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ERITREA

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RELIGIOUS FREEDOM IN ERITREA

I. LEGAL FRAMEWORK

A. Religious Protections in the Constitution

Currently, Eritrea's Constitution has no force, in actuality, because it has not yet been implemented.¹ However, the unimplemented Constitution grants various protections for religious freedom. For example, Article 14 of the Constitution of Eritrea, titled "Equality Under the Law," says that "[n]o person may be discriminated against on account of . . . religion . . . or any other improper factors."² Additionally, Article 19, titled "Freedom of Conscience, Religion, Expression of Opinion, Movement, Assembly and Organisation," provides that "[e]very person shall have the right to freedom of thought, conscience, and belief," that "[e]very person shall have the freedom of speech and expression, including freedom of the press and other media," and that "[e]very person shall have the freedom to practice any religion and to manifest such practice."³

B. Religious Protections in Statutes

According to the Constitution, the Eritrea National Assembly has the power to enact laws, but because the Constitution is still awaiting implementation, the executive has become a *de-facto* lawmaker.⁴ Governing statutes include the Transitional Civil and Penal Codes of Ethiopia as modified by Eritrea.⁵ As noted by the United Nations High Commissioner for Refugees website, the 1957 Penal Code of Ethiopia is the Transitional Penal Code.⁶ A copy of The 1957 Penal Code of Ethiopia shows somewhat adequate protections for religious freedom, but this Code may have been superseded by Eritrea's proclamations, as discussed *infra*.

¹ CENTRAL INTELLIGENCE AGENCY, THE WORLD FACTBOOK, ERITREA, <https://www.cia.gov/library/publications/the-world-factbook/geos/er.html#Govt> (last visited Apr. 10, 2009) ("a transitional constitution, decreed on 19 May 1993, was replaced by a new constitution adopted on 23 May 1997, but not yet implemented").

² CONST. OF ERI. art. 14. The constitution never defines an "improper factor."

³ CONST. OF ERI. art. 19.

⁴ Library of Congress, *Legal Research Guide: Eritrea*, <http://www.loc.gov/law/help/eritrea.php> (last visited Apr. 3, 2009).

⁵ *Id.*

⁶ See UNHCR Website, Refworld, <http://www.unhcr.org/refworld/type,LEGISLATION,,ERI,49216a0a2,0.html> (last visited Apr. 7, 2009).

The 1957 Penal Code of Ethiopia, Article 4 provides that the criminal law applies to all without discrimination based on religion.⁷ Additionally, Article 281 states that it is a punishable offense to intend to destroy a religious group, and engage in (a) killing or harm to the mental or physical health of group members, or (b) prevention of the propagation or survival of group members, or (c) compulsory movement or dispersion of people, or placement in conditions designed to result in their death or disappearance.⁸ Article 771 requires punishment for public blasphemous or offensive remarks toward “the feelings or convictions of others or towards the Divine Being or the religious symbols, rites or religious personages.”⁹ Article 816 allows public religious collections and appeals for money to be exempt from having to be authorized by law.¹⁰ Article 486 requires punishment for publicly disturbing authorized religious ceremonies or profaning places or objects used for religious ceremonies.¹¹ Article 79 provides that a religious conviction may be an extenuating factor to consider in mitigating a penalty.¹² Article 282 prohibits forced religious conversion against the civilian population during a time of war.¹³ Article 408, governing authorized disclosures and those compelled at law, provides that religious confession shall never have to be disclosed.¹⁴ Article 480 prohibits stirring up religious disturbances.¹⁵ Article 563 prescribes special punishment for a child abductor who has the purpose of moving the child “to an environment foreign to his religious convictions or to his deepest feelings.”¹⁶ Article 635 provides for special punishment for theft of religious objects.¹⁷ Article 654 provides for extra punishment for property damage done to “important objects[s] of religious veneration or worship.”¹⁸ Finally, Article 705 provides as a religious duties exception upon which a court may grant an individual permission to leave during house arrest.¹⁹

Proclamations issued after independence in 1991 by the Eritrean Government and published in the Gazette of Eritrean Laws rank in authority next to the Transnational Civil and Penal Codes in the hierarchy of laws.²⁰ Several proclamations make clear that the Eritrean Government is clamping down on religion and religious groups and limiting whatever protection they have in the codes. For example, a 1995 proclamation, Proclamation No. 73/1995, explains that religious groups that “interfere[] directly or indirectly with government politic through campaigns and mobilizations and create[] public unrest or cause hostility or offence among different religions or nationals, are legally liable.”²¹ Additionally, religious groups may only undertake legal action related to their spiritual nature;²² all political activity of religious groups is prohibited and they are heavily regulated by the “Department of Religious Affairs, within the Ministry of Internal

⁷ THE PENAL CODE PROCLAMATION OF 1957, art. 4 (Eth.), *available at* <http://www.law.ugent.be/pub/nwr/elw/criminalcode/penal%20code%201957.pdf>.

