



Individual submission to the Universal Periodic Review of Eritrea

For consideration at the 32nd Session of the Working Group in January 2019

19 July 2018

Executive Summary

1. In this submission, ARTICLE 19 highlights concerns on the following issues related to freedom of expression:
 - Cooperation with international and regional human rights mechanisms;
 - Legal framework for freedom of expression;
 - Press freedom;
 - Freedom of expression online.
2. On all these issues, the Eritrean government showed no progress on previously accepted UPR recommendations.¹
3. Efforts to systematically choke off any space for dissent have continued, online and offline, on the pretext of protecting national security. This is largely enabled through total control over all media, the arbitrary and incommunicado detention of journalists and opposition politicians, and severe intimidation against the population as a whole. The absence of an independent judiciary or legislature allows these violations to take place unchallenged, in an environment that makes independently monitoring the human rights situation from outside of the country challenging.
4. The recent peace agreement between Eritrea and Ethiopia, restoring transport and telecommunications channels between the countries, is positive. However, prospects for reform should be checked against the extreme challenges faced in building credible and independent institutions for better governance after decades of deliberate neglect, addressing in parallel a legal framework that gives the executive unfettered discretion to repress all criticism and evade accountability.
5. At this critical juncture, ensure specific and detailed recommendations to assist Eritreans in overcoming these challenges, and ensuring the effective redress of past violations, is essential.

Cooperation with International and Regional Human Rights Mechanisms

6. During its previous UPR, Eritrea accepted recommendations to enhance cooperation with international and regional human rights bodies, including the UN Human Rights Council (HRC).² More specific recommendations related to granting UN Special Procedures access to the country and addressing cooperation with the Special Rapporteur on human rights in Eritrea, were not supported.³ Cooperation has not improved.
7. The Commission of Inquiry was denied access to the country, and the government has yet to grant the Special Rapporteur on the human rights situation in Eritrea access, instead harassing and intimidating the mandate holders and persons seeking to engage with them.⁴ Visit requests issued by the thematic mandate holders continue to be refused, including a second reminder in 2015 of an outstanding 2003 request by the Special Rapporteur for freedom of opinion and expression.

¹ All UPR Recommendations and responses to them cited in this submission are taken from the 2nd cycle of the UPR, as reflected in the Report of the Working Group on the Universal Periodic Review, Eritrea, A/HRC/26/13; available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/131/29/PDF/G1413129.pdf?OpenElement> and in the Addendum to the Report of the Working Group on the Universal Periodic Review, Eritrea, A/HRC/26/13/Add.1; available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/054/51/PDF/G1405451.pdf?OpenElement>

² 122.73 (Somalia); 122.74 (Togo); 122.75. (Chad); 122.76 (Paraguay); 122.79 (Kenya); 122.81 (Gabon); 122.82 (Ghana); 122.98 (Turkey);

³ 122.72 (Netherlands); 122.77 (Portugal); 122.78 (Tunisia); 122.80 (Germany); 122.83 (Latvia); 122.84 (Somalia); 122.85 (Uruguay); 122.86 (Republic of Korea); 122.87 (Ireland); 122.88 (Portugal); 122.89 (Czech Republic); 122.90 (Brazil); 122.91 (Norway); 122.92 (Romania); 122.93 (South Sudan); 122.94 (Togo); 122.95 (Italy); 122.96. (Montenegro); 122.97 (Sweden); 122.99 (Portugal); 122.100. (Namibia); 122.101 (France); 122.102 (Australia); 122.103 (Botswana); 122.104 (Belgium); 122.105 (Namibia);

⁴ Press briefing note on attacks/threats by States against UN human rights experts, Spokesperson for the UN High Commissioner for Human Rights, 21 November 2017; available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22421&LangID=E>

8. While Eritrea acceded to the International Covenant on Civil and Political Rights (ICCPR) in 2002, it has yet to fulfil its obligation to submit its initial report to the Human Rights Committee (HR Committee) under Article 40, the review progressing in the absence of such a report.
9. We remain concerned by the continued non-implementation of key African Commission for Human and Peoples' Rights (ACHPR) decisions, including:
 - *Communication 250/02 Liesbeth Zegveld and Mussie Ephrem v Republic of Eritrea* (2003),⁵ which affirmed that freedom of expression cannot be derogated from even in emergencies, and called for the release and compensation of 11 former government officials detained without charge or trial in violation of the African Charter on Human and Peoples' Rights (the African Charter), including the right to freedom of expression (Article 9(2)).
 - *Communication No. 275/03 Article 19 v Republic of Eritrea* (2007),⁶ which called for the release or speedy trial of at least 18 journalists and 11 former government officials held in incommunicado detention without trial, for their compensation, access to lawyers and family, as well as for the lifting of the private media ban.
 - *Communication 428/12 Dawit Isaak v Republic of Eritrea* (2016),⁷ reaffirmed *Communication 275/03* and "strongly urged" Eritrea to implement its decision "without further delay". Dawit Isaak, one of the original journalist applicants, continues to be held in the maximum security Eirairo Prison.
10. While Eritrea submitted its overdue initial report to the 62nd ordinary session of the ACHPR, we regret that during its review the government consistently denied allegations of human rights violations and refused to comply with the above ACHPR decisions.

