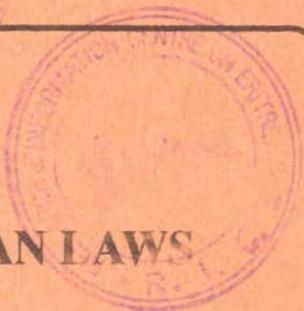


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PROCLAMATION No. 83/1995

**THE NATIONAL AGENCY FOR THE SUPERVISION AND
PRIVATISATION
OF PUBLIC ENTERPRISES**

Proclamation No. 83/1995

THE NATIONAL AGENCY FOR THE SUPERVISION AND PRIVATISATION OF PUBLIC ENTERPRISES

WHEREAS, the State of Eritrea has inherited from successive colonial regimes a variety of public enterprises which are as deterred with outdated technological means and production capabilities as well as the lack of skilled human resources and management efficiency, the realities of which have been as compounded with deliberate disregard and negligence of the socio-economic concerns for Eritrea;

WHEREAS, as a consequence of said deterrent factors, most of the public enterprises are overwhelmed with management inefficiency and productivity and financial difficulties;

WHEREAS, in pursuance of its commitment for and in the socio-economic development and transformation of the Eritrean Society, the Government of the State of Eritrea is as determined to implement its macro-economic policies and development strategies, privatisation of said public enterprises being in the forefront;

WHEREAS, for and in the implementation of said development measures, among others, the establishment of an effective and result oriented- management body as well as the introduction of optimum technology for and in said public enterprises are as imperative;

NOW THEREFORE, for and in consideration of the above premises, the Government of the State of Eritrea has promulgated this present Proclamation:-

CHAPTER I **PRELIMINARY**

1. Short Title

This Proclamation may be cited as the “ The National Agency For the Supervision And Privatisation of Public Enterprises Proclamation No.83/1995”

2. Definitions

Unless the context otherwise requires, in this Proclamation:-

- a) “Public Enterprise “ means an enterprise wholly or partially owned by the State of Eritrea and duly established to engage in the production of agricultural and industrial commodities and distribution of same as well as, those enterprises wholly or partially owned by the State of Eritrea and rendering services to the Public;
- b) “Total Assets “ includes all movable and immovable properties, cash, receivables, bank and other debit balances including intangible assets;
- c) “ Net Total Assets “ means total assets less current liabilities, long-term debts, deferred income and other liabilities;
- d) “Capital “ means the original value of the investment or net total assets attributed to the enterprise by the State as and when an enterprise was established;

- e) "Profit " means the excess of revenue over outlays and expenses of a subject public enterprises;
- f) "Loss" means the amount by which the costs of a public enterprise business operation exceed its revenue;
- g) "Residual Surplus" means the net profit retained in the public enterprise after setting aside legal and other reserves;
- h) "Agency" means the National Agency For the Supervision and Privatisation of Public Enterprises established pursuant to this present Proclamation;
- i) "Board" means the National Board of Directors of the Agency so constituted in accordance with this present Proclamation;
- j) "Director" means the Director of the Office of the Agency;
- k) "Sectoral-Board" means a Board of Directors established within the Agency to attend to undertaking or activity of a particular sector public enterprise or enterprises in consonance with this Proclamation;
- l) "Sector-Committee " means a committee constituted within the Agency to attend to sectoral public enterprises;
- m) "Enterprise Management-Team" means a unit formed within the management structure of a public enterprise;
- n) "Lead Department" means any Ministry, Department, Government or public authority delegated to chair a Sector-Board;
- o) "Privatisation" means total or partial sale or divestiture of the interests in a public enterprise to members of the public and/or the private sector and includes liquidation of those enterprises which may not be viable at all ;
- p) "Private Sector" means all forms of partnership, legal entities, incorporated bodies, and natural persons to the exclusion of public enterprises and Government interests; and

- q) “General Manager” means the person so appointed by the Board for the management of each such public enterprise.

CHAPTER II
THE NATIONAL AGENCY FOR THE SUPERVISION AND
PRIVATISATION
OF PUBLIC ENTERPRISES

3. Establishment

- a) There is hereby constituted and established an autonomous legal entity to be known as the “National Agency for the Supervision and Privatisation of Public Enterprises” (hereinafter the “Agency”).
- b) The Agency shall be accountable to the President of the State of Eritrea.