⁸ *Id.* art. 281.

⁹ *Id.* art. 771.

¹⁰ *Id.* art. 816.

¹¹ *Id.* art. 486.

¹² *Id.* art. 79.

¹³ *Id.* art. 282.

¹⁴ *Id.* art. 408.

¹⁵ *Id.* art. 480.

¹⁶ *Id.* art. 563.

¹⁷ *Id.* art. 635.

¹⁸ *Id.* art. 654.

¹⁹ *Id.* art. 705.

²⁰ *Legal Research Guide: Eritrea*, *supra* note 4.

²¹ Proclamation No. 73/1995, Proclamation to Legally Standardize and Articulate Religious Institutions and Activities, art. 3, cl. 3 (Eri.), *available at* <http://www.unhcr.org/refworld/country,,,LEGISLATION,ERI,,48aec42b2,0.html>.

²² *Id.* art. 8, cl. 1.

Affairs.”²³ This proclamation allows for criminal penalties for its violation.²⁴ Yet another Proclamation, No. 90/1996, prohibits newspapers from publishing and disseminating material that “vilifies or belittles . . . religious beliefs” or “incites religious . . . differences.”²⁵

II. RECENT RELIGIOUS PERSECUTION OR DISCRIMINATION REPORTS

A. United States Governmental Reports

In its International Religious Freedom Report 2008, the U.S. State Department noted widespread religious persecution, mainly on the part of the Eritrean government.²⁶ According to the Report, “[r]eligious leaders were unable to publicly advocate for freedom of religion for fear of being arrested,” and attempts by U.S. officials to meet with government and religious leaders about the issue have been rebuffed.²⁷

The Eritrean Government “severely restricts freedom of religion for groups that it has not registered, and infringes upon the independence of some registered groups.”²⁸ The government decreed in 2002 that all religious groups must register, and closed all religious facilities unless the facility was related to one of the four major religious groups: the Eritrean Orthodox Church, Roman Catholic Church, Evangelical Lutheran Church of Eritrea, and Islam.²⁹ There also were reports that the government has suppressed other religious groups, harassed and failed to recognize them, restricted gatherings, detained individuals, forced recantations, and tortured religious detainees.³⁰ However, the Eritrean government has dismissed U.S. concerns about its religious freedom, pointing to the lack of conflict between Christians and Muslims and claiming that allowing more religious freedom would disrupt the “social harmony.”³¹ Moreover, the government also claims it would implement its Constitution (which contains religious protections) when the border with Ethiopia is set.³² From 2004 onward, the U.S. Secretary of State has designated Eritrea a “Country of Particular Concern” (“CPC”), and sanctions have been applied under the Arms Export Control Act.³³

²³ *Id.* arts. 2–9.

²⁴ *Id.* art. 11.

²⁵ Proclamation No. 90/1996, The Press Proclamation, Part IV, 12 (Eri.), *available at*

<http://www.unhcr.org/refworld/country,,,LEGISLATION,ERI,456d621e2,48512e992,0.html>.

²⁶ See U.S. DEP’T OF STATE, INTERNATIONAL RELIGIOUS FREEDOM REPORT 2008, ERITREA (2008), *available at* <http://www.state.gov/g/drl/rls/irf/2008/108367.htm> [hereinafter 2008 INT’L RELIGIOUS FREEDOM REPORT].

²⁷ *Id.* §§ III–IV.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.* § II.

³¹ *Id.*

³² U.S. DEP’T OF STATE, 2008 HUMAN RIGHTS REPORT: ERITREA, § III, Elections and Political Participation [hereinafter 2008 HUMAN RIGHTS REPORT: ERITREA], *available at* <http://www.state.gov/g/drl/rls/hrrpt/2008/af/119000.htm>.

³³ 2008 INT’L RELIGIOUS FREEDOM REPORT, *supra* note 26, § IV. The severe governmental restrictions on religious freedom appear to be at a higher level than persecution from fellow citizens. According to the Report, citizens are generally tolerant of the beliefs of fellow citizens, at least among the four approved religions, though some harassment of Jehovah’s Witnesses has occurred because their beliefs caused them to disobey Eritrea’s compulsory military service laws. *Id.* § III.