Recommendations

11. Fully cooperate with all international and regional human rights mechanisms, including by:
 - Accepting the visit requests of and allowing unhindered access for the UN Special Rapporteur on the human rights situation in Eritrea and the UN Special Rapporteur on freedom of opinion and expression, as well as issuing a standing invitation to all HRC special procedures;
 - Committing to implementing all UN special procedures' recommendations, consulting with OHCHR, regional and national civil society organisations on a roadmap for implementation, seeking technical support from international and regional human rights bodies;
 - Responding to the HR Committee's List of Issues, correcting the lack of compliance with Article 40 of the ICCPR;
 - Implementing the decisions of the ACHPR in *Communication 275/2003*, *Communication 250/2002*, and *Communication 428/12*.

Legal framework for freedom of expression and related rights

12. Absent contrary evidence, no progress has been made to bring the Constitution or national laws restricting freedom of expression into compliance with the ICCPR, notwithstanding some UPR recommendations accepted on this,⁸ while others were noted.⁹

Constitutional Framework

13. Article 19 (2) and (3) of the 1997 Constitution sets out protections for the right to freedom of expression and access to information,¹⁰ though Article 26 largely claws those back. It contravenes the African Charter by allowing for derogations of the right in times of emergency, contravening the African Charter, and violates Article 19(3) of the

⁵ Communication 250/02 Liesbeth Zegveld and Mussie Ephrem/Eritrea, 20 November 2003; available at: <http://www.achpr.org/communications/decision/250.02/>

⁶ Communication 275/03 Article 19/Eritrea, 30 May 2007; available at: <http://www.achpr.org/communications/decision/275.03/>

⁷ Communication 428/12 Dawit Isaak v Republic of Eritrea, 27 April 2018; available at: <http://www.achpr.org/communications/decision/428.12/>

⁸ 122.22 (Czech Republic); 122.107 (Mexico); 122.31 (Tunisia); 122.32 (Uruguay); 122.41 (Ghana); 122.43 (Philippines); 122.158 (Japan); 122.159 (Lithuania); 122.160 (Belgium); 122.162 (Botswana).

⁹ 122.30 (Australia); 122.33 (Republic of Korea); 122.34 (Slovakia); 122.35 (Somalia); 122.36 (Sweden); 122.37 (Namibia); 122.38 (Germany); 122.40 (Switzerland); 122.161 (United States of America); 122.164 (Czech Republic); 122.167 (Estonia);

¹⁰ Article 19 (2) Every person shall have the freedom of speech and expression, including freedom of the press and other media; Article 19 (3) Every citizen shall have the right of access to information.

ICCPR by allowing expression to be limited for ambiguous purposes, including in circumstances that are neither “necessary” nor “proportionate”.

14. These limited protections are undermined by the constitution’s uncertain legal status: it has never been formally or fully implemented, on the basis of the alleged threat to national security and sovereignty posed by the (now discontinued) conflict with Ethiopia. The President’s announcement in 2014 of the drafting of a new constitution has exacerbated this uncertainty.¹¹ The lack of transparency in this apparent process, including the failure to disclose any draft or ensure effective participation of all stakeholders in its development, is a concern compounded by the absence of an elected legislature, independent media, or critical civil society.