4. Office of the Agency

The Agency shall have its Office in Asmara.

5. Objectives of the Agency

- a) The prime objective of the Agency is, in consonance with the national economic policies and development strategies and without prejudice to those enterprises which may not be viable at all and consequently have to be liquidated, to privatise public enterprises and, until such events, to formulate and supervise:-
 - i) the implementation of appropriate management policy, functions, duties and responsibilities in and by all public enterprises so as to vitalise, optimise and transform their respective productivity and servicing capability; and
 - ii) the establishment of competitive and conducive economic ambi-

ence in said public enterprises for and in the enhancement of their privatisation.

b) The Agency shall, for and in assuming and performing the functions entrusted to it pursuant to this Proclamation:-

i) identify and categorise all and every public enterprise based on the nature of each and respective undertakings and socio-economic responsibilities;

ii) formulate and implement a privatisation strategy and program, inclusive of investment strategies as a basis for a cohesively congruent implementation process and realisation of its objectives;

iii) conduct comprehensive and detailed economic and business studies on each of said public enterprises, inclusive of in-depth review of original capital investment, total assets valuation and financial track record, management efficiency, manpower skill and resources, technological status and production and marketing and servicing capability;

iv) formulate and implement reformative and result-oriented work program and investment strategies relative to each of such public enterprise, inclusive of sources and methods for capital inputs, technological transformation and promotion of productivity in volume, quality and marketing development within and without Eritrea, as well as, the introduction of efficient management system and culture; and

v) establish and ascertain the availability and reliability of the most economic supply and optimum utilization of all inputs.

c) For and in relation with the objectives of this Proclamation, the Agency

is authorized and fully empowered to identify, prioritize and privatise anyone or more of said public enterprises in accordance:-

- i) with its own policy and transparent privatisation modalities and imperative valuation and pre requirements based on comprehensive economic, technical, business and financial considerations, as well as long term public interests and national responsibilities; and
- ii) with such equitably commensurate contractual or transaction terms and conditions.

d) The Agency shall establish a cohesive and efficient management procedure to carry out its duties and responsibilities.

e) The Agency is authorised to carry out such activities and undertakings as it finds necessary, appropriate, consistent and contributive for and in the realisation of its privatisation objectives in accordance with this Proclamation.

6) Budget of the Agency

The Agency is empowered and authorised to administer and manage its own budget.

CHAPTER III

7. Management Organisation of the Agency

For and in the realisation of the objectives of this Proclamation, the establishment and institutionalisation of an effective management organisation being a prime consideration, the Agency shall have a management organisation consisting of:-

- a) The Board of Directors of the Agency;

- b) The Office of the Agency;
- c) Sectoral-Board of directors;
- d) Sectoral-Committees; and
- e) Enterprise-Management Teams.

8. The Board of Directors of the Agency

- a) The Board shall have five permanent members, one of whom shall be the Chairman.
- b) The members of the Board shall be designated by the President of the State of Eritrea.
- c) The Director of the Office of the Agency shall also serve as the Secretary of the Board.

9. Powers and Duties of the Board

- a) The Board shall be the supreme organ of the Agency with the ultimate responsibility for the supervision and privatisation of all the public enterprises and the effective implementation and realisation of the objectives of the agency as provided for in this Proclamation , it being expressly understood that each of said public enterprises shall maintain its distinct nature, objectives, entity and legal nature, unless for compelling economic and legal justifications, amalgamation with one another or re-formation of a given enterprise is deemed in order.
- b) Without limiting the generality of the foregoing, the Board is entrusted with and authorised and empowered to perform, initiate, improve, supervise, control, regulate and ensure that the objectives of the Agency are appropriately and effectively met and satisfactorily realised in all and every respect of the management, activities and expectations from each and every public enterprise , including:

