship and peaceful demonstration'.¹⁰⁴ Also the EPLF's 'National Charter for Eritrea: For a Democratic, Just and Prosperous Future', adopted at the third congress in 1994, safeguards democratic rights and the formation of political organisations is even encouraged.¹⁰⁵ It must be remembered, though, that the vocabulary of 'democracy' as used by EPLF during the struggle and after independence implied a Marxist-Leninist understanding of the term, and not 'liberal democracy' as it is often understood or interpreted by diplomats, development aid workers and other foreign observers.

The National Charter establishes the ideological guidelines for structuring politics and institutions in independent Eritrea. In the Charter, the PFDJ summarises its vision of Eritrea's future in terms of six basic goals: national harmony, political democracy, economic and social development, social justice (termed 'economic and social democracy'), cultural revival, and regional and international cooperation. These goals are meant to be pursued through the means of six principal guidelines, based on experiences from the liberation struggle. *National unity* is declared to be the paramount guideline, to which all work and policies will be aligned, thus rejecting 'all divisive attitudes and activities, [and] places national interest above everything else'.¹⁰⁶ It is further stated that the national development policies will be implemented through the means of *broad-based participation* by the people, combined with *individual dedication of self-sacrifice* – as guidelines two and three respectively – and based on the philosophy of *social justice* as the fourth guideline. *Self-reliance* in all fields – political as well as economic and cultural – is another basic principle of the PFDJ, experienced and learned through the solitary struggle for independence. The last guideline is the *strong relationship between the people and the leadership* of the organisation; a leadership which, according to the Charter, is mature and just in its role as decision-maker.¹⁰⁷

The National Charter seems to coalesce several thoughts, ideas and inspirations articulated by the EPLF leadership over time, and hastily put together into a symbolic manifestation of their political 'uniqueness' and 'maturity'. There is, however, not much intellectual maturity or political uniqueness found in the Charter, and as observed by Mengisteab and Yohannes, 'The document is fraught with contradictions, clichés, redundancies and platitudes' (Mengisteab and Yohannes 2005: 58). The National Charter must of course be read within the historical context in which it was drafted, just a couple of years after the end of the liberation war. However, the Leninist doctrines of political control and Albanian-inspired policies of self-reliance articulated in the Charter ought to have flagged several warning signs among donor countries flocking to Eritrea to assist the EPLF in rebuilding the war-torn country.

In particular, the Charter's notion on democracy should be seen as a worrying sign by the international community. 'Political democracy' in the Charter is defined as consisting of 'patriotism, national unity, secularism and social justice', not multipartyism, regular elections and the division of power. The Charter elaborates further on the understanding of democracy: 'In the context of our society, democracy is dependent not on the number of political parties and on regular elections but on the actual participation of people in the decision making process at community and national level'. Apparently, the EPLF tries to distinguish procedure from substance in relation to democratic values and principles (see also Yohannes 1996: 163); a distinction often favoured by authoritarian regimes claiming to

¹⁰⁴Article 1.D of The National Democratic Programme, endorsed at the First EPLF Congress, 31 January 1977. In the programme adopted at the second congress in March 1987, a more or less similar phrase is included, but also adding the 'rights' of 'nationalist political parties'.

¹⁰⁵EPLF, A National Charter for Eritrea, For a Democratic, Just and Prosperous Future, Nacfa, February, 1994.

¹⁰⁶EPLF (1994: 13).

¹⁰⁷EPLF (1994: 18).

represent the ‘masses’. The Charter is thus silent on mechanisms to operationalise and institutionalise the values and principles of democracy (Mengisteab and Yohannes 2005: 81). President Isaias Afwerki has on several occasions expressed reservations about multiparty democracy as an appropriate system of governance for Eritrea, and explained that ‘the time is not yet right’. Instead, he has speculated on models of ‘traditional African democracy’ without specifying the procedural and structural arrangement of such a model (Hedru 2003: 437).

It thus seems clear that the idea of EPLF all along was that the Eritrean people – the masses – should participate in the running of the state through clearly defined structures, processes and roles provided for them by the EPLF – the vanguard needed to guide the population to development (see also Tronvoll 1998b; Mengisteab and Yohannes 2005: 87). This political culture also influenced the discourse on democracy during the Constitutional Commission, where the ambiguity of the EPLF concept of democracy came to the fore.

CONSTITUTIONAL DEBATES AND RIGHTS OF DEMOCRACY AND BASIC FREEDOMS

The discussion paper *Constitutional Proposals for Public Debate*, which were widely disseminated for public consumption prior to the formal drafting of the Constitution, emphasised the need of a firm and strong government in order to create the necessary conditions for the growth of democracy, which ‘has to develop gradually, taking root through a process of struggle and change’ (cited from Pool 2001: 168). However, the idea of a multi-party system and free competitive elections was apparently viewed negatively by the EPLF and described as a ‘procedural as opposed to an essential’ aspect of democracy (cited from Pool 2001: 168).

The unimplemented Eritrean Constitution partly reflects this hesitation, as the democratic principles enshrined are somewhat vague on committing to full freedom of organisation and assembly in the country (see also chapter 1 for elaboration on constitutional rights). On the one side, Article 19 of the Constitution enshrines ‘Freedom of Conscience, Religion, Expression of Opinion, Movement, Assembly and Organisation’. The article reads in full:

1. Every person shall have the right to freedom of thought, conscience and belief.
2. Every person shall have the freedom of speech and expression, including freedom of the press and other media.
3. Every citizen shall have the right of access to information.
4. Every person shall have the freedom to practise any religion and to manifest such practice.
5. All persons shall have the right to assemble and to demonstrate peaceably together with others.
6. Every citizen shall have the right to form organisations for political, social, economic and cultural ends.¹⁰⁸
7. Every citizen shall have the right to practise any lawful profession, or to engage in any occupation or trade.
8. Every citizen shall have the right to move freely throughout Eritrea or reside and settle in any part thereof.
9. Every citizen shall have the right to leave and return to Eritrea and to be provided with a passport or any other travel documents.

¹⁰⁸It should be noted that some observers of the constitution-making process claim that the official English translation of these rights differs from the authoritative Tigrinya version, which is claimed to be more ambiguous on ‘party organisations’.

Leaving aside the fact that all these basic freedoms are purely theoretical in Eritrea today, since they are violated on a massive, systematic and consistent basis every day, another constitutional article puts restrictions on these presumably basic freedoms. In Article 7, titled 'Democratic principles', it is made clear that 'The organisation and operation of all political, public associations and movements shall be guided by the principles of national unity and democracy' (7.5). Furthermore, in Article 7.6 it is articulated that: 'The State shall create conditions necessary for developing a democratic political culture defined by free and critical thinking, tolerance and national consensus'. Such provisions clearly indicate that the government defines the criteria for public participation in the country's 'democratisation process'. It presages government-defined restrictions and control of the political context wherein 'parties' are supposed to be established (see also Pool 2001). Democratic rights and freedoms are thus not freely given in Eritrea, but need to be compliant with the overall political directions offered by the EPLF/PFDJ regime.

Criticism of the lack of full guarantees for democratic *multipartyism* in the Constitution was raised during the drafting process. For instance, Constitution Commission member Taha Mohammed Nur, a distinguished elder and prominent Eritrean fighter for independence, was openly dismissive towards the new Constitution and claimed that many commission members, including its chairman, voted against their own belief on the issue due to the 'political reality of EPLF' in power and the fact that 'no one dares to oppose the party stand'.¹⁰⁹ Taha was critical of the EPLF's reasoning on this matter and explained:

If our people 50 years ago in 1946¹¹⁰ could form political parties of varying ideologies and policies and manage to hold a dialogue with each other, and then after 50 years of fighting the EPLF says that we are not matured politically do to the same today! This is nonsense. The reason is that the EPLF wants to dominate everything in Eritrea: politics, economy, society – everything.

Taha Mohammed Nur was arrested by the EPLF in November 2005 and was never released or tried in court before he reportedly died in prison in early 2008 (see chapters 5 and 6).

The draft Constitution was made ready prior to the first Eritrean elections conducted in March 1997 for regional assemblies, the Constituent Assembly and, by indirect vote, the National Parliament. Thus, the democratic 'principles' agreed upon by the EPLF/PFDJ in the Constitution were put to the test immediately through the 1997 elections.

DE-DEMOCRATISING ERITREA: THE 1997 'ELECTIONS' AND LOCAL GOVERNMENT REFORM¹¹¹

As mentioned above, the totalitarian structure of Eritrea originates in political ideologies and practices developed during the war of liberation, and manifested through new policies, legislation and state institutions established after independence. The most radical event in this regard was the local government reform and subsequent elections of 1997. The reform was anchored in a resolution passed by the Third Congress of the EPLF in 1994, where it was decided to re-draw the internal administrative

¹⁰⁹Interview with the author, 26 February 1997 in Asmara.

¹¹⁰After the Second World War, Eritrea was temporarily administered by the United Kingdom (since Italy was defeated and lost all its colonial possessions). During this transition period, and until the annexation of Eritrea by Ethiopia in 1962, several political parties existed in Eritrea and candidates ran for election to the Eritrean national assembly.

¹¹¹This section builds on material previously presented in Tronvoll (1997, 1998b).

¹¹²Gash Barka, Anseba, Maakel (Central), Debub (Southern), Semienawi Keyih Bahri (Northern Red Sea), and Debubawi Keyih Bahri (Southern Red Sea).

boundaries of the country. This political decision by the EPLF was implemented by the government through the *Proclamation for the Establishment of Regional Administrations* (No. 86/1996), gazetted on 15 April 1996. The proclamation abolished the historical nine provinces (*awraja*) of Eritrea and established seven new administrative zones (*zoba*)¹¹² instead; with a corresponding new system of local administration and governance.

After liberation, the *awraja*-system had elected people's assemblies (*baito*) functioning as administrative bodies in the villages (*baito adi*) and at the level of the district (*baito woreda*). Significantly, the *baito* members, who were individually elected, were all accountable to their constituencies for their decisions and actions.¹¹³ At the level of the sub-province (*neus-awraja*), appointed EPLF cadres worked as administrators, who also had the responsibility to guide and assist the *baitos* at district and village level in their decision-making. People's assemblies (*baito awraja*) – with the majority of the representatives elected from the districts and a minority appointed by the EPLF – were also found in the nine provinces, operating as quasi-legislative bodies, whereas the executive branch of provincial administration was staffed by appointed EPLF fighter-administrators. This system of local government was introduced throughout the country after liberation, effectuated by the local and regional elections which started early in 1992 and ended with elections in Dankalia in the beginning of 1993.¹¹⁴ It is important to note that the *baito* system is a customary and familiar system of local governance in many parts of Eritrea (Tronvoll 1998a), and that the EPLF/PFDJ no more than formalised this institution by passing official proclamations and by nationally conducted local and regional *baito* elections in 1992.

The 1997 elections

Since the 1997 election is the first, and so far the only, election conducted under the EPLF, it is worthwhile to present it in more detail.¹¹⁵ The elections for the new *zoba* assemblies were held in the two first months of 1997, ending with the capital region, Maekel, on 1 March.¹¹⁶ To elect the representatives for the regional assemblies was, however, not the only function of this ballot. The 399 elected *baito* representatives in the six regions, together with 75 representatives appointed by the EPLF/PFDJ and 75 representatives elected by Eritreans in diaspora, would constitute the Constituent Assembly which later ratified the new Eritrean Constitution. And, in addition to this, the 399 *baito* representatives subsequently elected among themselves 75 representatives which, together with 75 EPLF/PFDJ appointed representatives, formed the new National Assembly.

The triple mandate of the ballot – first, to elect candidates for the *zoba* assemblies; second, to elect candidates for the Constituent Assembly; and third, by indirect vote, to elect members of parliament – was not properly communicated to the electorate, who generally believed that the vote was for the regional assemblies only. Adding more confusion to the vote was the system with reserved seats for female representation. In order to safeguard female representation, a parallel election with a separate ballot of female candidates was conducted.¹¹⁷ Thus, a double ballot was used; one for the reserved

¹¹³See the pamphlet, *Short Exposition on Local Government in Eritrea*, by the Ministry of Local Government, Asmara, September 1993.

¹¹⁴See also an unpublished paper by the Ministry of Local Government, *Experiences on the Introduction of Decentralization in Eritrea* (1993); and see Tronvoll (1998a) for further comments on the workings of the *baito* system during the transitional period.

¹¹⁵Local 'elections' were reportedly conducted in May 2003, less than two years after the widespread political crack-down and arrests. No independent assessment or reporting are available from these elections, however, reportedly all candidates were hand-picked loyal EPLF/PFDJ cadres (Hedru 2003).

¹¹⁶No international observers were invited to follow the 1997 elections. Only the Norwegian government was privileged to send a small team of election observers (headed by myself), since the Norwegian development agency (Norad) had helped to finance the local government reform programme.

¹¹⁷Almost one-third (30 per cent) of the seats in the assembly had been reserved for female representation. Cf. Article 10.3.A in the *Proclamation for the Establishment of Regional Administrations*.

seats with a pink ballot paper, and one for the open seats, with a blue ballot paper. Since the country did not yet have an electoral law, the legislative basis of the zoba elections was therefore to be found in the *Proclamation for the Establishment of Regional Administrations* and subsidiary in the *Proclamation Issued to Establish the Constituent Assembly*. In addition to these legal instruments, the Ministry of Local Government issued an *Electoral Guidelines* document which described the mode of the elections, formation of the election committees, and procedural electoral aspects.¹¹⁸

The electoral system adopted was a multiple-member constituency system with majority vote.¹¹⁹ The range of representation was determined on the basis of population concentration and size. However, there was a different ratio of voters to representatives from a rural electorate to an urban one, in order to safeguard rural interests.¹²⁰ The election for the reserved seats was delineated in different, more encompassing constituencies, which entailed that the female representatives in the reserved seats had an electorate of between 8000 and 10,000 people, whereas in the open election each representative was backed by approximately 4000 to 5000 people (in the Maekel zoba). This difference between the open and reserved constituencies was not mentioned in either the Proclamation or the Election Regulations. According to interviews with presiding officers, they had just been orally informed about this system. That such an important aspect of an electoral system was not specified in either the law or the regulations was of course unfortunate, but rather typical for the EPLF way of orchestrating political processes.

Individual 'election campaigning' was only allowed to be carried out over five days. The campaign activities conducted were also very limited, based almost entirely on displaying campaign posters with a picture of the candidate and a listing of his/her experience. Some posters had also a few sentences on what the candidate recognised as his/her major political issues, which were practically always in accordance with the official development policy of the government of Eritrea. One or two joint meetings, where all the candidates were allocated two minutes to present themselves, were arranged by the Election Committee. A well-known EPLF member and female candidate interviewed admitted that it was not necessary to do much campaigning since the candidates were all known to their constituency and that the voters were not that preoccupied with political issues. In this candidate's constituency, the government had just prior to the election announced that it would nationalise several residential houses, which had raised a lot of concern and criticism from the local inhabitants. When asked if this issue had been raised in her campaign, she was dismissive:

We cannot advocate the cases of our constituency if it goes against the national politics and government decisions. Concerning the nationalisation of housing some of the voters have asked me to take their case to the assembly, but that is a decision of the government. The assembly assesses and gives recommendations only which the administrator pass on to the Minister of Local Government who confirms and decides. This has to be done so we do not decide anything that will go against the government development policies.¹²¹

This explanation offered by a prominent candidate illustrates the shallowness of the election and the concept of 'democracy' as introduced by EPLF/PFDJ (note that this was four years prior to the crack-

¹¹⁸*Electoral Guidelines for Assembly Elections*, issued by the Ministry of Local Government, October 1996, Asmara (my version is an unofficial translation from the Arabic/Tigrinya original). The 'guidelines' had not been discussed or ratified by the existing National Parliament, nor gazetted, and its formal status as a legal instrument was thus unclear, even though it was formalised by Articles 11 and 41 in the *Proclamation for the Establishment of the Regional Administrations* which stated that such regulations shall be issued.

¹¹⁹As prescribed in the *Proclamation for the Establishment of Regional Administrations*.

¹²⁰Article 10 of *Proclamation for the Establishment of Regional Administrations*.

¹²¹Interview with zoba candidate Sara Solomon (the sister of the imprisoned former Foreign Affairs minister Petros Solomon), 27 February 1997, Asmara.

down and before the start of the new Eritrean-Ethiopian war). No political substance was allowed to be communicated in the electoral process, and all candidates were aware of this restriction. The candidates and the voters had to conform to procedural technicalities only, without raising or discussing any local political grievances or issues of national concern. That was the solitary prerogative of EPLF to handle. An ironic and paradoxical parallel to how EPLF itself had characterised liberal democracy as 'procedural as opposed to an essential' (see below).

Since the elections were only about symbolic procedures and not politics, there were no 'official' EPLF or fighter candidates. A female candidate explained that:

The fighters do not want to mingle so much with civilian life. They keep closely together and do not interact with the civilian population, and in a way they are a community within a community.¹²²

Yemane Gebrehab, head of Department of Political Affairs in the EPLF/PFDJ, confirmed in an interview that there was no need for party-endorsed candidates in the elections, since, as he claimed, the Front would take all the seats due to their popularity.¹²³ He added that it did not really matter, since 90 per cent of the candidates were party members anyway. The purpose of the election, as explained by Yemane Gebrehab, was threefold: first, to secure people's participation along the line of government priorities and to let them know the importance of elections; secondly, to make sure that the people do not look at ethnicity, kinship, village candidates, or narrow regionalism, but for the national issues; and lastly to enhance the role of women, youth and 'minorities' in national processes. All of these are priorities which fit well with the ideological doctrines established during the war of liberation.¹²⁴ Since the elections were intended to have an 'educational' effect, and to mobilise the masses along the priorities dictated by the government, pressure was applied to compel people to register and vote.¹²⁵

Although minor discrepancies and breaches of the electoral guidelines were observed during the 1997 elections, the overall impression was that the process was, technically, carried out in a commendable manner (Tronvoll 1997). However, the purpose of the elections was a sham, as the *Proclamation for the Establishment of Regional Administrations* outlines a system of local governance which seems not to hold any decentralisation of power and authority, but rather the contrary. The elected *baitos* were not vested with any powers or implementing mandate, but recognised only as a symbolic rubber-stamping body which shall offer praise of the national policies of development which are drafted and decided by the national government and the President. The Eritrean electorate was not allowed to voice its true opinion on these matters, and foreigners too were warned not to do so. In an interview with Yemane Ghebreab, Presidential advisor and head of the Political Affairs department within EPLF/PFDJ, during the elections, he gave the following blunt warning: 'I hope you have not come here to verify that the elections are free and fair. It is not up to the foreigners to verify the elections, but to the people of Eritrea.'¹²⁶ National elections, but notably without political parties, were again scheduled for 1998, but were postponed due to the outbreak of war with Ethiopia.¹²⁷ After signing the ceasefire agreement in the

¹²²Interviewed 25 February 1997, Asmara.

¹²³Interviewed by the author, 26 February 1997, Asmara.

¹²⁴However, considering the fact that the Jehovah Witnesses, due to their dis-engagement in the referendum process, were stripped of their right to vote or to stand as a candidate in the local elections, if they so wished, indicates that the formal purpose of the elections as explained by Yemane Gebrehab was not intended to be converted into practical realities.

¹²⁵Confirmed by several voters and a foreign lecturer at Asmara University, who had witnessed a government propaganda vehicle driving in the streets of Asmara and announcing that people who did not register to vote would be punished.

¹²⁶Interviewed by the author, 26 February 1997, Asmara.

¹²⁷See IRIN interview with Yemane Gebremeskel, Director of the President's Office, 1 April 2004, Asmara, at: <http://www.irin-news.org/Report.aspx?ReportId=49359>, accessed 6 January 2009.

summer of 2000, new plans for elections were made and a draft *Proclamation on the Formation of Political Parties and Organisations* was developed. A committee led by the then Minister of Local Government, Mahmoud Sherifo, was appointed to oversee the electoral process. However, being part of the growing post-war dissent against the President, Mahmoud Sherifo was summarily dismissed from his position in February 2001 and subsequently imprisoned during the September 2001 crackdown (see chapter 4). Being one of the key architects of the system of control and surveillance in Eritrea, and a government strong man, his dismissal was received with shock by the public at large. Subsequently, Mahmoud Sherifo claimed that he was dismissed because President Isaias Afwerki wanted to suspend the democratisation process and the formation of political parties in the country.¹²⁸ The draft legislation on political parties was subsequently annulled, and the conduct of general elections was postponed indefinitely. On 1 January 2003, an official declaration was made claiming that: 'In accordance with the prevailing wish of the people it is not the time to establish political parties, and discussion of their establishment has been postponed'.¹²⁹ While carrying out tightly controlled, non-party,¹³⁰ local elections, party-based national elections are not on the agenda in the foreseeable future.¹³¹ Reportedly, President Isaias Afwerki announced in May 2008 that elections would be postponed for 'three or four decades' or longer because they 'polarize society'.¹³²

THE LOCAL GOVERNMENT REFORM: FORMALISING TOTALITARIAN STRUCTURES

The new system of local government introduced in 1996 builds on the aforementioned *Proclamation for the Establishment of Regional Administrations*.¹³³ The most radical change introduced by the reform was the discontinuation of elected people's assemblies at the lower levels of the administration, leaving the *baito* institution intact – although with a severely restricted mandate and authority – only at the level of the *zoba*. The traditional district (*woreda*) entity is obliterated, and the three new levels of local government administration are the village/area (*adi/kebab*), sub-region (nues zoba) and region (*zoba*) (cf. Art. 6 in the proclamation).¹³⁴ The establishment of an executive line of command from the President's office all the way down to the village/area level – through the Minister of Local Government, and the chief administrators of the region, sub-region and village/area, who all are personally and permanently appointed by the President or his representative – is also a new arrangement within the field of local government. The administrators at each level are accountable for the conduct of their office to their immediate superior – and not to their constituencies – ending with the regional administrators who are accountable directly to the Minister of Local Government, and, notably, not to their elected regional people's assemblies (*baito zoba*) (Art. 20.3).

¹²⁸BBCNews, 'Eritrean minister speaks out', 17 April 2001, at: <http://news.bbc.co.uk/2/hi/africa/1281386.stm>, accessed 17 March 2009.

¹²⁹Posted in the government daily, Hadas Ertra, 1 January 2003, cited from Hedru (2003).

¹³⁰Local elections were carried out between 2003 and 2005. In this regard, President Isaias Afwerki explained that 'the foundation of the regional elections of administrators, work managers and village magistrates that we are now celebrating has its roots in the political culture we developed during our national liberation struggle. These elections have also proved the popular participation of the people along the path of development of free Eritrea.' Explaining the conduct of the elections, the party EPLF/PFDJ website asserts that: 'The basic beliefs of the country's peoples and its martyrs who fell heroically for the people is that no step forward can be obtained without the participation of its citizens. "There is no victory without its people, no development without its people," were the words of wisdom articulated by the President' (Shaebia: 'Elections for Regional Assemblies to be held soon', ERNA News, 24 September 2003, at: http://www.shaebia.org/artman/publish/article_1881.shtml, accessed 26 March 2009). Furthermore, according to the government, the local 'elections aimed at fostering active popular participation in public administration and strengthening the existing administration network in the country.' Cf. Ministry of Information's web-page: 'Elections to take place in 46 administrative areas in the Central region', 7 April 2005, at: http://www.shabait.com/staging/publish/article_003302.html, accessed 26 March 2009.

¹³¹See interview with presidential advisor and director of political affairs in EPLF/PFDJ, Yemane Gebremeskel by IRIN: 'ERITREA: Interview with Yemane Gebremeskel, Director of the President's Office' 1 April 2004, Asmara (IRIN), at: <http://www.irinnews.org/Report.aspx?ReportId=49359>, accessed 6 January 2009.

¹³²'The World's 10 Worst Dictators', Parade Magazine, 22 March 2009. at: <http://www.parade.com/dictators/2009/the-worlds-10-worst-dictators.html?index=8>, accessed 25 March 2009.

¹³³Government of Eritrea (Gazette of Eritrean Laws), No. 86, 1996.

¹³⁴Eritrea is divided into six regions, 54 sub regions and 2000 village districts (interview with Vice-Minister for Local Government published in Eritrea Profile, 17 February 1996, p. 2).

Whereas the former elected *baito* representatives were accountable to the village inhabitants for the conduct of their office – and thus were replaceable by vote – the new position of village/area ‘chief’ is only accountable to the government-appointed chief administrator of the sub-region (Art. 30.B.1).¹³⁵ Within the given context, this appears natural, since the village/area administrator’s duties are to ‘execute and implement the directives and programmes’ given to him by the sub-region administrator (Art. 30.B.4). The village/area administrator also holds the responsibility within his/her domain to ‘control compliance with and the implementation of the central government’s policies, plans, programmes as well as regional directives and programs’ (Art. 30.B.1). The village/area is thus explicitly *not* mandated to represent/administer the interests of the village, but to enforce the authority of the President at the village level.

According to the deputy Minister of Local Government, the reason for abolishing the elected village council¹³⁶ as the responsible administrative body of the village, was that the councils ‘promoted prestige projects which did not benefit the community’ (Pool 1997: 25). The government has a responsibility to plan and implement the overall development strategies of the country, and must prioritise according to various national needs and factors which might not be seen or comprehended from a local perspective. Consequently it ends in a difficult balance between genuine grassroots participation and peasant decision-making related to their own development process, on the one hand, and state responsibility and guidance *vis-à-vis* national priorities on the other. The government of Eritrea solved this quandary by purging all decision-making authority from the people’s assemblies and vesting the authority in permanently appointed executive administrators in the local government structure. The only remaining people’s assembly, the *baito zoba*, is left without any authority or mandate to decide on or implement development policies of its own choice, and is left only with the mandate of recommendation. The proclamation states that the regional *baito* shall have the powers and duties to: ‘prepare regional development programmes relating to economic and social services and pass resolutions and issue directives pertaining to its particular conditions *in harmony* with central government policies, proclamations and regulations and to implement the same when approved by the Minister of Local Government’ (Art. 13.1, my italics).

The *baito* may recommend solutions based on the people’s wishes (Art. 13.4), and ‘hear, investigate and comment on the performance reports and evaluations of the executive body and submit its objections and reservations thereon to the minister of local government’ (Art. 13.7), but it does not hold decisive authority within any field, and must submit to any national priority defined by the government. It has no independent fiscal authority, but is required to ‘collect local revenues, based on the central government’s local duty and taxation directives’ (Art. 13.6).

To safeguard against any possibility that the *baito zoba* might recommend or suggest anything which goes against national priorities and planned strategies, the government appoints regional administrators vested with ‘the power to suspend the *Baito*’s resolutions and recommendations until the Minister of Local Government decides on them, if he thinks the policies and regulations of the central government are violated’ (Art. 20.B.2). To avoid utilising such radical measures, however, the

¹³⁵As a substitute for the grassroots democracy of people’s councils (*baito adi*), a meeting of the whole village community is introduced, named after a customary institution of justice called *megaba’aya*. According to the Proclamation, the *megaba’aya* comprises all village inhabitants within the administrative area who are above the age of 18 (cf. Art. 3). The powers and duties of the *megaba’aya* will be to ‘discuss programmes to be carried out in the village/area, make comments and recommendations and approve programmes requiring its participation’ (Art. 30.A.2). It will also ‘generally hear, investigate and comment on performance reports presented by the administrator and pass on to the regional administration its objections and reservations thereon’ (Art. 30.A.3). Finally, the *megaba’aya* will ‘provide the necessary cooperation in electing committee members who would participate in the implementation of different programmes’ (Art. 30.A.4). Meetings of the *megaba’aya* will be conducted regularly every two or three months (Art. 30.A.5), and will be chaired by the permanently appointed village/area administrator, who is the highest administrative authority of the village/area (Art. 30.B.1).

¹³⁶The *baito adi* is the village assembly, a gathering of all the villagers. They elect a council or administration, called *memhedar*, which constitutes a chairman, and his/her secretary (deputy), a cashier and two additional administrators.

regional administrator attends all meetings of the *baito* where he/she 'gives recommendations and advises the Baito on matters related to the central government's policies and regulations and programmes before the *Baito* passes resolutions and recommendations' (Art. 20.B.1). It appears that the structure of local government introduced in 1997 in Eritrea reflected the idea that only a few individuals at the top of society should be entrusted with the power and duty to decide what is the optimal strategy of development for Eritrea and all its citizens. The small group of dedicated men, and a few women, who are trusted by the President thus have an enormous influence on issues of local governance, a power seemingly without any checks and balances. No counterpoised power which emanates from, and is accountable to, a demotic constituency exists as an integral part of the new system of local government. In this manner, the decisions of the village/area administrator – which are based on directives from above – appear incontestable (according to the proclamation). Long before the 2001 crack-down, the authoritarian traits of the EPLF/PFDJ were clearly understood by the Eritrean peasants. An elderly and much respected villager explained after the 1997 regional elections:

We have seen this system of governance before during the Italian period. We resisted the authority imposed on us by the colonial administrators at that time; this time it is our own kinsmen who do it; and we do not know what to do.¹³⁷

THE UBIQUITOUS ONE-PARTY STRUCTURE

Since coming to power in 1991, the EPLF/PFDJ has not allowed any organised political opposition to emerge within Eritrea. The spectrum of Eritrean opposition movements are forced to operate in exile, disconnected from the domestic constituency.¹³⁸ In the immediate post-liberation phase, individuals with opposition sympathies or membership were allowed to return to the country, but were prohibited from articulating opposition politics or organising into political alternatives.

The third EPLF congress conducted in 1994 aimed to transform the EPLF military front into a broad-based civilian movement, called the People's Front for Democracy and Justice (PFDJ). Although PFDJ formally became separate from the government of Eritrea, there was a direct overlap between its central council of 75 members and the national assembly and government ministers. The PFDJ also inherited all assets of EPLF, and continued to establish new businesses in independent Eritrea, as part of securing control over the 'free' economic sector as well as safeguarding a future direct source of income to the party independent of state finances (Pool 2001).

The 1994 congress also designed strategies to revitalise the party and to extend its party structure in order to, in its term, 'reinforce' its ties with the Eritrean population at large. By 1996, the party had established over 1000 branches throughout the country, with a membership base of around 600,000, a figure embracing a large share of the adult Eritrean population (Pool 2001: 177). The enlargement of the party membership base was conducted in such a way – with implicit and explicit coercion – that few people dared to decline membership if they were asked to register.¹³⁹ Furthermore, anybody aspiring to employment and a career in the civil service or EPLF/PFDJ-controlled companies was better off being a member of the party. The expansion of the party structure continued until the outbreak of the 1998-2000 war temporarily put a stop to the recruitment campaign.

Clearly, the objective of the EPLF/PFDJ was to develop a mass party organisation which through its

¹³⁷Interviewed February 1997, highland village outside of Asmara.

¹³⁸For a comprehensive overview of historical and contemporary Eritrea political movements and organisations in opposition to EPLF/PFDJ, see Günther Schröder, Directory of past and present Eritrean political organisations in opposition to EPLF/PFDJ, unpublished report, created March 2000, updated September 2007, 49 pages.

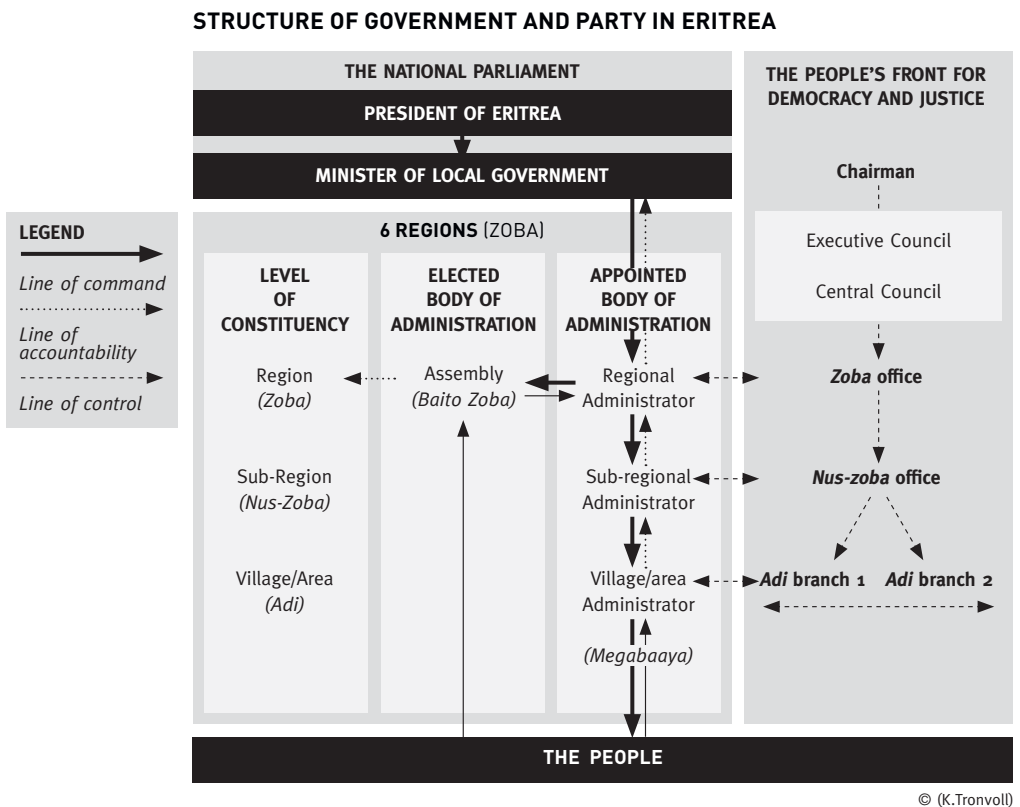
¹³⁹Information given to the author by Eritreans in exile.

structure was able to mobilise and control all citizens and societal activity in the country. Additionally, the party structure also aims to control the government structures, as party organs are organised in parallel to the new local government structure outlined above. Furthermore, in order to create an in-built structure of control within the party, two party branches were established in all villages/local level communities. When I asked villagers why EPLF/PFDJ established such an elaborate party structure throughout Eritrea in 1997, the usual answer given was the need for control and surveillance. As explained by a village militia member in a highland village outside Asmara:

The new party organisation in my village is established to look after the village administrator and to check that the government policies are followed and implemented. But, since the top leaders cannot be sure that the party organisation in the village is reliable, they have decided to establish two branches in each village. In this way the party will check on and control the village administrator, and each party branch will check and control each other.¹⁴⁰

The structure of government and party governance established in Eritrea in 1997 thus gives a clear line of command from the President of the State and Chairman of the Party, Isaias Afwerki, at the pinnacle all the way down to the smallest village. Accountability is one-directional, always to the upper level of command and not to the constituency supposed to be served.

Figure 1. Structure of government and party in Eritrea, 1997.



¹⁴⁰Interviewed 25 February 1997.

FINAL REMARKS

Comparative politics and history has taught us that the establishment of mass political movements or parties does not bode well for the development of liberalism, democracy and the plurality of choice and opinion. Mass parties are convenient instruments of control by a small clique at the top of society rather than mediums of broad-based participation. The mass membership is generally unable to do more than obey the policies set by the leadership, and is forced into quiescence. So also in Eritrea.

At an incipient stage, it became clear that EPLF/PFDJ had a different notion and understanding of 'democracy' than what Western liberal political theory implies. The local government reform and the 'democratic institution building' which was put into effect from the mid 1990s, actually entailed a de-democratisation of Eritrean society. Traditional democratic village and regional assemblies were replaced with an authoritarian command structure controlled by the President at the top and branching out to all villages in the country. The evolution of this structure, and the parallel transformation of EPLF/PDFJ into a mass party, gave evidence that the political leadership had no interest whatsoever in relinquishing the political power they had fought so bitterly to obtain.