Restrictive criminal laws

15. In May 2015, notwithstanding the absence of a functioning legislature, Eritrea enacted a new Penal Code,¹² and Criminal Procedure code regulating its implementation,¹³ which ostensibly replaced the Transitional Penal Code (TPCE), established under emergency powers in 1991. The new codes replicate many of the provisions found in the TPCE, in effect entrenching emergency powers within ordinary law. Notwithstanding these changes, however, it is reported that the Special Court continues to operate using the TPCE framework.
16. A number of overly broad provisions in the new Penal Code allow for the targeting of dissent and do not comply with the African Charter or ICCPR.
17. Defamation and insult are criminalised in the penal code (“defamation or malicious injury to honour or reputation”, **Article 301**; “insulting behaviour and outrage”, **Article 302**), allowing for custodial penalties of between 1 and 6 months as well as fines, contradicting guidance of the HR Committee.¹⁴ The Penal Code also allows for punishment for “defamation of government institutions” (**Article 154**) and “insults to the national flag of Eritrea or other countries” (**Article 123**), allowing for imprisonment of up to 3 years and 6 months respectively, and/or fines – against international law.¹⁵
18. Critical discourse on religion is severely restricted through provisions vaguely criminalising “defamation of or interference with religious and ethnic groups” (**Article 195**) and “disturbance of religious or ethnic feelings” (**Article 196**), allowing for up to 1-year imprisonment and/or a fine. Both provisions are not limited to acts intentionally inciting acts of violence, hostility or discrimination per Article 20(2) ICCPR, instead protecting subjective feelings of individuals or groups from injury, violating both the rights to freedom of expression and religion or belief. An aggravated offence of “public incitement” which includes an “appeal to religious or ethnic hatred” (**Article 190**), punishable by 3 – 5 years’ imprisonment, is not drawn narrowly enough to comply with the requirements of Articles 19(3) and 20(2) of the ICCPR.
19. A series of ambiguous provisions, ostensibly aimed at protecting national security, may easily be misapplied to target dissent. For example, “spreading false rumours” to “alarm the public” may result in imprisonment up to 6 months or a fine (**Article 194(1)(b)**), with double the custodial penalty if combined with “intent to undermine governmental authority” (**Article 194(2)**). More severely, the offence of “treason” (**Article 112(1)**) allows for between 13 and 23 years’ imprisonment for activities, including expression, which undermine national security interests in broad ways. Together with offences for “High Treason” (**Article 113**) and “Seditious Libel” (**Article 122**), these offences threaten freedom of expression, in particular in relation to reporting on national security matters. As well as being broadly framed, they do not, for example, provide defences where the public interest in releasing classified information outweighs the harms of those disclosures.
20. Other offences, such as “participation in a criminal society” (**Article 191**) and “participation in an unlawful assembly” (**Article 192**), also allowing for imprisonment or fines, are premised on concepts of “criminality” that do not respect the rights to freedom of association or peaceful assembly, and therefore may be applied to limit legitimate civic organizing.
21. ARTICLE 19 remains concerned that the absence of an independent judiciary has enabled total impunity for violations and abuses of civil and political rights in the country, including the rights to freedom of expression, religion or belief, association, and peaceful assembly.

¹¹ <http://www.shabait.com/news/local-news/18766-president-isaias-conducts-interview-with-national-media-outlets-focusing-on-domestic-affairs-in-connection-with-the-new-year>

¹² Penal Code of the State Eritrea, 2015; [unofficial English translation] available at:

<http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/101051/121587/F567697075/ERI101051%20Eng.pdf>

¹³ Criminal Procedure Code of the State of Eritrea, 2015; [unofficial English translation] available at:

<http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/101053/121589/F-308052584/ERI101053%20Eng.pdf>

¹⁴ The HR Committee has made clear that custodial penalties are never proportionate penalties for defamation, and that States should consider the complete decriminalisation of defamation. See: HR Committee, General Comment No. 34, CCPR/C/GC/34, 12 September 2011, at para. 47.

¹⁵ *Ibid*, at para. 38.

22. Arbitrary and incommunicado arrests and detentions of persons engaged in actual or perceived dissent or criticism, including of journalists and politicians whose rights are subject to the abovementioned ACHPR communications, are a concern. While accurate figures are challenging to maintain, reports in 2016 claim 360 facilities in the country hold more than 10,000 prisoners detained for political reasons.¹⁶
23. Indiscriminate mass arrests to disperse and deter peaceful assemblies are also a serious concern, including hundreds of individuals – including minors – peacefully assembling in the Akriya neighbourhood in October 2017, in response to the arrest of the late elder Musa Mohamed Nur.¹⁷ Following his death in custody, and funeral in March 2018, hundreds more individuals were arrested, including two journalists.¹⁸ Whilst many were released, an unknown number remain in custody.