- i) the formulation of privatisation strategies, programs, modalities and implementation of the same;
- ii) the conduct of specific and in-depth studies upon the actual status in production and technological capability of each of such public enterprises and evaluation, determination, formulation and implementation of specific and realistic short and long-term investment and development strategies, inclusive of rehabilitation and/or installation of new and relatively appropriate technology therein for and in the production and manufacturing process, so as to enhance volume capability and to avail and establish consumer-sensitive and market economy responsive quality products;
- iii) the reorganisation and alignment of management structure of each of such public enterprises accordingly so as to establish the desired efficiency, deliberate transparency and accountability;
- iv) the mobilisation, training, reorientation and motivation of the labour force so as to equip and ascertain the required skill and know-how, technology transfer, quality performance and optimum productivity in each and all of its public enterprises;
- v) the establishment of reliable and most economic supply source of raw materials and the constant supply of energy, water and such other necessary facilities; and
- vi) the conduct and exploration of market studies and potentials on domestic consumption and export potentials so as to generate foreign exchange.

c) The Board shall see to it that:-

- i) regular reports on the activities, achievements and set-backs, if any, as well as possible proposals and recommendations of each of such

- public enterprises are submitted to it for analytical scrutiny, evaluation and appropriate steps and guidelines;
- ii) for each and every Fiscal Year, it shall have prepared for submission of its Annual Report to the Government consisting of, among others, Balance Sheets and Profit and Loss Accounts on each of the public enterprises along with External Auditors' Reports; and
 - iii) within six months as of the end of each Fiscal Year, the residual-surplus from each of the public enterprises is delivered to the Ministry of Finance of the Government of the State of Eritrea.
- d) For and in the implementation of the objectives of the Agency and the realisation of its trust, duties and management responsibilities, the Board is empowered and duly authorised to:-
- i) constitute and establish within the Agency Sectoral-Board and Sectoral-Committees for such enterprises it may deem necessary ;
 - ii) appoint a general manager for each of such public enterprises, define and regulate his duties and responsibilities and determine the terms and conditions of his services;
 - iii) consider and approve the general manager's recommendations for the appointment of division heads in each of such public enterprises ;
 - iv) constitute Enterprise Management-Teams for each of such public enterprises and define their duties and responsibilities; and
 - v) appoint External Auditors for the Agency and the public enterprises and determine their remuneration and their services, and utilise independent expertise as and when appropriate.

e) In addition, the Board is, in consonance with the national macro-

economic policy and development strategies, fully empowered and authorised to:-

- i) prepare and present the Annual Budget of the Agency to the Government for approval;
- ii) consider and effect appropriate steps on the operational Annual Budget of each of the enterprises, inclusive of financing and reinvestment of their funds;
- iii) consider, review, evaluate, formulate and implement reports and recommendations that may be initiated by Sectoral Boards, Sectoral-Committees and enterprises Management-Teams on technological requirements and advantages as well as such investment and business plans and strategies for the existing or possible future public enterprises;
- iv) negotiate with banks and obtain loans and/or facilities for and in the realisation of the objectives of the Agency;
- v) enter into any kind of contract for whatever legitimate purpose with any natural or juridical entity or public organisation and such business establishments, inclusive of banks and financial institutions within or without the State of Eritrea;
- vi) lay and establish credible and conducive business ambience and positive parameters in each of such public enterprise so as to build, ensure and enhance business interest of the public and private sector for and in the eventual privatisation and/or divestiture process of the subject enterprises;
- vii) take and effectuate determinant and major decisions on each of the subject enterprises; including the setting and timing of schedules for privatisation by means of direct disposal or sale by public tender or otherwise, divestiture or invitation and encouragement of the public to invest and acquire interest therein;

- viii) carry out such undertakings which are necessarily consistent and congruent with the objectives of this Proclamation, or cause the issuance of appropriate regulatory requirements; and
- ix) appoint and grant a power of attorney to a lawyer or lawyers for the latter to act for and on behalf of the Agency.

10) Meetings of the Board

- a) The Board shall conduct a regular meeting every thirty days.
- b) Other meetings may be called by the Chairman of the Board, and, in case of pressing circumstances, other meetings may be requested by the Director of the Office or any other member of the Board.
- c) The attendance of three(3) members shall constitute the quorum necessary for meetings of the Board.
- d) The Director, in consultation with the Chairman, shall prepare, provide and submit a provisional agenda to each member of the Board, along with the notice of the meeting required pursuant to the provisions hereinabove, it being understood that said agenda shall include the subject matters required for discussion.
- e) Decisions of the Board shall be taken by consensus.
- f) The Director shall prepare the provisional Minutes of each of such meetings and shall transmit same to each member of the Board within five days following each of such meetings. Such Minutes shall be adopted at the next regular meeting of the Board.

