



ARTICLE 19 individual submission to the UN Universal Periodic Review of Eritrea

For consideration at the 18th session of the UN working group in January/February 2014

24 June 2013

Executive summary

1. In this submission, ARTICLE 19 assesses Eritrea's compliance with its international human rights obligations in respect of the freedom of expression since the last UPR review in 2009.
2. The UPR Working Group had presented Eritrea with 9 recommendations that directly concerned the right to freedom of expression, none of which were accepted. Rather than improving, the human rights situation in Eritrea has continued to deteriorate since 2009. This submission will examine the following key issues:
 - Lack of cooperation with international and regional human rights mechanisms;
 - The status of the 1997 Constitution and state of emergency;
 - National laws restricting the right to freedom of expression;
 - Various attacks on freedom of expression and imprisonment of journalists;
 - Low Internet penetration levels and lack of access to alternative sources of information.

Lack of cooperation with international and regional human rights mechanisms

3. The Eritrean Government has failed to submit its initial report to the Human Rights Committee regarding the steps it has taken to implement the International Covenant on Civil and Political Rights (ICCPR). Eritrea acceded to the ICCPR on 22 January 2002 and its initial report was due on 22 April 2003. Eritrea has not signed or ratified the Optional Protocol to the ICCPR, having rejected recommendations to do so during its last UPR review.
4. During its last UPR review, the Eritrean Government said it would consider requests for country visits from UN Human Rights Special Procedures and Rapporteurs on a case-by-case basis. Nevertheless, it has refused to invite the UN Special Rapporteur on the Human Rights Situation in Eritrea, Sheila Keetharuth, to visit the country and continues to refuse to cooperate with her office. Moreover, requests by Frank La Rue, the UN Special Rapporteur on the Right to Freedom of Opinion and of Expression, for an official visit have not been responded to.
5. The Eritrean Government has also failed to adopt or implement the recommendations of the African Commission on Human and People's Rights (ACHPR) in respect of two decisions:
 - *Communication No. 275 Article 19/Eritrea* 2003, in which the ACHPR found that the incommunicado detention without trial of at least eighteen journalists and eleven former government officials in Eritrea, in addition to a wholesale ban on the operation of the private press, constituted a violation of the right to freedom of expression (Article 9 of the African Charter on Human and People's Rights) and several other convention rights.

- *Communication No. 250 2002 Liesbeth Zegveld and Mussie Ephrem/Eritrea*, in which the ACHPR affirmed that the right to freedom of expression may not be derogated from on the basis of an emergency or “special circumstance”. The incommunicado detention of 11 former government officials without charge or trial was found to be a violation of the right to freedom of expression, the right to liberty and the right to a fair trial.

Status of the 1997 Constitution and State of Emergency

6. Implementation of the 1997 Constitution is uncertain due to a continuing State of Emergency in Eritrea.
7. Following the UPR review in 2009, the Eritrean Government noted that the 1997 Constitution is the supreme law of the land and the Government is implementing it, including the holding of democratic elections at the local, sub-regional and regional levels. It committed to hold national elections once the threat to national security and the country’s sovereignty is irrevocably removed.
8. However, national security concerns have continued to be used to prevent the holding of elections and the status of the 1997 Constitution and its Bill of Rights remains uncertain.

National laws restricting freedom of expression

9. At its last UPR, the Eritrean Government committed to work on developing its press laws and regulations consistent with the values, traditions, cultural practices and national interest of Eritrea. Nevertheless, no media law reform has taken place and there is still no free or privately owned press operating in Eritrea.
10. The Press Proclamation No. 90/1996 continues to regulate professional journalism and the operation of the mass media in Eritrea. While it claims to protect freedom of expression and guarantees against censorship, numerous articles of the Proclamation are against internationally accepted standards on freedom of expression, including:
 - A restrictive definition of “journalist” is adopted, and journalists are required to register with the government (Article 3).
 - The State is entitled to own media (Article 4(3)), and is afforded a monopoly over radio and television broadcasting (Article 4(1)(d)).
 - Blanket derogations from the right to freedom of expression, including the emergency power to rescind the Press Proclamation, are provided where the country or part of it is “faced with a danger” threatening public order, security and general peace caused by war, public rebellion or public disorder or by a natural disaster (Article 4(1)(c)).
 - The government prescribes the objectives of the press (Article 4(2)). The press is required to work “to realize national objectives” and to “develop public control” and “constructive criticism” by “affirmatively contributing to the clarification of ideas helpful to the organs of government in rendering solutions” (Article 4(2)(e)). The media is expected to enrich and deepen the “national tradition” and “work for national unity” Article 4(2)(d)).
 - Journalists are put under a duty not to “distort information” or “disseminate unverified information”, and not infringe upon broad and undefined concepts, including: “supreme national interests”, “division”, and “dissension” (Article 5(2)).
 - Permission must be sought from the government to print newspapers (Article 7(2), Article 9). The government is given full discretion to deny permission to those requesting it and is not required to give reasons (Article 7(3)), although a right of appeal to the courts is available.
 - The import or export, lease, sale, reproduction, display or distribution of artistic goods such as films, cinema, tape cassettes or videocassette without a permit from the ministry is prohibited (Article 8).