Recommendations

24. We recommend the government of Eritrea:

- Clarify the status of the 1997 Constitution, and ensure that any new Constitution is promulgated through a fully transparent, inclusive and participatory process, ensuring its guarantees for the aforementioned rights comply with international human rights law, including to ensure effective remedies for past human rights violations;
- Cease arbitrary arrests and arbitrary and incommunicado detentions, in particular for individuals exercising the abovementioned rights, and release and compensate all those currently detained for the exercise of those rights, including all journalists and political opponents;
- Reform the Penal Code to bring it into compliance with international human rights law, including by amending or where necessary repealing the abovementioned provisions which do not comply with international human rights law, and discontinuing the use of the TPCE.

Media freedom and safety of journalists

25. No independent media exists in Eritrea, notwithstanding the government's acceptance during the last UPR of recommendations to respect the rights of the press and other media, and ensure any "harm" against journalists is investigated and perpetrators prosecuted.¹⁹ A series of more specific recommendations related to these issues were not supported, demonstrating the lack of political will to create an enabling environment for a free press.²⁰

Press and Broadcast Regulation

26. While the absence of independent media in the country makes the concept of "regulation" largely moot, the Press Proclamation No. 90/1996 is relevant for the almost total discretion it gives for arbitrary executive action. Even if institutions are reformed, the repeal of the 1996 Proclamation, would be essential to bringing the framework for media freedom in line with international human rights law.
27. The 1996 Proclamation provides, for example, a total State monopoly over radio and television broadcasting (**Article 4(1)(d)**), while allowing the State to own other forms of media (**Article 4(3)**), and requiring all journalists to register with the government (**Article 3**). Rather than seek to protect media independence, diversity and pluralism, the Proclamation requires all media to work "to realize national objectives" defined by the government and "develop public control" (**Article 4(2)**). A series of positive obligations define how journalists are required to report the news (see, for example, **Article 5**), and a broad range of content-based reporting limitations, many duplicating provisions in the Penal Code, are also set out (**Part V of the Proclamation**). Close supervision from the Ministry of Information, together with powers to fine media and refuse or revoke licenses, equate to almost unfettered control over media, making the limited judicial oversight provided in the Proclamation meaningless. Foreign media are also tightly regulated under the Proclamation.
28. The last national private media outlets were banned in September 2001, and no foreign correspondences have been allowed to maintain residency since BBC and Reuters journalist Jonah Fisher was expelled in 2004. Even

¹⁶ <https://www.theguardian.com/world/2016/sep/18/eritrea-is-a-prison-state-no-wonder-so-many-are-desperate-to-escape>

¹⁷ Report of the Special Rapporteur on the situation of human rights in Eritrea, 25 June 2018, A/HRC/38/50, at paras 35-37.

¹⁸ Ibid. at paras. 36(b) and 37(b)

¹⁹ 122.67 (Canada); 122.152 (Belgium);

²⁰ 122.121 (Tunisia); 122.155 (Spain); 122.163 (Sweden); 122.164 (Czech Republic); 122.165 (Austria); 122.166 (Belgium); 122.167 (Estonia); 122.148 (Norway);

State-owned media have fallen out of favour with their government owners: *Radio Bana* was forcibly closed in 2009, and 38 of its employees were arrested.²¹

29. Media outlets currently licensed to operate in the country are limited to the state newspaper, the state television station, and three state-run radio stations. Reports that the National Security Office is considering restricting access to satellite television channels, further threatens to reduce access to the already extremely limited sources of independent information in the country.

Deaths in custody, arbitrary detention and harassment of journalists

30. Eritrea has the highest number of jailed journalists in Africa, with the UN Special Rapporteur on human rights in Eritrea stating that since 2012, at least 90 journalists had been arbitrarily arrested and detained.²²
31. While they should never have been detained, we welcome the January 2015 release on bail of six *Radio Bana* journalists: Ghirmay Abraham, Yirgalem Fisseha, Bereket Misghina (aka Wedi Misghina), Meles Negusse, Petros Teferi (aka Wedi Qeshi), and Basilos Zemo. Arrested on 22 February 2009, they were never charged or tried during their 6 years in detention.
32. It is unacceptable that the government continues to refuse to confirm the whereabouts and wellbeing of, or release, any of the 18 journalists arrested in September 2001, or those detained since.²³ A claim by the Foreign Minister in June 2016, in an interview with Radio France Internationale, that all 18 journalists and politicians arrested in 2001 were alive has not been verified.²⁴
33. Reports that at least seven journalists have died in detention, including Dawit Habtemichael, Mattewos Habteab, Wedi Itay (aka Sahle Tsegazab), Fessehaye “Joshua” Yohannes, Said Abdulkader of Admas, Medhanie Haile of Keste and Yusuf Mohamed Ali , have yet to be confirmed or investigated by the government.
34. Journalists working for State-owned media in the country and who are not detained are nevertheless subject to close surveillance and in a climate of fear of reprisals, in particular if their reporting is perceived as inaccurate or critical, or if they attempt to leave Eritrea. In an early 2016 act of intimidation, for example, journalists and staff holding key positions in the Ministry of Information were required to provide detailed information on themselves and family members.