11. Office of the Agency

- a) The Office of the Agency shall, for and in the realisation of the privatisation process, serve as the focal point for the coordination of the activities of the various management organs of the Agency.
- b) Without limiting the generality of the foregoing, the Office of the Agency shall in particular:-
 - i) initiate, prepare, up-date, maintain and/or submit, as and when appropriate, records, reports and recommendations on the activities, undertakings and studies which are necessarily relevant for and in the performance and realisation of the functions and responsibilities of the Board;
 - ii) supervise and ensure that the decisions, guidelines and directives of the Board are implemented accordingly;
 - iii) synchronise the functions and activities of the various management organs of the Agency;
 - iv) avail and extend all practicable assistance to the management organs of the Agency so as to facilitate their respective functions for and in the realisation of their common privatisation objectives; and
 - v) carry out such functions and responsibilities so required by the Chairman of the Board.
- c) The Office of the Agency shall be headed by the Director whose responsibility shall be to the Chairman of the Board.

12. Appointment of the Director

The Director shall be appointed by the President of the State of Eritrea.

13. Duties and Responsibilities of the Director

a) Subject to the overall supervision of the Board, the Director:-

- i) shall represent the Agency before any third parties or authorities within or without the State of Eritrea, and act, undertake and execute on behalf of the Agency and in its name routinely-expected and general day-to-day conduct and management of its activities;
- ii) shall follow-up, administer, supervise, control and ensure that such steps, actions and functions so initiated by the Board, inclusive of such undertakings of whatever form or nature, in pursuance of its powers, duties and responsibilities for and in the realisation of the objectives of the Agency are complied with, performed and implemented strictly, effectively and productively and report to and up-date thereon the Board as and when appropriate; and
- iii) shall assume and perform all such duties mandated and responsibilities entrusted or delegated to him formally in writing by the Board.

b) Without limiting the generality of the foregoing, the Director is required, authorised and empowered:-

- i) to employ and/or dismiss all such management staff and personnel for the Office of the Agency;
- ii) to open bank accounts for and in the name of the Office of the Agency and operate the same;
- iii) to maintain, up-date and supervise the archives, files, inventories, books of accounts, records and control the use and administration of the Agency's finance;
- iv) to maintain full records of his management activities, including

correspondence and submit in time to the Board a detailed report on the activities and the performance and/of set-backs of the Agency for and during each Fiscal Year;

- v) to prepare, well in time, the annual budget for each next or pending Fiscal Year and submit same for the use and consideration by the Board for and in relation with its annual report; and
- vi) to delegate all or part of his powers, duties, functions and responsibilities to anyone of his staff.

c) The Director shall see to it that, for each Fiscal Year, the Balance Sheets and Profit and Loss Accounts of each of such public enterprises and his management Report are completed in time and submitted to the Board to enable it act upon as appropriate.

d) The provisions of sub-paragraph(c) hereinabove shall, for each Fiscal Year, apply by analogy to those of the Office of the Agency per se.

e) For and in the performance of his duties and responsibilities the Director shall be accountable to the Board.

14. Sectoral-Board of Directors

a) A Sectoral-Board consisting of five to seven(5-7) members may, as provided for in Article 9 (d) hereinabove, be established by the Board for particular sectoral public enterprises.

b) The Board shall constitute the first Sectoral-Board for those sectoral public enterprises engaged in the following activities and responsibilities:-

- 1) Energy, Mining and Water Resources;
- 2) Transport and Communications; and
- 3) Banking and Insurance.

15. Duties & Responsibilities of Sectoral-Boards

a) Sectoral-Boards shall, under the overall authority and direction of the Board and in consonance with and in response to the ultimate privatisation of public enterprises in accordance with this Proclamation:-

- i) assume the responsibility over public enterprises falling within a defined sectoral-activities;
- ii) formulate and implement such means and methods, inclusive of skilled manpower and technology requirements, so as to activate and enhance management efficiency and productivity of each of such public enterprises; and
- iii) study, evaluate, consider and propose procedures, modalities, terms, conditions and timing of privatisation for the deliberation and determination thereon by the Board.