4

OBLITERATING CIVIL SOCIETY IN ERITREA:

DENYING FREEDOM OF ORGANISATION AND EXPRESSION

INTRODUCTION

When Eritrea achieved independence, *de facto* 1991 and *de jure* 1993, many national and international observers expressed a strong degree of optimism towards a positive development of democracy, civil society and a culture of human rights in the country. President Isaias Afwerki was characterised as belonging to the ‘new breed’ of African leaders who seemingly held popular support among their constituencies, rhetorically endorsed liberal democracy, human rights and free market economy, and had a well-defined development policy based on their own priorities. As such, Isaias Afwerki, and the rest of his generation of leaders,¹⁴¹ heralded a clear breach with the *ancien régime* of Mengistu Haile-Mariam.

Today, however, Eritrea is characterised as one of the world’s worst dictatorships, where human rights are violated on a massive and systematic scale. Institutions of democracy and civil society – which ought to function as checks-and-balances to unaccountable political power – plainly do not exist in the country. As this study illustrates, the seeds of dictatorship were sown early in Eritrea (Kibreab 2008); whereas the final blow to democratic development was experienced in the aftermath of the 1998-2000 Eritrean-Ethiopian war.

¹⁴¹This group of the new breed of African leaders included; Meles Zenawi (Ethiopia), Museweni (Uganda), Paul Kagame (Rwanda), and to some extent also Thabo Mbeki (South Africa).

OPPOSING THE EMERGING ONE-MAN DICTATORSHIP: POST-WAR REFORM MOVEMENT

Eritrean-Ethiopian relations gradually deteriorated after Eritrean independence, as the two formerly friendly resistance movements held different perceptions about how to organise state and governance, and opted for varying strategies of 'development' (Negash and Tronvoll 2000). The 1998-2000 war shattered Eritrean-Ethiopian relations, and the UN/AU negotiated peace process failed to provide a sustainable settlement to the dispute (Nystuen and Tronvoll 2008). With the withdrawal of the UN peacekeeping force (UNMEE) in 2008, the two countries are once again on the brink of war.

The 1998-2000 war had dramatic implications on domestic politics in both countries, as it inspired dissent movements within the two government parties, the EPLF in Eritrea and the TPLF/EPRDF in Ethiopia, questioning the decisions made which led to the outbreak of war and the conduct of the fighting itself (Plaut 2002; Tadesse and Young 2003; Vaughan and Tronvoll 2003; Tronvoll 2009b). In the subsequent 2005 election in Ethiopia, for instance, the opposition made great electoral advances and challenged the EPRDF's grip on power, partly as an effect of the war (Tronvoll 2009a). Consequently, and in order for the EPRDF to remain in power, political and legislative restrictions are gradually 'closing down' the process of democratisation in the country (Aalen and Tronvoll 2009).

In Eritrea, the war was used as an excuse by the EPLF to postpone the scheduled 1998 elections. Many Eritreans, however, saw the war as an illustration of EPLF's failure to build an accountable system of governance which would prevent the outbreak of war in the first place. In October 2000, a group of thirteen prominent Eritrean intellectuals (later called G-13),¹⁴² wrote a confidential letter to President Isaias Afwerki, questioning the outbreak of war and raising a wide range of critical issues on the EPLF's dominant role in the country's politics and economy and on the matter of the unimplemented Constitution. The group, some of whom held high-level civilian and symbolic positions within the EPLF (like the Constitutional Commission Chairman, Bereket Habte-Selassie, and the former head of the Eritrean Relief Association, Paulos Tesfagiorgis), admitted that they had kept quiet for too long due to self-censorship, as they became aware of the negative development trends in Eritrea at an early stage after independence. However, the outbreak of the new war and the continued negative political developments within the country compelled them at this late stage to raise a direct criticism of President Isaias Afwerki's rule:

We must now say that, in our considered opinion, the government has lagged behind in the development of democratic institutions, including mechanisms for ensuring accountability and transparency. The advent of one-man dominance has had the effect of suffocating a variety of ideas from blossoming and denied meaningful popular participation. It has inevitably prevented the growth of democratic institutions. A new nation with very limited and under-developed resources facing enormous challenges in all fields – political, security, economic, social – cannot afford to have a government that depends only on one person. In fairness, the blame must also be shared by other members of the leadership to the extent that they did not object to the negative practices. They may have put up some feeble complaints, but we have heard of no such protests. So, they too have failed the nation along with you in allowing power to be concentrated in the hands of one man.¹⁴³

The confidential letter was soon leaked and created an uproar of interest among Eritreans in the country and the diaspora. A delegation from the G-13 travelled to Asmara to meet with President Isaias

¹⁴²All but two were living outside Eritrea: Araya Debessay, USA; Assefaw Tekeste, USA; Bereket Habte Selassie, USA; Dawit Mesfin, UK; Haile Debas, USA; Kassahun Checole, USA; Khaled A. Beshir, USA; Lula Ghebreyesus, South Africa; Miriam M. Omar, UK; Mohamed Kheir Omar, Eritrea; Mussie Misghina, Sweden; Paulos Tesfagiorgis, Eritrea; and Reesom Haile, Belgium.

¹⁴³Letter to the President of Eritrea from G-13, 1 October 2000.

personally in order to discuss the letter and a way forward to handle the criticism. They managed to secure a brief meeting with the President, who did not enter into the substance of their criticism but was more preoccupied with trying to identify who leaked the letter to the press.¹⁴⁴ Thus, no concrete follow-up strategy to the letter was agreed upon, and the G-13 group as a collective did not follow up on their initial criticism, although many of the individual signatories to the letter have continued their peaceful struggle for change in Eritrea through various means from exile.

Protest against President Isaias Afwerki's monolithic power was also brewing within the top echelons of the Front towards the end of the war. The political and military leadership of EPLF/PFDJ was particularly concerned with the fact that Isaias Afwerki, as both President and party chairman, had neglected the routine to convene regular meetings in the party's Central Council (the top legislative committee of EPLF/PFDJ) and the National Assembly during the war, as well as failing to organise a fourth party congress and national elections. After the active warring ceased in the summer of 2000, the pressure from top-level military and party leaders increased on President Isaias to open and the way to re-introduce a collective leadership model of the EPLF/PFDJ and the government.¹⁴⁵ An initial group of 15 top-level government officials coordinated their critique of the President (thus called the G-15). The opponents of the President were formidable in their own right, as both founding members of EPLF and liberation war heroes, as well as being incumbent government ministers and generals. They included two former Foreign Affairs Ministers, Petros Solomon and Haile Woldensae, the Minister of Local Government, Mahmud Sherifo, the former Minister of Defence (and the person second only to Isaias in the most recent party elections), Mesfin Hagos, as well as the serving generals, Ogbe Abraha and Estifanos Seyoum.¹⁴⁶

The growing dissent within the leadership's own ranks, in combination with pressure from the diaspora and civil society representatives in Eritrea, warned the President of his waning power. The regime thus started to plot against the dissenters and in January 2001 a presidential commission of inquiry to investigate the political crimes of 'sub-nationalism' and 'defeatism' was established (Hedru 2003: 441). Its objective was to undermine the accusations and criticism raised by the dissenters by launching a smear campaign accusing them of regionalism and treason – a deadly sin within the nationalistic and militaristic ideology of the EPLF/PFDJ. Loyal cadres in the party arranged seminars hinting at the existence of a 'fifth column' inside the country which was aiding the Ethiopian government in its aggression against Eritrea. In late January, the Minister of Local Government, Mahmud Sherifo, was

¹⁴⁴See Saleh Younis, 'Dawit vs. Goliath. An interview with Dawit Mesfin, member of G-13', published on www.awate.com, 2 December 2000.

¹⁴⁵According to information disseminated by the EPLF/PFDJ dissenters (G-15) (see 'open letter' to all PFDJ/EPLF members of May 2001 from the G-15), criticism was directed at President Isaias Afwerki at a EPLF/PFDJ Central Council meeting which was convened from 31 August to 2 September 2000 and to some extent at the 13th session of the National Council, which was held from 29 September to 2 October 2000. The substance of the criticism was, inter alia, to undertake genuine reviews of policies and to establish deadlines for conducting the party congress and national elections. Furthermore, since military and diplomatic efforts had to be strengthened, it was also decided by the National Council to form a military committee to do an appraisal of the war in order to advise the president in the future. According to the dissenters, however, none of the decisions taken at these two important meetings were implemented due to obstruction from President Isaias Afwerki.

¹⁴⁶The G-15 originally consisted of: 1. Mahmud Ahmed Sheriffo, Member of the Central Council of PFDJ and Member of the National Council; 2. Haile Woldensae, Member of the Central Council of PFDJ, Member of the National Council, Ministerial cabinet member; 3. Mesfin Hagos, Member of the Central Council and the Executive Committee of PFDJ, Member of the National Council; 4. Ogbe Abraha (General), Member of the Central Council of PFDJ, Member of the National Council; 5. Hamid Hmd, Member of the Central Council of PFDJ, Member of the National Council; 6. Saleh Kekya, Member of the Central Council of PFDJ, Member of the National Council; 7. Estifanos Seyoum (B. General), Member of the Central Council of PFDJ, Member of the National Council; 8. Berhane GhebreEghzabihier, Member of the Central Council of PFDJ, Member of the National Council; 9. Astier Feshatsion, Member of the Central Council of PFDJ, Member of the National Council; 10. Mohammed Berhan Blata, Member of the Central Council of PFDJ, Member of the National Council; 11. Petros Solomon, Member of the Central Council of PFDJ, Member of the National Council, Ministerial cabinet member; 12. Germano Nati, Member of the Central Council of PFDJ, Member of the National Council; 13. Beraki Ghebreslassie, Member of the Central Council of PFDJ, Member of the National Council; 14. Adhanom Ghebremariam, Member of the Central Council of PFDJ, Member of the National Council; 15. Haile Menkerios, Member of the Central Council of PFDJ, Member of the National Council.

dismissed from his post, as the internal battle within the EPLF/PFDJ hardened. The dissenters tried to counter the government's accusations by giving interviews and statements to the press, and newspaper sales skyrocketed in the spring and summer of 2001 (Hedru 2003: 441).

The dissenters thrice requested in writing (in February and March 2000) the President to convene meetings of the Central Council of the PFDJ and the National Council. Their intention was to use the formal rules and procedures of EPLF/PFDJ and the National Assembly to push through a no-confidence vote on the President, and thus open the way for general elections in the country (Hedru 2003: 442). The President, however, responded with a blunt warning: 'Again today you have sent me another letter. I have seen it. I repeat, you are making a mistake.'¹⁴⁷ Not satisfied with the rebuff, the G-15 gave the President until the end of March to convene meetings in order to address the critical issues of governance in the country, but to no avail. The President rejected that there were any problems as indicated by the group, and again asked them to refrain from 'this mistaken path and come to your senses'.¹⁴⁸

As a last measure to increase the pressure on the President, the G-15 signed an open letter to all EPLF/PFDJ members and to Eritrea at large in May, outlining in detail the development of authoritarianism under President Isaias, the basis of their criticism, and possible solutions to the problems Eritrea was facing. The justification for this move, as seen by the G-15, was to 'pave the road for peaceful, legal and democratic transition to a truly constitutional government, and to establish guarantees for Eritrea to become a peaceful and stable nation where democracy, justice and prosperity shall prevail'. The open criticism of the President by top-level EPLF/PFDJ cadres was unprecedented and shocking, within the usually cloaked and secretive leadership. The letter spelt out the core of the criticism in the following way:

Because of the weaknesses of the legislative and executive bodies, the President has been acting without restraint, even illegally. While the judiciary lacks adequate human and institutional capacity, instead of providing resources to build up its capacity, the President has created a competing Special Court reporting directly to him. People are being jailed for years without the knowledge and agreement of the judiciary, and independence of the judiciary and rule of law are being violated. The problem is that the President is conducting himself in an illegal and unconstitutional manner, is refusing to consult, and the legislative and executive bodies have not performed their oversight functions properly.

By appealing to the Eritrean public at large and EPLF/PFDJ members in particular, the G-15 aimed to remove President Isaias Afwerki from power by popular pressure. Considering the personal knowledge and experiences of the G-15 individuals, their naïveté in this regard is puzzling. Instead of succumbing to pressure, President Isaias went about doing what he knows best: plotting how to eliminate the enemy threatening his power.

THE REGIME HITS BACK: THE 2001 CRACK-DOWN AND THE CLOSURE OF THE PROCESS OF 'DEMOCRATISATION'

The nascent private Eritrean press started to write about the emerging criticism of President Isaias Afwerki in the spring of 2001. By publishing the views of the EPLF/PFDJ reformists and other civil society voices, the Eritrean public at large became aware for the first time of the internal power struggle within the EPLF/PFDJ; and their lingering doubt was confirmed that even their much revered liberation leader and President was not a person without flaws.

¹⁴⁷Letter from the Office of the President addressed to Mahmud Sherifo, 13 March 2000.

¹⁴⁸Letter from the President dated 29 March 2000 to Mahmud Sherifo (reference: N.I.: A290301.RTF).

The dissemination of news on the internal EPLF/PFDJ power struggle was seen as an advantage for the reformists; thus the regime tried to stifle the press on this issue. In April 2001, Paulos Zaid, an assistant editor of the government weekly *Eritrean Profile*, was picked up at his home by security agents and detained at an unknown location.¹⁴⁹ This followed the suspected arrests and conscription to the armed forces of other journalists. In June 2001, the Committee to Protect Journalists, a US-based organisation dedicated to freedom of expression, sent a letter to the Eritrean Minister of Justice questioning the whereabouts of 15 Eritrean journalists who were believed to have been arrested or forcibly conscripted into the army since the end of the war in order to silence them.¹⁵⁰ On 25 July, Mattewos Habteab, editor-in-chief of the private Tigrinya-language *MeQaleh* newspaper, was allegedly kidnapped by security forces and forced to enlist in the army.¹⁵¹ His newspaper had published a critical editorial the day before, calling on the Eritrean government to improve its treatment of independent journalists. It seems clear that forcible conscription to the armed forces was being used in reprisal against journalists writing on the reform movement and criticising the regime of President Isaias Afwerki (see also AI 2002: 6-7).

As the private media started to question the sanctity of the President, it opened the way for a broader demand for democratic reforms, particularly spearheaded by the students at Asmara University. The university students demanded greater academic freedom, social liberties, and the right to be consulted on matters of interest to them. Of particular concern for the students was the infamous and mandatory 'summer work programme', which required all students to undergo intensive military training (as their regular military service is deferred until after graduation) and to carry out what amounts to forced labour on behalf of the regime (on forced labour in Eritrea, see Kibreab 2009). The living conditions in the military/work camps, and the abuse and harsh treatment of the students, made the student leader Semere Kesete publicly announce that students would not enrol in the summer programme unless specific reforms were carried out.¹⁵² To question publicly a military operation like the summer programme was tantamount to treason in the highly militaristic Eritrea. The day after his statement, on 31 July 2001, Semere Kesete was arrested without charge by the security forces.

A *habeas corpus* application was made to the High Court on 11 August, for the authorities to bring Semere Kesete to court in order to justify his detention. The President of the High Court, Teame Beyene, accepted the *habeas corpus* petition, and ordered the police to bring Semere Kesete to court; but the police requested more time (AI 2002: 7). The regime supported the police in their handling of the matter, effectively suspending the decision of the court. Teame Beyene had, the previous month, presented a paper at the International Eritrean Studies Association conference in Asmara where he severely criticised the government's interference in the judiciary and the operations of the Special Court (see chapter 2). After his *habeas corpus* decision, Teame Beyene was summarily dismissed as President of the High Court (effectively the role of Chief Justice in Eritrea).¹⁵³

¹⁴⁹Committee to Protect Journalists (CPJ), 'CPJ asks Justice Minister to clarify whereabouts of 15 journalists', 7 June 2001, New York, at:

<http://cpj.org/2001/06/cpj-asks-justice-minister-to-clarify-whereabouts-o.php#more>, accessed 17 March 2009.

¹⁵⁰In a subsequent response, Eritrea's Minister of Justice claimed that five of the 15 journalists mentioned in the CPJ letter were employed with local publications or NGOs, and that 'the remaining journalists are performing their obligations in the National Service Program'. The CPJ was not able to independently verify this claim ('CPJ Delegation meets with Eritrean Ambassador. Expresses continued concern about whereabouts of 15 journalists', 13 June 2001, Washington DC, at: <http://cpj.org/2001/06/cpj-delegation-meets-with-eritrean-ambassadorexpre.php>, accessed 17 March 2009).

¹⁵¹CPJ, 'Journalist abducted by security forces, many others still missing', 6 August 2001, New York, at: <http://cpj.org/2001/08/journalist-abducted-by-security-forces-many-others.php#more>, accessed 17 March 2009.

¹⁵²Human Rights Watch, 'Escalating crack-down in Eritrea', 20 September 2001, at: <http://www.hrw.org/en/news/2001/09/20/escalating-crackdown-eritrea>, accessed 17 March 2009.

¹⁵³Cf. US State Department Country Reports on Human Rights Practices 2001; Human Rights Watch: 'Escalating crackdown in Eritrea: reformists, journalists, students at risk', 21 September 2001; and AI (2002). See also Connell (2007)..

During the High Court's deliberation of the *habeas corpus* plea, hundreds of students gathered outside the court house in support of their student union leader. The police seized the opportunity and 400 students were rounded up and sent to the summer work programme in Wia, a reputed military/detention camp located in the inhospitable and scorching desert south of Massawa.¹⁵⁴ Parents of the students and elders who protested over the arrest and tried to negotiate their release were also detained (Hedru 2003: 443). According to Human Rights Watch, the government accused the students of 'unruly behaviour' and 'unlawful acts', but no formal charges were made. Immediately following the forcible transfer of the arrested students to Wia, 1700 others 'voluntarily' joined them there, according to the government, as the regime moved in to quell the growing public protest among the youth of the country.

Amnesty International reports that many of the students were severely beaten and not given any food for the first three days in detention (AI 2002: 7). As additional punishment in Wia, the students were forced to work in harsh conditions and extreme heat, building roads and crushing stones. Two of the students died from dehydration and heat stroke during their ordeal (AI 2002: 8),¹⁵⁵ something the government attributed to 'lack of adequate logistical support' at the camp.¹⁵⁶ The student leader Semere Kesete languished in solitary confinement in a dark cell in Asmara, until he managed to escape in August 2002 (AI 2002: 8). He is now in exile in Europe.

When the regime began to round up and detain critical voices in the country, officials of the party and government started to defect. The first to leave was the Eritrean ambassador to Scandinavia, Ms Hebret Berhe, who resigned from her post and said that she could no longer serve a government that was trying to block the Eritrean people's aspirations for democracy and rule of law.¹⁵⁷ Her resignation sent shock waves through Eritrean society – as the first high-profile EPLF defector – and she was soon to be followed by the Eritrean ambassadors to Nigeria and the European Union, as well as other diplomats and officials at the Ministry of Foreign Affairs in Asmara (Plaut 2002: 122).

The combined pressure from the G-15 top EPLF/PFDJ leaders, the private media, students and other civil society voices came to bear on President Isaias Afwerki and his regime. With events spiralling out of the regime's control, the loyal PFDJ party secretary, Alamin Mohammed Seid, publicly accused the dissidents and reformists of treason in assisting the enemy, Ethiopia (Plaut 2002: 122). In August 2001, in a desperate attempt to swing the EPLF/PFDJ support in their favour, the reformists issued a public document, 'An Open Paper to the Eritrean People: Important and Urgent Issues'. It summarised earlier statements and rebutted the regime's accusations of treason; as well as warning that Eritrea would descend into tyranny if they did not receive the support of the party and its cadres (Hedru 2003: 443).

Understandably, though, many Eritreans were passive bystanders to the power-struggle among the EPLF/PFDJ party echelons; they found it hard to believe the newly-found 'democratic' commitment by the so-called reformists, as they had been part and parcel of the regime which had developed the system of control and surveillance and abused human rights during the post-independence period. Hedru concludes: 'Unaccustomed to public airing of differences among the elite, and uncomfortable with the promises of the regime's critics, most Eritreans reserved judgement' (2003: 443). In the mindset of President Isaias Afwerki, a threat from an enemy is not supposed to be negotiated,

¹⁵⁴Human Rights Watch, 'Escalating crack-down in Eritrea', 20 September 2001, at: <http://www.hrw.org/en/news/2001/09/20/escalating-crackdown-eritrea>, accessed 17 March 2009.

¹⁵⁵See also BBC News, 'Students die in Eritrea detention camp', 20 August 2001, at: <http://news.bbc.co.uk/2/hi/africa/1501092.stm>, accessed 17 March 2009.

¹⁵⁶Human Rights Watch, 'Escalating crack-down in Eritrea', 20 September 2001, at: <http://www.hrw.org/en/news/2001/09/20/escalating-crackdown-eritrea>, accessed 17 March 2009.

¹⁵⁷BBC News, 'Attack on president "no big deal"', 20 July 2001, at: <http://news.bbc.co.uk/2/hi/africa/1448575.stm>, accessed 17 March 2009.

but eliminated. In the shadow of 9/11, when the world's attention was focused on the tragic events in the US, the President mobilised the coercive instruments of the state. In dawn raids on 18 and 19 September 2001, loyal security forces struck against and arrested the G-15 EPLF/PFDJ leaders opposing the President. Three members of the group, Mesfin Hagos, Adhanom Gebremariam and Haile Menkarios, were abroad and escaped arrest. The rest¹⁵⁸ were thrown in jail without any formal charges. The government spokesperson and senior EPLF/PFDJ cadre, Yemane Gebremeskel, claimed that those arrested had been involved in illegal activities which had endangered the sovereignty of the country, by organising clandestine cells inside the country and the armed forces. The reformists were thus accused of treachery, including co-operating with opposition groups which were supported by Ethiopia.¹⁵⁹

Following these two initial raids, the regime commenced a nationwide crack-down and mopping up operation, arresting hundreds of people. All private newspapers and magazines, eight in number, were closed down, and the journalists either arrested or forced into exile. Dozens of senior civil servants, diplomats, military commanders, journalists, business people and other professionals were detained; nearly all of whom were EPLF/PFDJ members and ex-fighters (AI 2004: 8). Many of them had not expressed public criticism of the President, but were nevertheless associated with the reformers and considered a threat to the regime.¹⁶⁰ For instance, Idriss Abaire, the director-general of the Ministry of Labour and a veteran liberation war hero, was arrested the first week of October. His only public criticism of the government was in a debate some months prior to his arrest on the use of minority languages in primary education. A prominent elder businessman, Abdu Ahmed Yonus, was arrested for signing a letter written by Eritrean elders to the president urging reconciliation with the dissidents.¹⁶¹

The dire political repercussions and the massive human rights abuses following the September crack-down compelled the diplomatic community in Asmara to protest about the government's handling of the matter. As a consequence, the dean of the diplomatic community, Italy's ambassador to Eritrea, was singled out and expelled from the country.¹⁶² This subsequently led all the EU countries to pull out their envoys from Asmara in protest.¹⁶³ The Eritrean Ministry of Foreign Affairs later expressed 'puzzlement' over the many 'negative' statements from diplomats and foreign ministries on the measures they had taken and perceived as justifiable: 'The Government of Eritrea particularly finds inexplicable the attempts to 'whitewash' crimes against the nation's security and sovereignty and present it as advocacy for democratic reform.'¹⁶⁴

On 26 November, a habeas corpus request for the G-15 was made to the Minister of Justice, pursuant to the Eritrean Constitution (article 17), asking, *inter alia*, to reveal their place of detention, to either charge the G-15 members and bring them to court, or release them, and to guarantee their adequate treatment in prison and to grant them access to lawyers, their families and adequate medical care. No response to the habeas corpus petition was received from the government.¹⁶⁵ Subsequently, in a

¹⁵⁸One of the original signatories to the G-15 letter, Mohammed Berhan Blata, had taken fright and disassociated himself from the group, and was thus not arrested. See above, note 143.

¹⁵⁹BBC News, 'Eritrea defends political crack-down', 10 October 2001, at: <http://news.bbc.co.uk/2/hi/africa/1591835.stm>, accessed 18 March 2009.

¹⁶⁰As of 2004, only four of these had been released from detention, according to Amnesty International (AI 2004).

¹⁶¹BBC News, 'Eritrea defends political crack-down', 10 October 2001, at: <http://news.bbc.co.uk/2/hi/africa/1591835.stm>, accessed 18 March 2009.

¹⁶²BBC News, 'Eritrea expels Italian ambassador', 1 October 2001, at: <http://news.bbc.co.uk/2/hi/africa/1572517.stm>, accessed 18 March 2009.

¹⁶³BBC News, 'European envoys pull out of Asmara', 10 October 2001, at: <http://news.bbc.co.uk/2/hi/africa/1589148.stm>, accessed 18 March 2009.

¹⁶⁴Human Rights Watch, World Report 2002, at: <http://www.hrw.org/legacy/wr2k2/africa4.html>, accessed 18 March 2009.

¹⁶⁵UN Working Group on Arbitrary Detention, Opinion No. 23/2007 (Eritrea), paragraph 6. Subsequently a new request of habeas corpus was filed in the Eritrean High Court on 26 June 2002 to which there was no reply either (African Commission on Human and Peoples' Rights, Communication 250/2002 – Liesbeth Zegveld and Mussie Ephrem v. The Government of Eritrea, 34th Ordinary Session, 6-20 November 2003, Banjul, The Gambia).

speech to the National Assembly in early February 2002, and based on a government investigation report into the events of 2001,¹⁶⁶ President Isaias Afwerki indicted the reformists for ‘committing treason by abandoning the very values and principles the Eritrean people fought for’; and the Assembly responded by condemning them ‘for the crimes they committed against the people and their country’ (citations taken from Hedru 2003: 444).

By the end of 2001, all dissenting voices demanding democratic reform in Eritrea were quelled; either arrested, driven into exile, or cowed into silence. The nascent Eritrean civil society and independent press were shut down; their spokespersons and journalists and editors arrested. Thenceforth, no opposition or alternative voices have been allowed to be heard inside the country. Today, it is forbidden in Eritrea for any group of more than seven people to assemble without approval by the government.¹⁶⁷

Since September 2001, the G-15 detainees and civil society representatives have been kept incommunicado in secret detention camps and prisons. Little is known about their situation and physical and mental health, although unconfirmed information hints to the fact that several of the reformists and journalists arrested have died in prison due to lack of medical care, torture and inhumane treatment. The UN, the AU and other agencies have requested the Eritrean government to release the prisoners and for information about their whereabouts and status, but with meagre results. The African Commission on Human and Peoples’ Rights has on two occasions sent written appeals to President Isaias Afwerki to intervene in the matter to ensure that the G-15 detainees are removed from secret detention and brought before the courts of law; all in vain.¹⁶⁸ Furthermore, the UN Special Rapporteur on the right to freedom of opinion and expression sent an inquiry to the Eritrean government concerning the alleged deaths of three of the journalists imprisoned in the 2001 crack-down.¹⁶⁹ The Eritrean government did not bother to reply to the UN on the question.¹⁷⁰

THE 2001 CRACK-DOWN: A CLEAR VIOLATION OF BASIC HUMAN RIGHTS

The international system of justice has through four separate opinions – two by the African Commission on Human and Peoples’ Rights and two by the UN Working Group on Arbitrary Detention – made clear that the Eritrean government’s 2001 crack-down on the EPLF/PFDJ reformists and civil society activists constituted a clear and grave violation of basic human rights; and continues to be so as long as the detainees are not brought in front of a court of law or released.

The case of the G-15

Just a few months after the detention of the eleven top government officials (G-15), the UN Working Group on Arbitrary Detention received a plea concerning their situation.¹⁷¹ Eritrea was at that time not

¹⁶⁶See reference to the report in the Eritrean Government’s response (of 29 August 2007, ref.: MO/145/07) to the UN Working Group for Arbitrary Detention, paragraph 2.

¹⁶⁷UN Commission on Human Rights, Report submitted by the Special Representative of the Secretary-General on human rights defenders, E/CN.4/2006/95/Add.5, 6 March 2006, paragraph 558.

¹⁶⁸See paragraph 54 of African Commission on Human and Peoples’ Rights, Communication 250/2002 – Liesbeth Zegveld and Mussie Ephrem v The Government of Eritrea, 34th Ordinary Session, 6-20 November 2003, Banjul, The Gambia.

¹⁶⁹On 29 November 2006, in regard to Seyoum ‘Fsehaye’ Tsehaye, freelance, Dawit Habtemichael, deputy editor and co-founder of Meqaleh, and Yusuf Mohamed Ali, a journalist who is thought to be the editor of Tsigenay; all of whom were detained in Eiraeiro prison.

¹⁷⁰UN Human Rights Council, A/HRC/4/27/Add.1, 26 March 2007, paragraph 224 and 226.

¹⁷¹UN Commission on Human Rights, E/CN.4/2003/8/Add.1, 24 January 2003; Working Group on Arbitrary Detention, Opinion No. 3/2002 (Eritrea), Adopted 17 June 2002.

a party to the International Covenant on Civil and Political Rights, but nevertheless upon request provided information on the case to the Working Group. The undisclosed source of the complaint argued that the G-15 members had been unlawfully detained 'solely for the peaceful expression of their political concerns' and that their detention violated their rights and freedoms as guaranteed by the Universal Declaration of Human Rights (Art. 9, 10, 14, 19 and 20).¹⁷²

In its reply to the accusations, the Eritrean government maintained that the detention of G-15 was made in consonance with the Criminal Code of the country and other relevant national and international legal instruments, as they were detained, inter alia, for:

conspiring to overthrow the legitimate Government of the country in violation of the relevant resolutions of the Organization of African Unity (OAU), colluding with hostile foreign powers with a view to compromising the sovereignty of the State, undermining Eritrean national security and endangering Eritrean society and the general welfare of the people.¹⁷³

This argument was opposed by the complainant, referring to the Transitional Eritrean Criminal Code (Art. 29) and the Constitution (Art. 17) which states that any person accused of a crime has the right to due process of law and to be brought before a court of law within 48 hours. In considering the contradictory statements of the complainant and the Eritrean government, the Working Group on Arbitrary Detention, , was not convinced by the Eritrean Government's position on the subject matter due to lack of concrete evidence:

Therefore, the Working Group concludes that the political leaders in question were arrested and are being detained for having expressed their political opinions and convictions and that they are victims of having exercised their right to freedom of opinion and expression guaranteed under article 19 of the Universal Declaration of Human Rights.¹⁷⁴

Moreover, the Working Group concluded that the continued detention of the eleven former top officials in 'isolation in one or more secret locations where they have had no contact whatsoever with lawyers or their families', and the absence of a 'court ruling on the legality of their detention', all 'constitutes a series of violations of such gravity' that the deprivation of their liberty is *arbitrary* and thus a violation of Articles 9 and 10 of the UDHR.¹⁷⁵ The UN Working Group on Arbitrary Detention consequently requested the Eritrean government to 'take the necessary steps to remedy the situation of those individuals by bringing it into conformity with the standards and principles' in the UDHR.¹⁷⁶ Needless to say, the Eritrean Government neglected to take action upon the Working Group's concluding request.

Subsequently, the African Commission on Human and Peoples' Rights (ACHPR) followed up on the G-15 case and in November 2003 delivered a landmark judgment against the Eritrean government.¹⁷⁷ The ruling was motivated by a complaint submitted by a Dutch lawyer (Liesbeth Zegveld) and an Eritrean living in Sweden (Mussie Ephrem), on behalf of the eleven former top-level government officials

¹⁷²Paragraph 7 in UN Commission on Human Rights, E/CN.4/2003/8/Add.1, 24 January 2003; Working Group on Arbitrary Detention, Opinion No. 3/2002 (Eritrea), Adopted 17 June 2002.

¹⁷³Paragraph 8 in UN Commission on Human Rights, E/CN.4/2003/8/Add.1, 24 January 2003; Working Group on Arbitrary Detention, Opinion No. 3/2002 (Eritrea), Adopted 17 June 2002.

¹⁷⁴Paragraph 14 in UN Commission on Human Rights, E/CN.4/2003/8/Add.1, 24 January 2003; Working Group on Arbitrary Detention, Opinion No. 3/2002 (Eritrea), Adopted 17 June 2002.

¹⁷⁵Paragraph 15 and 16 in UN Commission on Human Rights, E/CN.4/2003/8/Add.1, 24 January 2003; Working Group on Arbitrary Detention, Opinion No. 3/2002 (Eritrea), Adopted 17 June 2002.

¹⁷⁶Paragraph 17 in UN Commission on Human Rights, E/CN.4/2003/8/Add.1, 24 January 2003; Working Group on Arbitrary Detention, Opinion No. 3/2002 (Eritrea), Adopted 17 June 2002.

¹⁷⁷African Commission on Human and Peoples' Rights, Communication 250/2002 – Liesbeth Zegveld and Mussie Ephrem v. The Government of Eritrea, 34th Ordinary Session, 6-20 November 2003, Banjul, The Gambia.

detained by the regime in September 2001.¹⁷⁸ Despite a protest by the Eritrean government, the Commission found the case admissible, since the requirement to exhaust local judicial remedies can no longer apply in Eritrea since the government had ignored previous *habeas corpus* requests by the detainees to be brought before a court.¹⁷⁹ After the Commission accepted the complaint's admissibility, the Eritrean government declined to forward its written statements on the merits of the case, and the African Commission was left with no alternative but to proceed and deliver a decision on the case based on the statements of the complainants only.¹⁸⁰

The African Commission accepted in full the deposition submitted by the complainants and thus found the State of Eritrea responsible for violation of Articles 2, 6, 7(1) and 9(2) of the African Charter on Human and People's Rights, involving respectively the violation of individual rights and freedoms of liberty and security, the right to fair trial and due process of law, and the right to freedom of opinion and expression. The Commission hence urged the Eritrean government to release the eleven prominent prisoners immediately and to grant them compensation for their illegal detention.

The lack of compliance by the Eritrean government with the unambiguous ruling by the African Commission, motivated Dawit Mesfin (an Eritrean with German citizenship) and Habtom Yohannes (an Eritrean with Dutch citizenship) to ask Liesabeth Zegveld to continue to pursue the case within the international system of justice. On 1 February 2007 she opened a new case with the UN Working Group on Arbitrary Detention on the continued detention of the eleven former top-level government officials. The Eritrean government tried once again to justify the detention with the war-like situation in Eritrea, and that the detainees attempted to undermine and topple the government. More intriguing, though, is the Eritrean government's justification of not yet having taken the detainees to court, due to the continued war-like situation and the fact that 'there are co-offenders who are not yet apprehended'.¹⁸¹ It appears that the government of Eritrea justifies incommunicado detention without trial and formal charges being pressed over eight years, since they will continue to arrest people suspected of being opposed to the regime. Obviously, such arguments were rejected by the UN Working Group on Arbitrary Detention.¹⁸²

The Working Group observed that no new element (but the ruling of the African Commission on the case) had been brought to light which would change their previous ruling of 2002 on the arbitrariness of the detention of the eleven former government officials. The Working Group requested the Eritrean government in 2002 to take 'the necessary steps to remedy the situation'; but the government's communication to the Working Group indicated that they had done nothing in this regard. The Working Group thus restated their opinion that the continued detention without trial of the G-15 'seriously contravenes' the principles of due process of law (as enshrined in Article 9 of the International Covenant on Civil and Political Rights, to which Eritrea in the meantime had become a state party).¹⁸³ Furthermore, the Working Group reiterated their decision that keeping the G-15 in detention solely for expressing dissent against the authoritarian policies of the regime, 'constitutes a clear violation of the rights of these 11 persons to exercise their right of freedom of opinion and expression' (cf. Art. 19 ICCPR).¹⁸⁴

¹⁷⁸These were: Mahmud Ahmed Sheriffo, Haile Woldensae, Ogbe Abrha, Hamid Himid, Saleh Kekya, Estifanos Seyoum, Berhane GhebreEghzabiher, Astier Feshatsion, Petros Solomon, Germano Nati, and Beraki Ghebreslassie. See above, note 143.