Recommendations

35. We recommend that the government of Eritrea:
- Repeal the Press Proclamation No. 90/1996, and undertake comprehensive reforms to provide an enabling environment for an independent, diverse, and pluralistic media;
 - Allow private media outlets forcibly closed to reopen, ensuring in law their independence from government interference;
 - Confirm the names, locations and wellbeing of all detained journalists, and ensure prompt, effective, impartial investigation of all deaths and alleged torture or ill-treatment in custody, with adequate redress provided to victims or their next of kin;
 - Cease the harassment, arbitrary arrest and detention of journalists, and ensure the immediate and unconditional release of all those who remain in prison and their access to effective remedies.

²¹ See, Eritrea: A nation silenced, ARTICLE 19, June 2013, <https://www.article19.org/data/files/medialibrary/3494/Eritrea-a-Nation-Silence.pdf> at p.10

²² See, Interactive Dialogue with the UN Special Rapporteur on the situation of human rights in Eritrea, 38th Session of the UN Human Rights Council, 26 June 2018, available at: <http://webtv.un.org/en/ga/watch/id-sr-on-human-rights-in-eritrea-17th-meeting-38th-regular-session-human-rights-council-5801987527001/?term=?lanfrench&sort=date>

²³ The 18 journalists were the subject of the aforementioned communication 275/03 to the ACHPR, ARTICLE 19 v Eritrea. The group of journalists included: Ghebrehiwet Keleta, a news writer for Tsigenay; Selamynges Beyene, reporter for the weekly Meqaleh; Binyam Haile of Haddas Eritrea; Yosef Mohamed Ali, chief editor of Tsigenay; Seyoum Tsehaye, freelance editor and photographer and former Director of Eritrean State Television (ETV); Temesgen Gebreyesus, reporter for Keste Debena; Mattewos Habteab, editor of Meqaleh; Dawit Habtemicheal, assistant chief editor, Meqaleh; Medhanie Haile, assistant chief editor, Keste Debena; Fessahye Yohannes (or Joshua) editor-in-chief of Setit; Said Abdulkadir, chief editor of Admas; Amanuel Asrat, chief editor of Zemen; Dawit Isaak, contributor to Setit; Hamid Mohammed Said, ETV; Saleh Aljezeeri, Eritrean state radio; and Simret Seyoum, a writer and general manager for Setit.

²⁴ “Eritrea’s foreign minister denies rights abuses, blames Ethiopia for clashes”, Radio France International, 21 June 2016; available at: <http://en.rfi.fr/africa/20160621-eritrea-foreign-minister-denies-human-rights-abuses-clashes-ethiopia-disappeared-act>

Online Freedoms

36. During its previous UPR, the government did not support recommendations relating to online freedoms.²⁵
37. EriTel is a State-owned telecommunications provider with a monopoly, with all infrastructure also government owned. Internet penetration levels are among the lowest in Africa, with only 1% of households connected.²⁶ Requirements that any Internet user receive government authorization to own a personal connection, mean that anonymous or private browsing is largely impossible. Of the 40 internet cafes in the country, most are in Asmara, and since 2016 they are required to register all customers, enabling government tracking of browsing histories.²⁷ In some cases, Internet café owners have been intimidated, arrested, and their businesses shutdown.²⁸
38. Internet shutdowns have also been reported. In late October 2017, during aforementioned protests following the arrest and death in custody of Musa Mohamed Nur, the Internet was shut down in parts of Asmara.

Recommendations

39. We recommend the government of Eritrea adopt a human-rights based approach to expanding Internet access in the country, removing all unnecessary and disproportionate requirements for registration of Internet users or connections, and prohibit in law intentional disruptions of Internet access.

²⁵ 122.164 (Czech Republic);122.167 (Estonia)

²⁶ <http://www.internetlivestats.com/internet-users/eritrea/>

²⁷ Report of the Special Rapporteur on the situation of human rights in Eritrea, A/HRC/35/39, 24 July 2017, at para 29.

²⁸ <https://rsf.org/en/reports/beset-online-surveillance-and-content-filtering-netizens-fight>