The U.S. Commission on International Religious Freedom (“USCIRF”) 2008 Annual Report notes many of the same severe restrictions as the State Department’s 2008 Report.³⁴ A second USCIRF report estimated the number of religious detainees as high as 300, and noted others were jailed, beaten, or threatened with death.³⁵

B. Reports from Human Rights Groups & Other Media Sources

Reports from human rights groups generally agree that religious persecution in Eritrea is widespread and oppressive. Freedom House notes that no officials are ever prosecuted for torturing or abusing detainees³⁶ and that religious freedom is very poor.³⁷ Amnesty International’s 2008 online report on Eritrea lists many of the same religious freedom violations, specifically pointing out that the head of the Orthodox Church, under house arrest since 2006, was recently “transferred to secret security detention.”³⁸ A second Amnesty report extensively documents violations,³⁹ and a press release gives an overview of even more violations.⁴⁰ The Human Rights Watch 2009 World Report also reports religious persecution and detention, the government’s refusal to register religious groups, prisoners in “unventilated cargo containers” subject to “extreme temperatures,” and interference with the Orthodox Church.⁴¹ The government has reportedly interfered with the Catholic Church, and in 2008, youths protesting confiscation of religious books at a military school were locked in shipping containers.⁴²

³⁴ See U.S. COMM’N ON INT’L RELIGIOUS FREEDOM, ANNUAL REPORT 2008 133–37 (2008) [hereinafter 2008 USCIRF REPORT]. The 2008 USCIRF REPORT noted that religious freedom in Eritrea has deteriorated within the past year; over 160 members of unregistered religious groups were detained without charges, some held in a military detention center and subject to coercion to produce a recantation of their faith, while others were tortured to the point of death. *Id.* at 133–35. Other detainees “have reportedly been beaten, tortured, confined in crowded conditions, or subjected to extreme temperature fluctuations,” *id.* at 135, and the government has consistently interfered in the internal affairs of the Orthodox Church. *Id.* at 135–36. The government has also cracked down on Muslim extremists on the pretense of maintaining order, but some of these Muslims are possibly being detained because of their views. *Id.* at 136.

³⁵ See U.S. COMM’N ON INT’L RELIGIOUS FREEDOM, COUNTRIES OF PARTICULAR CONCERN—ERITREA, http://www.uscirf.gov/index.php?option=com_content&task=view&id=2077&Itemid=1 (last visited Apr. 7, 2009).

³⁶ DAN CONNELL, FREEDOM HOUSE, ERITREA 9, available at <http://www.freedomhouse.org/uploads/ccr/country-7173-8.pdf>.

³⁷ See *id.* at 9–16; see also FREEDOM HOUSE, ERITREA 3, available at <http://www.freedomhouse.org/uploads/WoW/2006/Eritrea2006.pdf>.

³⁸ ERITREA—AMNESTY INTERNATIONAL REPORT 2008, AMNESTY INT’L (2008), <http://www.amnesty.org/en/region/eritrea/report-2008#>. The report also estimates the number of “prisoners of conscience” to be greater than 2,000, most of whom are from evangelical churches, including women, children, three Jehovah’s Witnesses held at a military camp since 1994, and some who have not had outside communication for over three years. *Id.* Some prisoners were reportedly held in shipping containers that varied between extremes of heat and cold, *id.*, a point that is corroborated by other reports. See *infra* notes 41, 42, 45, 48 and accompanying text.

³⁹ See generally AMNESTY INT’L, ERITREA RELIGIOUS PERSECUTION (2005), available at <http://www.amnesty.org/en/library/asset/AFR64/013/2005/en/62b61e58-d499-11dd-8a23-d58a49c0d652/afr640132005en.pdf> (documenting examples of religious persecution).

⁴⁰ Press Release, Amnesty Int’l, Eritrea: Government resists scrutiny on human rights and calls to end torture and arbitrary detention (May 19, 2004), available at <http://www.amnesty.org/en/library/asset/AFR64/004/2004/en/dom-AFR640042004en.html>.

⁴¹ HUMAN RIGHTS WATCH, WORLD REPORT 2009 67–68 (2009), available at http://www.hrw.org/sites/default/files/reports/wr2009_web.pdf.

⁴² *Id.* at 68.