¹⁷⁹The Eritrean government tried to explain that it had been unable to bring the detainees before a court of law because of 'the nature of the criminal justice system in Eritrea [... as it was] inherited from Ethiopia and is therefore lacking' and as such it is 'highly congested and difficult to manage' (paragraph 33 in the ruling). This reason was not considered relevant by the Commission.

¹⁸⁰Paragraph 46 in the ruling.

¹⁸¹See the Eritrean Government's response of 29 August 2007 to the Working Group's communication (Eritrean government reference: MO/145/07).

¹⁸²UN Working Group on Arbitrary Detention, Opinion 23/2007 (Eritrea), adopted on 27 November 2007.

¹⁸³Paragraph 26 in UN Working Group on Arbitrary Detention, Opinion 23/2007 (Eritrea), adopted on 27 November 2007.

¹⁸⁴Paragraph 27 in UN Working Group on Arbitrary Detention, Opinion 23/2007 (Eritrea), adopted on 27 November 2007.

Thus, the deprivation of liberty of the eleven former leaders was considered to be arbitrary and the Working Group requested once more the Eritrean government to ‘remedy the situation’ and suggested that an adequate remedy would be the immediate release of the detainees.¹⁸⁵ However, considering their previous ruling five years earlier, the Working Group took note of the ‘obvious unwillingness of the Government to comply with the Working Group’s Opinion’ as ‘particularly worrying’.¹⁸⁶ Habitually, the Eritrean government has ignored the Working Group’s decision and recommendation.

The case of the journalists and the closure of the private press

Prior to the African Commission’s final ruling on the detention of the G-15 in November 2003, another complaint was submitted to the Commission in April that year on the continued incommunicado detention of 18 journalists arrested in the 2001 crack-down while working for the private media, and the banning of the private press in the country.¹⁸⁷ The complaint was submitted by Article 19, an international organisation dedicated to freedom of expression, which had taken up the case on behalf of the detained journalists.¹⁸⁸ Despite the Eritrean government’s repeated attempts to convince the African Commission of the complaint’s inadmissibility – principally due to failure to exhaust domestic judicial remedies in Eritrea – the Commission finally accepted the admissibility of the case in 2005. The Eritrean government explained the arrests of the journalists as occurring ‘against a backdrop of war when the very existence of the nation was threatened’ and that, as a result, the government was ‘duty bound to take necessary precautionary measures (and even suspend certain rights)’.¹⁸⁹ However, unlike certain other human rights instruments, the African Charter does not allow states to derogate from it in times of war or other emergency. The precarious post-war situation in Eritrea at the time of the crack-down, the potential military threat posed by Ethiopia, and the possible political challenge posed by the reformist themselves, were thus not considered relevant by the Commission, which stated that ‘Eritrea’s actions must be judged according to the Charter norms, regardless of any turmoil within the State at the time’.¹⁹⁰

Both the Eritrean government and Article 19 accepted the basic facts of the case (the actual arrest of the journalists and the closure of the press), but differed in regard to the motivations and justifications behind the action taken by the government. Article 19 argued in its complaint that the newspapers were closed and the journalists arrested since they had expressed their opinions and spoken out against the government. The Eritrean government, on the other hand, claimed that the arrests and the closure of the press were justified by Eritrean law since the measures occurred because ‘the stated

¹⁸⁵Paragraph 29 and 30 in UN Working Group on Arbitrary Detention, Opinion 23/2007 (Eritrea), adopted on 27 November 2007.

¹⁸⁶Paragraph 28 in UN Working Group on Arbitrary Detention, Opinion 23/2007 (Eritrea), adopted on 27 November 2007.

¹⁸⁷African Commission on Human and Peoples’ Rights, Communication 275/2003 – Article 19 v The State of Eritrea, (EX.CL/364 (XI)). Final ruling was made in 2007.

¹⁸⁸The African Charter permits complaints by third parties on behalf of and not known to the individuals of concern (*actio popularis* approach). The journalists detained were: 1. Zemenfes Haile, founder and manager of the private weekly Tsigenay; 2. Ghebrehwet Keleta, a news writer for Tsigenay; 3. Selamynghe Beyene, reporter for the weekly MeQaleh; 4. Binyam Haile of Haddas Eritrea; 5. Yosef Mohamed Ali, chief editor of Tsigenay; 6. Seyoum Tsehaye, freelance editor and photographer and former Director of Eritrean State Television (ETV); 7. Temesgen Gebreyesus, reporter for Keste Debena; 8. Mattewos Habteab, editor of Meqaleh; 9. Dawit Habtemicheal, assistant chief editor, Maqaleh; 10. Medhanie Haile, assistant chief editor, Keste Debena; 11. Fessahye Yohannes (or Joshua) Editor-in-Chief of Setit; 12. Said Abdulkadir, chief editor of Admas; 13. Amanuel Asrat, chief editor of Zemen; 14. Dawit Isaac, contributor to Setit; 15. Hamid Mohammed Said, ETV; 16. Saleh Aljezeeri, Eritrean State Radio; and 17. Simret Seyoum, a writer and general manager for Setit. One of the 18 individuals originally listed by Article 19 had been covered by the ruling passed by the African Commission on the detention of the G-15 group (see above: Communication 250/2002 – Liesbeth Zegveld and Mussie Ephrem v The Government of Eritrea); thus in order to avoid double jeopardy, his name was excluded from the current case. Several of the journalists listed later died in prison.

¹⁸⁹Paragraph 87 in African Commission on Human and Peoples’ Rights, Communication 275/2003 – Article 19 v The State of Eritrea, (EX.CL/364 (XI)).

¹⁹⁰Paragraph 87 in African Commission on Human and Peoples’ Rights, Communication 275/2003 – Article 19 v The State of Eritrea, (EX.CL/364 (XI)).

newspapers and the leading editors were recruited into the illegal network organised for the purpose of ousting the Government through illegal and unconstitutional means'.¹⁹¹

The African Commission rejected the Eritrean government's claim that its action was justifiable due to clauses in domestic legislation which permit restrictions on basic human rights during times of political crisis.¹⁹² The African Commission thus ruled that the arrests of the journalists were arbitrary (a violation of Article 6 of the Charter); that their incommunicado detention for several years was a violation of the principles of due process of law (Art. 7(1)) and amounted also to a violation of Article 5, on the right to be free from torture and cruel, inhumane and degrading punishment and treatment. Furthermore, the Commission ruled that separating the detainees from their families over such a long period of time also constituted a breach of the right to family life (Art. 18). The government's banning of the press and targeting journalists was further deemed to be a violation of the freedom of expression and opinion (Art. 9), and an infringement of the public's right to information (Art. 9). The African Commission concluded its ruling by explaining:

A free press is one of the tenets of a democratic society, and a valuable check on potential excesses by government. No political situation justifies the wholesale violation of human rights; indeed general restrictions on rights such as the right to free expression and to freedom from arbitrary arrest and detention serve only to undermine public confidence in the rule of law and will often increase, rather than prevent, agitation within a state.¹⁹³

To support its conclusion, the African Commission made reference to a UN Human Rights Committee finding on the subject matter, which states that: 'The legitimate objective of safeguarding and indeed strengthening national unity under difficult political circumstances cannot be achieved by attempting to muzzle advocacy of multi-party democracy, democratic tenets and human rights.'¹⁹⁴

The African Commission thus urged the Eritrean government to 'release or to bring to a speedy and fair trial the 18 journalists detained since September 2001, and to lift the ban on the press', and recommended that the 'detainees be granted immediate access to their families and legal representatives', as well as paying compensation to the detainees. Needless to say, the Eritrean government ignored the ruling by the African Commission.

International actors and human rights organisations, like Amnesty International (AI 2002, 2004), government agencies, like the US State Department (USSD 2008a), and multilateral organs, like the EU¹⁹⁵ and the Inter-Parliamentary Union,¹⁹⁶ all consider the G-15 detainees to be political prisoners.

FINAL REMARKS ON 'DEMOCRACY' AND PLURAL POLITICS IN ERITREA

Since the 2001 crack-down, a large number of Eritreans voicing their dissent towards the authoritarian policies of the regime and advocating democratic rights have disappeared into incommunicado detention in Eritrea's prison gulag. Little is known about the condition and whereabouts of thousands

¹⁹¹Paragraph 89 in African Commission on Human and Peoples' Rights, Communication 275/2003 – Article 19 v The State of Eritrea, (EX.CL/364 (XI)).

¹⁹²As this constitutes a breach of Article 1 of the African Charter.

¹⁹³Paragraphs 106 and 107 in African Commission on Human and Peoples' Rights, Communication 275/2003 – Article 19 v The State of Eritrea, (EX.CL/364 (XI)).

¹⁹⁴Paragraph 107 in African Commission on Human and Peoples' Rights, Communication 275/2003 – Article 19 v The State of Eritrea, (EX.CL/364 (XI)).

¹⁹⁵Council of the European Union: 'Declaration by the Presidency on behalf of the European Union on political prisoners in Eritrea', 20 September 2007, 12978/1/07 REV 1 (Presse 201), P 074/07, Brussels.

¹⁹⁶Inter-Parliamentary Union, Resolution on Eritrea adopted unanimously by the Governing Council at its 173rd session, Geneva, 3 October 2003.

of ordinary Eritreans who are not sufficiently well-known internationally to attract support from international lawyers who can argue their case in front of the international system of justice. The rulings on the G-15 and journalists by the African Commission on Human and Peoples' Rights and the UN Working Group on Arbitrary Detention ought, in this regard, to be read as applicable to the vast number of anonymous Eritreans languishing in incommunicado detention due to their struggle for democracy. It seems unlikely, considering the developments of the last decade, that President Isaias Afwerki and his regime will allow any true and realistic plural politics in the country, irrespective of what type of democratic model is suggested. Since the establishment of independent Eritrea, Isaias Afwerki has assumed the posts of party chairman (in a single-party state), head of state and government, chairman of the National Assembly, Commander in Chief of the armed forces, and in effect also the head of the judiciary (since he dismissed the Chief Justice at his own will in 2001). Eritrea today is the quintessence of a one-man dictatorship, as aptly described by a team of exiled Eritrean researchers who tried to create a directory of the power structure and organisational features of the Eritrean government:

But to do so would imply that there is structure and organizational chart in the government. In reality, there is none: there is Isaias Afwerki, and then there is everybody else. He is indispensable, and everybody else is disposable. He is the snake, and the rest are its skin – that he sheds seasonally, and only he knows when the season begins and when it ends.¹⁹⁷

Prior to the outbreak of the 1998-2000 Ethiopia war, Eritrea had the resemblance of a collective leadership where the top echelons of the EPLF/PFDJ were internally accountable to each other. There was periodic, although irregular, convening of party organisational congresses and deliberations in the National Assembly. Until the outbreak of war in 1998, this collective leadership was together responsible for laying the foundation stone of dictatorship in Eritrea. The G-15, eleven of whom are languishing in jail today, reluctantly admitted so in their open letter to EPLF/PFDJ members in April 2001: 'Just as we bear ultimate collective responsibility for our performance as leaders, we are obliged to bear equal responsibility for correcting our failures. Since our failure to lead properly has injured the people, we are prepared and determined to make amends ...'.

Today, President Isaias Afwerki reigns alone, with the help of a few loyal men and women at the top of the party, military and intelligence structures. By constantly reshuffling government and military officials, the President makes sure that no one can consolidate a power-base strong enough to threaten him.¹⁹⁸ How long he will last, however, is an open question.¹⁹⁹

¹⁹⁷The Awate team: 'The Snake and Its Skin', 25 February 2009, at: <http://www.awate.com/portal/content/view/5083/9/>, accessed 3 March 2009.

¹⁹⁸President Isaias Afwerki had just made his latest re-shuffle of the government and military chiefs of staff as this was written, in March 2009.

¹⁹⁹During the last couple of years, for instance, scattered information about assassination attempts carried out on the President has been circulating.

5

THE ERITREAN GULAG ARCHIPELAGO:

PRISON CONDITIONS, TORTURE, AND EXTRAJUDICIAL KILLINGS

INTRODUCTION

Eritrea is a country re-born out of suffering and human rights abuses. Its independence was hard won in 1993 after a 30-year long war of liberation (Cliffe and Davidson 1988; Connell 1993; Lyob 1995). The massive and widespread human rights abuses experienced by the Eritrean people suffering under the yoke of the Derg military regime of Ethiopia, made them promise that they would ‘never kneel down’²⁰⁰ in their struggle against oppression (Firebrace and Holland 1987).

It is cause for despondency that oppression and massive human rights abuses persist in Eritrea today, but now committed by their liberation hero-turned-dictator, President Isaias Afwerki. Promises of democracy and freedom offered by the liberation front (EPLF/PFDJ) during the war and at independence have all been broken.²⁰¹ Thousands of Eritreans are languishing in ‘secret’ detention camps throughout the country; government critics, veteran liberation fighters, civil servants, peasants, students, journalists, and religious believers alike.²⁰² No group or individual is unaffected – men and women, young and old, Christian and Muslim, rural and urban, educated and uneducated, all are liable to be regarded as a threat to the regime and thus susceptible to arrest, torture and disappearance (see chapter 6). Eritrea today is a nation held hostage by its own government, with a population denied basic human rights and freedoms. Estimates of the number of political prisoners, given by Eritrean refugees and exiled civil society representatives, vary between 10,000 and 30,000.

²⁰⁰‘Never kneel down’ was a popular slogan of the EPLF. President Isaias Afwerki continues to use this metaphor, as during the recent war with Ethiopia he allegedly stated: ‘Eritreans only kneel on two occasions; when they pray and when they take aim to shoot the enemy’.

²⁰¹The National Democratic Programme of the EPLF of 31 January 1977 states that the aim of the struggle is to establish an independent democratic state, where ‘freedom of speech, the press, assembly, worship and peaceful demonstrations’ are protected (Article 1. D), and to ensure ‘all Eritrean citizens’ equality before the law’ (Article 1. E). See also President Isaias Afwerki’s first address to the UN General Assembly, Forty-eighth session, 10th Plenary Meeting, 30 September 1993.

²⁰²See, for instance, Amnesty International (AI 2002, 2004).

The police are officially responsible for maintaining internal security and order in Eritrea; however the army, reserves and demobilised soldiers are also called upon to assist in operations targeting civilian citizens. Military personnel have the authority to arrest and detain civilians.²⁰³ Agents of the National Security Office (NSO), which reports directly to the President's Office, are also responsible for detaining individuals who are considered to be a threat to the country's 'sovereignty' or security (USSD 2008a).

The Eritrean police corps, many of whose officers are conscripts, are riddled with corruption and they typically use their influence as government officials to assist friends and family. It is also reported that the police demand bribes to release detainees (USSD 2008a). The police, military, and internal security forces continuously engage in arrests and detentions without due process. Despite a constitutional provision on administrative redress (Art. 24), there are no operative mechanisms to address accusations and cases of abuse by the police, internal security, or military forces (USSD 2008a).

The Eritrean Constitution prescribes that detainees must be brought before a judge within 48 hours of arrest, and may not be held for more than 28 days without being charged with a crime (Art. 17.4). This is an important safeguard against police abuse. The criminal procedure code requires that unless there is a 'crime-in-progress', police must conduct an investigation and obtain a warrant prior to an arrest (USSD 2008a). However, in cases involving national security, this process may be waived, an excuse often (mis)used by the authorities. In reality, most arrests are conducted without a warrant, the majority of the detainees are not presented before a court of law, and detainees are held for much longer periods than the law prescribes, often in incommunicado (AI 2008b; USSD 2008a).

In practice, the accountability to the judicial system is non-existent. Former prison guard Mehari Yohannes, a veteran EPLF fighter who joined the front in the mid-1980s when he was 15 years old, managed to escape Eritrea in 2002.²⁰⁴ He describes a:

'sloppy' jail system with no accountability: one where orders are given orally (nothing in writing), people thrown in jail and forgotten, people asked to show up for 'five minutes' only to end up in jail for 4–5 years, a system without due process, a system that dumps prisoners in the cover of the dark every night, a system where family members are not notified of the arrest of their loved ones and if they inquire of the whereabouts of their children are given no information.²⁰⁵

THE ERITREAN 'GULAG ARCHIPELAGO'

Like a chain of islands, the Eritrean political prisons, detention centres, and labour camps are scattered throughout the country. They are under the control of the military or the internal security service. Some are purpose-built as centres of incarceration; others may be converted store houses and makeshift constructions (often metal shipping containers),²⁰⁶ or may double-up as military camps and detention centres. Many of the sites are underground, where detainees are kept hidden below ground

²⁰³The legal foundation of this authority is unclear, however.

²⁰⁴Mehari Yohannes was responsible for guarding Semere Kestete, the imprisoned leader of the Eritrean Student Movement (see chapter 4), when he engineered the flight of both of them to Ethiopia in July 2002.

²⁰⁵Gedab News at Awate.com: "'The 'Executed': No smoking gun, but plenty of circumstantial evidence', Gedab Investigative Report on the alleged massacre of 150 people, 13 March 2003, at: <http://www.awate.com/cgi-bin/artman/exec/view.cgi/11/1090/> printer, accessed 4 April 2009.

²⁰⁶The shipping containers are used both as an easy way to expand the capacity of the detention centres, and also as designated punishment since they work as 'ovens' and may reach extreme temperatures in the hot Eritrean climate. Amnesty International reports that metal shipping containers are used as prison facilities in Sawa military training centre, Adi Abeto prison, Dahlak Kebir prison, Mai Serwa, Alla near Decamare, Mai Edaga near Decamhare, Mai Temenei in Asmara, and Tehadasso army prison (in addition to other places) (AI 2004).

in specially dug-out cells and ‘dungeon’ like structures. Reportedly, some political prisoners are held incommunicado in secret security sections of official police stations or of officially-designated prisons (such as in Sembel prison in Asmara). Members of the armed forces and national service conscripts are held in military prisons, including custodial ‘rehabilitation centres’ in army units (AI 2004). The majority of the detention centres are secret, with access prohibited, and not officially designated as prisons. Several of the detention camps are located in some of the world’s most inhospitable places, where soaring temperatures (above 50 degrees Celsius) and extremely rudimentary facilities make basic survival difficult. No outsiders are permitted access to these prisons/camps, and usually even close family members of detainees are denied visits.²⁰⁷ The International Committee of the Red Cross – which has access to political prisoners in many dictatorial regimes throughout the world – is denied access to any Eritrean prisoners or prisons (AI 2004: 21).²⁰⁸

Of the numerous prisons and detention facilities throughout the country, the most frequently named are:

- **‘Track B’** (or ‘Tract B’) is located near the airport in a western suburb of Asmara (a former US storage facility). It is a military-run prison reportedly containing about 2000 detainees,²⁰⁹ mostly EPLF veterans, conscripts, alleged Islamists, and people accused of forging identity documents or smuggling army deserters out of the country (AI 2004: 21). Most of the prison camp’s buildings are underground, in addition to extra ‘storage’ of detainees in metal containers. The camp is run by Col. Berhane, reportedly assisted by two notorious interrogators, Yosief Berhane and Fikre.²¹⁰
- **Adi Abeto** army prison is just outside Asmara. A relatively large camp, it is reportedly used for conscripts, returned asylum seekers, and members of minority religions (AI 2004: 20).
- **Wi’a** military detention centre is located some 32 kilometres south of the Red Sea port of Massawa, at one of the hottest places on Earth (it was used during the Italian colonial era as an incarceration site for extreme punishment). It is composed of several separate camps designated to hold two large groups of detainees: escaped military conscripts and draft evaders, and members of prohibited religious organisations.²¹¹ The camp commanders reportedly are Lt Col. Jemal, Lt Col. Weddi Hale and Capt. Ramadan. On 10 June 2005, reportedly, 161 detained youths were shot and killed trying to escape from Wi’a (USSD 2006).
- **Eiraeiro** secret prison camp is located near the village of Gahtelay (Northern Red Sea Province) in a mountainous desert region north of the Asmara-Massawa road.²¹² It is composed of five main blocks, including two cell blocks (of 62 cells each).²¹³ Allegedly, the camp was purpose built in 2003 to receive

²⁰⁷Prisoners suspected of ordinary crimes and held in official civilian prisons and police stations are normally allowed three family visits per week and food, and their conditions broadly conform to international standards (AI 2004; USSD 2008a).

²⁰⁸The ICRC has access to visit Ethiopian soldiers (who the Eritrean government claims are deserters from the Ethiopian army) and to visit and register Ethiopian civilian detainees in police stations and prisons (USSD 2008a). The Ethiopian inmates are usually held in separate prisons (AI 2004). On the ICRC’s activities in Eritrea, see ‘The ICRC in Eritrea - facts and figures 2007’, at: [http://www.icrc.org/Web/Eng/siteeng.nsf/htmlall/eritrea-field-newsletter-310308/\\$File/facts-figures-eritrea-07-08.pdf](http://www.icrc.org/Web/Eng/siteeng.nsf/htmlall/eritrea-field-newsletter-310308/$File/facts-figures-eritrea-07-08.pdf), accessed 9 December 2008.

²⁰⁹Reporters Without Borders, press release, ‘Eritrea: Journalist employed by state-owned Radio Dimtsi Hafash held since 2006’, 24 April 2008.

²¹⁰Eritrean Center for Media Services (ECMS), ‘Thirteen detainees escape Track B’, 5 November 2007. I have been unable to ascertain the military ranks of Yosief Berhane and Fikre.

²¹¹Awate.com: ‘Scores of Eritreans Die at Wi’a’, 3 October 2007, at www.awate.com, accessed 14 March 2009. See also statements and information from the Open Doors International organisation (available at <http://sb.od.org/>).

²¹²According to Reporters Without Borders, identified as ‘hill 346’ on the military high command’s maps (RWB report ‘New revelations about Eiraeiro prison camp - “The journalist Seyoum Tsehaye is in cell No. 10 of block A01”’, 30 January 2008, available at: http://www.rsf.org/article.php3?id_article=25251, accessed 18 April 2009.)

²¹³According to Reporters Without Borders, the three sections holding the most politically sensitive detainees are A01, B01 and B03. (RWB report ‘New revelations about Eiraeiro prison camp - “The journalist Seyoum Tsehaye is in cell No. 10 of block A01”’, 30 January 2008, available at: http://www.rsf.org/article.php3?id_article=25251, accessed 18 April 2009.)

the 'G-15' political prisoners (former top-ranking EPLF cabinet ministers and party leaders; see chapter 4). The camp is also used for other political prisoners, including many of the detained Eritrean journalists. The area is extremely inhospitable, making it difficult to escape, and the temperature can fluctuate from 40 Celsius by day to several degrees below zero at night. The camp administrator is Lt Col. Isaac Araia, also known as 'Wedi Hakim'.²¹⁴

- **Dahlak Kebir** detention centre is located on Dahlak Kebir island, the main island of the Dahlak archipelago in the Red Sea, 7 kilometres from the main town of Nakua. It consists of eight large iron-sheet buildings, and holds about 800 inmates, mainly army deserters and draft evaders, and military and political prisoners (AI 2004: 20). The Dahlak islands are notorious for their extremely hot climate, and were used as detention centres during both the Italian and Ethiopian periods.
- **Mitire** military detention camp is a rather new complex, located in north-eastern Eritrea. Reportedly, it is purpose-built to house religious prisoners and has received over 100 adherents of 'banned' Christian churches.²¹⁵
- **Haddis Ma'askar** army prison is located close to the main Sawa military camp. It is also recently built, composed of underground structures. It holds about 1000 prisoners, mostly military personnel, but also returned asylum seekers (AI 2004: 20).
- **Ala Bazit** military prison camp is located in the middle of a desert behind the Ala mountains, on the road between Dekemhare and Massawa.²¹⁶ It occupies the site of a former military training camp built by the US military in 1996, and consists of three groups of houses with corrugated sheet metal roofs that are surrounded by large brambles and overseen by three watchtowers.²¹⁷
- **Mai Dima** military prison camp is located around Berakit Mountain (on the way to Obal), in Zone 3. It is run by the Intelligence Unit of the 25th Regiment. The camp is used to house Kunama detainees, and reportedly 26 Kunamas were killed in April 2007 by the authorities and buried in the camp (see chapter 8).²¹⁸
- There are several prisons in Asmara. **Semebel** prison is an officially-designated prison for political prisoners; **Teserat** prison holds mainly EPLF veterans in underground cells; **Wengel Mermere** is a security section of the 2nd **Police Station** (known as *Karchele*), used as a special investigation centre; and likewise there is a special security section in the 6th Police Station in Asmara holding political prisoners (AI 2004). Additionally, the national security service maintains many secret 'safe houses' in

²¹⁴A first-hand witness account of the Eiraeiro camp has been obtained by Reporters Without Borders. The witness explains: 'About one kilometre after the barrier [check-point on the road to the camp] are the barracks of Eiraeiro's guards, then the outer perimeter of the camp itself, delineated by barbed wire on this side and by a minefield on the north side of the camp. After this second checkpoint, the prisoners are taken to the administrator's office in an L-shaped building on the edge of the complex. This building also houses a bakery, a medical post, a pharmacy and a bedroom for senior officials from Asmara such as President Isaias himself. In a flat area below the administration building, the prison camp is an E-shaped complex of three cement buildings, each containing a total of 64 separate cells separated by thick walls. Each wing is identified by a letter and a number. The three sections holding the most politically sensitive detainees, including the journalists, are A01, B01 and B03.' See Reporters Without Borders: 'New revelations about Eiraeiro prison camp - "The journalist Seyoum Tsehaye is in cell No. 10 of block A01"', 30 January 2008 (at: http://www.rsf.org/article.php3?id_article=25251, accessed December 2008).

²¹⁵Information from the Christian-rights organisation Open Doors International (available at: <http://sb.od.org/>).

²¹⁶It is one of five prison camps in the so-called 'Zone 3' of Eritrea, run by military Commando Unit No. 525.

²¹⁷Reporters Without Borders, 'State TV journalist secretly sentenced in 2006 to five years of forced labour', 30 October 2008, at: http://www.rsf.org/article.php3?id_article=29140, accessed 8 December 2008.

²¹⁸This event, according to the testimony of a former EPLF liberation fighter and later intelligence officer in the Eritrean army, Menghsteab Girmay Asre, given in October 2008 (see note 358), is discussed in detail in chapter 8.

Asmara and other towns which are used for short-term detention and interrogation (AI 2004). It is impossible to list all the political prisons and detention centres in Eritrea, not only due to difficulties in accessing information on this sensitive topic, but also due to the fact that a number of regular military camps and facilities double-up as centres of detention. Military units, from battalion up, have their own makeshift prisons. Often an outdoor space is marked off by large thorny branches from acacia trees where the detainees are kept in the open, day and night, sunshine or rain.

Some of the military camps have developed more specialised facilities to cater for political prisoners (like underground cells), others house detainees in ordinary military barracks. The most notorious military detention centre is at the main **Sawa** Military Training Camp in the western lowlands close to the Sudan border, where all new national service recruits are sent. Other military camps allegedly also functioning as detention centres are **Mai Temenei** (in Asmara), **Tehadasso**, **Tessenei**, **Mai Edaga** (near Dekhamare), **Galaalo** (at the Red Sea coast), **Alla** (near Dekhamare), **Gahtele** and at **Assab**.

Military commanders are vested with the authority to try prisoners and pass sentences, including the death sentence. Reportedly, detainees have been executed in front of their unit members to intimidate others into accepting the discipline (see chapter 6).²¹⁹

CONDITIONS OF DETENTION

The conditions in the detention camps and prisons are harsh and life threatening and the facilities are extremely primitive (USSD 2008a). Reportedly, scores of Eritreans die while in detention or under arrest.²²⁰ It is difficult to obtain official confirmation on deaths in prison, since there reportedly are no inquests into the deaths of prisoners and their families are generally not informed (AI 2004: 21).

Many detention centres involve underground cells, metal shipping containers are widely used as cells, or detainees are kept in open-air facilities (in addition to ordinary prison blocks). Since several of the camps are located in areas where it is extremely hot – where daytime temperatures rise to the high 40s Celsius – this puts an extra physical burden on the prisoners. For instance, in the Wi'a military detention centre, allegedly 16 prisoners died, while hundreds fell sick, by being exposed to extreme heat and subsequently suffering from dehydration, inadequate medical care and malnutrition, during the hot season of 2007.²²¹

Prison guards who have fled Eritrea have recounted the horrible prison conditions. For instance, a former guard told Reporters Without Borders about the situation in Eiraeiro:

The cells are windowless rooms, 3 metres square, with ceilings high enough to be out of reach, and lit 24 hours a day by a bulb behind an opaque plastic globe. They have a numbered metal door with a 10-centimetre-square spy-hole through which the guards give the prisoner his food. Inside the cell, to the right of the door, a hole in the ground serves as a latrine. Above it is a pipe that delivers water but only the camp administrator can turn on the supply.

²¹⁹Information given by Eritrean escapees. See also Amnesty International (AI 2004: 23).

²²⁰Reported by, inter alia, Amnesty International, Reporters Without Borders and US State Department. For instance, RWB reported that 'at least three of the journalists who were arrested in 2001, died in prison between 2005 and 2006. And on 11 January, Fessehaye Yohannes, known as 'Joshua', one of the most important figures in the country's intellectual life, died from the effects of appalling prison conditions in Eiraeiro' (see: Eritrea – Annual Report 2008, at http://www.rsf.org/article.php3?id_article=25386&Valider=OK). Furthermore, Open Doors International claims that eight Christians have died while in detention ('Christian deaths mount in Eritrean prisons', 21 January 2009, at: <http://www.opendoorsusa.org/content/view/902/139/>, accessed 23 January 2009).

²²¹Awate.com: 'Scores of Eritreans die at Wi'a', 3 October 2007, at www.awate.com.

A one-metre-high metal bar projecting from the floor at the far end of the cell, opposite the door, is used for punishments. If the guards think a prisoner has behaved badly (a look or comment to another prisoner or to a soldier, for example), the prisoner is bound to the bar by the feet and by the hands behind the back, in a squatting position. They are forced to remain like this 'for at least 40 hours' [...].

The heads of the prisoners are shaved every two months by a barber, who is accompanied by a guard to prevent him talking to them. They are given food twice a day in a plastic bowl – a soup of lentils, vegetables or potatoes. They also have a glass of tea in the morning and six pieces of bread. They are only allowed one litre of water a day. Detainees in very poor health may be given an additional water ration, but only if prescribed by the camp physician, Dr Haile Mihtsun. If he issues a prescription, it is posted on the cell door. The administrator turns on the water in the pipe over the latrine for only 20 minutes a week. The prisoners have to wash themselves and their clothes in that short period of time.²²²

The testimony of a former Eritrean military intelligence officer corroborates the information given by the prison guard above, and describes the terrible conditions in Mai Dima military prison camp.

The conditions for prisoners were awful. We didn't allow them to change their clothes, we didn't allow them to see their family, we always forced them to walk without shoes, and we always gave them small amounts of food and water – in order to weaken them and to make them sick and die. When they got sick – we didn't give them medical treatment and because of this they were having mental and physical problems. We forced them to do hard work, and we were taking their private property like money, house, gold, and necessary documents, and other privately owned things. We would put 23–26 people in a small cell so that many would nearly die because of the shortage of fresh air. We scared and beat them continuously, and they couldn't escape. I have seen a lot of prisoners going crazy, and facing different kinds of diseases. I also saw some of the prisoners disabled because of the heavy beatings. I also saw prisoners die inside the prison.²²³

Food and water supplies to detainees vary from prison to prison and depending on the season. Generally, however, the amount and quality of the food is inadequate. Likewise, sanitation facilities vary, but are generally very poor. Testimony given to Amnesty International by a former detainee in Wenjel Mermera prison in Asmara, gives evidence of this:

The food was very poor and looked like washing-up water. It consisted of half-cooked bread, lentils, and half-cooked unsalted cabbage, in very small quantities. It was placed in a communal bowl in our cell where we had to eat by hand – about six spoonfuls' amount each for 26 prisoners. We were given half a cup of tea in the morning, and two meals a day at noon and 4pm. We had tap water to drink, but not enough. There was an open toilet in the cell. We could only wash once in two weeks. We slept on the floor, which was often damp, with two thin blankets. (AI 2004: 19-20).

The unhygienic conditions and absence of toilet facilities (only a bucket) and the prevalence of diarrhoea among prisoners help spread infectious diseases. It is also reported that detainees are forced to lie in diarrhoea as a punishment (AI 2004: 21). Reportedly, many detainees have died as a consequence of illness and unhygienic conditions (AI 2004; USSD 2008a).

²²²Reporters Without Borders: Eritrea – Annual Report 2008, at http://www.rsf.org/article.php3?id_article=25386&Validator=OK.

²²³Recorded interview with Menghsteab Girmay Asre (conducted for this study on 25 October 2008 in Addis Ababa).

The handling of detainees is part of an overall strategy, where inadequate facilities and mistreatment are part of an interrogation strategy to weaken the resistance among the detainees. ‘Standard procedure’ in this respect – beyond physical torture – is a six-point plan, as described by a defected Eritrean intelligence officer:

1. Confiscation of personal assets like money, jewellery, necessary documents and gifts,
2. Forbid change of clothes and underwear,
3. Inflict pain and weaken them through meagre food, water, and medical supplies,
4. Harass them by applying strict, severe security and surveillance measures,
5. Deny family access,
6. Wear them out through rigorous labour.²²⁴

The severe physical and psychological stress in prisons has caused psychological problems for many detainees (USSD 2008a). Reportedly, many detainees have committed, or tried to commit, suicide to escape the gruesome prison conditions. A former detainee of the infamous Dahlak Kebir island prison off Massawa, who later managed to escape, recalls:

Walta Haile, an ex-Malta deportee who had been tortured, tried to commit suicide at Massawa by tying his own hands and jumping into the sea [on 15 December 2003]. He got caught in the ship’s propeller and his face was badly cut. He was taken out of the sea and we didn’t hear of him again, maybe he died. (AI 2004: 22).

It seems clear that the Eritrean prison conditions, and the treatment the detainees receive, contravenes the principles enshrined in the ‘Basic Principles for the Treatment of Prisoners’, adopted by the UN General Assembly Resolution 45/111 of 14 December 1990. Furthermore, conditions of detention in Eritrea are in clear violation of the standards as prescribed by the UN Covenant on Civil and Political Rights (ICCPR), to which Eritrea is a party. Article 10 of ICCPR makes clear that detainees shall ‘be treated with humanity and with respect’, as well as other standards violated by Eritrean authorities. Further aggravating the harsh conditions of detention is the deliberate torture and cruel, inhumane and degrading treatment inflicted upon detainees.

TORTURE AND CRUEL, INHUMANE AND DEGRADING TREATMENT AND PUNISHMENT

During the liberation struggle against the Derg, Eritrean detainees were routinely tortured in Ethiopian prisons; a brutality which made the Eritrean people even more steadfast in their struggle for independence. Sadly, the torture, inhumane and degrading treatment and punishment sustained on a massive scale in Eritrea persist today; paradoxically by the very same liberation ‘heroes’ who were tortured by the Derg.²²⁵

During our work on this study, a number of Eritreans have retold their personal experiences of torture inflicted by EPLF officials; both rank and file soldiers, officers and professional ‘torturers’, as well as by high-level EPLF leaders themselves.²²⁶ Reporters Without Borders interviewed escapees from the infamous Eirairo prison, who told about their ‘daily hell’ and the involvement in torture by high-level government officials:

²²⁴Recorded interview with Menghsteab Girmay Asre (conducted for this study on 25 October 2008 in Addis Ababa). See also, below, note 358.