b) Without limiting the generality of the foregoing, Sectoral-Boards shall:-

- i) conduct relative and detailed studies on the business and technological status, means and alternatives as well as, investment requirements on enterprises within their respective jurisdictions and the formulation and initiation of supportive and constructive recommendations to the Board;
- ii) submit regular reports on the state-of-facts and requirements;
- iii) follow-up and ensure that the administrative and management policies and practices in said enterprises are consonant with

- national socio-economic development policies;
- iv) select and nominate managers for each of their sectoral enterprises, along with respective service terms and conditions, duties and responsibilities, and submit same for the Board's consideration and decision;
 - v) consider and approve the general managers' recommendations for the appointment of division heads in each public enterprise within their jurisdiction;
 - vi) present annual budget and work program relative to each of their sectoral enterprise for the Board's review and directives thereon;
 - vii) establish a regular, standard and transparent financial documentation and accounting system and control method for their sectoral enterprises;
 - viii) appoint external auditors for said enterprises and determine their remuneration and terms of service; and
 - ix) implement and supervise such functions and responsibilities as may be required of them by the Board.

16. Sector-Committees

- a) Sectoral-Committees may, as necessary, be established for defined sectors of public enterprises.
- b) Each of said Sectoral-Committee shall be composed of three to seven (3-7) members.

17. Functions of Sectoral-Committees

- a) The duties, functions and responsibilities of each Sectoral-Committee shall, for and within the objectives of privatisation, be determined by the Board.
- b) Without limiting the generality of the foregoing, Sector-Committees

shall conduct and follow up detailed studies and analytical assessments on the economic and business status, management and technological realities of each of such public enterprise within their jurisdiction and formulate and submit constructive steps and recommendations to the Board for and in the revitalisation and enhancement of the capability and productivity of a particular public enterprise, inclusive of:-

- i) the availability and most economic and reliable supply of raw materials, energy, water and such other necessities; and
 - ii) the conduct of market studies within and without Eritrea.
- c) The Sector-Committee shall, in compliance with the national privatisation policy and objectives:-
- i) design, formulate and recommend to the Board promotional business and management conducts and standards conducive to privatisation; and
 - ii) perform such specific duties and assignments given by the Board.

18. The Enterprise Management-Teams

- a) The Board shall establish Enterprise Management Teams;
- b) Each Enterprise Management-Team for each of such subject enterprises shall be composed of:
 - i) the general manager of each such enterprise;
 - ii) representatives of three(3) management units within the enterprise;and
 - iii) one representative of the labour of such enterprise.
- c) The Chairperson of each Enterprise Management-Team shall be the general manager of the subject enterprise.

19. Functions of the Enterprise Management-Team

- a) The Enterprise Management-Team shall closely follow-up, scrutinise and evaluate the management efficiency, productivity and marketing perspectives of each of such enterprise, inclusive of manpower resources and technological status, and recommend to the Board and/or the concerned Sectoral-Board or Sectoral-Committee, such measures and methods for the promotion and enhancement of the efficacy, production and marketing capability of the public enterprise.
- b) The Enterprise Management-Team shall, as and when required, conduct and perform specific studies and submit reports and recommendations thereon to the Board and/or the Sectoral-Board.
- c) The Enterprise Management-Team of each public enterprise shall avail its advisory services to the general manager of the public enterprise but shall not in any way be involved in the day-to-day running of the enterprise.

20. Enterprise General Managers

- a) The Board shall, in accordance with Article 9(d)(ii) appoint a general manager for each of such public enterprises .
- b) Each general manager shall be accountable to the Board for and in the performance of his duties and responsibilities.

21. Duties And Responsibilities of Enterprise General Managers

- a) The General Manager of each public enterprise shall, subject to the overall supervisory mandate and direction of the Board, be primarily responsible for:-