- Foreign correspondents for newspapers based outside of Eritrea require a permit from the Ministry of Information, which may be refused at their discretion (Article 9).
 - Any newspaper licensed to operate in Eritrea must provide two copies of every issue to the Ministry of Information, free of charge (Article 13).
 - There are broad content restrictions on matters the press may disseminate (Part V), including: “any matter which vilifies or belittles humanitarian and religious beliefs”; “inaccurate information and news intentionally disseminated to influence economic conditions, create commotion and confusion and disturb general peace”; “shapes, pictures and maps of Eritrean territory”; “any document or secret information on the supreme interest of the nation and people”; information that “incites religious and sub-national differences, promotes the spirit of division and dissension among the people, vilifies the Eritrean people’s tradition of struggle” among others.
 - Newspapers that fail to provide the right of reply to “incorrect news or information” may be fined (Article 15(7)).
 - Foreign investment in the media is prohibited (Article 7(8)).
11. The Criminal Code includes extensive content-based restrictions that illegitimately restrict freedom of expression:
- Defamation and calumny are criminalised under Articles 580(1) and 580(2) respectively. Article 580(3) also makes “insulting behaviour or outrage” a criminal offence, with no defences specified. Penalties include fines and imprisonment for between one and six months, depending upon the perpetrator’s intent. Article 586 provides for aggravated sentences where offences against honour or reputation are committed against a public servant in the discharge of his duties. In addition to these general provisions on defamation, Article 256 specifically protects the “Emperor” or the constitutional authorities from “injury”.
 - Extensive provisions on treason and national include “high treason” (Article 261); “attacks on the independence of the state” (Article 259), and “impairment of the defence powers of the state” (Article 260). These provisions are among those used to silence dissent and insulate itself from criticism.
12. Article 7 of the Proclamation to Determine the Administration of Non-governmental Organisations No. 145/2005 provides that “the activities of every NGO shall be limited to relief and/or rehabilitation works.” All such works must be in conjunction with and subject to the approval of the relevant government ministry. The Proclamation has the effect of prescribing the issues that NGOs can work on, outlawing human rights advocacy as well as oppositional political activities.

Attacks on freedom of expression and imprisonment of journalists

13. The Eritrean Government did not make any commitments during its last UPR review regarding releasing imprisoned journalists. It also did not respond to questions on the fate of journalists and human rights defenders in detention.
14. 18 journalists and 11 former government officials (part of a collective known as “the group of 15”) arrested and detained in 2001 ostensibly on national security grounds are still officially unaccounted for and their whereabouts unknown.
15. It was reported in August 2012 that eight of the journalists, Dawit Habtemichael; Mattewos Habteab; Temesgen Gebreyesus; Yosef Mohamed Ali; Medhaine Haile; Sahle Tsegazab; Said Abdul Kadir, and Fessahye Yohannes, have died in detention. Seyoum Tsehaye, Amanuel Asrat, and Temesgen Gebreyesus are reported to still be alive.