²²⁵For instance, the vivid recollection of the EPLF fighter Girmai Haile of his torture experiences under the Derg as described in Bondestam (1989), could just as well be told by one of today’s escapees from EPLF’s detention centres.

²²⁶The director of Suwera, an Eritrean human rights NGO based in Khartoum, confirmed that the majority of the refugees interviewed who had been imprisoned told about experiences of torture. Interviewed 20 April 2008, Khartoum.

The prisoners are kept day and night under the light of an electric bulb and in complete isolation. Some are manacled by the feet or hands. Others are not. When they are not shut up in their cells, the prisoners are taken to one of the three interrogation rooms. The interrogation sessions are often conducted by Abdulla Jaber, the security chief of the ruling People's Front for Democracy and Justice, or other senior officials such as Yemane 'Monkey' Gebreab, President Isaias' advisor [and political director of the government party]. The prisoners are tortured during these sessions. They are hit with plastic whips, for example. There are messages written over the doors of the interrogation rooms. One says: 'Did you see who died before you?' Another says: 'If you don't like the message, kill the messenger.'²²⁷

Former detainees tell about various types of torture and inhumane treatment inflicted upon them with or without a specific reason given. A 34-year old who had been undertaking national service told what happened when he and his army friends did not manage to carry out a physical exercise as ordered:

They beat us and some were thrown in prison. They beat with a stick first. They beat as much as they could. Then when you are tired they tie you like a 'helicopter'. Afterwards, they throw you on the sand, in direct sunlight. You are left outside during night too, freezing.

Another national service soldier told about his friend: 'My friend Wedi Amir was tied by the hands and hung from a tree. His arms/tendons were 'broken'. He was sent to the hospital and [they] amputated both arms. I think he is a mental case now.' A young man in his mid-twenties explained his story:

I escaped the army in 2004, to Asmara. After a month I was working with house construction in Asmara. Then they [military] came and took me to Addi-Abeyto prison, in the vicinity of Asmara. They tied me in the 'no. 8' for two weeks. This is normal. [...] I was tortured continuously for several weeks. My own army friends had to torture me. The officers commanded them to do it. Now I have a nerve problem...²²⁸

Some methods of torture are frequently used by the Eritrean interrogators, as described by our informants above. Based on numerous interviews with Eritrean torture victims, Amnesty International has listed the following standard torture methods used by the EPLF regime against their own people (AI 2004: 19).

- **'The helicopter'**: the victim is tied with a rope by hands and feet behind the back, lying on the ground face down (sometimes even suspended in the air), outside in the hot sun, rain or freezing cold nights, stripped of upper garments. This is a punishment allocated for a particular number of days, the maximum reported being 55 days in the Dahlak Kebir island prison, but it is more often one or two weeks. The prisoner is tied in this position 24 hours a day, except for two or three short breaks for meals and toilet functions.



The "Helicopter" Drawing made by former prisoner now refugee. Taken from: www.west.asu.edu/amnesty

²²⁷Reporters Without Borders: 'New revelations about Eiraeiro prison camp - "The journalist Seyoum Tsehaye is in cell No. 10 of block Ao1"', 30 January 2008: http://www.rsf.org/article.php3?id_article=25251, accessed December 2008.

²²⁸All interviews conducted in Addis Ababa, 28 April 2008.

- **‘Otto’ (Italian for ‘eight’)**: the victim is tied with hands behind the back and left face down on the ground, but without the legs tied.

- **‘Jesus Christ’**: the victim is stripped to the waist, wrists tied, and standing on a block with hands tied to a tree branch; the block is removed, leaving the victim suspended with the feet just off the ground in a crucifix-like posture. Beatings are inflicted on the bare back. This is said to be an extremely severe torture, restricted to only 10–15 minutes to avoid serious lasting injury. This method was first reported from Adi Abeto prison in 2003.

- **‘Ferro’ (Italian for ‘iron’)**: the wrists are bound behind the back with metal handcuffs while the victim lies on the ground face down and is beaten with sticks or whipped with an electric wire on the back and buttocks.

- **‘Torch’ or ‘Number eight’**: inside a special torture room, the victim is tied up by wrists behind the back and with the feet bound; a stick is placed under the knees and supported on a framework on both sides horizontally, and the body is turned upside down with the feet exposed. The soles of the feet are beaten with sticks or whipped. (This was a common punishment in Ethiopia and pre-independence Eritrea under the Derg.)

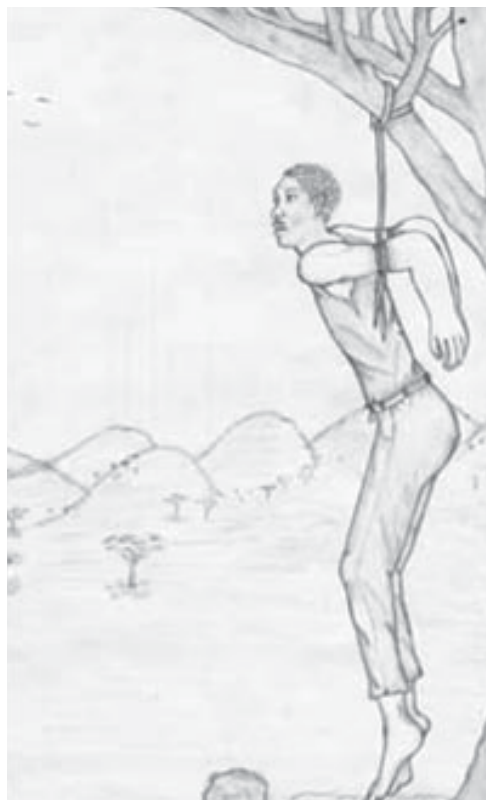
- **‘Almaz’ (diamond)**: the victim is tied and suspended from trees with arms tied behind his back (USSD 2007a).

Reportedly, detainees have also been exposed to torture by electric shocks and sexual torture (such as a soft-drink bottle filled with water and tied to the testicles) and rape of female detainees (USSD 2007a). A standard procedure, before and after active torture, is to tie the victim at the hands, elbows and feet for extended periods (up to several weeks), and leave them exposed to the sun (USSD 2007a). One former detainee recalled:

I saw others tied too, some very tightly. I saw one whose veins in his arms burst and blood flowed out. They just left him there and forgot about him. When the veins burst they took him away and we didn’t know what happened to him. Sometimes the veins swelled up because of the sun, and burst.(AI 2004: 22).

Another survivor gave the following witness account:

They beat them in front of us until they were vomiting blood. They tied them in ‘helicopter’ method for 55 days outside in the heat. Ermias’ skin colour changed, his body swelled and he couldn’t walk. For the first two days he was refused food, but the prisoners fed him. I don’t know if he is still alive. (AI 2004: 18).



“Jesus Christ” Drawing made by former prisoner now refugee. Taken from: www.west.asu.edu/amnesty

Medical Foundation for the Care of Victims of Torture, a UK-based charity, reports that Eritrea is ranked among the top ten 'torture-victim producing' countries in the world.²²⁹ Furthermore, the UN Special Rapporteur on torture and other cruel, inhumane or degrading treatment or punishment has received considerable reports on torture in Eritrean detention camps and prisons, and also cases where detainees were tortured to death.²³⁰

Despite the widespread reports of systematic torture in Eritrea, committed by police, army, intelligence, party and government officials, no known action has been taken to punish the perpetrators of torture and abuse (USSD 2007a). This is in itself a clear violation of Articles 2 and 3 of the International Covenant of Civil and Political Rights (ratified by Eritrea), which require states to respect and ensure the civil and political rights of *all* individuals within its territory (for elaboration, see Novak 2005: 27-82). The prohibition of torture has an extraordinary status in the protection of human rights under international law; it is nonderogable and ensured without any restrictions whatsoever (Novak 2005: 157). Furthermore, the Eritrean Constitution prohibits torture (Art. 16.2), and it is prohibited by Article 7 of the International Covenant on Civil and Political Rights (ICCPR) which has been ratified by Eritrea, as well as customary international law and ranks as *jus cogens* (Novak 2005: 157-158). Clearly, the Eritrean government is in grave violation of both Eritrean and international law on this matter.

EXTRAJUDICIAL KILLINGS AND ENFORCED OR INVOLUNTARY DISAPPEARANCES

How many people have disappeared – or even been killed – in the Eritrean Gulag archipelago under the EPLF is impossible to estimate. There are numerous reports of summary executions or people being tortured to death, carried out by military personnel in the many military detention camps throughout the country (AI 2004; USSD 2008a). An eye-witness account told to Amnesty International by an Eritrean refugee, gives a glimpse into this brutal reality:

One day while I was in the army, three soldiers were brought in front of us and shot. We were told they were traitors but we were not told what the charges were. They had no trial and we didn't know who they were or what they had done. (AI 2004: 23)

Involuntary disappearances and extrajudicial killings have reportedly taken place in Eritrea on several occasions. In the immediate aftermath of military liberation of the country in May 1991, reportedly several hundred people were rounded up from the Dembelass and Qohain areas after being accused of serving the Ethiopian military junta and being members of the Ethiopian Workers Party.²³¹ To this day, there is no news of what happened to them or their whereabouts.²³²

In January 2003, TV-Zete, a television station founded by the Eritrean Action Group in Sweden, announced the news of a massacre of Eritrean Muslims perpetrated by the Eritrean government on 18 June 1997. The group of 150 civilian Eritreans was rounded up on 23 January 1997, accused of being collaborators of the Eritrean Islamic movement. Allegedly all of them were executed without trial or formal sentencing. The killings were part of a retaliation offensive ordered by the chief of the National Security Office, Abraha Kassa, under the direction of President Isaias Afwerki, after five Belgian

²²⁹Statistics based on more than 29,000 torture victims from 95 countries who were referred to the organisation's four centres in the UK in 2007. See www.torturecase.org.uk/about_us/30, accessed 4 December 2008.

²³⁰Cf. UN Human Rights Council, A/HRC/4/33/Add.1, 20 March 2007, Fourth Session, Agenda item 2; UN Human Rights Council, A7HRC/4/21/Add.1, 8 March 2007, Fourth session, Agenda item 2.

²³¹Gedab News at Awate.com: 'The "Executed": No smoking gun, but plenty of circumstantial evidence', Gedab Investigative Report on the alleged massacre of 150 people, 13 March 2003. at: <http://www.awate.com/cgi-bin/artman/exec/view.cgi/11/1090/> printer, accessed 4 April 2009.

²³²Not all people 'disappearing' in detention die, however. Some of those who were reported 'disappeared' have later been known to have received extrajudicial sentences to long prison terms (AI 2004).

tourists were killed in late December 1996, allegedly by the Eritrean Jihadists. An investigation team by the Eritrean diaspora news site Awate.com has researched the alleged execution of the 150 civilian Eritrean Muslims. Although much circumstantial evidence exists, it is impossible to conclude definitely on the massacre due to lack of concrete evidence and the fact that it is impossible to carry out an investigation into the atrocities in Eritrea.²³³ However, immediately after the incident of the killings of the Belgian tourists, several reports about retaliation campaigns against villages in the area. Allegedly, villagers from Sheab, Gedged and Shebah were rounded up and disappeared – allegedly executed – in early 1997 by Colonel Osman Bekhit and his squad. Villagers from Seber also disappeared after a raid by General Wuchu and his men.²³⁴

A more recent and equally brutal incident occurred in 2007. As reported to this author, the Eritrean military executed by poison 26 Kunama prisoners in April 2007 in the Mai Dima detention camp (run by the Intelligence Unit of the 25th Regiment).²³⁵ The Kunama were rounded up as part of the crack-down on the Kunama resistance front (DMLEK) in the first half of 2007. The detention and subsequent killing of the detainees was allegedly ordered by a Major General (whose name I have chosen to withhold), the commander of the Third Operational Zone in Eritrea. Reports about the massacre were later filed by the officer in charge of carrying out the order (a Major, name withheld) to the Third Operational Zone and the Ministry of Defence (see chapter 8 for a more detailed discussion of this case).

Extrajudicial killings take place not only in detention centres and prisons, but also in the context of everyday life in rural and urban areas. A number of people have been shot near the Sudanese and Ethiopian borders, allegedly for attempting to cross the border illegally (USSD 2008a). Apparently, military personnel on the border have standing orders to shoot on sight if people are attempting to flee the country. For instance, on 31 December 2008, six Eritrean teenage boys trying to cross the border to Ethiopia in the Mid-Mereb basin (Western lowlands)²³⁶ ran into an Eritrean military border patrol. Five of them were rounded up and after identifying themselves, the soldiers reportedly shot and killed four of the boys at arm's length.²³⁷ One of the five boys, Tekeste Wolda, who happened to stand behind the others, was shot lightly on his leg and fell to the ground first. The others fell on top of him, so the soldiers did not notice that he had survived. Later, Tekeste Wolda, despite his wound, managed to trek across the Eritrean border into Ethiopia, where he currently is a registered refugee.²³⁸

The practice of extrajudicial killings by the Eritrean border patrols was confirmed by many of the Eritrean refugees interviewed in the Sudan and Ethiopia as part of the research undertaken for this study. As a consequence of this brutal standing operational order, many innocent inhabitants in the border areas are killed too. Since many of the people living in the border areas are pastoral nomads, they are not accustomed to territorial borders as country demarcation lines and may thus be shot while tending to their daily activities, for instance, following their grazing animals.

²³³Gedab News at Awate.com: 'The "Executed": No smoking gun, but plenty of circumstantial evidence', Gedab Investigative Report on the alleged massacre of 150 people, 13 March 2003, at: <http://www.awate.com/cgi-bin/artman/exec/view.cgi/11/1090/printer>, accessed 4 April 2009.

²³⁴Ibid.

²³⁵The incident was reported by the Eritrean security officer concerned, Menghesteab Girmay Asres (see above note 221, and note 358 below). Mr Menghesteab recollects the names of 18 of the 26 killed. I have chosen not to publish the names, but they may be provided upon request. The specific location of their grave is inside the prison premises of the 25th Regiment, Intelligence Unit in Mai Dima. The camp is located close to Berakit Mountain, on the way to Obal.

²³⁶In the forest area of Enda Azmatch Ucubit, in the environs of a place called DemBe Enda Seqal.

²³⁷The names of the victims are: Goitom Solomon (from Adi Quoray); Kiros Haile (from Adi Haber); Tesfai Debessai (from Adi Haber); and Mengistu W/Gergis (from Adi Yehdug); all from the district of Enda Azmatch Ucubit.

²³⁸Reported on the website of the organisation Connection e.V. (International Support of Conscientious Objectors and Deserters) by the Eritrean People's Party, 'Eritrea: The Shoot-to-Kill Heinous Policy Brings the Death of Four Innocent Teenager Boys', 11 February 2009, at: <http://www.connection-ev.de/z.php?ID=582>, accessed 4 April 2009.

Furthermore, the government has authorised the use of lethal force against anyone resisting or attempting to flee during military searches for deserters and draft evaders in the cities; a practice that reportedly has resulted in many deaths (USSD 2008a). Many individuals were beaten and killed during these forced recruitment roundups (USSD 2008a), possibly as a strategy to instil fear and compliance among the group of youth targeted. An Italian diplomat became an eyewitness to a forced conscription roundup in October 2005 in Asmara, where a young man was shot dead at point blank range. The diplomat recounts in his own words:²³⁹

I was parking my car in the centre of the town when I saw a truck on the other side of the road. On its truck body some soldiers were pushing twenty or so boys. I understood that it was a matter of a raid of young people to be sent to the infamous and hated military training army camp of Sawa. One of the boys managed to wrestle himself free from the group and tried to escape across the road. He did not reach the other side before he was hit by a burst of sub-machine gun fire. Subsequently a man in uniform approached the victim and ended his life with a grace shot. The body of the boy remained in the street for over an hour. To me it seemed like a warning to those who tries to resist the orders of the regime.

Italian diplomat
(Author's translation)



Photographs by Massimo Alberizzi/*Corriere della Sera*

²³⁹Corriere Della Sera: 'Speciale: in fuga dall'Eritrea: Massacri e repressioni', 25 October 2005, at www.corriere.it/Primo_Piano/Esteri/2005/09_Settembre/11/speciale_eritrea.shtml, accessed 16 January 2009.

FINAL REMARKS

There is no doubt that the Eritrean government's system of detention, the cruel and inhumane prison conditions, and the practice of torture and extrajudicial killings, are in clear breach of Eritrean national law and the international human rights obligations to which the government has subscribed. Witness statements (from individuals fleeing the country) and evidence of this brutal practice are found in abundance. The Eritrean population is no stranger to mass detention and torture, as the brutal Derg military regime of Ethiopia also used such a strategy to quell Eritrean resistance towards their domination. The current human rights atrocities committed by EPLF/PFDJ are probably on a larger scale than the Derg; but what is worse in societal terms is that this time it is their own liberation leaders and government – not a colonial regime like Ethiopia – who are committing the violations. The social and political impact is thus far more devastating upon Eritrean society.

The totalitarian policies of the regime, their denial of any such practices, and their rejection of international calls for the respect for human rights in Eritrea, makes it impossible to undertake on-the-ground monitoring and investigation into the widespread and massive occurrences of grave human rights violations in the country. Thus, human rights violations on a massive scale are sustained and conducted with impunity. The international community has not taken upon itself the responsibility to intervene in Eritrea. Considering the scale of the atrocities committed, it may be a legal justification and foundation for an international humanitarian intervention (through the African Union or United Nations); however, to this author's knowledge, this has not yet been either politically or juridical explored. The responsibility to investigate and press charges against today's perpetrators must thus be followed up by the new regime replacing the EPLF/PFDJ sometime in the future.

6

EVERYDAY LIFE OF DETENTION AND DISAPPEARANCES IN ERITREA:

VULNERABLE GROUPS IN A POPULATION UNDER SIEGE

INTRODUCTION

Memories of the detention and disappearances of loved ones by the brutal Ethiopian military dictatorship during the war of liberation still linger among the people of Eritrea. However, today those memories are overshadowed by the current brutal reality: that their own government is even more ruthlessly vicious than their former enemy.

Despite the fact that there is a fairly adequate legal framework for the protection of basic human rights in the country (see chapter 1), widespread and systematic violations on a massive scale occur on a daily basis in Eritrea. Eritrean and international laws prohibit arbitrary arrest and detention, yet it remains a serious and widespread problem in the country (USSD 2008a). No one knows how many individuals – men and women, old and young – are kept in detention or under arrest in Eritrea today. Today, *anyone* in Eritrea is liable to arrest and detention, irrespective of their age, gender, religion or ethnicity. Any reason – or *no* reason at all – may be given for their arrest or detention.

WHO IS DETAINED AND WHY?

Old age or youth is not an excuse for avoiding detention. Reportedly, detainees of over 80 years of age and in poor health are held under rudimentary conditions in prisons.²⁴⁰ For instance, 82-year old Hassen Sheik Feres was arrested by the security forces in May 2007, without any charges. He is held in high esteem as a veteran liberation fighter for Eritrean independence from the 1960s.²⁴¹ Reportedly, just prior to his arrest, he had met President Issias and told him, 'Fear God and rule justly', a comment which apparently was not regarded favourably by the President.²⁴²

Children, too, are liable to arrest and detention in Eritrea. Reportedly, children as young as eight or nine years of age have been detained, with or without their parents. It has also been reported that child detainees have been sexually abused in prison (USSD 2008a). This is a clear violation of the UN Convention on the Rights of the Child (Art. 37), which Eritrea has ratified. Although there is a juvenile detention centre in Asmara, usually children are imprisoned with adult prisoners (AI 2004: 21; USSD 2008a).

Having a trusted, high-profile position, or a distinguished record as a veteran liberation war hero, is no protection against the arbitrary punitive injustices committed by the government. Most famous and notable are the eleven top-level government ministers and party officials arrested in the September 2001 clamp-down; all prominent EPLF leaders and veteran liberation war heroes (see below and chapter 4). However, detentions of top-level EPLF members have occurred since the coming to power of EPLF in 1991. For instance, General Bitwede Abraha, a founding member of EPLF, was arrested in 1992 and detained without charge for five years, apparently due to a falling-out with President Isaias Afwerki. He was re-arrested just some weeks after his release, and is reportedly still detained. Having served over 15 years imprisonment, and for long periods in solitary confinement in a dark cell, he is believed to have become mentally ill (AI 2004: 9). Furthermore, in the 1993 'fighter rebellion' – when some sections of the armed forces briefly took over key installations on the eve of independence as a protest against President Isaias Afwerki's tendencies to make his own decisions involving all fighters and Eritreans – several of the officers believed to be the 'ring leaders' of the protest were arrested and are reportedly still secretly detained without charge in Tsatsarat prison (AI 2002: 17).²⁴³

The arrest of other distinguished and prominent Eritreans continues; for example, Taha Mohammed Nur was detained in November 2005. He was one of six founding members of the Eritrean Liberation Front in Cairo in 1960, the first organised armed resistance to Ethiopian occupation of Eritrea. Taha was also an EPLF-appointed member of the Constitutional Commission of independent Eritrea, and served as a commissioner in the five-member Referendum Commission (as its secretary). Throughout his life, Taha Mohammed Nur fought for Eritrean independence and the well-being of its people – a personal history which was ignored by the regime. Taha was never released and died in prison in early 2008, when his family were told to pick up his body from prison, without any explanation given for his death.²⁴⁴

Arrests and detentions can be ordered both with and without any specific reason given. Ordinary civic protest, not related to any specific 'sensitive' political or military matter, may unleash coercive reprisals

²⁴⁰Amnesty International, for instance, reports the detention of Suleiman Musa Haji and Sunabera Mohamed Demenam, both over 80 years old and in poor health (AI 2004).

²⁴¹Hassen Sheik Feres was a veteran ship's pilot and captain plying the waters off the Eritrean coast. Under this natural cover, he was instrumental in smuggling food, medicines, arms and ammunitions from the countries of the region to the Eritrean coast during the period of the armed struggle.

²⁴²Awate.com: 'Hassen Feres, 82, Arrested in Massawa', 23 May 2007 (at www.awate.com).

²⁴³Including Tewelde Zemichael, Tesfaldet Tewelde and Hadera Kahsu, a medical doctor (AI 2002).

²⁴⁴Mr Taha Mohammed Nur was an early critic of the political developments in independent Eritrea. During an interview with this author in 1996, as a Constitutional Commission member he expressed a deep concern over the way the constitution-drafting process was handled (censoring and excluding views and opinions which differed from the EPLF view), and the monopolisation of power by the EPLF (see chapters 1 and 3).

from the authorities. For instance, reportedly 35 men (and two women who were later released) of high local standing were detained in the village of Halhal (close to Keren) on 27 November 2006.²⁴⁵ They had allegedly been protesting against the distribution of land plots to individuals who were not residents of the area, a protest not accepted by the local authorities.²⁴⁶ Furthermore, on 16-17 September 2006, in one coordinated operation, police reportedly arrested more than 2000 persons at several nightclubs in Asmara. The US State Department reports that in one of the nightclubs, police 'surrounded the club, entered, and began to check the identification cards of those inside. After initially arresting only specific individuals, police changed their approach and arrested without charge everyone inside the club – approximately 250 persons – using sticks and threats to control the crowd' (USSD 2007a). No trials were carried out in relation to the mass arrest, and most of those detained were subsequently released on bail.

In May 2006, reportedly 54 college students were imprisoned for refusing to participate in Independence Day celebrations.²⁴⁷ The group, all evangelical and Pentecostal Christians, refused to participate in the state-organised activities marking Independence Day as they felt it was contradictory to their faith. Such an action is challenging to the extreme nationalistic ideology and praxis of the regime and is thus not taken lightly. For this 'disobedience', they were detained and allegedly suffered punitive measures for over ten days.²⁴⁸

Muslims are also arbitrarily targeted. For instance, on 13 and 14 August 2008, over 30 Muslim elders, community and religious leaders were reportedly arrested in Senafe town and surrounding villages.²⁴⁹ No reason was given for their arrest, no formal charges have been made, and their whereabouts are still unknown as this is written.²⁵⁰

Mass arrest and collective punishment has become a common phenomenon in Eritrea. This is in particular related to preventing and punishing protests against the government's militarisation of society in general, and its much-hated national service campaign.²⁵¹ After the 2000 peace agreement with Ethiopia, the Eritrean people looked forward to a general demobilisation of the army, and a return to 'normality' and civilian rule in the country. However, with the sustained full mobilisation and increasing militarisation of society,²⁵² people began to protest against and evade recruitment to the compulsory national service programme. As the protests spread, the government broadened its strategy and in 2005 started to detain and arrest relatives of draft evaders and escapees to prevent people fleeing. The authorities have no legal instrument that could justify such action (USSD 2007a).

²⁴⁵The following individuals have been identified; Mohammad Nur Hazut, Abubakar al-Haj, Sulaiman Ibrahim Humad, Mohammad Osman Mohammad Ali Ashkaray, Adam Farajalla Elos, Idris Mohammad Fikak, Jemae Karar Mohammad Nur Abilo (Eritrean Center for Media Services, 'Eritrean authorities arrest 35 leading personalities in Halal', 27 December 2006, <http://www.adoullis.com/english/details.php?rsnType=1&id=158>, accessed 4 December 2008).

²⁴⁶The Eritrean government seemingly intends a 'Tigrinyafication' of lowland territories; where Tigrinya highlanders are given land rights in non-Tigrinya (lowland) areas. This, notably, has never been reported to happen the other way around, so that a Muslim lowlander has been given land rights in the Christian highlands.

²⁴⁷Cf. Release Eritrea, press release: 'Eritrean students imprisoned for refusing to participate in Independence Day celebrations', 23 May 2006, at: www.release-eritrea.org.uk/node/45, accessed 9 January 2009.

²⁴⁸This action is a clear violation of Article 18 of the International Covenant on Civil and Political Rights, ratified by Eritrea.

²⁴⁹They include the imam of the main mosque, Siraj Ona Ali; Awqaf leader and director of the Islamic Institute, Mohammed Saleh Abdella; a teacher and member of the Awqaf committee, Suleiman Ali; and a town dignitary, Pasha Mohammed Suleiman.

²⁵⁰Information given to the author by the Awate team; personal communication, 2 April 2009.

²⁵¹All Eritreans between the ages of 18 and 40 (both men and women) are required to undertake national service (6 months of military training and 12 months of 'construction work'). Since the Eritrean-Ethiopian war of 1998-2000, the national service has become never-ending, as – due to the general full mobilisation of society – all recruits are kept under military command. Thus, individuals who enlisted for national service in 1998 are still serving in the army a decade later! The national service personnel is also used as forced labour for both public construction work and on the private enterprises of high-ranking military officers.

²⁵²For instance, the militarisation of the system of higher education in the country, and the abolition of Asmara University.

Furthermore, collective punishment is in itself a violation of Article 14 of the International Covenant on Civil and Political Rights, ratified by Eritrea. Since 2005, thousands of mothers and fathers, sisters and brothers, of draft evaders and escapees have been arrested throughout Eritrea. For instance, reportedly around 179 women and 26 men were detained on 24 October 2005 in the highland town of Dekemhare. The targets were parents whose children had fled the country over the last several years. If a parent was not found, the eldest available brother or the closest adult relative was detained. This wave of arrests followed earlier clamp-downs in the region.²⁵³ Furthermore, over 500 relatives, mostly parents, of young men and women who have avoided conscription or deserted the army, were reportedly arrested and held under harsh conditions in Asmara in late 2006 (USSD 2007a). As the flight of Eritrea's young men and women today has reached about 2000 per month, the regime has reportedly ceased the practice of arresting parents or relatives of the escapees, as this would have implicated an unmanageably large share of the population of the country.²⁵⁴

Residents of villages west of the town of Najfa (Agaraa, Falket, Dejaya, and Gen) were prevented from farming and carrying out their jobs, reportedly due to local resistance towards the government military recruitment campaigns, in addition to refusal to celebrate Independence Day and commemorate Martyr Day. According to the Eritrean Constitution (Art. 19.1), every person has the right to freedom of thought, conscience and belief; also in cases which contravene 'official policy'. This constitutional principle is ignored by the Eritrean government, which considers such actions as undue criticism and disobedience, warranting collective punishment in retaliation.²⁵⁵

PARTICULARLY VULNERABLE GROUPS AND INDIVIDUALS

Due to the enormity of human rights abuses in Eritrea, which affects the whole population, it may be difficult to single out certain individuals or groups which are more at risk for attack than the population at large. Nevertheless, certain groups of individuals are directly targeted by the government and exposed to grave human rights violations due to their particular status, profession or background. These prejudiced practices are partly a manifestation of the ideological underpinnings of the EPLF/PFDJ (stressing a militant nationalistic ideology), but is also somewhat arbitrary, as all 'new' groups perceived as a threat to the regime's power will routinely be sanctioned.

National service personnel and military conscripts

National service personnel and military conscripts, or youths liable to be called for national service, are in an extremely precarious situation. At independence, the leadership of the Eritrean defence forces was commended for its high morale and work ethic; high-ranking officers served without payment and special privileges, on the same footing as rank-and-file soldiers. Today, however, the Eritrean military leadership has reportedly become totally corrupted. Many of the army officers are extremely volatile and unaccountable in their execution of power. Since Eritrea is run as a military dictatorship, there are no checks and balances to the omnipresent power of the military leadership. In order to maintain its hegemonic position, the military leadership heavy-handedly cracks down upon all signs of dissent or questioning of its powers and no reasons whatsoever are tolerated to be excused from serving in the military.

²⁵³Eritreans for Human Rights and Democracy, 'Hundreds more of Eritrean parents arrested in the Southern Region', 26 October 2005, at <http://ehdr.org.uk/NE-26Oct05.htm>.

²⁵⁴Information given to the author by the Awate team; personal communication, 2 April 2009.

²⁵⁵Eritrean Center for Media Services, 'Collective punishment against areas west Nakfa and arrest of a Liberation War wounded', 20 June 2006 (www.adoulis.com).

National military service is compulsory in Eritrea, and there are no provisions for conscientious objectors.²⁵⁶ According to law, Eritrean individuals between the age of 18 and 40, both men and women, must undertake national service for at least one and a half years (six months basic military training and one year of national service).²⁵⁷ However, allegedly the upper age limit today is 50 years, and numerous cases of underage conscription are reported, making Eritrea one of few countries in the world that officially use child soldiers.²⁵⁸

Since the start of the Eritrean-Ethiopian war in 1998, national service recruits have been kept in the army for an indefinite period, as no demobilisation has taken place. The legal penalty for evading conscription or assisting in it is two years' imprisonment (as per the National Service Regulations of 1995). Amnesty International reports, however, that in practice offenders are being punished by their local commanding officers without any form of trial, legal recourse or opportunity to appeal or redress. The forms of punishment may vary, but usually consist of torture and arbitrary detention for an indefinite period (AI 2004: 23). Such a practice is unlawful and a clear violation of human rights (IC-CPR Arts. 7, 8, and 9), however, it appears that no army officer has ever been investigated or punished for employing them.²⁵⁹

Reportedly, many hundreds, if not thousands, of military service personnel are held in arbitrary detention without charge or trial (AI 2004: 23). Many of these are possible conscientious objectors, others are prisoners of conscience and individuals protesting against the brutality and destructiveness of the militarisation of society in Eritrea. Investigation carried out by Amnesty International reveals that there are a number of reasons for the arrest and detention of military conscripts (AI 2004).²⁶⁰ Due to the brutality of the military service, many try to evade conscription by all possible means, also fleeing the country.²⁶¹ Thus, a number of individuals are detained while trying to evade conscription. Others have been arrested on opinion-based political grounds, such as criticising government policies or resisting military mobilisation and the conduct of war, and requesting demobilisation and a return to civilian life. Expressing support for democratic reforms has also led to arrests. Conscripts have also been detained for congregating in prayer meetings (AI 2004: 16). Some female conscripts have also reportedly been detained for rejecting sexual requests by officers (AI 2004: 26).

In interviews carried out by this author in the Eritrean refugee camps in eastern Sudan and in the Shimelba camp of Tigray in Ethiopia, dozens of former military conscripts and national service

²⁵⁶The right to conscientious objection to military service is not unequivocally supported by international law. Amnesty International argues that the right to conscientious objection is inherent in the rights to freedom of opinion and belief set out in Article 19 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (AI 2004). Furthermore, paragraph 5 of resolution 1998/77 of the Commission on Human Rights emphasises that states should take the necessary measures to refrain from subjecting conscientious objectors to imprisonment. However, the International Covenant on Civil and Political Rights does not explicitly refer to a right to conscientious objection. Article 8.3.c.ii inserts a certain ambiguity into this matter, which the UN Human Rights Commission has also elaborated (see ICCPR General Comment No. 22 on Art. 18 para 11, at [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/9a30112c27d1167cc12563ed004d8f15?Opendocume nt](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/9a30112c27d1167cc12563ed004d8f15?Opendocume nt)). In the case of Eritrea, however, according to the UN Special Rapporteur on freedom of religion or belief, 'imprisoning conscientious objectors for more than 13 years is clearly a disproportionate measure which violates the individuals' right to freedom of thought, conscience and religion as laid down in A/HRC/7/10/Add.1 page 26 article 18 of the Universal Declaration of Human Rights as well as article 18 of the International Covenant on Civil and Political Rights (ICCPR)' (cf. Human Rights Council, A/HRC/7/10/Add.1, 28 February 2008, Seventh session, Agenda item 3).

²⁵⁷See the National Service Regulations, Proclamation 82/1995, Eritrean Gazette, 23 October 1995.

²⁵⁸Information given to the author by the Awate team; personal communication, 2 April 2009.

²⁵⁹Offences committed by conscripts and other members of the armed forces are in theory subject to military law, for which penalties are set out in the former Ethiopian penal code which was adopted in a modified version by Eritrea at independence (AI 2004).

²⁶⁰Some of these are arrested for 'regular' military offences punishable under military law, such as being absent without leave or disobeying an order, which may be due process and not a human rights violation.

²⁶¹In 2008, about 700 and 400 Eritreans fled to the Sudan and Ethiopia respectively every month, the absolute majority of them national service personnel. In 2007, 14,100 new claims were registered in Sudan and 7800 in Ethiopia (UNHCR 2008). In 2009, however, the number of people fleeing the country has reportedly increased to about 2000 per month.

personnel reported eye-witness accounts of human rights abuses, corroborating the findings of Amnesty International. For instance, a 28-year old law graduate from Asmara University, who fled the country in 2007, explained how the system operates in the army:

Whenever they conduct a meeting or a course of instruction, the commanding officers expect opinions and reactions from the soldiers. Whenever a person speaks out against the government leadership, or questions policy or strategy, no immediate action will necessarily be taken. But later at night they will come and pick them up and take them away for torture and detention. Many of my fellow soldiers disappeared in this way during night time.²⁶²

Adherents of prohibited churches and religious organisations

Adherents of prohibited churches and religious organisations are constantly persecuted and restricted from practising their faith, which constitutes a clear violation of Article 18 of the International Covenant on Civil and Political Rights, ratified by Eritrea. Individuals belonging to churches and sects not officially approved and sanctioned by the government are likely to be arrested en masse if they congregate, and are likely to be exposed to torture and inhumane and degrading treatment.²⁶³

The EPLF, as a Marxist-Leninist inspired liberation front, was a secular organisation which established independent Eritrea as a secular state. Today, only four main religions are officially recognised and allowed to organise and practise their beliefs (albeit controlled and under surveillance by the government): the Eritrean Orthodox Church (about 30 per cent of the population); the Eritrean Catholic Church (about 13 per cent of the population); the Evangelical Church of Eritrea (Mekane Yesus); and Islam of the Sunni rite (about 50 per cent of the population).²⁶⁴ Although officially allowed to operate, their adherents may still risk government harassment and detention due to faith-based practices.