Christians have come under increasing persecution recently,⁴³ and news sources document numerous examples of persecution and detention,⁴⁴ including more reports of cargo container detention.⁴⁵ Compass Direct cites numerous examples of religious persecution,⁴⁶ and even the authorized churches are more recently falling under persecution.⁴⁷ Voice of the Martyrs reports that about 1,800 Christians are currently in prison, corroborates shipping container use,⁴⁸ and cites Compass Direct reporting Christians dying in prisons for their faith.⁴⁹ Christian Solidarity Worldwide also reports religious persecution,⁵⁰ noting that about 2,000 Christians are currently held without charge.⁵¹

⁴³ The Eritrean President, Isaias Afwerki, denies problems with press freedom and religious persecution, claiming he needs to make sure the country is orderly. See Edmund Sanders, *Q & A with President Isaias Afwerki*, L.A. TIMES, Oct. 2, 2007, available at <http://www.latimes.com/la-fg-eritreaweb2oct02,0,6537513,full.story?coll=la-home-center>. Yet the government wants to limit access to a truthful picture of religious freedom in Eritrea, and prevented access to the Orthodox Church leader, currently under house arrest, by moving him to an undisclosed location during a U.S. congressional delegation's visit. See *Eritrea Conceals Religious Freedom Violations from U.S. Congressman*, Jan. 30, 2008, Canada Free Press, <http://www.canadafreepress.com/index.php/article/1624>.

⁴⁴ Tanya Datta, *Eritrean Christians Tell of Torture*, BBC News, Sept. 27, 2007, <http://news.bbc.co.uk/2/hi/africa/7015033.stm>; Aloys Evina, *Eritrean Government Detains Full Gospel Church Leader and Muslims; Releases Others*, Journal Chretien, Feb. 16, 2007, <http://www.journalchretien.net/spip.php?article6578>; Jonah Fisher, *Religious Persecution in Eritrea*, BBC News, Sept. 17, 2004, <http://news.bbc.co.uk/2/hi/africa/3663654.stm>.

⁴⁵ See *Eritrea Conceals Religious Freedom Violations from U.S. Congressman*, *supra* note 43; Fisher, *supra* note 44.

⁴⁶ Compass Direct News, <http://www.compassdirect.org> (For examples of religious persecution, type "Eritrea" into the "Quicksearch" box on the right column, then click on the links under "News Archives."). Local sources also report that 100 Christians have been arrested since November. See *Eritrea—Renewed Government Campaign of Arrests Reaches Asmara*, Christian Solidarity Worldwide, Dec. 18, 2008, <http://dynamic.csw.org.uk/article.asp?t=news&id=821>; see also *Eritrea—Approximately 100 Christians Arrested*, Voice of the Martyrs, http://www.persecution.com/recent_eritrea100Christians.html (last visited Apr. 7, 2009).

⁴⁷ See *Eritrea Targeting "Permitted" Churches*, BBC News, <http://news.bbc.co.uk/2/hi/africa/4924252.stm> (last visited Apr. 7, 2009). Another potential result of limiting religious freedom is the current Jewish population of 1. See *Eritrea's Last Native Jew Tends Graves*, Remembers, May 2, 2006, Ynet News, <http://www.ynetnews.com/articles/0,7340,L-3246419,00.html>; Ed Harris, *Asmara's Last Jew Recalls Good Old Days*, BBC News, <http://news.bbc.co.uk/2/hi/africa/4955088.stm> (last visited Apr. 7, 2009).

⁴⁸ See *Eritrea—Approximately 100 Christians Arrested*, *supra* note 46.

⁴⁹ *Three Christians Dead in Eritrean Prisons*, Voice of the Martyrs, http://www.persecution.com/recent_christianDeathsInEritrea.html (last visited Apr. 7, 2009).

⁵⁰ Countries of Focus Article, Eritrea, Christian Solidarity Worldwide, <http://dynamic.csw.org.uk/country.asp?s=gi&urn=Eritrea&related=45> (last visited Apr. 7, 2009) (Click on the links under "Latest News" for examples of religious persecution.); Eritrea, Reports of Religious Persecution, Christian Solidarity Worldwide, http://www.cswusa.com/Reports%20Pages/Reports-Eritrea.htm#Urgent_Action_-_Helen_Berhane (last visited Apr. 7, 2009); see generally CHRISTIAN SOLIDARITY WORLDWIDE, BRIEFING ERITREA (2007), available at <http://dynamic.csw.org.uk/article.asp?t=report&id=86> (click on "Download Full Report") (giving overview and examples of religious persecution).

⁵¹ Countries of Focus Article, *supra* note 50.