16. Dawit Isaak, one of the journalists detained in the 2001 clampdown on independent media, remains in detention and is in poor mental and physical health. His lawyers have referred his case to the Africa Commission on Human and Peoples Rights (ACHPR).
17. In February 2009 the authorities shut down Radio Bana and 38 journalists working there were arrested and detained. Their fate is largely unknown.
18. A few days following the arrests of the Radio Bana's Journalists, the following people were arrested: Isaac Abraham, a journalist of *Eri TV*; Girmay Abraham of radio *Dimtsi Hafash* (The Voice of the Masses state radio); Mulubrhan Habtegebriel, a journalist, writer and translator; Meles Negusse, a young writer and poet; Tsegay (Temere'o) Peot; Zemenfes Haile, a writer; Petros Teferi (wedi Qeshi) both a writer and poet; Tesfagirgios Habte; Negassi Habtemariam, a veteran journalist at the state media; Mohammed Ali Dafla, a journalist from Radio Bana; Mohammed Said Osman, a journalist and head of Tigre branch in Radio Bana and well known poet among the Tigre people. It is not known where they are being held.
19. ARTICLE 19 has observed that the targeted imprisonment of journalists and human rights defenders has continued with impunity since 2009:
 - In February 2011, radio journalists Nebiel Edris, Ahmed Usman and Mohamed Osman were arrested and detained.
 - Tesfalidet "Topo" Mebrahtu, who used to report sports on state-owned radio *Dimtsi Hafash* and state-owned *Eri-TV*, was also arrested at the end of March 2011.
 - Radio Bana journalist Yirgalem Fisseha Mebrahtu who was reportedly being held in solitary confinement in Mai Swra Prison was "released on bond" in early 2012 after being held for 10 months with relatives acting as guarantors. Her colleagues - Bereket Misghina, Wedi Misghina, Basilios Zemo, Wedi Zemo remain in custody.
20. The foreign media has been harassed and their transmission blocked. On 5 February 2013, *Al-Jazeera TV network* was blocked for 11 days because of allegedly carrying reports about demonstrations by Eritrean exiles outside Eritrean diplomatic missions in opposition to the government and in support of soldiers who had allegedly stormed the Ministry of Information on 21 January 2013 in what was believed to have been an attempted coup.
21. On 4 September 2012, Radio Erena, a Paris-based satellite radio station that broadcasts to Eritreans in Eritrea and to the Eritrean Diaspora, was a "victim of sabotage" that prevented it from being carried by the Arabsat radio and TV satellite service for three weeks. It had been previously been jammed on 14 August but was restored on 2 September.
22. Radio Erena's website was the target of a cyber-attack on 28 August 2012.

Low Internet penetration levels and access to alternative sources of information

23. Incredibly low Internet penetration levels and a lack of communications infrastructure remains a serious obstacle to the realisation of the rights to freedom of expression and information and hinders media development.
24. Mobile and fixed telephone reach in Eritrea is 5%, and only 6.2% of the population use the Internet. These are among the lowest rates in the world.

Recommendations

In response to these concerns ARTICLE 19 calls upon Member States to put forward clear and strong recommendations to the Eritrean government, namely to:

Lack of cooperation with international and regional human rights mechanisms

- Submit to the Human Rights Committee its initial report on the steps it has taken to implement the ICCPR;
- Ratify the Optional Protocol to the ICCPR;
- Extend a standing invitation to and engage cooperatively with all UN special mandate holders, in particular the Special Rapporteur on the Human Rights Situation in Eritrea, Sheila Keetharuth, and the Special Rapporteur on the Right to Freedom of Opinion and of Expression, Frank La Rue, whose repeated requests for a country visit have been ignored;
- Implement the decisions of the African Commission in the cases of *Communication No. 275/2003 Article 19/Eritrea* and *Communication No. 250/2002 Liesbeth Zegveld and Mussie Ephrem/Eritrea*.

Status of the 1997 Constitution and state of emergency

- Promulgate the 1997 Constitution and confirm the end of the State of Emergency;

National laws restricting freedom of expression

- Repeal the Press Proclamation No. 90/1996, and undertake comprehensive reforms to provide an enabling environment for an independent and pluralistic media;
- Repeal the offences of criminal defamation, calumny and insulting behaviour or outrage within the Criminal Code, and repeal provisions providing heightened protections to public officials;
- Reform provisions with the Criminal Code concerning national security to ensure that they comply with international standards on freedom of expression;
- Amend the Proclamation to Determine the Administration of Non-governmental Organisations to lift restrictions on the operation of organisations seeking to promote and protect human rights;

Attacks on freedom of expression and imprisonment of journalists

- Unconditionally release all journalists and former government officials who remain in prison, and afford them adequate redress for the denial of their freedom of expression rights and prolonged arbitrary detention;
- Confirm the names, locations and health status of all detainees, and confirm any deaths that have occurred in detention. Any death in custody should be speedily, independently and effectively investigated, and redress afforded to victims' families;
- Refrain from harassing, threatening, criminalising or arresting writers, journalists, bloggers, political activists and other human rights defenders for reasons connected to their peaceful activities, including the legitimate exercise of their freedom of expression rights;
- Cyber-attacks against news websites should be fully, effectively and speedily investigated and perpetrators prosecuted;

Internet penetration levels and access to alternative sources of Information

- Adopt a plan of action to increase access to the Internet in the country among the whole population, including a strategy for developing telecommunications infrastructure.