In addition to these four main religions, there are at least twelve smaller Christian denominations (totalling about 2 per cent of the population), mostly Pentecostal and evangelical in their orientation (generally known as *pentes*). These include the Jehovah's Witnesses (1600 members in the country), the Mullu Wongel Church, the Rhema Church, the Kale Hiwot Church of Eritrea, Meseret Christos Church and the Hallelujah Church. There are also small congregations of Buddhists, Hindus, and Baha'is, in addition to followers of traditional beliefs (USSD 2008b).

There are various reasons to explain why Christians and members of other non-recognised religious communities are persecuted in Eritrea. For instance, Jehovah's Witnesses were victimised more or less immediately after the military liberation of Eritrea, since they do not engage in politics. As they refused to register to vote in the 1993 referendum on independence, they were targeted and harassed and sanctioned by the EPLF government from 1992 and onwards. Their denial, on the grounds of faith, to enrol in the national military service programme which was launched in 1994 further aggravated the EPLF which subsequently stripped the Jehovah's Witnesses of their citizenship rights by Presidential decree in October 1994 (AI 2004: 14).²⁶⁵ Three Jehovah's Witnesses who refused the first call for

²⁶²Interviewed in Khartoum, 20 April 2008 (name withheld).

²⁶³See UN Commission on Human Rights, E/CN.4/2006/6/Add.1, 21 March 2006, Sixty-second session, Agenda item 11(a); UN Commission on Human Rights, E/CN.4/2006/5/Add.1, 27 March 2006, Sixty-second session, Agenda item 11; UN Human Rights Council, A/HRC/4/21/Add.1, 8 March 2007, Fourth session, Agenda item 2; Amnesty International, 'Eritrea: Religious Persecution', (AFR 64/013/2005), 7 December 2005; Voice of the Martyrs, 'Eritrea: Police arrest 150 more Christians'. See also the comprehensive, compiled information reproduced by Howard Hughes in the unpublished report 'Power versus Prayer: Religious Persecution in Eritrea', May 2007. See also US State Department's annual country reports on international religious freedom.

²⁶⁴Number of adherents according to US State Department (USSD 2008b).

²⁶⁵To withdraw citizenship rights from the Jehovah's Witnesses is a clear violation of Article 16 of the ICCPR: 'The recognition of Legal Personality'.

military service have been held in incommunicado detention in Sawa military training centre since 24 September 1994.²⁶⁶ The UN Special Rapporteur on freedom of religion lists 25 Jehovah's Witnesses detained 'solely on the basis of their religious beliefs'.²⁶⁷ The particular history of the Jehovah's Witnesses in Eritrea has indicated that the government singled them out 'for particularly harsh treatment' (USSD 2007b).

The Eritrean government denies that there are any restrictions on religion per se, and argues that the Jehovah's Witnesses are themselves to blame since they 'refuse to accept the Government of Eritrea and the laws'.²⁶⁸ Government spokesperson and senior cadre Yemane Gebremeskel explained that since the Jehovah's Witnesses 'publicly said they don't recognise the temporal government and the government's response was, okay, if they do not recognise the temporal government, the government will also not recognise them'.²⁶⁹ The statement exposes the political immaturity of the EPLF/PFDJ in handling civilian governmental affairs. In a formal response to an inquiry by the UN Special Rapporteur on freedom of religion or belief, the Eritrean government claims that the Jehovah's Witnesses are not being arrested due to their religious beliefs, but because they refused to participate in the national service programme, which is compulsory and universal in Eritrea.²⁷⁰

After the general political crack-down in September 2001 (see chapter 4), the Eritrean government put further restrictions on the freedom of religion and belief. For instance, it is now prohibited to hold a prayer meeting or to keep a Bible or the Koran in military camps, restricting about 350,000 military service personnel their constitutional right to worship. In May 2002 the government ordered the closure of all religions and churches apart from the main four faiths, and decreed that all religious groups needed to register in order to operate in the country. According to the US State Department, however, the Eritrean government failed to register religious groups who were willing to do so and infringes upon the independence of groups who are registered (USSD 2008b); this again is a violation of Article 18 of the ICCPR.

President Isaias Afwerki has rejected criticism of the policy to register religious groups. In a recent interview he explained his view on new religious groups in the following manner:

There is no restriction on religion. What's new about the Bible that you want to teach me? What is new about the Koran? I say there is nothing new. Extremists who want to use Islam as a political end for their ambitions should be asked that simple question. What do you want to do with this ideology? I say it's a pretence of using religion for ulterior aims. Religion is by default restricted because you have nothing new to teach me. You do not have the right to impose your beliefs on another person. That creates discord and confusion in the society. Government is there to guarantee everyone is respected. I don't believe that's a restriction.²⁷¹

Since early in 2003 there has been active persecution of members of Christian minority religions which still continues as this is written. For instance, on 28 May 2005, Eritrean security forces arrested a whole wedding party of over 200 people, including the bride and groom, in Asmara. All those arrested were members of the banned Meserete Christos Church. Several detainees were released the next day,

²⁶⁶They are Paulos Iyassu, Isaac Moges and Negede Teklemariam (AI 2004).

²⁶⁷Human Rights Council, A/HRC/7/10/Add.1, 28 February 2008, Seventh session, Agenda item 3.

²⁶⁸Statement issued by the Ministry of Internal Affairs in March 1995 (AI 2004).

²⁶⁹IRIN news: 'ERITREA: Interview with Yemane Gebremeskel, Director of the President's Office', Asmara, 1 April 2004: <http://www.irinnews.org/Report.aspx?ReportId=49359>, accessed 6 January 2009.

²⁷⁰Cf. UN Commission on Human Rights, E/CN.4/2005/61/Add.1, 15 March 2005, Sixty-first session, Agenda item 11(e).

²⁷¹Interview by Edmund Sanders: 'Q and A with President Isaias Afwerki', Los Angeles Times, 2 October 2007.

but the majority remained in custody.²⁷² Furthermore, on 29 April 2007, the Mehrete Yesus Evangelical Presbyterian Church in Asmara was raided by the police during a service, and the pastor of the church (Zecharias Abraham) and 77 other persons attending the service were arrested.²⁷³ There are also reports of forced recantations of faith during torture (USSD 2008b).

The new government directive that requires all churches and religious communities to register in order to operate legally is used as a formal reason to crack-down upon 'non-registered' churches. The Eritrean government responded, upon an inquiry by the UN Special Rapporteur on freedom of religion or belief, that members of the Rhema Church and other Christians were detained because they had 'deliberately, contemptuously and provocatively disobeyed the decision of the Government that no religious group could operate until after they had registered with, and acquired a permit from, the Government in accordance with the existing law'.²⁷⁴ Like most authoritarian regimes, the Eritrean government at times uses a legalistic approach to 'justify' its own human rights-violating practices.

In 2008, reportedly more than 3225 Christians from unregistered groups were detained in prison; including 37 leaders and pastors of Pentecostal churches, some of whom have been under detention for more than three years without due process of law (USSD 2008b).²⁷⁵ The arrest of Christians in Eritrea continues as this is written, and in December 2008 it was reported that the country's most senior paediatrician, Dr Michael Mehari, had been arrested among many other senior members of evangelical churches in Eritrea.²⁷⁶

In 2006 the US State Department redesignated Eritrea a 'Country of Particular Concern' under the International Religious Freedom Act for particularly severe violations of religious freedom (USSD 2008b). In 2008, the US State Department observed that the situation for the freedom of religion and belief had further deteriorated, and listed Eritrea – together with North Korea and Iran – as 'among the world's leading violators of religious freedom'. The US ambassador responsible for overseeing religious freedom in the world stated: 'Eritrea has an abysmal record of abuses – arresting, detaining, torturing and even killing some of its citizens for attempting to worship outside the four officially-approved religious groups'.²⁷⁷

The UN Special Rapporteur on torture and other cruel, inhumane or degrading treatment or punishment, has, for instance, reported that two detained members of the banned Christian Rhema Church, Immanuel Andegergesh and Kibrom Firemichael, were tortured to death in 2006 in order to make them abandon their faith.²⁷⁸ Open Door International reported in early 2009 that three Christians had died in prison due to torture during the last four months, bringing to eight the total number of Christians known to have died while imprisoned due to their faith.²⁷⁹

²⁷²Cf. UN Commission on Human Rights, E/CN.4/2006/5/Add.1, 27 March 2006, Sixty-second session, Agenda item 11.

²⁷³Amongst those arrested were two US citizens and a number of Indian teachers working in Eritrea. The US citizens were released on 3 May 2007 while the rest remained in detention at an undisclosed location, according to the UN (cf. Human Rights Council, A/HRC/7/10/Add.1, 28 February 2008).

²⁷⁴Cf. UN Commission on Human Rights, E/CN.4/2005/61/Add.1, 15 March 2005, Sixty-first session, Agenda item 11(e).

²⁷⁵The exact number of people arrested due to their faith is impossible to calculate and estimates vary. Open Doors International (a Christian rights-based organisation), for instance, claims that in mid-December 2008, 2907 Christians were held in detention in Eritrea due to their faith (Open Doors International: 'Christian deaths mount in Eritrean prisons', 21 January 2009, at: <http://www.opendoorsusa.org/content/view/902/139/>, accessed 23 January 2009).

²⁷⁶Cf. Release Eritrea: 'Eritrean authorities arrest the country's most senior paediatrician on the count of his Christian faith', 19 December 2008, at: www.release-eritrea.org.uk/node/67, accessed 9 January 2009.

²⁷⁷US Ambassador-at-Large for International Religious Freedom, John Hanford. See also David Gollust: 'US Religious Freedom Report faults North Korea, Eritrea, Iran', 19 September 2008, Voice of America news website, Washington DC, at: <http://www.voanews.com/english/archive/2008-09/>, accessed 22 January 2009.

²⁷⁸UN Human Rights Council, A/HRC/4/33/Add.1, 20 March 2007, Fourth session, Agenda item 2. See also UN Human Rights Council, A/HRC/4/21/Add.1, 8 March 2007, Fourth session, Agenda item 2.

²⁷⁹On 16 January 2009, Mehari Gebreneguse Asgedom, a member of the Church of the Living God in Mendefera, died at the Mitre military confinement centre from torture and complications from diabetes; Mogos Hagos Kiflom (aged 37), a member

The UN Special Rapporteur on freedom of religion or belief²⁸⁰ in 2007 sent a communication of concern to the Eritrean government stressing that: ‘The right to freedom to worship is not limited to members of registered religious communities, since registration should not be a precondition for practising one’s religion, but only for the acquisition of a legal personality and related benefits’.²⁸¹

It is thus clear that the active religious persecution conducted by the Eritrean government is in violation of Article 19.4 of the Eritrean Constitution, which states: ‘Every person shall have the freedom to practise any religion and to manifest such practice’. Furthermore, the Eritrean government contravenes a wide area of international human rights clauses, as for instance, Article 18(2) of the ICCPR, which provides that ‘[n]o one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice’. Furthermore, Article 6 of the 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief is also violated, as it provides that the right to freedom of thought, conscience, religion or belief includes the freedom: ‘(a) To worship or assemble in connection with a religion or belief’.²⁸² Finally, the basic freedom of religion or belief, as established in Article 18 of the Universal Declaration on Human Rights (UDHR), is regarded as customary international law and thus binding even upon states that have not ratified all relevant international human rights conventions. The Eritrean government has routinely rejected or ignored all criticism and calls from international agencies in relation to its violation of religious freedom in the country.

Individuals from the Kunama ethnic group

Individuals from the Kunama ethnic group are in danger of being persecuted due to their ethnicity (see chapter 8 for an elaboration of the Kunama case; and chapter 7 for elaboration on EPLF/PFDJ’s minority rights policies). The particular history of the Kunama minority group – perceived as supportive of the Ethiopian state during the Eritrean liberation war – has collectively stigmatised the Kunama in the eyes of the fiercely nationalistic Eritrean government.

According to Kunama representatives, discrimination against the group was immediately felt after the EPLF take-over in May 1991.²⁸³ At least 55 Kunama, serving as civil administrators under the Ethiopian

of Rema Church, was also tortured to death in Mitire military confinement centre (exact date unknown); and Teklesenbet Gebreab Kiflom (aged 36), died in October 2009 while imprisoned for his faith at the Wi’a military confinement centre (Cf. Open Doors International: ‘Christian deaths mount in Eritrean prisons’, 21 January 2009, at: www.opendoorsusa.org/content/view/902/139/, accessed 23 January 2009).

²⁸⁰Jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on freedom of religion or belief and the Special Rapporteur on the question of torture.

²⁸¹The Eritrean government has not responded to any of the concerns expressed by the UN Special Rapporteur. Human Rights Council, A/HRC/7/10/Add.1, 28 February 2008, Seventh session, Agenda item 3.

²⁸²The UN Special Rapporteur on freedom of religion and belief has, furthermore, made the following observation in relation to the Eritrean case in her 2005 report to the UN General Assembly (A/60/399, para. 50), with reference to international human rights norms and to the mandate practice concerning ‘Freedom from Coercion’ (para. 1, category I.2): ‘The fact that the prohibition of coercion was made explicit shows that the drafters of the Covenant found the freedom provided by paragraph 1 to be so significant that any form of coercion by the State was impermissible, independently of whether the coercion was physical or in the form of State-sponsored incentives. According to the Human Rights Committee: “Article 18.2 bars coercion that would impair the right to have or adopt a religion or belief, including the use of threat of physical force or penal sanctions to compel believers or non-believers to adhere to their religious beliefs and congregations to recant their religion or belief or to convert. Policies or practices having the same intention or effect, such as, for example, those restricting access to education, medical care, employment or the rights guaranteed by article 25 and other provisions of the Covenant, are similarly inconsistent with article 18.2” (general comment No. 22, para. 5).’ Furthermore, the Special Rapporteur would also: ‘like to make reference to her framework for communications, more specifically to the international human rights norms and to the mandate practice concerning ‘Freedom to worship’ (see above para. 1, category I. 3. a). As she noted in her 2005 report to the Commission on Human Rights, ‘members of religious communities or communities of belief, whenever they find themselves in places of worship, are in a situation of special vulnerability given the nature of their activity. The Special Rapporteur is therefore of the opinion that States should pay increased attention to attacks on places of worship and ensure that all perpetrators of such attacks are properly prosecuted and tried.’ (E/CN.4/2005/61, para. 49). Cf. UN Human Rights Council, A/HRC/4/21/Add.1, 8 March 2007, Fourth session, Agenda item 2.

²⁸³Interviewed 29 April 2008, in Shimelba Refugee Camp, Tigray, Ethiopia.

government, were arrested in May 1991. None of the 55 persons have been released or even seen since then, and it is unclear if any formal charges have been pressed, or any trials held (BIA 2008: 44).

The outbreak of a new war between Eritrea and Ethiopia in May 1998 further escalated the already tenuous relations between the Kunama and central Eritrean authorities, as it revived the image of the Kunama as Ethiopian collaborators and spies. Unlike people of other ethnic groups, the Kunama did not flee their home villages when the Ethiopian forces occupied Eritrean territory during the war. They remained in their villages and the majority ignored the Ethiopian presence. The Eritrean authorities thus accused the Kunama first of failing to resist the Ethiopian military offensive, later of allegedly assisting the Ethiopians and showing them secret unguarded border-crossing points on the Mereb river (Naty 2001: 588; Gilkes 2005: 237). An unknown number of Kunama were consequently detained in the aftermath of the 1998-2000 war, on suspicion that they were welcoming the Ethiopian advances into Eritrean territory (Al 2004: 11; USSD, 2003). The existence of the Kunama resistance movements, the Democratic Movement for the Liberation of the Eritrean Kunama (DMLEK) and the Eritrean Democratic Resistance Movement-Gash Setot (EDRM, also called Sawrawi Baito),²⁸⁴ and Ethiopia's support for their politico-military operations, has furthermore reinforced such a view among highlanders and the Eritrean government.

More than 4000 Kunama fled the country to Ethiopia in fear of persecution in the aftermath of the Eritrean-Ethiopian war in 2000.²⁸⁵ Allegedly, at the beginning of 2007 a special security retaliation operation was ordered against the Kunama, in which over 300 persons were detained, accused of being sympathisers of the Kunama resistance front. According to a defected Eritrea intelligence officer, the Kunama detainees were tortured and mishandled, and later 26 of them were killed in prison by poison (see chapter 8).

The Eritrean Constitution states that 'all persons are equal under the law' (Art. 14.1) and emphasises that no person may be discriminated against on account of race, ethnic origin, or language (Art. 14.2). A similar prescription is found in ICCPR (Art. 2.1), which Eritrea has ratified. It seems clear that the Eritrean government is violating its own Constitution and international law with its apparent discriminatory practice. It may also be argued that their policies are in contradiction to minority rights guarantees, as enshrined in Article 27 of the ICCPR.

Returned refugees and asylum seekers

Returned refugees and asylum seekers, immediately upon arrival in Asmara, are detained, usually incommunicado, and possibly tortured. To have fled Eritrea and applied for asylum in another country is considered a form of treason by the Eritrean government; thus returnees are treated accordingly, despite the fact that this is a violation of both the Eritrean Constitution (Art. 19.9) and the ICCPR (Art. 12.2) which prescribes that everyone shall 'be free to leave any country, including his own'. The brutal handling of Eritrean returnees was brought to light in 2002 when Malta forcibly deported over 200 Eritrean refugees back to Eritrea. Upon arrival in Asmara, they were all immediately detained, as explained by one of the returnees who later managed to escape imprisonment and flee the country once again:

When we landed at Asmara, the airport was quiet. The Maltese handed us over. There were no relatives meeting us. When the Maltese plane left, the soldiers took us in a military bus

²⁸⁴UK Home Office fact-finding mission to Eritrea, 4–18 November 2002 (BIA 2008).

²⁸⁵On the grounds of their particular collective motivation for fleeing and the risk of returning to their country of origin, all of the more than 4000 Eritrean Kunama in the Shimelba refugee camp were granted the right of resettlement in the United States as a group (CORC 2007).

to Adi Abeto prison. The women, girls and children were separated. There were interrogation rooms and we were called one at a time, with two guards, one asking the questions, the other doing the beating. (AI 2004: 30).

The women, children and those over the age of military conscription (40 years) were reportedly released after some weeks of detention, while the rest were sent to different detention centres in Eritrea and kept incommunicado and 'subjected to forced labour, interrogated and tortured (e.g. by beating, tying up and exposing to sun ...)' (UNHCR 2004: 6). Of the original 233 persons forcibly returned to Eritrea, 180 were imprisoned for a longer period, of whom 30 later managed to escape to Sudan. Reportedly, some Malta detainees were released from prison in 2006, while an unknown number have died in detention or have been killed while trying to escape since their incarceration in 2002 (USSD 2006).

The deteriorating human rights situation in Eritrea, and the treatment of the Malta deportees, led the UNHCR to issue a separate position paper on the 'Return of rejected Asylum seekers to Eritrea' in January 2004, recommending that 'states refrain from all forced returns of rejected asylum seekers to Eritrea and grant them complementary forms of protection instead' (UNHCR 2004: 6). However, several countries have continued to deport rejected asylum seekers and refugees back to Eritrea. In June 2008 up to 1200 Eritrean asylum-seekers were forcibly returned to Eritrea from Egypt, despite an urgent appeal to cease deportations by the UN High Commissioner for Human Rights.²⁸⁶ Apparently returned women with children and those who were pregnant were released after some weeks in detention.²⁸⁷ However, as of December 2008, at least 740 of the returnees were still imprisoned under harsh conditions in military detention facilities throughout Eritrea.²⁸⁸ European states also overlook the UNHCR recommendation not to return rejected asylum seekers to Eritrea, despite a recent landmark ruling by the European Court of Human Rights reaffirming the absolute prohibition on returning people to countries known to practise torture.²⁸⁹ For instance, German immigration authorities forcibly returned Yonas Haile Mehari and Petros Aforki Mulugeta to Eritrea on 14 May 2008. Neither man has been seen since their arrival in Asmara.²⁹⁰

Journalists

Journalists, as defenders of human rights, are annihilated in Eritrea. The 'horrifying state of affairs' in relation to press freedom in the country led *Reporters Without Borders*, for the first time, to rank Eritrea last (as number 173) in its 2008 worldwide press freedom index, after North Korea.²⁹¹ In 2007, the International Press Institute characterised the developments in Eritrea as so dire that the nation was singled out as the year's 'most egregious suppressor of press freedom'.²⁹² The reality today is that the only news serving Eritrea is the diaspora media outlets, communicating news to Eritrea through radio and television broadcasting, and the internet.

All independent press in the country was shut down as part of the September 2001 crack-down (see

²⁸⁶UN News Centre: 'UN human rights chief urges Egypt to stop deporting Eritrean asylum-seekers', 19 June 2008; Reuters: 'Egypt deports 10 more Eritreans - airport sources', Cairo, 18 January 2009.

²⁸⁷Amnesty International, 'Egypt: Further information on forcible return/fear of torture or other ill-treatment', MDE 12/018/2008, 7 August 2008. See also the comprehensive Amnesty International report on Egypt's treatment of African refugees (AI 2008a).

²⁸⁸Human Rights Watch: 'Egypt: Stop deporting Eritrean asylum seekers', 8 January 2009, at: www.hrw.org/en/news/2009/01/08/egypt-stop-deporting-eritrean-asylum-seekers, accessed 9 January 2009.

²⁸⁹European Court of Human Rights: Application no. 37201/06, Saadi v. Italy, 28 February 2008.

²⁹⁰Amnesty International, Urgent Action 145/08 (AI index: AFR 64/002/2008), 29 May 2008.

²⁹¹On a score from 1 to 100 (where 1 is best), Eritrea receives 97.5 points (on the other end of the scale Iceland, Luxembourg and Norway score 1.5 points). Cf. Reporters Without Borders: Press Freedom Index 2008, at: www.rsf.org/article.php3?id_article=29031, accessed 9 January 2009.

²⁹²International Press Institute: 'World Press Freedom Review 2007: Eritrea', at: www.freemedia.at/cms/ipi/freedom_detail.html?country=KW0001/KW0006/KW0154/, accessed 9 January 2009.

chapter 4), since it was accused by the government of contravening the 1996 Press Law (AI 2002: 10). Reportedly, thirteen leading editors and journalists were arrested in the operation,²⁹³ but no formal charges have been made (RWB 2008). The harsh conditions in the prison have supposedly led to the death of four of the journalists, the latest being Fessehaye Yohannes (known as 'Joshua') who reportedly died on 11 January 2008 (RWB 2008: 12).²⁹⁴

The last permanent foreign correspondent was expelled from Eritrea in 2004,²⁹⁵ and journalists trying to enter the country are either denied a visa or are closely monitored by the Ministry of Information. Journalists working for the remaining government media are also being targeted. Government newspapers and broadcasting facilities in Eritrea have become 'Soviet-style instruments of propaganda', directly monitored, controlled and censored by the Minister of Information, Mr Ali Abdu (RWB 2008: 12).²⁹⁶ Government journalists are forced to publish whitewashing reports about developments in the country, and conceal all criticism of the prevailing extremely dire social, economic, and political conditions under which the population is suffering. This led the UN Special Rapporteur on freedom of expression and opinion, jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, to send an urgent appeal in November 2006 to express 'grave concern' at the 'series of arrests which may be an attempt to intimidate their media related work. This concern is aggravated by the high number of currently detained journalists in Eritrea, which reportedly numbers at least 22'.²⁹⁷ The Eritrean government habitually neglects to respond to the inquiries and criticisms raised by the Special Rapporteur.

The dire situation has prompted many government journalists to flee Eritrea, as they can no longer tolerate the blanket censorship on the current state of affairs in the country. In November 2006, nine state media staff were arrested on suspicion that they would flee the country, after several other renowned government journalists had managed to escape.²⁹⁸ All of them were reportedly beaten and tortured during detention (RWB 2008: 13). Other government journalists have been arrested while trying to flee the country, such as Eyob Kessete (a journalist with the Amharic service of the state radio *Dimits Hafash*) and Johnny Hisabu (editor with Eri-TV), both caught trying to leave the country

²⁹³Amnesty International has published short biographies of ten of the arrested editors/journalists (AI 2002): 1. Said Abdulkadir, Chief editor and founder of the newspaper, Admas; also employee of the Ministry of Information's Arabic-language newspaper, Haddas Eritrea; aged 34. 2. Yosuf Mohamed Ali, Chief editor of the newspaper, Tsigenay; business studies graduate; aged 45. 3. Amanuel Asrat, Chief editor of the newspaper, Zemen ('Time'); EPLF member since the 1970s. 4. Temesgen Gebreyesus, Sports reporter on the newspaper, Keste Debena ('Rainbow'); amateur actor; aged 36. 5. Matthewos Habteab, Editor of the newspaper, Meqaleh ('Echo'); mathematics graduate, University of Asmara; aged 30. 6. Dawit Habtemichael, Assistant chief editor and co-founder of the newspaper, Meqaleh; physics graduate, University of Asmara; full-time science teacher employed by the Ministry of Education; aged 30. 7. Medhanie Haile, Assistant chief editor and co-founder of the newspaper, Keste Debena; law graduate, University of Asmara; full-time employee of the Ministry of Justice; aged 33. 8. Dawit Isaac, Editor and co-owner of the newspaper, Setit; dual Eritrean and Swedish citizen as a result of being granted asylum in Sweden in the 1980s; education graduate; writer and theatre producer; aged 38. 9. Seyoum Tsehay, Freelance photographer; French language graduate and former French teacher; EPLF veteran since the 1970s; former director of Eritrean state television in the early 1990s; aged 49. 10. Fessaye Yohannes ('Joshua') Reporter and co-founder of the newspaper, Setit; EPLF veteran since 1977; poet and director of an amateur cultural dance group; studied in the UK in 2000; aged 46.

²⁹⁴See also Committee to Protect Journalists: 'In Eritrea, a prominent journalist dies in a secret government prison', New York, 9 February 2007.

²⁹⁵Reporters Without Borders: 'Last permanent foreign correspondent expelled from Eritrea', 13 September 2004, Paris. In March 2008 a BBC journalist, who had worked in the country for a year, was expelled; see his valedictory article: 'Not so fond farewell to Eritrea', BBC, 10 March 2008.

²⁹⁶The only media outlets in Eritrea today are those controlled by the state or the ruling party: EriTV; Dimtsi Hafash (Voice of the Masses radio); a government newspaper printed in three languages: Tigrinya (Hadas Eritrea), Arabic (Eritrea al-Hadisa), and English (Eritrea Profile); a government-run press service, the Eritrean News Service (EriNA); several small publications and radio programmes run by party-controlled social organisations (women, workers, youth); and a party-controlled website, Shaebia.org (Connell 2007).

²⁹⁷Cf. Report of the UN Special Rapporteur on freedom of opinion and expression, UN Human Rights Council, A/HRC/4/27/Add.1, 26 March 2007, Fourth session, Agenda item 2, p. 88.

²⁹⁸Cf. Report of the UN Special Rapporteur on freedom of opinion and expression, UN Human Rights Council, A/HRC/4/27/Add.1, 26 March 2007, Fourth session, Agenda item 2.

during 2008 (RWB 2008: 13). In June 2008, Paulos Kidane, a journalist working for Eri-TV's Amharic service, was captured trying to flee into Sudan and was later reported dead by the Eritrean authorities (RWB 2008: 13).²⁹⁹

The harassment of government journalists continues as this is written. Reporters Without Borders recently reported that on 22 February 2009 the authorities ordered a raid on the premises of Radio Bana, a small public station in the heart of the capital that broadcasts educational programmes under the sponsorship of the Education ministry.³⁰⁰ Without any formal charges pressed or reasons given, its entire staff of around 50 journalists were arrested and taken to the Doboito detention centre on the edge of the city. Some of the staff were later released but several of them remain in custody.³⁰¹

The Eritrean Constitution guarantees the freedom of expression and the press and other media (Article 19.2), concomitantly as it ensures every citizen's right of access to information (Article 19.3). The Eritrean government blatantly neglects its own Constitution and international obligations in regard to these rights.

Furthermore, the clamp-down and arrests of journalists in Eritrea were brought in front of the African Union's Commission of Human and Peoples' Rights, of which Eritrea is a party, by the rights organisation Article 19. The African Commission decided to take on the case and, in a lengthy written deliberation, the Eritrean government is found guilty of violating the African Charter (Articles 1, 5, 6, 7(1), 9 and 18), and the Commission urges the government to release, or bring to a speedy and fair trial, the detained journalists – and to lift the ban on the press (see chapter 4).³⁰²

Human rights defenders

Any person perceived as a defender of human rights will immediately be arrested if voicing criticism of government violations. The Eritrean government does not recognise the legitimate role of human rights defenders, as set out in the UN Declaration on Human Rights Defenders of 1998 (AI 2004: 37); a situation also acknowledged by the UN Special Representative on human rights defenders.³⁰³ No organisations monitoring or conducting advocacy for human rights are allowed to operate in the country, as the government perceives such activities to be subversive or treasonable.

The practical and political restrictions placed upon organising civil society activities in Eritrea contravene the Eritrean Constitution (Art. 19.6) and ICCPR (Art. 22). The EPLF's negative attitude towards human rights activism was visible immediately after liberation, when the Regional Centre for Human Rights and Development, an independent NGO established by a senior EPLF member and former director of the Eritrean Relief Association, Mr Paulos Tesfaigorgis, was closed down on government orders soon after its opening in 1993 (AI 2004: 37) (see chapter 4).³⁰⁴

Since independence, no truly independent civil society organisations or activities have been allowed

²⁹⁹See also commemorative article by Mohamed Hassim Keita, published in *Dangerous Assignments* (Fall/Winter 2007 issue), a publication of the Committee to Protect Journalists.

³⁰⁰Reporters Without Borders: 'Plea to EU to suspend development aid in light of fresh crackdown on journalists', 6 March 2009, at: http://www.rsf.org/article.php3?id_article=30491, accessed 10 March 2009.

³⁰¹Among them, according to Reporters Without Borders, are Bereket Misghina, aka Wedi Misghina, a famous actor and playwright; journalist and essayist Yirgalem Asfha, former art critic for the newspaper *Zemen*; teacher Basilius Zemo, aka Wedi Zemo, and a young teacher Senait Habtu, working in the radio's production studio. Unconfirmed reports suggested they had been transferred to the military prison in Adi Abeito, north-west of Asmara on the road to Keren.

³⁰²African Commission on Human and Peoples' Rights, Communication 275 / 2003 – Article 19 / The State of Eritrea, EX.CL/364 (XI), Annex II.

³⁰³See report by the UN Secretary General's Special Representative on human rights defenders, 'Promotion and protection of human rights: human rights defenders', Commission on Human Rights, E/CN.4/2006/95/Add.5, 6 March 2006.

³⁰⁴The NGO was never formally registered, but operated by permission given orally by President Isaias Afwerki.

to operate independent of government control and monitoring.³⁰⁵ The Marxist-Leninist inspired ‘mass movements’ which were an integral part of EPLF during the struggle – like the associations of women, youth, students and workers – continued to be controlled by EPLF after they became so-called autonomous organisations after independence. They are not allowed to promote human rights work which criticises the government.³⁰⁶ An example is the arrest of three trade union leaders who allegedly protested against workers’ worsening standards of living in 2005.³⁰⁷ According to The Observatory for the Protection of Human Rights Defenders, the arrest came about solely on account of their efforts to exercise their mandate as trade union leaders, a concern also shared by the UN Special Rapporteur on the rights to freedom of opinion and expression.³⁰⁸ Hence, their arrest constituted a grave violation of international legal standards (Arts. 22 and 19 ICCPR), as well as explicit violations of Conventions 87 and 98 of the ILO (which Eritrea has ratified) regarding freedom of association which is legally binding on Eritrea as an ILO member state.³⁰⁹ The three trade union leaders were later released in 2007 (USSD 2008a).

There is no Bar Association in Eritrea or any other independent forum for lawyers. The very few lawyers in private practice are unable to act as legal defence counsel for detainees, or to advise on other human rights grievances (AI 2004: 37). This reality undermines the emphasis put upon legal counsel and due process of law, as prescribed by ICCPR (Arts. 2.3 and 14). None of the handful of international NGOs present in the country are allowed to undertake any human rights-related programmes or awareness building. Thus ‘civil society’ – as it is generally understood – is nonexistent in the totalitarian Eritrean state (see chapter 4).

EPLF/PFDJ dissenters

High-ranking EPLF leaders and government officials, civil servants and military officers³¹⁰ are also under a constant threat of arrest or detention if they express dissent or criticise President Isaias Afwerki. Throughout the post-independence period, President Isaias was afraid of internal dissent and opposition to his increasingly omnipresent power ambitions. Thus, he regularly re-shuffled his cabinet without any warning or reason, to hinder ministers and top-level government officials from developing and cement an ‘autonomous’ power-base which could challenge him later. If some top-level cadre fell into disfavour, he would be ‘frozen’ – stripped of all formal authority and generally placed under house-arrest awaiting the outcome of the process against him.

³⁰⁵The organisation Citizens for Peace was established after the outbreak of war with Ethiopia in 1998, with the aim to report on human rights abuses inflicted by Ethiopian authorities on Eritrean deportees from Ethiopia, as part of the propaganda war. Although registered as an ‘independent’ NGO, the organisation is closely controlled by the Eritrean authorities and does not do anything to criticise human rights abuses by the Eritrean government.

³⁰⁶The Eritrean women’s associations, for instance, have conducted gender awareness campaigns and anti-FGM (female genital mutilation) work, both of which fall within the EPLF’s policies on these issues.

³⁰⁷The three leaders were: Tewelde Ghebremedhin (chairperson of the Food, Beverages, Hotels, Tourism, Agriculture, and Tobacco Workers Federation), Minase Andezion (secretary of the Textile and Leather Workers Federation), and Habtom Weldemichael (head of the Coca Cola Workers Union). See UN Commission on Human Rights, ‘Civil and Political Rights, Including the Question of Freedom of Expression, Report of the Special Rapporteur’ (E/CN.4/2006/55/Add.1), 26 March 2006, para. 334-339. See also The Observatory for the Protection of Human Rights Defenders (a joint programme of the International Federation for Human Rights and the World Organisation Against Torture), ‘Eritrea: Arbitrary arrest and incommunicado detention of three trade union leaders’, (ERI 001/0505/OBS 032), 13 May 2005.

³⁰⁸Cf. Commission on Human Rights, E/CN.4/2006/55/Add.1, 27 March 2006, Sixty-second session, Agenda item 11(c). See also UN Commission on Human Rights, E/CN.4/2006/95/Add.1, 22 March 2006, Sixty-second session, Agenda item 17(b).

³⁰⁹The UN Special Rapporteur also notes in this regard that Resolution 2005/38 of the Commission on Human Rights calls upon states to refrain from imposing restrictions which are not consistent with Article 19.3 of the ICCPR, to which the Eritrean Government acceded in 2002, including restrictions on reporting on human rights, peaceful demonstrations or political activities. Cf. Commission on Human Rights, E/CN.4/2006/55/Add.1, 27 March 2006, Sixty-second session, Agenda item 11(c).

³¹⁰Military officers are in danger of arrest mostly in relation to internal infighting between the army echelons, for instance, in relation to controlling the system of corruption/bribery within the army. Awate.com: ‘Secret Meetings, Defections, Refoulment and Expulsions’, Gedeab News, 20 November 2007 (www.awate.com).

Nevertheless, in the aftermath of the Eritrean-Ethiopian war, government ministers and top-level EPLF leaders protested against the unaccountable and monopolistic power of President Isaias. The group of EPLF leaders commonly known as the G-15 (Group of 15) were all members of the Eritrean parliament and the party's Central Committee and several of them also Cabinet ministers. At the end of March 2001 they sent a letter to the President (which later became public), which was described as a 'call for correction, a call for peaceful and democratic dialogue, a call for strengthening and consolidation, a call for unity, a call for the rule of law and for justice, through peaceful and legal ways and means'. The letter outlined several policy areas where the government had failed, most importantly in terms of establishing democracy, rule of law and respect for human rights.³¹¹ The President rejected the call for change, and in the September 2001 crack-down, 11 out of the 15 signatories to the letter were arrested, and have been held incommunicado ever since.³¹²

The Eritrean government has labelled the G-15 as traitors who tried to 'sell-out' their country during the war with Ethiopia and oust the President, justifying the continued incommunicado detention of the former prominent EPLF leaders.³¹³ However, international human rights organisations such as Amnesty International (AI 2002; AI 2004), government agencies such as the US State Department (USSD 2008a), multilateral organs such as the EU³¹⁴ and the Inter-Parliamentary Union,³¹⁵ consider the G-15 detainees to be political prisoners.

Furthermore, the arrest of the G-15 was brought to the attention of the AU African Commission on Human and Peoples' Rights. The Commission ruled that the arrests were in violation of the African Charter on Human and Peoples' Rights, Articles 2, 6, 7(1) and 9(2), and urged the Eritrean government to release the prisoners immediately and offer them compensation (see chapter 4).

FINAL REMARKS

In Eritrea today, all people – young and old, women and men, Christians and Muslims, civil servants and peasants, educated and illiterate – are susceptible to being detained and arrested. Generally, no reason is given or formal charges presented.

Against the backdrop of a widespread, and at times arbitrary, detention policy, certain groups may be identified as particularly vulnerable to arrest and governmental harassment. This study has identified

³¹¹On the inception of the Eritrean dissent movement, see Plaut (2002).

³¹²Three of the signatories were abroad during the clamp-down and thus avoided arrest, and one withdrew from his support of the group. The 11 arrested EPLF leaders are: Ogbe Abraha, Army General; formerly Chief of Staff of the Defence Force, Minister of Trade and Industry, and Minister of Labour and Social Welfare; he has chronic asthma. Aster Fissehatsion, Director in the Ministry of Labour and Social Affairs; executive member of the official National Union of Eritrean Women; EPLF official since 1977; former wife of Mahmoud Ahmed Sheriffo, also detained in September 2001; she has stomach ulcers. Berhane Gebregziabeher, Army Major-General; head of the National Reserve Force; EPLF political bureau member since 1977. Beraki Gebreselassie, former Ambassador to Germany (to May 2001); previously Minister of Education and Minister of Information and Culture. Hamad Hamid Hamad, Head of the Arabic (Middle East) Department in the Ministry of Foreign Affairs; former Ambassador to Sudan. Saleh Kekiya, former Minister of Transport and Communication, Vice-Minister of Foreign Affairs and Head of the Office of the President. Germano Nati, Regional Administrator. Estifanos Seyoum, Army Brigadier General; former Head of the Inland Revenue Service (to August 2001). Mahmoud Ahmed Sheriffo, former Vice-President (dismissed in February 2001), Minister of Local Government, and Minister of Foreign Affairs; co-founder of the EPLF. Petros Solomon, former Minister of Maritime Resources; previously Minister of Foreign Affairs, EPLF military commander and intelligence chief, EPLF political bureau member since 1977. Haile Woldetensae (or Weldensae, also known as 'Duru'e'), former Minister of Trade and Industry (until July 2001); previously Minister of Foreign Affairs during the war and the peace talks, and also Minister of Finance; former EPLF head of political affairs and political bureau member since 1977; he is diabetic (AI 2002).

³¹³See, for instance, interview with Yemane Gebremeskel, Director at the President's Office, by IRIN 1 April 2004 (<http://www.irinnews.org/Report.aspx?ReportId=49359>, accessed 6 January 2009).

³¹⁴Council of the European Union: 'Declaration by the Presidency on behalf of the European Union on political prisoners in Eritrea', 20 September 2007, 12978/1/07 REV 1 (Presse 201), P 074/07, Brussels.

³¹⁵Inter-Parliamentary Union, Resolution on Eritrea adopted unanimously by the Governing Council at its 173rd session, Geneva, 3 October 2003.

national service personnel, adherents of prohibited churches and religious organisations, individuals from the Kunama minority group, forcibly returned refugees, journalists and other human rights defenders, as well as government party dissenters, as being particularly prone to arrest.

The common denominator among these categories of people is the reality that they are liable to pose a challenge to the totalitarian control over Eritrean society by the regime. Any element, not matter how few, who are perceived to be 'independent' of the government, may be construed as a threat and must thus be subdued or annihilated. Eritrea has now entered a vicious negative cycle; as the antipathy towards the regime grows, more and more people will be targeted, again fuelling the aversion against the regime. So far, this has led to an increasing stream of refugees fleeing the country on a daily basis. At the time of writing, however, this growing aversion has not been converted into an active mobilisation and recruitment into the Eritrean politico-military resistance fronts. Comparative politics shows, however, that if such a brutal and human rights abusing policy is sustained over time, this will eventually facilitate increased recruitment to an armed resistance in order to topple the regime by any means.

7

MINORITY MARGINALISATION IN ERITREA:

EPLF'S POLICIES OF 'CULTURAL SUPERIORITY'

INTRODUCTION

Eritrea, Africa's newest state, gained independence in 1993³¹⁶ after a 30-year long war of liberation against Ethiopia. The Eritrean People's Liberation Front (EPLF) organised its resistance along a stringent nationalist ideology, where identity markers of ethnicity, culture, religion or regionalism were banned. The particular colonial history of the country, EPLF's ideology and the brutal and protracted war itself – which impacted on all people in the region – were believed to help to foster and consolidate an all-embracing national Eritrean identity (Negash 1987; Iyob 1995; Pool 2001). Today, however, nearly two decades later, the Eritrean nationhood cherished and celebrated in 1993 seems hollow, as the sovereignty of the Eritrean citizen is usurped by the ruling party who pitch the people against each other in order to perpetuate their position in power.

In independent Eritrea, the EPLF³¹⁷ sustained and even reinforced its strict nationalist ideology, as *national unity* became the principal guideline to which all government policies and development plans were aligned (EPLF 1994: 3). Consequently, the cultural diversity of the country, inhabited by at least nine distinct ethnic groups (several of which are further divided into separate clans), appeared to suffer, as arguments and claims for the enhancement and protection of cultural or minority rights were interpreted as undermining and divisive in relation to the official nationalist policy (Tronvoll 1998b).

³¹⁶The EPLF overran the capital, Asmara, on 24 May 1991 and liberated the whole country from the Ethiopian army on 28 May 1991. After a UN-monitored referendum on independence in April 1993, Eritrea declared independence and gained international recognition as a new country on 24 May 1993.

³¹⁷EPLF was renamed the Popular Front for Democracy and Justice (PFDJ) in 1994. However, the government is still usually known by its original name, EPLF. In this chapter, EPLF and PFDJ will be used interchangeably.

The main objective of this chapter is to go beyond a mere assessment of the situation of minorities in the country, in order to cast light on the historical and political contexts which influence the situation of minorities today. This will help to explain how and why the precarious minority situation in Eritrea has developed.

First, a brief backdrop on the liberation war and the context of cultural diversity will be presented, before the EPLF/PFDJ's general understanding of and policies towards minorities will be elaborated. Subsequently, the legal obligations of the Eritrean state will be addressed, in relation to its own Constitution as well as binding international treaties. Then follows a brief outline of the ethnic diversity in the country, before an analysis of the government's policies on land rights/pastoral concerns and language rights are used as examples to illuminate how current government policies are apparently sustaining the superiority of the dominating Tigrinya culture.

BACKDROPS: WAR AND CULTURAL DIVERSITY

During the war of liberation from Ethiopia, the argument that the Eritrean peoples were historically and culturally distinct from Ethiopia gave legitimacy to the struggle of the Eritrean People's Liberation Front (EPLF). At that time, this was quite a controversial position, since the scholarly work on the region generally viewed 'Eritrean' history and culture as sub-categories of Ethiopian studies (Gebre-Medhin 1989). The 'Greater Ethiopia' thesis – which subsumed all cultures and ethnic groups of the region under an Abyssinian³¹⁸ tradition – was also instrumental in interpreting political developments in the region. From the point of view of Ethiopia, Eritrea was an integral cultural-historical entity and local resistance developing in the area was framed in political – and not ethnic or ethno-nationalistic – terms. Hence, already at an early stage of the struggle in 1982, a group of fighters under the EPLF Department of Politicisation, Education and Culture launched a scheme to identify, gather, and document specific ethnic customs, cultural traditions and historical traits unique to the nine ethnic groups of the country, in order to prove their 'distinctness' from the Ethiopian cultural sphere. In retrospect, however, the objective of the effort was defined as to identify and understand the indigenous knowledge of the Eritrean peoples in a socio-economic context (WB 2001).

The project to gather and analyse indigenous knowledge data from the many Eritrean ethnic groups continued after independence, although at a restricted pace due to the lack of formal scholarly training of the fighters responsible for the project. In 1995 the official Eritrean newspaper *Eritrea Profile* started to run the regular column, 'Eritrean traditions and customs,' presenting bits and pieces of the many interesting and varied customs among the nine Eritrean groups. Likewise, at official occasions in Asmara, folklore and traditional dances of the Eritrean minority groups were displayed as exotic artefacts of the new nation. Beyond that, the interest and concern for the minority cultures of the country did not seem to penetrate deep into the policies of post-independent Eritrea, as the nationalist ideology of EPLF – strongly influenced by highland Tigrinya cultural perceptions – defined the parameters of all development plans. The pretence of making allowances for the ethnic minorities of Eritrea through official cultural shows made the native Kunama anthropologist Dr Alexander Naty describe the practice as: 'We only have "dance-democracy" in Eritrea. The minority groups are allowed to make public appearances at government hosted cultural events. All other minority rights and political liberties are, however, brutally crushed.'³¹⁹

³¹⁸The term Abyssinia is used to denote the historical polity that embraced both Eritrea and Ethiopia prior to the advent of the Italian colonial ambitions in the region.

³¹⁹Extracted from an interview I conducted with Dr Naty in Asmara, in September 1996.

The Eritrean government's strong emphasis on national unity – ideologically anchored in the liberation struggle, manifested through the Eritrean National Charter of 1994, and enshrined in the 1997 Constitution – apparently works as an impediment to protecting cultural and minority rights in the country. Minority rights, as defined by international instruments, are perceived as an antithesis to the strong nationalistic policies and practices of the Eritrean government.

THE EPLF/PFDJ'S POLICIES ON MINORITIES

In the National Charter – the Government's vision of how to develop independent Eritrea – it is declared that *national unity* is the principal guideline to which all government policies and development plans will be aligned (EPLF 1994: 3). All 'divisive attitudes and activities' are condemned and rejected, and the Charter places 'national interests above everything else' (EPLF 1994: 13). Within this ideological framework, diversity suffers and cultural and minority rights are portrayed as illegitimate claims threatening the coherence of the Eritrean nation. This may be illustrated by how President Isaias Afwerki himself described the emerging opposition towards the implementation of new regional divisions (*zoba*) in the country in 1995, which deliberately broke down old administrative borders partly aligned along ethnic lines:

The history of regional boundaries in Eritrea does not go back more than 100 years. All Eritreans are born equal. No ethnic group is superior or inferior to any other group. Eritrea belongs equally to every Eritrean. No social group is more closely related to land than the rest. There was a time when people thought in terms of 'we' and 'they' using religion and regional [ethnic] boundaries as bases. However, such notions have been put aside during the 30-year long struggle, and it is because the fighters struggled as one person by uniting their hearts that we were able to achieve our goal of liberation. A person should be judged not by his place of origin but by his mental capacity, good manners and sense of altruism. Those who think otherwise are mentally sick and we should not allow them to impose their will on us. The government will not restrain itself from taking appropriate measures regarding those who misinterpret and misconstrue any administrative or developmental policies in order to create religious and regional conflicts. (Quoted in Eritrea Profile, 27 September 1995).

The Eritrean government's position on minority rights reflects the ideological origin of the liberation struggle. The Eritrean People's Liberation Front (EPLF), the precursor of today's government, defined its war against Ethiopia on a nationalistic basis, struggling to liberate the territory of Eritrea and all its culturally diverse inhabitants. The EPLF in principle rejected all notions of ethnicity in the struggle (as was the predominant organisational platform of resistance in Ethiopia), and fought as *Eritreans*, not as Tigrinya, Afar, Tigre or some other ethnic group. Ethnicity, and in particular minority concerns, was in this regard perceived as irrelevant and as a possible obstacle to the formation of a coherent national front. Thus, 'minorities' is not even a term recognised or used by the government: in the official language of the state, ethno-linguistic communities are identified as 'nationalities' (Pool 1997: 5).

The EPLF liberation strategy was clearly successful, both militarily and ideologically. Through the struggle for independence, it managed to forge an Eritrean consciousness and identity among the many ethnic groups in the country (Iyob 1995; Pool 2001). However, this does not mean that other sub-national identities, based on ethnicity, clan, descent or locality, were 'replaced' or 'forgotten'. A national identity was created on top of in or parallel with other culturally-defined identities which still are perceived as residual categories of identity in the country (see also Tronvoll 1998a; Naty 2002b).

MINORITY RIGHTS OBLIGATIONS OF THE STATE OF ERITREA

The legal protection of cultural and minority rights in Eritrea is inadequate. To my knowledge, no

specific act or proclamation is drafted with the aim to protect minorities or their cultural traditions. Hence, as a starting point, we need to turn to the Eritrean Constitution in order to acquire an understanding of the Government's legislative position on this issue.

The Eritrean Constitution on minority and cultural rights

The Eritrean Constitution makes limited references to cultural and minority rights. The first and most important one is Article 4(3), which states that 'the equality of all Eritrean languages is guaranteed'. Furthermore, Article 6(1) points out that 'as the people and government struggle to establish a united and developed Eritrea, within the context of the diversity of Eritrea, they shall be guided by the basic principle 'unity in diversity'. In Article 6(2), however, the Constitution downplays the 'diversity' of the people, and stresses that: 'The State shall strengthen the stability and development of the country by encouraging democratic dialogue and national consensus through participation of all citizens; by building strong political, cultural and moral foundations; and by promoting national unity and social harmony'. This principle is followed by Article 9 of the Constitution, covering 'national culture'; no mention whatsoever is made of the many minority cultures of Eritrea, as all attention is focused on developing unity and a *national* culture of identity.

The principle of non-discrimination and equality under the law is enshrined in Article 14(2), where it is explicitly stated 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 factors*' (emphasis added).

The principle of non-discrimination and equality is also emphasised under Article 21 of the Constitution, covering 'economic, social and cultural rights and responsibilities'. Under Article 21(4), it is prescribed that: 'The State and society shall have the responsibility of identifying, preserving, developing, as need be, and bequeathing to succeeding generations, historical and cultural heritage; and shall lay the necessary groundwork for the development of the arts, science, technology and sports, thus encouraging citizens to participate in such endeavours'. The Constitution does not, however, specify if this 'historical and cultural heritage' relates to minority cultures per se, or if it should be interpreted as Eritrean national cultural heritage.

Eritrea's international obligations to protect minority and cultural rights

The protection of cultural diversity may be approached from two different angles: from a universalistic or a particularistic viewpoint. Based on the fundamental principles in human rights of equality and non-discrimination, all peoples, irrespective of their cultural or ethnic background, may freely maintain and develop their culture, language and ways of life while participating on an equal footing in societal activities, economic progress and development. As such, the other ethnic minority groups in the country should be put on an equal footing with the majority Tigrinya group in all spheres and activities of society. Seen from a particularistic perspective, furthermore, it may be argued that certain particularly vulnerable groups may need special attention and measures and positive action in order to protect, maintain and develop their culture. Inspiration as to the fields for positive action and special measures can be found in the two UN Declarations; the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities³²⁰ and the Declaration on the Rights of Indigenous Peoples.³²¹ In the former declaration, emphasis is placed on the obligations of the state to 'protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity' (Article 1); whereas the latter, for instance, also emphasise the important principle of indigenous

³²⁰UN General Assembly Resolution 47/135, 1992.

³²¹UN General Assembly Resolution 61/295, 2007.

peoples to 'consider themselves different' from the majority, and 'to be respected as such' (preamble). The principle of equal value and dignity of all cultures has been reaffirmed by the UN General Assembly resolution on 'Human Rights and Cultural Diversity'.³²² This holds true for prevention and mitigation of cultural homogenisation, as well as tolerance towards cultural diversity as a means for the advancement of peace (Iovane 2007: 249). The former UN Commission on Human Rights stressed this too, in its resolution, 'Promotion of the Enjoyment of the Cultural Rights of Everyone and Respect for Different Cultural Identities',³²³

The United Nations Educational, Scientific and Cultural Organization (UNESCO) is particularly dedicated to promoting respect for cultural diversity. In the Universal Declaration on Cultural Diversity (unanimously adopted in November 2001), UNESCO aims, inter alia, to preserve cultural diversity as a living, since the 'defence of cultural diversity is an ethical imperative, inseparable from respect for human dignity' (UNESCO 2001: Article 4).³²⁴

The above declarations and resolutions are not legally binding on states, but should be seen as general aspirations to be followed by UN member states. Eritrea is, however, bound by three international conventions which relate to cultural and minority rights,³²⁵ because it has ratified the International Covenant on Civil and Political Rights (ICCPR),³²⁶ the International Covenant on Economic, Social and Cultural Rights (ICESCR),³²⁷ and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).³²⁸

ICERD is the most important international legal instrument to prevent discrimination and inequality along ethnic and racial lines. In Article 1, racial discrimination is defined as:

[...] any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

State parties to the Convention are thus obliged to follow up and work actively to protect and enhance racial/ethnic equality in all sectors of society and fields of policy and governmental activity (Article 2). State parties shall also guarantee fundamental human rights to everyone, without distinction to ethnicity or origin (Article 5). As shown in this study, some of these rights are violated systematically in relation to the Kunama minority group in Eritrea, such as the right to equal treatment before the law, the right to security of persons against violence, the right to freedom of movement and residence, and the right to nationality (see chapter 8).

³²²A/RES/58/167 'Human Rights and Cultural Diversity', 4 March 2004. Moreover, UN General Assembly Resolution 60/1 (of 24 October 2005) endorsing the 2005 World Summit Outcome, also underpins the rights aspect of cultural diversity, confirming it as 'one of the key values of contemporary international relations' (Iovane 2007).

³²³UNHRC Resolution 2005/20, 14 April 2005.

³²⁴These intentions are further enshrined and elaborated on in the Convention on the Protection and Promotion of the Diversity of Cultural Expressions (adopted 2005, entry into force March 2007) (UNESCO 2005). The Convention states that 'cultural diversity can be protected and promoted only if human rights and fundamental freedoms, such as freedom of expression, information and communication, as well as the ability of individuals to choose cultural expressions, are guaranteed' (Article 2.1); and the fact that 'the protection and promotion of the diversity of cultural expressions presuppose the recognition of equal dignity of and respect for all cultures, including the cultures of persons belonging to minorities and indigenous peoples' (Article 2.3). Eritrea has not ratified the UNESCO Convention on cultural diversity, and is thus not obliged to comply with its rules.

³²⁵Some of the legal instruments geared to granting special prerogatives to minorities and indigenous peoples – like ILO Convention no. 169 – are not ratified by Eritrea, however, and are thus not relevant for discussion in this paper.

³²⁶Ratified by Eritrea in 2002.

³²⁷Ratified by Eritrea in 2001.

³²⁸UNGA Res. 2106 (xx). Ratified by Eritrea in 2001.

Article 27 of the ICCPR provides that persons belonging to minorities ‘shall not be denied the rights, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language’.³²⁹ Importantly, though, these are rights granted to individuals in a group and not to the group collectively as such. The individual rights depend in turn on the ability of the whole minority group to maintain its culture, language and religion,³³⁰ and reveal as such a collective element (Novak 2005: 655). The substance of the rights guaranteed by Article 27 focuses on ‘ensuring the survival and continued development of the cultural, religious and social identity of the minorities concerned, thus enriching the fabric of society as a whole’.³³¹

The right of minorities to the common enjoyment of their specific culture creates directly applicable duties on State parties to refrain from actions which might limit and destroy the exhibition of ‘cultural life’ of the group, for instance, in practising their customs, traditions and rituals, as well as traditional economic activities as pastoralism and hunting (Novak 2005: 658-659). Of direct relevance to the Kunama case discussed in chapter 8 is the interpretation that Article 27 of the ICCPR prohibits state parties from denying minorities access to and residency in their traditional home areas; and ‘all measures which threaten the way of life and culture of a minority, such as large-scale expropriations of minority lands for commercial purposes’ constitute a violation (Novak 2005: 659).

ETHNIC DIVERSITY IN ERITREA

Eritrea is officially described as being inhabited by nine ethnic groups, all diverse in culture, religion, and activities of production. Dividing ethnicity into fixed categories of population groups is, however, difficult from a scholarly viewpoint. For instance, the classic study on ethnic groups and clans in Eritrea, conducted by the anthropologist S.F. Nadel while he served as a military administrative officer in the country during the Second World War, illustrates this point well, as he lists a number of groups and clans not officially recognised as distinct groups today (Nadel 1944).

Tigrinya is the language of the highland population, which is the largest population group in the country, possibly constituting around 50 per cent of the total population (see table below). They usually refer to themselves as ‘highlanders’ (*kebessa*), but the term describing their language (*Tigrinya*) is generally used to denote the ethnic group also. The *Tigrinya* speakers are also to be found in the urban centres of the lowlands and the ports of Massawa and Assab, and in neighbouring Tigray regional state of Ethiopia. They are mostly sedentary agriculturists, and share a common tradition of Orthodox Christianity, but include also groups of Roman Catholics and a small minority of *Jeberti*, *Tigrinya*-speaking Muslims. Muslims have traditionally been denied access to land in the Christian Orthodox highlands, thus today the *Jeberti* are mostly merchants and urban dwellers.

The *Tigre* group is constituted of diverse peoples inhabiting parts of the western lowlands, the northern highlands, the northern coastal plains, and parts of the Dahlak islands. The ten or so different clans speaking the *Tigre* language, of which the largest is Beni Amer, do not form a distinct ethnic entity, although they share a common adherence to Islam (cf. Fegley 1995).

The *Rashida* speak Arabic and form the smallest ethnic group, population wise, in Eritrea. They are a nomadic people who migrated from the Arabian peninsula in relatively recent times. They are found in small shifting concentrations in north-eastern Eritrea and the Sudan.

³²⁹The right of persons belonging to majority groups, such as the *Tigrinya* speakers of Eritrea, to protect and advance their culture is to be found in Article 15 of CDESCR. For elaboration, see (Eide 2001).

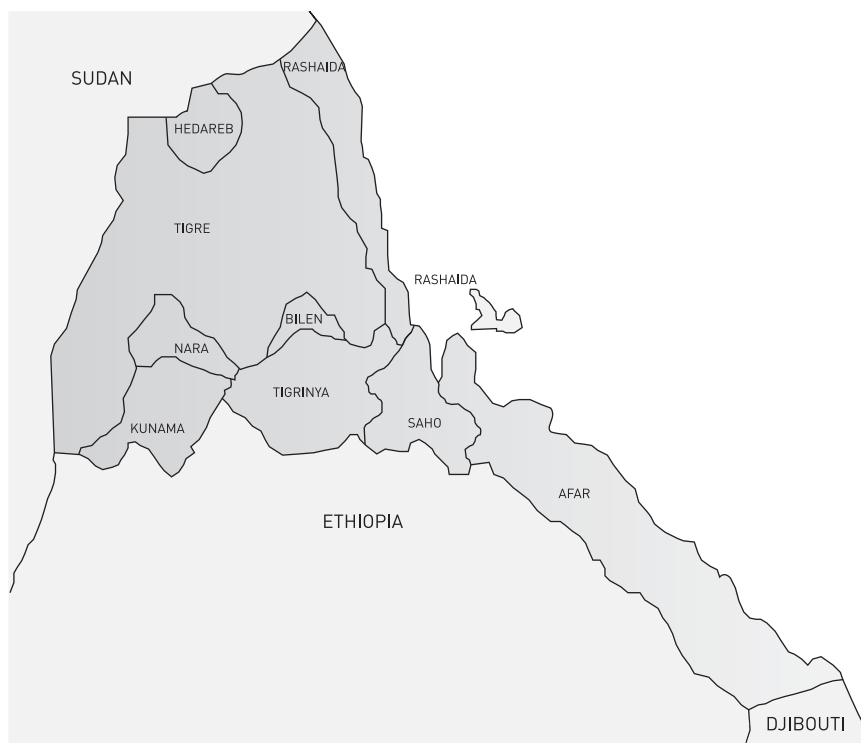
³³⁰See UN Human Rights Committee, General Comment No. 23 (1994), paragraph 6.2.

³³¹UN Human Rights Committee, General Comment No. 23 (1994), paragraph 9.

The *Afar* is the largest of the Cushitic speaking groups in Eritrea, inhabiting the lowland coastal strip of Dankalia and they are also to be found in Ethiopia and Djibouti. The *Afar* are agro-pastoralists and are organised on a clan basis. The *Saho* is more like a linguistic category, based on a shared East Cushitic language, than an ethnic group. The *Saho* inhabit the escarpment region between the eastern lowlands and the *kebessa*. They are clustered in small pastoral nomadic and semi-nomadic groups. It is believed that the origins of the diverse groups speaking *Saho* are mixed, including elements from the *Afar*, *Tigrinya*, *Tigre*, and others. *Bilin* is a Central Cushitic language spoken by the people living in and around the town of Keren. The *Bilin* are sedentary agriculturists and in Keren some are occupied with trading.

Two languages spoken in Eritrea belong to the Nilo-Saharan language group. One is *Nara*, also known as *Baria*, a language spoken by the *Baria* people living in the eastern Gash region in the western lowlands.³³² They are sedentary agriculturists, and live in small villages, divided in a clan structure. *Kunama* is the other Nilo-Saharan group in Eritrea. They too inhabit the western lowlands between the rivers Gash and Setit, living predominantly as sedentary agriculturists. The social structure of the *Kunama* is based on a division into six clans. The clans are strictly exogamous, and they are the only group in Eritrea where descent is recognised through the maternal line. The *Beja*, in newer literature called the *Hedareb*, is a nomadic group living in the north-east and north-west border region (and is also to be found in Sudan).

Figure 2. Map of ethnic group distribution in Eritrea



³³²Baria is an Amharic/Tigrinya term for 'slave', thus seen from the dominant population group this is a derogatory term. However, many informants from the lowland state that the people themselves use Baria as a self-descriptive term, not implying any servile connotations at all.

Table 1.**Eritrean population by ethnic group**

Ethnic group	Population	Percentage
Afar	160,000	6.0
Bilen	64,000	2.0
Hedareb	80,000	2.5
Kunama	64,000	2.0
Nara	48,000	1.5
Rashida	76,000	2.4
Saho	160,000	5.0
Tigre	992,000	31.0
Tigrinya	1,600,000	50.0
Total	3,200,000	100

Source: Planning Office, Ministry of Education, Asmara, Eritrea, 1996 (cited from Woldemikael 2003: 120)

SUSTAINING CULTURAL SUPERIORITY: PERPETUATING MINORITY DISCRIMINATION

Within certain areas, the Eritrean government's development policies reflect a socio-historical and cultural bias. The reality is that the highlanders have throughout history maintained hegemony over what the state is supposed to be, whom it should embrace, and how its policies (whether military or domestic) ought to be designed. The sedentary Christian Orthodox highlanders of Eritrea and Ethiopia (*kebessa* and *habesha* respectively) have always dominated the Abyssinian realm (Eritrea and Ethiopia) and thus been instrumental in designing the political attributes of the state and the dominating culture of the nation (cf. Tronvoll 2009b).

In the Eritrean case, this hegemony was even exacerbated after independence, as the demographic weight of the Tigrinya population increased considerably in relation to the population of the state. (As part of Ethiopia, the Tigrinya-speaking population constituted about 8 per cent of the population; in independent Eritrea about 50 percent). The tradition of rule by the highlanders – in combination with what they perceive as their more advanced mode of production (sedentary agriculture), more developed culture, and being morally enlightened through Christianity – have thus impacted negatively on the accommodation of true cultural diversity under the independent state of Eritrea. Cases in point may be the lack of protection of pastoral rights under the new land tenure regime and the implementation of mother languages as the medium of instruction in public primary schools (see below).

The Neglect of Pastoral Rights: Eradicating 'Backwardness'

The Eritrean land reform (proclamation no. 58/1994) adopts a sedentary agriculturalist's view of landed property, disregarding pastoral and nomadic rights. During the struggle, the EPLF encouraged the nomads to settle, and provided for education, health services and vaccination of cattle in the liberated areas.³³³ The rival Eritrean Liberation Front (ELF), on the other hand, supported the nomads'

³³³Cf. National Democratic Programme of the EPLF (1977), Article 2.A.5: 'Provide the nomads with veterinary services, livestock breeding experts, agricultural advisors and financial assistance in order to enable them to lead settled lives, adopt modern techniques of agriculture and animal husbandry and improve their livelihood' (my italics). The same article is repeated in the National Democratic Programme of 1987 (Art. 2.A.5), adopted at the second congress of the EPLF.

traditional way of life and defended their rights of livelihood, a stance which was, to a certain degree, reciprocated by segments of the lowland agro-pastoralist groups with political support and backing.

After independence, the government of Eritrea designed a macro development policy which favoured agricultural rights over pastoral ones, and pastoralism was never mentioned as a potential area of growth and sustainable development.³³⁴ The land reform proclamation furthermore included no special provisions protecting the grazing rights or rights of movement of herds of the lowland groups who traditionally practise pastoral nomadism and mixed agro-pastoralism. This may be seen as a violation of the cultural rights of these groups.

The diverging interests between agriculturists and agro-pastoralists ('pure' pastoral nomads account only for about 5 per cent of the total population) might be read as a political discourse, displaying the contrasting political priorities of the EPLF/PFDJ *vis-à-vis* the political opposition, historically represented by the ELF. New settlement schemes are being planned and implemented in the western lowlands, directly infringing traditional pastoral areas. The settlers are both returning refugees from the Sudan and ex-fighters, of whom the majority are Tigrinya highlanders. Therefore, giving legislative protection to agriculturists and not to agro-pastoralists sustains and broadens the cultural influence of the Tigrinya mode of production, at the expense of the economic activities pursued by minority groups.³³⁵ It is thus plausible to argue that the regime aims to transform the pastoral nomadic groups into sedentary agriculturalists, and hence possibly mould them into replicas in terms of traditional production system of the dominant group.

The Contradictions of Language Rights

Language rights are a vital medium for enjoying, preserving and developing minority cultures. International treaties binding on Eritrea grant minorities the right to use and develop their languages.³³⁶ Similar to the land policy discussed above, the main 'official' objective and motivation for the new language policy in Eritrea is to foster national unity and identity in developing the country, while respecting cultural diversity (Woldemikael 2003). Or, as phrased by the head of Organisational Affairs in the EPLF/PFDJ: 'The EPLF's policy in the past and the government's policy at present has been and is [...] based on objective realities. This policy has served and serves national identity, unity and interest, and puts into consideration and safeguards the rights of the individual.'³³⁷

At an early stage, the Provisional Government of Eritrea (PGE)³³⁸ emphasised the 'diversity in unity' argument and declared that: 'Every nationality has the right to its own language or any other language of its choice at the primary school'.³³⁹ The Eritrean government justified its policy by referring to

³³⁴See, for instance, the state of Eritrea's Development Letter, prepared for the World Bank's Consultative Group Meeting for Eritrea, in Paris, 10-20 December 1994, and the government's Macro Policy document, November 1994, which lists the main objectives of the new land policy as: 'encourages long-term investments in agriculture and prudent environmental management; assures women's right to land on equal basis with men; promotes commercial agriculture' (p. 34).

³³⁵One informed observer of Eritrean politics told me that one of the main reasons behind this narrow-minded development strategy is that there are more or less no policy makers or decision makers in the regime with a nomadic-pastoralist background. The regime's bureaucracy is predominantly drawn from the highland sedentary population, and is ignorant of pastoralist values and mode of life. Therefore, 'the EPLF/PFDJ believes that what is good for the sedentary agriculturalist must be good for the pastoralist', according to my informant (personal communication, 28 February 2009). On a different note, not giving pastoral rights proper legislative protection is also questionable in terms of sustainable development (Joireman 1996); and the possible negative environmental impact, a point stressed by Alexander Naty in his research on environmental degradation in Eritrea's western lowlands (Naty 1998, 2002a).

³³⁶Article 27 of the ICCPR.

³³⁷Abdella Jaber, quoted in 'Unity in linguistic diversity', Eritrea Profile, 27 July 1996, p. 2.

³³⁸The PGE acted during the interim period after the military liberation of the country the 24 May 1991 until formal independence was declared after a referendum in 24 May 1993.

³³⁹Provisional Government of Eritrea, 'Declaration on Education in Eritrea', Legal Notice, No. 2/1991, 2 October 1991, Department of Education, Asmara (cited from Woldemikael 2003).

UNESCO's argument explaining that the use of the mother language in primary schools enhances the learning capacities of children. Furthermore, it was also emphasised that the use of mother languages in schools has the 'advantage of preserving minority languages and folk traditions that would be threatened if the government were to pursue policies and practices emphasizing the principle of "one state, one nation, one language"' (Woldemikael 2003: 122). This argument has, however, been questioned by Eritreans belonging to the minority groups, claiming that the 'so-called mother-tongue policy was adopted in order to sustain the marginalisation of the minority groups since they would not be fluent in the dominant language of the state, Tigrinya'.³⁴⁰ This will sustain discrimination against the minority students in admission to institutions of higher education, as well as possible employment careers in the civil service, where a fluent command of Tigrinya is compulsory.

In all sectors of governance, the EPLF has attempted to modify 'traditional' society through developing the educational system as a tool of centrally planned processes of social and cultural change (see also Tronvoll 1998b; Woldemikael 2003: 120). It is thus important to contrast the formal policies ('law in books') with the implemented practice ('law in action'), in order to assess the use and development of minority languages in a human rights perspective.

The education policy encourages using the mother tongue as the language of instruction in elementary school (up to grade 7). In addition, all elementary school children are required to learn Tigrinya and/or Arabic (the two languages which are considered to be the working languages of the Eritrean government),³⁴¹ and English, which is the medium of instruction in all schools beyond the primary school level (Woldemikael 2003: 122). This implies that Tigrinya children must learn Arabic and English in addition to Tigrinya; the Rashida children (the only group speaking Arabic as their mother language) will learn Tigrinya and English in addition to Arabic; and the rest, i.e., children from the seven remaining minority groups, must learn Tigrinya, Arabic and English, in addition to their mother tongue.

The designation of Tigrinya and Arabic as the official working languages of the state (it is questionable, though, whether one can call Arabic a working language in practice in Eritrea), and English as medium of instruction beyond grade 7, grants these languages a special status above minority languages in the country. In effect, this implies that the government is contradicting its own stated commitment to the equality of all Eritrean languages (Woldemikael 2003: 123). Woldemikael notes further that the application of the education policy has been fraught with difficulties, as the principle of the right to use 'its own language or any other language of its choice at the primary school' has been subject to local interpretation and negotiation (Gottesman 1998: 225-229; Woldemikael 2003: 124).

Apparently, the implementation of the language policy in Eritrea creates a threefold pattern, aligned more along religious lines than ethnicity (Woldemikael 2003: 124-128). The Christian population groups accept fully the aim of instruction in the mother tongue. In relation to the dominant ethnic group, the Tigrinya speakers, this is no surprise, since their mother tongue is also the main language of the state. However, the Kunama, who are predominantly Christian (Lutheran Protestants), have also adopted the Kunama language as the medium of instruction in the schools.³⁴² The minority of Christian Tigre

³⁴⁰One noted observer illustrated the devious use of the policy by the government with the Arabic proverb, 'A word of truth intended to serve falsity' (Kilmet haq yuradu biha batil). Personal communication, 2 April 2009.

³⁴¹Arabic was justified by its historical position in the region, as well as the fact that it is used as a language of commerce and trade in the western lowlands and as the language of their religion among the Muslims.

³⁴²The Swedish evangelical mission started its work among the Kunama in the mid 1860s. Also the Roman Catholic Church conducted missionary activities among the Kunama during the Italian colonial period. One of the main tasks of the missionary work was focusing on establishing schools among the Kunama, and to develop their language into a written script (Normark 1972; Woldemikael 2003). It should be noted, however, that it is extremely difficult to divide and classify the Kunama, like other groups on the region, into categories of specific religious denominations, since religious syncretism and ambivalence are inherent in these communities.

speakers also prefer to use Tigre as their language of instruction. Most Muslim communities, on the other hand, including Tigre, Nara, Afar, Saho, Bilen, Hadareb and Jeberti, have chosen Arabic instead of their ethnic languages. A cause, or an effect, of this is that there are no schools in Eritrea offering instruction in the minority languages of Nara, Bilen, Afar, and Hadareb. Consequently, the use and sustainability of these minority languages has reportedly been neglected.³⁴³

The reactions to the new Eritrean language policy can be explained from both historical and contemporary contexts. First, the structural discrimination of the lowland, Muslim minority groups has been sustained for centuries, as they have been perceived as 'alien' to positions of power and authority in relation to the Abyssinian feudal system.³⁴⁴ Furthermore, most of the urban centres are located in the highlands; hence public institutions and the infrastructure of the state tend to be overrepresented among the Tigrinya highlanders. For instance, as late as 1958, there was not a single school in the Muslim areas of Eritrea (Pool 1997: 9).

The overrepresentation of Tigrinya is continuing even today. It is estimated that the Tigrinya constitute about half of the Eritrean population; but 82 per cent of school pupils are taught in Tigrinya and 68 per cent (370 out of 549) of the total number of schools teach in Tigrinya (in 1996-7) (Woldemikael 2003). Hence, the absolute dominance of Tigrinya as a medium of instruction in Eritrean schools does not reflect the demographic composition of the population. Furthermore, Tigrinya is the sole language of instruction during military training and the language of command of the Eritrean army,³⁴⁵ which bestows on it unprecedented importance in the highly militarised Eritrean society. In reality, moreover, Tigrinya is the dominant working language of the state, as it operates as the working language of the bureaucracy, the courts, the arts, and among the literati.

Possibly as a reaction to the dominant Tigrinya culture, the Muslim lowland groups have turned to Arabic as a medium of instruction rather than their minority languages. This is most noteworthy among the Tigre group, which is the second largest group in Eritrea, constituting about 30 per cent of the total population of the country, but just 5 per cent of schools (29 out of 549) used Tigre as a medium of instruction in 1995-6. Furthermore, only 3 per cent of the pupils in elementary schools were learning in Tigre, whilst 12 per cent chose Arabic as the language of instruction³⁴⁶ (Woldemikael 2003: 127).

Arabic is developing into a lingua franca among the Eritrean Muslims. They pray in Arabic; it is used by religious leaders in mosques as well as by teachers in Koran schools; and traditional judges use it in administering *shari'a* law. Arabic is also the language of trade and business among Muslim communities. Thus, the demand for Arabic is driven by both local and public needs, as is reflected in the growth of the language as medium of instruction. From 1993/4 to 1996/7, 32 new schools started to use Arabic as a medium of instruction, surpassing the growth rate of all other languages, including Tigrinya (which had a 22 per cent net increase) (Woldemikael 2003: 127).

The government seems to interpret the increased interest in Arabic as a medium of instruction as an expression of opposition to its language policy and ultimately its nationalistic ideology, as it is interpreted against the historical discourse on Eritrea after the collapse of Italian colonialism in 1941.

³⁴³Landinfo note, Norwegian Immigration Authorities, Oslo, August 2007: at <http://www.landinfo.no/index.gan?id=834&subid=0>, accessed October 2008.

³⁴⁴Non-Christian lowlanders (not Habesha/Kebessa) could obtain high office under the feudal Abyssinian state by converting to the Orthodox faith, learning Amharic/Tigrinya and assimilating into the Christian Amhara/Tigrinya culture.

³⁴⁵After grade 12, all educational institutions in Eritrea are administered by the military. All Eritreans of 18 to 45 years of age have to undergo 18 months of national service, including 6 months of rigorous military training. In effect, though, the national service programme has been never-ending since 1998 and the general mobilisation of Eritrean society as a consequence of the Eritrean-Ethiopian war.

³⁴⁶Only the Rashida, constituting about 2.4 percent of the population, have Arabic as their mother tongue.

At that time certain national and international actors argued that the country should be divided into an Arabic-speaking, Muslim, lowland sector (which could be united with Sudan) and a Tigrinya-speaking, Christian highland sector (which could be united with Ethiopia).³⁴⁷

In spite of the growing popular demand for Arabic as a medium of instruction, the government is accused of denying certain groups the use Arabic as a medium of communication. Mohammed Salih Ibrahim, a representative of the Eritrean Islamic Party for Justice and Development, explained that particularly Muslims living in the highlands (the Jeberti) were discriminated against in this regard:

The government tells people to use Tigrinya not Arabic. I speak and understand Tigrinya as well as Arabic. We, the Muslims in the highlands, were not oppressed by the dominant people of the Tigrinya; we like and are used to speak Tigrinya. But what is important here is that the government stopped our language and is forcing us to speak Tigrinya. The government is using this tactic to make trouble between us and the Eritrean people.³⁴⁸

As a major regional and international language, Arabic may appear more attractive to learn than ethnic minority languages. Hence, resistance to the policy of using the mother tongue in Eritrean schools by Muslims is probably related to a conscious decision to pursue broader strategies of social and economic upward mobility, since economic and political rewards and benefits are more likely to accrue to those who are fluent in Arabic rather than an Eritrean minority language. Additionally, Eritrean Muslims may turn to Arabic and their common faith as a strategy to resist the political domination of the Tigrinya culture projected by the EPLF/PFDJ government. As this brief discussion of the implementation of government language policy illustrates, the divide between highlands and lowlands, Christians and Muslims, Tigrinyas and minority groups, still largely prevails in Eritrea (cf. also Pool 1997: 9).

FINAL REMARKS

The Eritrean government's strongly nationalistic ideology and policies, in combination with the ruling party's highland Tigrinya cultural inclination and dominance, makes minority rights and protection a marginalised field in Eritrea today. Although certain policies on paper appear to follow the state's motto of 'Diversity in Unity', in reality they apparently sustain the Tigrinya cultural and political domination of Eritrean society.

Furthermore, as certain groups defined along ethnic (e.g. Kunama), cultural (e.g. pastoralist), or religious (e.g. Muslim) lines are construed as a threat to government policies and societal order, special protection or incentives to cater for the rights of these groups and their demands are negated.

³⁴⁷'Unity in linguistic diversity', Eritrea Profile, 27 July 1996, p. 2.

³⁴⁸Quoted from an interview with me, conducted in Arabic, on 19 April 2008 at Khartoum (Sudan), my translation into English.

8

DIVERSITY DIMINISHED IN ERITREA:

TARGETING THE KUNAMA MINORITY GROUP

INTRODUCTION

The consolidation of nationalist sentiments in Eritrea and the construction of a centralist, unitary state after independence in 1993 have led to a growing tension between the dominant nationalist ideology – which partly reflects the cultural sentiments of the Tigrinya majority group – and minority groups. This is aggravated by the fact that the EPLF/PFDJ government is perceived by many minority representatives to be a predominantly ‘Tigrinya’ government as the language and political culture of the government stems from the Tigrinya group inhabiting the Eritrean highlands and urban centres throughout the country.

Of the many minority groups in Eritrea, the government has seemingly singled out the Kunama group as a special concern for the state. The history of the Kunama population can be read as a narrative of sustained violations of minority rights, in addition to a general contravention of basic human rights, such as the right to life and the prohibition of torture and collective punishment. In order to highlight concerns about Eritrea’s minority populations, this chapter will analyse the situation of cultural and minority rights in Eritrea exemplified by the case of the Kunama group and based on the framework for the general protection of minority rights as developed by the UN Independent Expert on Minority Issues (McDougall 2007: 334). A human rights-based approach to the protection of minority rights should include the following four aspects: (1) Protecting a minority’s existence, including the physical integrity of persons belonging to minorities; (2) protecting and promoting cultural and social identity; (3) ensuring non-discrimination and equality, including ending structural or systemic discrimination; and (4) ensuring effective participation of minorities in public life, especially in decisions that affect them.

First the historical marginalisation and suppression of the Kunama will be highlighted, followed by an in-depth analysis of the stigmatisation of the Kunama in independent Eritrea. Emphasis will be put on the recent government campaign against the Kunama in the wake of the 1998-2000 Eritrean-Ethiopian war, the encroachment of Kunama land rights, and the targeting of their cultural sites and symbols which has led to an increasing stream of Kunamas as 'cultural' refugees to neighbouring Ethiopia.

THE KUNAMA

The Kunama is one of the smallest ethnic groups in Eritrea, and is estimated to number between 50,000 and 140,000 people.³⁴⁹ They live in small scattered communities in the areas around the Setit and Gash river basin (western lowlands), which extends up to and along the Eritrean and Sudanese border in Eritrea and the adjacent districts of Humera and Adi Abo in the Tigray regional state in north-western Ethiopia.³⁵⁰ The town of Barentu in the Gash-Setit area has traditionally been viewed as the Kunama 'capital'.

The frontier location of the Kunama group has positioned them in a precarious political situation. The anthropologist Dominique Lussier describes the consequences of their location as: 'The advent of Eritrea as a newly created state has put the Kunama in the position of a double periphery now that the national borders have divided them on the ground' (Lussier 1997: 441).

The Kunama people are today nominally divided into four main groups: Kunama Aimasa, living in the western part of the provincial capital town of Barentu; Kunama Barka, living along the river Gash in the south-eastern part of Barentu; Kunama Marda, residing in the north-eastern part of Barentu; and Kunama Tika, living along the river Gash in the southern part of Barentu (USCIS 2003: 2). The traditional political structure was territorially defined, dividing the Kunama into six political divisions, which are divided in turn into three to four sections corresponding to well-defined localities.

A history of oppression

Throughout history the Kunama have been exposed to conflict and subjugation from neighbouring groups (Longrigg 1945; Naty 2004). The native Kunama anthropologist, the late Professor Alexander Naty, stressed in particular the hostile historical relationship between the Kunama and the 'Abyssinians', i.e. the ruling highlanders in current day Eritrea and Ethiopia. The highlanders viewed the Kunama as secondary people, since they were originally non-Christians and their livelihood differed from the sedentary agriculturalist practice dominant in the highlands. Repeated raids against Kunama villages where people were enslaved, cattle stolen and villages torched, has left an imprint in Kunama collective memory of the highlanders as enemies (Naty 2004: 2).

Historians have documented repeated massacres on the Kunama throughout history, and in successive raids by Abyssinian forces towards the end of the nineteenth century (and in particular the 1886 campaign by Ras Alula, the governor of Tigray), it is estimated that the Kunama was decimated from about 200,000 to only 10,000–15,000 people (Longrigg 1945: 68-72; Erlich 1996: 101; Kibreab 2008: 80-82). With the advent of Italian colonialism, the raiding of the Kunama ceased. Italian colonial rule

³⁴⁹No national census with categories for ethnicity is available. Estimates of the size of the Kunama population thus vary accordingly. The authoritative language database, Ethnologue, reports that 142,000 people speak the Kunama language, of which 140,000 reside in Eritrea (Ethnologue.com: 'Kunama: a Language of Eritrea'). The UN information agency (IRIN) estimates that there are around 100,000 Kunama people in Ethiopia and Eritrea, of which 70,000 reside in Eritrea (<http://www.irinnews.org/PrintReport.aspx?ReportId=38494>). The Catholic Near East Welfare Association (CNEWA) is much more conservative in estimating the Kunama population of Eritrea and Ethiopia to be between 50,000 and 60,000 (Molidor 2001). It is claimed that the Kunama population has been decimated by the recent Eritrean-Ethiopian war.

³⁵⁰The most comprehensive anthropological study of the Kunama was conducted by Dominique Lussier in 1994 (Lussier 1997). The Italian ethnographer Gianni Dore has also recently done research on the Kunama.

brought relative peace and stability for the Kunama people, a memory which is still cherished by Kunama elders. Despite the Italian presence, however, irregular Abyssinian raids into Kunama territory continued (Naty 2001). Moreover, with the collapse of the Italian colonial empire in 1941, the Kunama were once again exposed to the whims of their neighbours.

The 'continuity in the Kunama experience of brutal domination' (Lussier 1997: 441) has thus been experienced up to recent times. For instance, it is reported that during the British Military Administration (BMA) of Eritrea (1941–52), the Kunama were exposed to conflict and subjugation from many neighbouring groups with the apparent consent of the BMA (Lussier 1997: 444). In particular, during 1949–50, organised warfare was conducted against the Kunama by neighbouring groups, ironically driven by Idris Awate, the person who later became famous as the rebel who commenced the hostilities against Ethiopian domination of Eritrea in 1961.³⁵¹ An Italian journalist working in Eritrea at the time, reported that: 'I am positive that there is an on-going process of genocide directed against the Kunama, whether or not the parties or neighbouring groups are conscious of this, but there is no doubt that this is being done with the assistance of the British Administration responsible for the territory' (Lussier 1997: 445). These historic events feed into current sentiments of fear, scepticism and enmity towards neighbouring groups and central authorities among many Kunama.

During the Eritrean liberation war, the Kunama were accused of being the only group which largely and consistently supported the Ethiopian government (see also Gilkes 1983: 203; Bondestam 1989: 183–4; Markakis 1990: 116), even though there were Kunama recruits to the EPLF in the last phase of the war (Pateman 1990: 20–21). The Derg military junta armed the Kunama and used them to help defend towns like Barentu and Tessenei from attacks from the EPLF. It is claimed that the Kunama military support for the Derg army was instrumental during the EPLF siege of Barentu in 1976/77, when hundreds of Kunama fought alongside the garrison and were recruited into the Derg army (Gilkes 2005: 235).³⁵² When the EPLF finally captured Barentu from the Ethiopian army in mid 1984, the Kunama as a whole suffered. It is reported that as 'Kunama women and children fled the town they were shot down by advancing EPLF fighters' (Gilkes 2005).

Although many Kunama found the Derg's policy of ethnic equality appealing – considering the unequal power relations that existed between them and other groups, in particular the Tigrinya highlanders (Naty 2001: 587) – this was probably not the main motivating factor for supporting the Derg. More than being ideologically anchored, the support for the Derg was probably pragmatic, as a Kunama elder explained: 'We had no choice, we joined whoever came: when these came we said 'father', when those came we said 'father' and we just stayed alive' (Lussier 1997: 443). The seeking of Ethiopian patronage by the Kunama may thus be interpreted as a survival strategy, as the Eritrean liberation fronts also joined in the raids on the Kunama by neighbouring groups, forcing the Kunama to seek protection from Ethiopian forces stationed in Barentu (Markakis 1990: 116; Gilkes 2005: 235).

A similar interpretation of the Kunama political allegiances is also supported by the British government fact-finding mission to Eritrea in 2003, which found that:

³⁵¹Like all interpretations of historical events in the region, the role of Idris Awate is also severely contested. Thus, his possible role in Kunama raids could be exaggerated as part of a conscious defamation campaign against Idris Awate and his role as the 'first Eritrean resistance fighter', first by Haile Selassie, later by the Derg, and eventually by EPLF, all of whom referred to him as a *shifita* (bandit) in order to undermine his political legitimacy and discard his representativeness as a Muslim 'lowlander'.

³⁵²It is estimated that some 6000 Kunama in total served in the Ethiopian army during the 1970s and '80s (Gilkes 2005), a relatively large number considering the small size of the group.

The Kunama has traditionally relied on the Ethiopian Army when larger and more powerful ethnic neighbours attacked them. For historic reasons, although the majority of the Eritrean population strongly supported Eritrean independence, the Kunama still maintained their support for the Ethiopian army. (BIA 2008: 42).³⁵³

THE STIGMATISATION OF THE KUNAMA IN INDEPENDENT ERITREA

After independence in 1991, the Eritrean government included the Kunama in the compulsory national service programme, and by that means is trying to enforce and consolidate a Kunama loyalty to the Eritrean state. However, the tense relation between the Kunama and the EPLF government has been sustained in the post-independence period (USCIS 2003). The Kunama's history of supporting the Derg during the liberation war was a stigma which immediately put them in jeopardy of government sanctions after independence. According to Kunama representatives, the discrimination against the group was felt immediately after the EPLF take-over in May 1991. Endrias Sisto Nada, a Kunama spokesperson, explained that, when coming to power, the EPLF accused them of working for Ethiopia and being Ethiopians.³⁵⁴

The decisive and brutal arrest immediately after the EPLF takeover of Eritrea in 1991 of at least 55 Kunama serving as administrators and civil servants under the Ethiopia government signalled the continuation of a hostile relation between the EPLF and the Kunama. Allegedly, these people had been involved in human rights abuses under the Derg. None of the 55 persons have been released or been seen since then, and it is unclear if any formal charges have been pressed, or any trials held (BIA 2008: 44). Hundreds, and possibly thousands, of Kunama ex-soldiers were also detained for at least two years after independence; some were kept for longer and it is even claimed that some may still be in detention (Gilkes 2005: 236).

The immediate clamp-down on Kunama representatives after the EPLF take-over in Eritrea in 1991 was soon followed by other apparently discriminatory actions directed against the Kunama. On 11 March 1995 in the town of Shambuko (also written Shambakko), two Kunama brothers were shot and killed by police officers (who were ex-EPLF fighters of Tigrinya origin). The anthropologist Dominique Lussier was doing fieldwork in the area at that time and interviewed a number of eye-witnesses to record the event (Lussier 1997). The Kunama brothers were in town to market their harvest. A Tigrinya woman complained to the police about the price they demanded, and the police officer ordered the brothers to sell at a lower price. One of the brothers refused, saying he was not forcing anybody to buy his harvest, and instead started packing it on his camel. The police officer prevented him from leaving, and a fight broke out between them. A second police officer (also Tigrinya) then reportedly shot the Kunama man dead on the spot. His brother, shocked by the incident, grabbed the gun and while running away emptied it in the air. According to Kunama witnesses, the surrounding Tigrinya people all pulled arms and chased after the brother and shot him dead too. In the aftermath of the event, several Kunama were arrested (accounts vary between nine and twenty) and put in jail for months, while none of the Tigrinya involved in the incident were questioned. It is not reported whether the police officer who shot the first brother faced any consequences for his action.

This incident was deeply felt in Kunama society, and Lussier reports that 'it reached momentous proportions as a source of concern' (Lussier 1997: 444). The incident is also corroborated by the

³⁵³In interpreting these allegiances and sentiments, it is important to distinguish between the perceptions of the Tigrinya highland population and Eritrean nationalism. In certain contexts and discourses these two categories fuse and overlap, in others they are separate and conflicting.

³⁵⁴Interviewed on 29 April 2008, in Shimelba refugee camp, Tigray, Ethiopia.

Eritrean anthropologist Alexander Naty as a source of increased tension between the Kunama and Eritrean authorities in the post-independence period and a symbolic reminder of the historical animosity between the Kunama and the Tigrinya highlanders (Naty 2002b: 3).

The outbreak of the new war between Eritrea and Ethiopia in May 1998 further worsened the already tense relations between the Kunama and central Eritrean authorities, as it revived the image of the Kunama as Ethiopian collaborators and spies. Unlike people of other ethnic groups, the Kunama did not flee their home villages when the Ethiopian forces occupied Eritrean territory during the war. They remained in their villages and the majority ignored the Ethiopian presence. Eritrean authorities thus accused the Kunama first of failing to resist the Ethiopian military offensive, later of allegedly assisting the Ethiopians and showing them secret unguarded border-crossing points on the Mereb river (Naty 2001: 588; Gilkes 2005: 237).

The existence of the Kunama resistance movements – the Democratic Movement for the Liberation of the Eritrean Kunama (DMLEK) and the Eritrean Democratic Resistance Movement-Gash Setit (EDRM, also called Sawrawi Baito)³⁵⁵ – and Ethiopia's support for their politico-military operations, has furthermore reinforced such a view among highlanders and the Eritrean government. Endrias Sisto Nada, a Kunama spokesperson, claims: 'Today the Government has one aim: they say that we are siding with the opposition and they kill us and imprison us'.³⁵⁶

This view is corroborated by a recently defected Eritrean intelligence officer, Mr Menghesteab Girmay Asres.³⁵⁷ His security unit (the Third Operational Unit) was responsible for following and targeting the Kunama community around Mendefera. Menghesteab Girmay Asres offered two reasons for the government's campaign against the Kunama:

The first reason is that the government has for a long time quarrelled with the Kunama; and the second reason is that the Kunama has strong opposition groups who struggle for the rights of Kunama people. These opposition groups are strong enough to attack military camps and they are destroying government properties. The government is really concerned for this group. The problem is that the government can't destroy the opposition group as they can't find them. The government knows that the Kunama people as a whole are the base and the supporters of this opposition group and that is why the government attempts to eliminate the Kunama.³⁵⁸

During the Ethiopian military offensive, Operation Sunset, in February/March 1999, Kunama resistance forces allegedly joined in behind the Ethiopian troops. As large parts of the Eritrean western lowlands fell into the control of Ethiopian military, including the regional capital Barentu, the Kunama front was given delegated administrative authority by the Ethiopian Army in their home areas. When Ethiopia withdrew from uncontested Eritrean territories in 2000 after signing the cease-fire agreement, this created anxiety and fear among the many Kunama who had assisted or accepted the Ethiopian military presence in the Eritrean western lowlands. Immediately after the Ethiopian pull-out, it was reported that Kunama who had helped in administering Barentu under Ethiopian control were arrested and

³⁵⁵British government fact-finding mission to Eritrea, 4-18 November 2002 (BIA 2008).

³⁵⁶Interviewed 29 April 2008, in Shimelba refugee camp, Tigray, Ethiopia.

³⁵⁷Menghesteab Girmay Asres joined the EPLF in 1990 and served with the Front until 1993. He was re-enlisted in the Eritrean army in 1998, first with the 16th Military Intelligence Unit of Regiment 161, subsequently serving as an expert of information and cartography with various military sections until 2004. He was then transferred to the Intelligence Unit of the Third Operational Zone, working as an investigator in the internal security/counter-intelligence section until he defected in September 2007.

³⁵⁸From a recorded interview conducted for this study on 25 October 2008 (see note 358).

killed (AI 2001). Further, in the comprehensive country study on Eritrea from 2004, Amnesty International reports that:

An unknown number of Eritrean civilians were detained in fighting zones during the war on suspicion of collaborating with the Ethiopian army, especially when the Eritrean army regained areas captured by the Ethiopian army in southern Eritrea. This was particularly the case with members of the Kunama ethnic group (or 'nationality') in south-western Eritrea. The Kunama have historical connections with Ethiopia and were as a result suspected of Ethiopian sympathies during the war. Scores of Kunamas are allegedly still secretly detained on suspicion of welcoming the Ethiopian army when it captured parts of southwestern Eritrea. (AI 2004: 11).

Kunama representatives claim, in a letter sent to Amnesty International in November 2000, that immediately after the war ended, some 600 Kunama men, women and children were forcefully taken and transferred to Sahel (the mountainous and barren region of north-eastern Eritrea), after which their whereabouts was unknown (Gilkes 2005: 237). The US State Department corroborates these reports, and writes in its country study on Eritrea for the year 2002 that: 'There was no information available, nor is any likely to become available, on the several members of the Kunama ethnic group who were detained without charges on suspicion of collaborating with Ethiopian forces in 2000' (USSD 2003). It thus seems plausible to argue that the Eritrean government's retaliation against the Kunama after the Ethiopian pull-back in 2000 was not only directed against the Kunama resistance movement per se, but was intended as a collective punishment. A Kunama woman explained that: 'When the Ethiopians left, we were suspicious about revenge the Eritreans might take on us saying we helped the Ethiopians'.³⁵⁹ Hence, more than 4000 civilian Kunama fled Eritrea alongside the Ethiopian army when it pulled back under the cease-fire agreement. These Kunama are mostly from the two villages of Fode and Anugulu, whose districts fell under the control of the Ethiopian army during the war. From the point of view of the Eritrean authorities, this action confirmed the accusations that the Kunama had sided with Ethiopia during the war. In this context, it must be remembered that tens of thousands of Kunama remained in Eritrea, and did not flee alongside the Ethiopian army. Furthermore, thousands of Kunama youth fought in the Eritrean army against Ethiopia during the war. The native Kunama anthropologist Alexander Naty questioned, on this ground, why only the Kunama are stigmatised as 'not true Eritreans' by the Eritrean government, while other segments of the Eritrean population have also collaborated with different Ethiopian regimes.

REGIME REVENGE: THE 2007 KUNAMA CRACK-DOWN AND MASSACRE

Apparently, the Kunama's fear of revenge after the 1998-2000 war was well founded. The former EPLF liberation fighter and later intelligence officer in the Eritrean army, Mr Menghsteab Girmay Asres, has described in detail how the military intelligence and interrogation system operates in general, and how the Kunama were targeted in particular. The following account is based on Mr Menghsteab's testimony given in October 2008.³⁶⁰ At the beginning of 2007, a special intelligence operation was ordered against the Kunama, while army security units in Shambako, Bushuka, Maidima and Mendefera started 'collecting Kunama and abusing them horribly'.

³⁵⁹UN Integrated Regional Information Network for Central and Eastern Africa (UN IRIN-CEA), 'Plight of the Kunama Refugees', 2 December 2002, at <http://www.irinnews.org/PrintReport.aspx?ReportId=38494>.

³⁶⁰Menghsteab Girmay Asres gave his testimony, in a broadcast on the exiled Eritrean television channel, 'Eritrean Voice TV', on 18 October 2008. He repeated his testimony in a recorded interview conducted in Addis Ababa on 25 October 2008, by Anna Little, on my behalf and for the Eritrea Human Rights Study, organised by the Oslo Centre for Peace and Human Rights.

At the beginning of 2007, 70 Kunama were imprisoned under harsh conditions in Barentu. The Eritrean army continued its persecution of the Kunama in areas such as Faulina, Boshoka, Shimbako, Bimbilna, Tolegamuja, Aymaba and Koyta Biya, as they were accused of being sympathisers of the Kunama resistance front (DMLEK). Allegedly, children as young as nine were taken into custody in these operations, where a total of 300 Kunama were detained. Menghesteab asserts:

The prisoners were bloodily harassed, molested and tortured in order to say yes to the accusations which were alien to them and they knew nothing about. [...] If you are going to arrest someone you should have some evidence against them, but for those people there was no evidence or a reason for us to interrogate them. They were innocent and there was no reason to interrogate them – we just brought them to beat and to kill them and we were treating them very badly – beating them till they died. In general, the aim of the government is to kill and beat the Kunama, not to interrogate.

The prison conditions, too, worsened the plight of the Kunama, as explained by Menghesteab:

The conditions for [the Kunama] prisoners were awful. We didn't allow them to change their clothes, we didn't allow them to see their family, we always forced them to walk without shoes, and we always gave them small amounts of food and water – in order to weaken them and to make them sick and die. When they got sick we didn't give them medical treatment and because of this they were having mental and physical problems. We forced them to do hard work, and we took their private property like money, house, gold, and necessary documents, and other privately owned things. We would put 23 to 26 people in a small cell so that many would nearly die because of the shortage of fresh air. We scared and beat them continuously, and they couldn't escape. I have seen a lot of prisoners going crazy, and facing different kinds of diseases. I also saw some of the prisoners disabled because of the heavy beatings. I also saw prisoners die inside the prison.

Of the around 300 Kunama detained during the period of January to May 2007, Menghesteab reports that the outcome of their cases differed:

- (a) Ten children aged 9–13 years were sentenced to 6 months custody at Halhale rehabilitation centre of the Third Operational Zone;
- (b) Thirteen individuals aged 13–18 were sentenced to between one and four years incarceration in Adi Quala;
- (c) Around 250 Kunama of all ages, including mothers with infants, were sentenced to between one and 20 years incarceration in Adi Quala;
- (d) Two individuals died during interrogation (names withheld by the author); and
- (e) 26 individuals were poisoned and killed (the names of 18 of them are withheld by the author).

The most shocking incident reported by Menghesteab Girmay Asres was the brutal killing by poison of some of the individuals who had been detained. All of them were Kunama men; many were known to have close relatives in the Kunama resistance front (DMLEK). The alleged killings of these individuals were not only committed to intimidate the Kunama collectively, but also to cover-up a propaganda initiative by the Eritrean government. In order to justify and create a propaganda diversion of the Kunama crack-down, twelve Kunama prisoners (detained in Mendefera) who spoke Tigrinya well were forced to confess and testify on camera that they were part of the Kunama front (DMLEK) and were responsible for planting anti-vehicle mines in Shamboko, Geze, Erab, Bimbilna, Sinshale and Adi Tekleheimanot at the beginning of 2001. The Eritrean government wanted material which exposed Ethiopia's war of proxy by the means of the Kunama front, in order to undermine its legitimacy in the eyes of the Eritrean people. Allegedly, the Minister of Information personally provided both a journalist

and a cameraman (names withheld by the author) to the operation run by the Major General (name withheld by author) who was commander of the Third Operational Zone. The Kunama prisoners performed as they were instructed, 'confessed' their misdeeds and praised the EPLF/PFDJ for the adequate and good treatment they had received while in custody.

Afterwards, the prisoners were taken to the prison camp at Mai Dima, run by the Intelligence Unit of the 25th Regiment. In the camp, they were told to dig a hole in the ground 5 metres deep and 4 metres square. In order to assist in this work, an additional 14 Kunama prisoners were brought from Adi Quala. After the hole was complete, the officer in charge of the case, a Major (name withheld by the author), brought two containers of 20 litres of a certain poisonous chemical from Meandere to the Mai Dima camp. He then dismissed the regular camp security, and brought in a special team of six intelligence officers from Mendefera (names withheld by the author) to carry out the massacre. All the 26 prisoners were then allegedly poisoned during one day in April 2007, and dumped in the hole they had previously dug.³⁶¹ After the operation, the officers of the Intelligence unit were ordered by the commander of the Third Operational Zone to send all personal documents and belongings of the victims to his headquarters. Reports about the massacre were later filed with the Third Operational Zone and the Ministry of Defence. The Minister of Information was also later informed about the incident, as he wanted to use the prisoners for another propaganda mission. Reportedly, the Minister expressed dissatisfaction and regret about the measures taken.

Considering the extremely abhorrent and grave accusations reported above, one should be very cautious to state them as facts. Although Menghesteab Girmay Asres appears to be a credible eye witness to the events, the only other concrete information we have on the spring 2007 crack-down on the Kunama is provided by the Kunama resistance front (DMLEK). This may, however, also serve as an illustration of how totalitarian and authoritarian Eritrean society has become, as possible information about such grave incidents of human rights abuse does not filter through to the international community until one year after they allegedly have taken place.

ENCROACHMENT OF KUNAMA LAND RIGHTS

The tense relations between the Kunama and the EPLF are not only grounded in perceived opposing political allegiances, but also stem from the new development policies drafted after independence. Within a matter of months after liberation, the new government sought after land on which it could re-settle both demobilised fighters and returning refugees from the Sudan. The lack of fertile agricultural land in the overpopulated highlands was also a concern, and settlement areas for Tigrinya-speaking highlanders were needed. In the eyes of the government, the agro-pastoral lands of the Kunama in the fertile region of Gash-Setit were significantly under-utilised, and thus were an appropriate area to exploit development wise (Gilkes 2005: 236).

The Gash-Setit area has not until recently experienced any considerable settlement flows. The area was perceived to be on the periphery by political decision-makers and remained under-developed and marginalised; the local inhabitants were basically left in control over their own land. Only some of the urban centres (Barentu, Shambako, Dokimbia, Tessenei and Omhajer) experienced some new settlers from other ethnic groups, mainly highland Tigrinya speakers and people from the Tigre group (Naty 2002b). These individuals were either posted to the western lowlands as administrators of the state, or attracted to these areas for small-scale business purposes (as shop and bar owners).

³⁶¹Menghesteab recalls the names of 18 of the 26 persons killed. The names are deliberately not published here, but may be provided upon request. The specific location of their grave is inside the prison premises of the 25th Regiment Intelligence Unit in Mai Dima. The camp is located around Berakit mountain, on the way to Obal.

After independence, the Eritrean government abolished in principle and by law all traditional land tenure forms, and made all land the property of the state.³⁶² The rationale behind the reform as stated in the preamble of the new land proclamation was that the old land tenure systems were not compatible with the modern needs for development of the new state. In the government's development outlook, landed resources are viewed as a commercial factor – as a means to increase production output – so as to enhance Eritrea's food security. Within the government's nation-building strategies, moreover, land is viewed as an impediment to creating a mobile and homogenous population, as traditional land tenure arrangements tie people to a certain locality through descent rights in land (Tronvoll 2000).

One of the key changes introduced by the new proclamation is that, although priority to usufruct of land will be given to local villagers, *any* person may ask for land in any place where he or she wants to live (Tronvoll 1998b). Traditionally, land rights in Eritrea are traced through descent and habitation rights. By severing people's connection to land through descent, the government wanted to make people more geographically mobile, which again would encourage commercial farming and a better exploitation of the land resources. The government-appointed land commissioner assumed that 'the whole concept of attachment to land will change resulting from this', and viewed this as an important intended effect of the reform (Tronvoll 1998b: 472).³⁶³

The new legislation enshrines that the land administration will take local conditions into consideration, including available areas of agricultural land and the number of inhabitants in the area, in order to distribute the usufruct rights equally. From the capital, the vast Kunama plains of Gash-Setit were perceived as semi-vacant and large areas of land were put aside for resettlement and agricultural plantation schemes.³⁶⁴ The only thing was that the land was not vacant; the Kunama perceived this to be their ancestral land (USCIS 2003). The Kunama thus claim that the new land policy of the government undermines the clan-based traditional ownership rights of the Kunama (Naty 2002b). The government-sanctioned encroachment on Kunama land is thus a violation of Article 27 of the ICCPR on the protection of minorities (ratified by Eritrea). The interpretation of the article is clear on the matter that when minorities reside primarily in a certain bounded geographical area – like the Kunama – their members may not be denied access to and residency in this area (Novak 2005: 659). Furthermore, 'All measures which threaten the way of life and culture of a minority, such as large-scale expropriations of minority lands for commercial purposes' constitute a violation of Article 27 of the ICCPR (Novak 2005: 659).³⁶⁵

Most of the mixed groups of returnees from Sudan (refugees from the war of liberation) have settled in the Gash-Setit region.³⁶⁶ Moreover, the Ali Gidir area in western Gash became the centre of large-scale agricultural development projects, and Gilkes reports that 'thousands of highlanders moved into Barentu and other Kunama towns and villages, over 30,000 into the area of Barentu alone' (Gilkes 2005: 236; see also Naty 2002b).³⁶⁷ The new settlers compete with the local population over the

³⁶²Land proclamation, The Government of Eritrea (Gazette of Eritrean Laws), No. 58; 1994.

³⁶³Whether it was intended or not, the land policy has opened up the western lowlands in general for migration by Tigrinya highlanders, as on the one hand pastoral lands are perceived as un-exploited by the authorities and thus suitable for sedentary cultivation; and to urban centres where Tigrinya speakers fill the roles of administrators and civil servants. It is, however, more or less impossible for outsiders to settle in the highland Tigrinya area, since all the land is cultivated by sedentary agriculturalists.

³⁶⁴See, for instance, Government of Eritrea, Department of Agriculture (December 1992): 'A Proposal of Rehabilitation and Settlement Scheme for Returning Refugees in Eritrea (Agricultural Component)', Asmara, Eritrea.

³⁶⁵ILO Convention 169 furthermore substantiates minorities' claims to land.

³⁶⁶According to Alexander Naty, they have been settled in the villages of Alabu, Fanko, Garsat, Gergef, Tabalida, Dokimbia, Omhajer and Samunait.

³⁶⁷I first visited this area and Barentu town in September 1991, just months after the military liberation of Eritrea. At that time, Barentu was predominantly a Kunama settlement. Today, the Kunama do not constitute a strong visible presence in Barentu.

utilisation of resources, leading to increased tension in the area. As the big mechanised farms are mostly owned and operated by Tigrinya highlanders, the conflicts between the Kunama and the new development initiatives of the state, inevitably embody an ethnic gist.

The rapid change of local control of land – perceived as land encroachment by the Kunama – was conducted in such a manner that even the EPLF-appointed Kunama governor of Gash-Setit region, Germano Nati, protested. His objections were all in vain, and he was immediately ‘frozen’³⁶⁸ and in 1996 replaced by a loyal appointee described by the Kunama as ‘our main enemy’ (Gilkes 2005: 236-7). Germano Nati was later arrested as a member of the G-15 group and part of the 2001 dissent process and is still languishing in incommunicado detention (see chapter 4).

The anthropologist Lussier claims that the ‘forced removal of local communities partly because of refugee resettlement, is an on-going process *specific to Kunama land*’ (Lussier 1997: 443, my emphasis). If so, it is an even worse case of minority rights violation, according to Article 27 of the ICCPR. However, other areas of the Eritrean western lowlands are also used for re-settlement programmes (affecting the Beni Amer and other groups), which dilutes Lussier’s claim. On the other hand, in addition to the ‘villagisation’ programme, there are also other state interventions on Kunama land, like industrial plantation schemes, ‘wiping out the existence of time-honoured strategies of coping with hunger’ (Lussier 1997: 443). Other observers of Eritrea note that the seizure of Kunama lands continues (Gilkes 2005), and Kunama representatives interviewed as part of the research for this study stress this point.³⁶⁹

In the wake of the new Eritrean-Ethiopian war (1998-2000), encroachment on Kunama land was sustained. Internally displaced Tigrinya from the highlands were settled in the Kunama villages of Delle, Tolegamaja and Karkon (Naty 2002b: 3). Furthermore, the Kunama villages of Fode and Anugulu and the surrounding fertile agricultural lands – whose population had fled alongside the retreating Ethiopian army – were allegedly given to around 500 displaced Tigrinya speakers from Adi-Bare (near Badme village).³⁷⁰ The US State Department corroborates in general this information in its 2002 human rights Country Report on Eritrea:

In 2001 there were unconfirmed reports that the Government took land from Kunamas without compensation and gave it to other ethnic groups on the grounds that the land had not been efficiently exploited. There also was an unconfirmed report that Eritrean refugees returning from Sudan were resettled on Kunama fields after evicting the native Kunama (USSD 2003)

Further, a British fact-finding mission to Eritrea also took note of a number of land disputes between the government and the Kunama, ‘whereby the Kunama are pushed into ever-diminishing tribal lands, as the non-Kunama population expands to relieve pressure in the more densely populated parts of Eritrea’ (BIA 2008: 42).

Denied the possibility to do on-the-ground research and surveying of the Eritrean government’s encroachment of Kunama land, it is difficult to give estimates of the impact (area or population wise) on the Kunama of the Eritrean government’s development and resettlement schemes in Gash-Setit. It appears, however, these plans are in breach of Article 27 of the ICCPR. Furthermore, it seems relevant

³⁶⁸To be ‘frozen’ entails that person is deprived of all politico-administrative powers, and sometimes even put under house-arrest, until President Isaias Afwerki is once again comfortable with the individual’s loyalty. It is a strategy frequently used by the President towards people who questioned or protested against his decisions.

³⁶⁹Endrias Sisto Nada, a Kunama spokesperson, interviewed on 29 April 2008, in Shimelba refugee camp, Tigray, Ethiopia.

³⁷⁰Interview with Kunama representatives in Shimelba refugee camp, Tigray, Ethiopia, on 28 April 2008.

to argue that any government, which claims to act in the interests of its people, ought to consult with groups concerned about their interests and viewpoints on specific development policies affecting them directly or indirectly. The Kunama objections have apparently, in this regard, been overlooked or ignored.

NEW WAR: KUNAMA CULTURE BELEAGUERED

Kunama land is not only encroached upon by new civilian settlers, but also by military intervention. The Kunama claim that the Eritrean army is deliberately and consciously establishing bases in Kunama villages and on Kunama holy sites, in order to violate their cultural heritage.³⁷¹ The unsettled border demarcation situation and the failed peace process with Ethiopia requires Eritrea to maintain full mobilisation along the Ethiopian-Eritrean border. Since the Kunama home areas lie close to or straddle the border, many Kunama villages and towns have been converted to military bases. Reportedly, the following Kunama villages in the vicinity of Barentu, are or have been used as base areas for various military divisions; Prima-Kanteri, Ma'ra-rarata, La'wsi', Duta, Gulul, Balak, Shilibo.³⁷² Confiscation of land for military purposes is allegedly not limited to the Barentu area alone, but is taking place throughout Gash-Setit region; thus impacting on many Kunama communities. The Kunama argue that it is a deliberate strategy by the Eritrean government to confiscate land for military purposes and locate military facilities in civilian Kunama villages, in order to dilute Kunama cohesion and cultural distinctness. As part of the strategy to break-down Kunama culture – and political resistance – Kunama refugees claimed that Kunama girls are either raped or lured into sexual relations with military personnel from the Tigrinya group, so that their children will be considered Tigrinya offspring and not Kunama.³⁷³

The perception that Kunama culture is deliberately beleaguered is corroborated by reports that Kunama holy sites are being used for military purposes by the Eritrean government. The Kunama culture venerates specific locations for specific ritual purposes during certain time-periods.³⁷⁴ These locations are considered holy by the Kunama, and are not supposed to be used for purposes other than the specific cultural rituals. For instance, in Ko'na, close to Shambuko, the *ku'ndu'ra* ritual is celebrated annually. During this event, traditional leaders of the Kunama will pass on cultural knowledge to new generations. In Koyta (in So'so'na' district), the *indodagalba* ritual is performed. On this occasion, Kunama ritual leaders accept sacrifices offered by the community and pray for rain and protection of the forthcoming harvest. Furthermore, twice every decade (in the ninth and tenth years) the *tu'ka* ritual is celebrated at So'so'na'. On this occasion the Kunama make sacrifices for the communal well-being and increase of the group. Finally, the *ana-ila* ritual is celebrated in Agisha and Alay-Saglia (close to Shambuko) and in Odase (in Fode district). This is a rite of passage where young Kunama boys are initiated into adulthood. A group of boys (from 10 to 100) are collectively accompanied by elders to the sites of worship, where they are instructed on cultural ethics, moral stature, traditions and discipline. Passing this ritual is crucial for Kunama boys, as it prepares them for adult responsibilities (like getting married) and grants them access to further cultural rites and events.

On all these holy ritual sites, the Eritrean government has allegedly established some type of military presence. This prevents the Kunama from performing their cultural rituals at the traditionally

³⁷¹The religious rights and protection of holy sites of minorities are integral to Article 27 of the ICCPR, in addition to being protected as a separate right under Article 18.

³⁷²Communicated to the author via e-mail from Kunama refugees in Shimelba refugee camp in Tigray, Ethiopia. August 2008.

³⁷³Interviews in Shimelba refugee camp, Tigray, Ethiopia, 28-29 April 2008.

³⁷⁴Generally, military use of land (including minority groups' homelands) may be acceptable under human rights law, as there is a wide margin of appreciation in relation to the needs of the state (in times of emergency and war and state security). However, if there is abuse in a specific situation in order to violate minority rights (or people belonging to a minority), the 'necessity argument' will no longer be valid.

designated holy areas; or if they try, it is claimed that Kunama boys when they attend at the place of veneration have been forcefully conscripted into the army.³⁷⁵ This is a particularly severe breach of the protection of minority rights enshrined under Article 27 of the ICCPR.

One other concern raised in relation to the performance of Kunama cultural traditions is the government's treatment of the *Sanga-Na'ne*. The *Sanga-Na'ne* are honoured individuals (descendants of the Nataka clans) who function as mediators and peace makers in Kunama society. When conflict occurs among the Kunama, over land or individual grievances (even in cases of fatal wounding), the *Sanga-Na'ne* intervenes in order to stop a cycle of revenge and to reconcile the conflicting parties. The Kunama accuse the central authorities of undermining the position of the *Sanga-Na'ne* in Kunama society, having prohibited their role as 'peace-makers'.³⁷⁶ The targeting of traditional authority among the Kunama has forced many *Sanga-Na'n* to flee to Ethiopia, or to renounce their ritual practices. Consequently, it is argued that intra-Kunama conflicts have been on the increase, since their traditional mechanisms of conflict resolution is banned; and due to lack of trust, few Kunama view government-sanctioned conflict resolution mechanisms as an alternative.

EXIT KUNAMA: POLITICAL REPRISAL AND CULTURAL CONSEQUENCES

There is a steady, and increasing, flow of refugees fleeing Eritrea every month; about 700 and 400 Eritreans arrive in the Sudan and Ethiopia respectively.³⁷⁷ Eritrea is ranked in the top three in absolute numbers of principal refugee-producing countries in the world (after Iraq and Somalia); a total of 36,000 Eritrean refugees were registered fleeing the country in 2007 (UNHCR 2008: 15).³⁷⁸ Considering the small population size, of less than 3 million people, Eritrea is the largest absolute producer of refugees in relative numbers in the world.

In order to curtail the increasing flow of refugees, the Eritrean government has declared draconian measures of border control (where border patrols can open fire on sight on people believed to be fleeing the country), in addition to severe penalties imposed on family members left behind in Eritrea. For every person fleeing the country, the remaining family must pay a fee of 50,000 Nakfa (approximately US\$3500), serve three-months hard labour in detention camps, or alternatively languish in one-year's imprisonment. If two or more family members are caught fleeing, the punishment increases correspondingly. It has been reported that mothers and fathers over 70 years of age, without the capacity to pay the fee, have been thrown into jail as retaliation for escaping sons or daughters.³⁷⁹

The collective pressure and reprisal campaign against the Kunama is reportedly being intensified, as the Eritrean government, according to the Kunama opposition (DMLEK), allegedly ordered the Kunama farmers to give half of the produce they harvested during the 2008 season to the government.³⁸⁰ This will further undermine the collective sustainability of the group.

³⁷⁵Based on information gathered through interviews with Kunama in Shimelba refugee camp, Tigray, Ethiopia, and subsequent written statements from refugees through e-mail to the author.

³⁷⁶From a human rights non-discriminatory perspective, the Eritrean government may prevent 'multi-jurisdiction', but only if they do so with a similar policy towards all groups in the country. Since the government encourages traditional community courts among the dominant Tigrinya highlander group, this seems to be a case of discriminatory practice against the Kunama, which thus constitutes a breach of the government's human rights obligations under ICCPR.

³⁷⁷In 2007, 14,100 new claims were registered in Sudan and 7800 in Ethiopia (UNHCR 2008).

³⁷⁸An unknown number of Eritreans flee the country (across the Red Sea, through Somalia or over the deserts of Sudan) without registering with any refugee authority.

³⁷⁹Since these sanctions are imposed on all Eritreans no matter their ethnic origin, it is not a violation of minority rights, but it is in contravention of civil rights principles in general (collective punishment, the right to leave the country, rule of law, etc.).

³⁸⁰Waltainfo: 'Eritrea orders Kunama farmers to hand over half produce', 4 November 2008, at: http://www.waltainfo.com/walnew/index.php?option=com_content&task=view&id=4249&Itemid=45. Walta Information Center (WIC/Waltainfo) is an Ethiopian-government-friendly information service.

The majority of the current refugees are national service personnel (UNHCR 2008), mostly men, who flee the country based on personal motivations (for a better future with hope for continued education or employment) or grievances (fear of arrest and torture). Since the majority of the national service personnel are drawn from the largest ethnic group, the Tigrinya highlanders, they also constitute the bulk of the refugees. With the exception of the Kunama, there is seemingly no other ethnic group whose members cross the border en masse with their whole families and possessions.

Considering then the brutal and unfair reprisal strategy employed by the Eritrean government against the family members of refugees left behind, the Kunama as a group is particularly affected. With the exodus of thousands of Kunama, this places a potentially heavy financial burden on the remaining families, both for payment of 'fees' and the costs of incarceration. The policy of collective retaliation towards families of Eritrean refugees has reportedly engendered great consternation among the Kunama. This has prompted even more Kunama families to flee the country, despite the inherent dangers of crossing the borders.³⁸¹

In the eyes of many Kunama, the combined impact of the Eritrean government's discriminatory policies and actions threaten to make the Kunama cultural heritage extinct in Eritrea. This notion is further fuelled by a statement allegedly offered by President Isaias Afwerki in response to the massive flight of Kunamas in 2000 alongside the Ethiopian army: 'Eritrea is now home to nine ethnic groups, minus one'. Kunama refugees in the Shimelba camp embodied the same impression, as they claimed: 'We are no longer considered to be Eritreans'.³⁸² This information corroborates the orders to 'eliminate the Kunama' allegedly given to the Eritrean internal security forces, as referred to above.

UNHCR began discussions with Eritrean and Ethiopian authorities in 2004 on the possible voluntary return of the Kunama to Eritrea. The Eritrean government was allegedly prepared to welcome the Kunama back to their homeland; however the refugees were sceptical and reluctant to take up the offer (BIA 2008: 80). Considering the particular collective motivation for fleeing and the risk of returning to their country of origin, the more than 4000 Eritrean Kunama in the Shimelba refugee camp were granted resettlement in the United States as a group (CORC 2007). To the bewilderment of many, the majority of the Kunama in Shimelba refugee camp – about 2800 individuals – chose not to be included in the UNCHR referral (CORC 2007). Of the 1200 Kunama who accepted the offer, over 700 will be resettled in US by the end of 2008.³⁸³

The reluctance shown by many Kunama to go the US may be influenced by the position of the Kunama resistance front, the Democratic Movement for the Liberation of the Eritrean Kunama (DMLEK), who fear that their people may become culturally extinct if a mass exodus to the US occurs. Thus, they try to convince the Kunama refugees to stay in the camp in order to be ready to return to Eritrea after the fall of Isaias Afwerki. Different means are used to communicate this position by the DMLEK, including a 'fear campaign'.³⁸⁴ Allegedly, the Kunama front is using the Shimelba refugee camp as a recruiting pool for their resistance against the Eritrean government. They have allegedly told the refugees that if they go to US, they would be sold as slaves and treated badly. In order to illustrate their possible fate in the US, the television drama series *Roots* (1977), about African slavery in America and featuring the historical individual, Kunta Kinte, and his descendants, has been screened in the camp.³⁸⁵

³⁸¹Interviews with Kunama refugees in Shimelba refugee camp, Tigray, Ethiopia, 28-29 April 2008.

³⁸²Interviewed 29 April 2008.

³⁸³US Department of State/US Department of Homeland Security/US Department of Health and Human Services: 'Proposed Refugee Admissions for Fiscal Year 2008: Report to the Congress', submitted to Committees on the Judiciary, US Senate and US House of Representatives, p. 23.

³⁸⁴These abuses are of course not attributable to the Eritrean government, and thus do not constitute human rights violations per se.

³⁸⁵Paul Salopek, 'Refugees fear sharing same fate as Kunta Kinte', Chicago Tribune, 17 July 2007.

The majority of the Eritrean refugees in Shimeba are fed up with war and terror, and there is the same feeling among the Kunama. A group of young Kunama men interviewed in the camp gave a response in unison on the issue of resistance towards the Eritrean regime:

We hate to fight; so the Kunama Front is not that attractive to us. But we are still blamed and punished for their activities by the Eritrean government. We are even insecure here in the camp, since the Front [DMLEK] has good contacts with Ethiopian authorities. So we feel insecure here. We see that people are being kidnapped from the camp. Maybe they are taken by the Front to become soldiers.³⁸⁶

Stories about abductions, forcible recruitment and threats towards the Kunama in the camp are rejected by the DMLEK. They claim that all recruitment is voluntary, based on the wish to remove President Isaias Afwerki from power: 'We want a change in Eritrea by all means. We want democracy and development for our people'.³⁸⁷ The DMLEK claims, as also stated by the defected security officer Mengheteab Girmay Asres, that the Eritrean government has recently intensified its operations against the Kunama with the aim of eliminating the group, as a response to the resistance exhibited by the movement.³⁸⁸

It appears that the Kunama refugees in the Shimelba camp are caught between a rock and a hard place; forced to flee their country in fear of persecution and possibly death at the hands of the Eritrean government; concerned that their cultural heritage may become extinct due to government campaigns and land encroachment; anxious of being resettled to a unknown life in the US; and, while remaining in the camp, constantly insecure about possible coercive recruitment into the Kunama resistance front.

Although the history of atrocities against the Kunama and their current disadvantaged position in relation the Eritrean authorities are quite unique in an Eritrean context, other minority grievances – than the Kunama – are also expressed against the EPLF government. The limitations of this study prevent an in-depth coverage of all ethnic groups in Eritrea; but for the sake of illustration the situation of the Jeberti is worth mentioning (Bariagaber 2006: 18).³⁸⁹

BEYOND THE KUNAMA: THE DIS-RECOGNITION OF THE JEBERTI

The history and the plight of the Jeberti people is somewhat parallel to the situation of the Kunama. The Jeberti are Tigrinya-speaking Muslims living in urban centres in the highlands of Eritrea and Tigray. Since their conversion to Islam, centuries ago, they have been marginalised and persecuted by the majority Christian Orthodox highlanders. For instance, being Muslims in the Christian highlands, the Jeberti were barred from tenure to agricultural land, forcing them to settle in small towns and concentrate on crafts and trade. In the deeply sedentary agriculturalist culture of the highlands, lacking access to land perpetuated the marginalisation of the Jeberti. Over time, the group has thus developed a distinct culture separating them from the other Tigrinya-speaking Christian highlanders.

Due to their marginalised position in society, the Jeberti sought to be recognised as a distinct ethnic group (nationality) under the 1987 constitutional reform in Ethiopia, which in principle emphasised

³⁸⁶Interviewed in Shimelba refugee camp, Tigray, Ethiopia, 29 April 2008.

³⁸⁷Interview with the DMLEK leaders, Kornelios Adolay Osman and Hosen Khalifa, in Addis Ababa on 26 April 2008.

³⁸⁸Walta Information Center: 'DMLEK condemns growing barbarity of Eritrean government', 5 August 2008, at: www.waltainfo.com, accessed 23 September 2008.

³⁸⁹Another group worth mentioning is the Afar. Since the Afar territory straddles the borders between Eritrea, Ethiopia and Djibouti, and the added concern that there are various political movements among them which advocate for a special Afar homeland, they appear to be a potential threat to the nationalistic policies of the Eritrean government and are thus susceptible to government sanctions.

their rights to cultural autonomy. On the recommendation of a special task group, Mengistu Hailemariam granted the Jeberti status as a distinct ethnic group, entailing *inter alia* separate representation in the Ethiopian parliament (shengo).³⁹⁰

The Jeberti case seemingly goaded the EPLF on several aspects. First of all, both during the struggle and in particular after independence, the EPLF's ideological and policy emphasis has been on creating national congruence, opposing all ethnic, sectarian, religious, or parochial claims and sentiments. Thus, an argument for recognition from a sub-group which EPLF perceived to be part and parcel of the Tigrinya highlanders appeared nonsensical. In the eyes of the EPLF, ethno-nationalities are mainly defined by linguistic criteria; hence the Jeberti should be classified as belonging to the Tigrinya group. The Jeberti argument of distinctiveness was thus interpreted as subversive to their national liberation struggle. This view was underpinned by the fact that the Jeberti turned to the Ethiopian government for acceptance as a culturally distinct group, and was subsequently granted such status. The 'cooperation' with the Ethiopian government by representatives of the Jeberti collectively stigmatised the group in the eyes of the EPLF. Consequently, towards the end of the liberation war, the EPLF deliberately targeted the Jeberti community. Their leader, Dr Yassin Aberra, was assassinated by the EPLF outside his own house in Asmara in January 1991, just four months prior to liberation.³⁹¹

The killing of the Jeberti leader made it clear that their claim for ethnic minority status would not be tolerated by the EPLF in independent Eritrea. After independence, many Jeberti fled the country and their struggle to be recognised as a distinct cultural minority is carried on by Jebertis in exile. The exiled Eritrean al-Nahda Party is predominantly composed of Jeberti, and is part of the broader coalition of Eritrean opposition movements supported by the Ethiopian government.³⁹²

FINAL REMARKS

The Eritrean Constitution states that 'all persons are equal under the law' (Art. 14.1) and that no person may be discriminated against on account of race, ethnic origin, or language (Art. 14.2). A similar prescription is found in both the ICERD and ICCPR, which Eritrea has ratified. It seems clear that the Eritrean government is violating its own Constitution and international law with its apparent discriminatory practice against the Kunama minority group, and possibly other minority groups too.

The apparent governmental targeting of Kunama cultural sites and traditions, in addition to harassment, intimidation and detention of Kunama representatives which has driven several thousands of families into refuge in Ethiopia, is raising concern among the Kunama that their unique culture is under threat and dying off in Eritrea today.

³⁹⁰Information given to the author by the late Dr Assefa Medhane, Professor at the Department of Political Science and International Relations, Addis Ababa University. Dr Assefa headed the Derg task force to assess the request by the Jeberti for recognition as a nationality.

³⁹¹Information given to the author by Dr Yassin's family.

³⁹²See press release, 'Constituent Congress of a new Eritrean mass party opens sessions (media team at site of Congress)', 25 July 2008, at: http://www.nharnet.com/July_2008/RC_Party_Congress_E_1_July2708.pdf, accessed 26 September 2008.

ANNEX I

The international and regional human rights instruments to which Eritrea is a party include the following:

- UN Convention on the Rights of the Child (1994)
- UN Convention on the Elimination of all Forms of Discrimination against Women (1995)
- African Charter on Human and Peoples' Rights (1999)
- African Charter on the Rights and Welfare of the Child (1999)
- International Convention on the Elimination of All Forms of Racial Discrimination (2001)
- International Covenant on Social, Economic and Cultural Rights (2001)
- International Covenant on Civil and Political Rights (2002)
- Statute for the International Criminal Court (2002).

United Nations Treaties

Date of admission to UN: 28 May 1993.

- International Covenant on Economic Social and Cultural Rights - ICESCR
Acceded: 17 April 2001. Reports submitted/due: 0/0 No reservations
- International Covenant on Civil and Political Rights - ICCPR
Acceded: 23 January 2002. Reports submitted/due: 0/0 No reservations
- International Convention on the Elimination of all Forms of Racial Discrimination - CERD
Acceded: 31 July 2001. Reports submitted/due: 0/0 No reservations.
- Convention on the Elimination of All Forms of Racial Discrimination - CEDAW
Acceded: 5 September 1995. Reports submitted/due: 0/2 No reservations
- Convention on the Rights of the Child - CRC Ratified: 3 August 1994.
Reports submitted/due: 0/2 No reservations

ILO treaties

- ILO 87 Freedom of Association and Protection of the Right to Organise Convention (1948).
Date of ratification: 22.02.2000
- ILO 98 Right to Organise and Collective Bargaining Convention (1949).
Date of ratification: 22.02.2000
- ILO 111 Convention concerning Discrimination in Respect of Employment and Occupation (1958).
Date of ratification: 22.02.2000
- ILO 138 Minimum Age Convention (1973) -
Date of ratification: 22.02.2000.

African System

- The African Charter on Human and People's Rights
Date of Ratification: 14.01.1999
- The African Charter on the Rights and Welfare of the Child
Date of Ratification: 22.12.1999.

ILO Conventions

ILO 87 ¹	ILO 98 ²	ILO 111 ³	ILO 138 ⁴	ILO 169 ⁵	ILO 182 ⁶
Yes	Yes	Yes	Yes	No	No

1. Freedom of Association and Protection of the Right to Organise Convention, ILO 1948
2. Right to Organise and Collective Bargaining Convention, ILO 1949
3. Convention concerning Discrimination in Respect of Employment and Occupation, ILO 1958
4. Minimum Age Convention, ILO 1973
5. Convention concerning Indigenous and Tribal Peoples in Independent Countries, ILO 1989
6. Worst Forms of Child Labour Convention, ILO 1999

ANNEX I I

HISTORICAL BACKDROP: THE CREATION OF ERITREA

Before the advent of colonialism in the Horn of Africa, the area known today as Eritrea generally fell under four different political domains:²⁰

The Mereb Melash (The Land Beyond the [river] Mereb) as it was called by the Abyssinians, or *Medri Bahari* (Land of the Sea), consisted of the highland region. The inhabitants of this region were Tigrinya-speaking, mainly Orthodox Christians from the three plateau districts of Hamasien, Seraye and Akele-Guzai. The region formed an integral part of the feudal structure of Abyssinia. As is the case today, the area was also inhabited by the Saho-speaking agro-pastoralist Muslims, and the Jeberti, a population of Tigrinya-speaking Muslims.

The western lowlands of Barka (and present Gash-Setit) were dominated by various Tigre-speaking groups and Beni-Amer clans, which were from time to time under the influence of the Funj Kingdom at Sennar (Sudan). These nomadic pastoral groups had little contact with the highlanders, except occasional reciprocal livestock raids. Smaller groups of hunters and gatherers, such as the Kunama and Nara, also inhabited these areas.

The Semhar region of Massawa and the coastal areas (including the provinces of Sahel and parts of Senhit) had, since the rise of Islam, been under Arabic/Muslim influence. Especially during the Ottoman Turk period this district had adopted its own identity, distinguishing it from the neighbouring areas. The border areas of Keren sometimes fell under the influence of Islam, and at other times they paid tribute to the Funj kingdom.

The Afar land of Dankalia is the coastal area extending southwards from the Gulf of Zula, south of Massawa, to the former French enclave of Djibouti. This area was part of the Sultanate of Assua, and the pastoral Afar clans which inhabited the region had never been ruled by any outside power until the arrival of the Italians. The Afars have always been perceived by their surrounding neighbours as a hostile and fierce people, with a strong clan and ethnic identity. After the colonial race for the Horn was over, the Afars found themselves fragmented between two new-born states – Eritrea and Djibouti – and the old, but expanding, Empire of Ethiopia.

The Italian presence in Eritrea commenced in 1869 through a shipping company which purchased the Bay of Assab for strategic trading purposes (Negash 1987). In 1882, Assab was formally declared an Italian colony, and Italy started preparing for the colonial race for Africa. In 1885, Italy expanded its territory northwards and incorporated the port of Massawa into the colony, reaching out for the highlands as the next conquest. The first Italian attempt to enter the highlands in 1887 met with defeat at the hands of Emperor Yohannes of Ethiopia. However, troop reinforcements from Italy, the dire local situation caused by drought and famine in 1888-90, and the death of Emperor Yohannes in 1889, facilitated the Italian takeover of the Eritrean highlands. A treaty with the new Ethiopian Emperor Menelik II was signed at Wichale in May 1889, where Menelik was forced to accept the Italian colonisation of Eritrea (Negash 1987: 2). The Italian colony of Eritrea was subsequently proclaimed on New Year's Day, 1 January, 1890.

COLONIAL RULE OF ERITREA

The colonial rule of Eritrea may be divided into six phases, comprising the period between the proclamation of the colony in 1890, until the defeat and the expulsion of the Derg army from Eritrean soil in 1991 and the subsequent proclamation of independence on 24 May 1993.

The *first* phase of this history ended with the Italian attempt to continue its expansionist policies to colonise Ethiopia. In the famous battle of Adwa (in Tigray) in 1896, the advancing Italian army was crushed by Emperor Menelik's troops. The humiliating defeat led to a reorganisation of Italian colonial politics. The *second* phase of Italian colonialism in Eritrea started in 1907 and ended in 1932. In this period, civilian Italian governors administered the colony as they consolidated the Italian presence in Africa. They sought neighbourly relations with Ethiopia and political stability within Eritrea. Initial Italian plans to make Eritrea a settler colony were not implemented, and Eritrea served instead as a reservoir, supplying colonial soldiers to consolidate Italian rule in Somalia (1908–1910) and later in Libya (1912–1932) (Negash 1987: 4).

The *third* phase of colonial history in Eritrea marks the last phase of Italian influence, which began in 1932 with the preparations for the Italian invasion of Ethiopia, and ended in 1941 with the Italian defeat by the British/Allied forces as a consequence of World War II. In this comparatively short time period, Eritrea experienced the most radical changes during its time as a colony. More than 300,000 Italian troops arrived in the mid-1930s; after 50,000 Italian labourers, who had arrived in advance, had prepared the necessary infrastructure of transport and accommodation. In this period, the slumbering colony of Eritrea was turned into a commercial and industrial centre for the new empire and a traditional colonial economy gave way to a war economy. The growth of urban centres changed Eritrean society forever, and Italy transformed Eritrea into a real colony of settlement where Italians constituted up to 12 per cent of the entire population (Negash 1987: 4). The recruitment of Eritrean nationals to the colonial army created possibly the greatest impact on Eritrean society in general. Between 1935 and 1941 the colony produced 60,000 Eritrean men under arms, which constituted a large share of Eritrea's adult male population. Nearly all of these soldiers were used outside Eritrea, most of them in the Ethiopian occupation force.

During the final phase of Italian colonialism, Tekeste Negash (1997) argues that a combination of three factors contributed towards a development of what may rightly be called a separate and distinct 'Eritrean' identity and consciousness among major parts of the population; an identity which distinguished them from the old, 'greater Ethiopia' identity-sphere. The first was the growing racist ideology of the Italian colonial policy, which began to draw a distinction between 'Eritreans', as subjects under their civilising umbrella, and the rest of the inhabitants of the Ethiopian empire. This policy which was intended to enhance the Italian colonial ego appears to have been employed by the Eritrean literati in their shaping of 'Eritreanness'. A second factor, writes Tekeste Negash, was the economic boom the Italian preparations for war against Ethiopia created in Eritrea. A huge indigenous wage-labour market was created, whereby Eritrean citizens' inclusion in a modern money-economy distinguished them further from their Ethiopian neighbors. Finally, the third factor behind the emergence of an 'Eritrean' identity was the Italo-Ethiopian war itself and the vital role the Eritreans were made to play. With slightly more than 50,000 Eritrean troops fighting alongside the Italians in the occupation force – whose role was pivotal in the actual conquest of Ethiopia, and later its pacification – this broadened the division between the two peoples. Italian policy later cemented this division by passing a decree in 1937 which distinguished the Eritreans from other subjects of the new colony. Eritreans were to be referred to as 'Eritreans' and were given special privileges in certain categories of jobs and professions, whereas the Ethiopians were termed 'natives' and were discriminated against *vis-à-vis* the Eritreans in certain fields (Negash 1997: 16-18; see also Negash and Tronvoll 2000).

These three factors contributed to the creation of a nascent Eritrean identity; an identity whose main characteristic was based on the notion that the Eritreans and their land were more 'developed' than the rest of the Ethiopian empire.

The start of World War II marked the beginning of the end of Italy's influence in Africa. As a part of the overall war strategy, the British forces in East Africa captured enemy colonial territory, and by April

1941 all Eritrean territory was under British/Allied control and the *fourth* phase of the colonial history of Eritrea had begun. The British Military Administration (BMA) of Eritrea governed the territory according to international rules concerning the occupation of enemy territory in war time, and its authority was of a provisional character (Trevaskis 1960: 24). The British did, however, dismantle large parts of the Eritrean infrastructure and factories and export them to other British colonies during this period.

After a decision of the UN General Assembly, Eritrea was federated with Ethiopia in 1952, which marked the start of the *fifth* 'colonial' period in Eritrea. Even though the UN had drafted a particular Eritrean constitution in 1952, which explicitly stated the autonomous status of Eritrea under the Ethiopian Crown, these rights were infringed from the very start of the period of federation. The Eritrean police force was to take orders from Addis Ababa; Tigrinya and Arabic languages were substituted by Amharic as the official language; the Eritrean flag was abolished; and so on. Finally, in November 1962, as a consequence of Ethiopian machinations, the Eritrean Parliament dissolved itself, a decision which, according to the UN-drafted constitution and the UN resolution on Eritrean/Ethiopian federation (390A, 1952), was illegal. From that date Eritrea was annexed as Ethiopia's fourteenth province.

With the Ethiopian annexation the *sixth* and last phase of the colonial history of the country commenced. The violation of the federal agreement triggered off armed Eritrean resistance in 1961, initiated by the Eritrean Liberation Front (ELF). The Ethiopian annexation and increasing oppression of the Eritrean people stimulated growing support for the liberation movements. In 1970 a small faction of the ELF broke off and established its own movement, which, by 1975, took the name of the Eritrean People's Liberation Front (EPLF). During the 1970s the ELF and the EPLF engaged in civil war with each other, based on different strategies of liberation and views of ideology, in addition to an intensified war against the then Marxist-Leninist regime of Ethiopia. In 1982 the EPLF expelled the remains of the ELF from Eritrean soil, and thus could direct all its efforts against the Mengistu regime. With growing tension within Ethiopia, as a consequence of the liberation of Tigray by the Tigray People's Liberation Front (TPLF) in 1989, the EPLF prepared themselves for the final push. On 24 May 1991 the EPLF marched into Asmara, and by the evening of 26 May, Assab was captured and the EPLF held control over all Eritrean territory.

It was during this last decade of the liberation war that one can say that traces of a true Eritrean national identity emerged and an all-encompassing form of nationalism was achieved, since the EPLF was uncontested in shaping the struggle to put an end to the Ethiopian hegemonic control of Eritrean society. 'Eritrea thus ceased to be a mere dream and became a reality,' writes Ruth Iyob, 'because those who shared in its construction attained the capabilities needed to counter those of its main opponent, Ethiopia' (Iyob 1995: 3).

After the fall of the Derg regime in June 1991, the Ethiopian People's Revolutionary Democratic Front (EPRDF) took power in Ethiopia, and the EPLF proclaimed a two-year transitional period which would end in a referendum on independence. In April 1993 the Eritreans went to the polls and voted overwhelmingly in favour of independence and on 24 May 1993 the EPLF declared Eritrea an independent sovereign state. Immediately thereafter, international society gave recognition to Eritrea as a sovereign state.

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