- i) the routinely-expected administration and management conduct of the affairs of the public enterprise and the performance of all necessary to achieve the business purpose and/or service requirement of the enterprise;
 - ii) the implementation of the Board's reformative management policy, structure, directives and guidelines as well as the effective utilisation of capital inputs, investments and business strategies and the technological transformation and enhancement of man-power resource so as to promote production capability and marketing potentials; and
 - iii) the establishment of an exemplary and pioneer public enterprise duly characterised with management and labour efficiency, most economic productivity and responsiveness to competitive market-economy , as well as conducive business realities and profitability so as to expedite and facilitate the privatisation of the public enterprise under his responsibility.
- b) The general manager of each public enterprise shall, for and in the implementation and realisation of his duties and responsibilities, be entrusted with the following functions:-
- i) to present the public enterprise to all effects and purposes, before any third parties, including courts of justice, government departments, municipal authorities, domestic and/or foreign business organisations, companies, agencies, financial institutions, banks or other person and/or persons for and in the interest and activities of the public enterprise;
 - ii) to sign all documents, receipts and discharges, for and in respect of any activity of the public enterprise;
 - iii) to open an account or accounts with a bank or banks, an

operate the same, and to draw, endorse and sign in the name of the public enterprise all cheques, drafts, payments orders, transfers, assignments, and any other instruments whatever relating to the business of said enterprise;

iv) subject to prior resolution or decision of the Board, to raise funds or loans for and on behalf of the public enterprise from any bank or other financial institution, with or without security, and to apply for and obtain overdraft or credit facilities from any bank or other financial institution and to execute on behalf of the enterprise any contract or instrument related thereto;

v) to employ all staff and experts according to the requirements of the public enterprise and, when deemed necessary, to effect dismissal of the same, as well as to nominate division heads for the Board's approval;

vi) to establish, ensure and implement sound and reliable methods and procedures for the timely collection of all fees, charges and revenues due to the public enterprise;

vii) to keep or cause to be kept, accounts, records, books, up-to-date inventories of the public enterprise in all material aspects in accordance with the requirements of the provisions of the Commercial Code of Eritrea dealing with share companies;

viii) to prepare and submit to the Board detailed quarterly reports of the business activities of the public enterprise, along with such possible proposal or recommendations, as well as a comprehensive annual report relevant to each Fiscal Year on the activities of the public enterprise, inclusive of financial analysis, for the Board to act upon;

ix) to designate any person at the managerial level to act on his

behalf in case of his absence or illness; and

x) to designate, in consultation with the Board, any of his powers to other officers of the enterprise.

c) Without limiting the foregoing, the general manager of a public enterprise shall carry out all directives of the Board and is expected to perform whatever necessary and requisite to achieve the business purposes and the privatisation of the enterprise in accordance with this Proclamation.

CHAPTER IV

FISCAL YEAR AND ANNUAL REPORTS

22. Fiscal Year

a) The Fiscal Year of the Agency as well as that of each public enterprise shall begin on the first day of January and end on the thirty first day of December of each year.

b) The first Fiscal Year shall run from the date of coming into force of this Proclamation.

23. Annual Reports on Performance, Balance Sheet and Profit & Loss Accounts

a) Following the end of each Fiscal Year, the Director shall ensure that the Annual Reports on Work Performance, Balance Sheet and Profit & Loss Accounts of public enterprises are completed and submitted to the Board within a maximum period of three months as of the end of each Fiscal Year.

- b) The Board shall see to it that the annual financial statements of such public enterprises and that of the Agency itself shall immediately be forwarded to the External Auditors for their evaluation and independent report.
- c) Based on the provisional reports of the public enterprises, the Board shall undertake and complete its comprehensive Annual Report and Recommendations on the state of affairs of the privatisation process of the subject public enterprises and the Agency's progress and achievements thereon within the context of the objectives of this Proclamation and deliver the same to the President of the State of Eritrea.

24. Utilisation of Income and Reserve Funds

- a) The net income shall comprise net earnings for the Fiscal Year as shown in the Profit & Loss Account after deduction of such administrative and general costs, related charges, amortisation and taxes of such public enterprise.
- b) The public enterprise shall retain 20% (twenty percent) of each of said net income of each year for the constitution of a reserve fund until such cumulative reserve fund shall have equalled to 30% (thirty percent) of the principal or original funds and assets of the public enterprise.
- c) Subject to the provisions of sub-paragraph(b) hereinabove, the residual surplus of each public enterprise shall be delivered formally to the Ministry of Finance of the State of Eritrea on the basis

of the provisional financial statement within six(6) months after the the end of the Fiscal Year.



CHAPTER V
GENERAL PROVISIONS

25. Inconsistency

Any law, regulation, directive and practice which is inconsistent with this Proclamation shall not apply with respect to the matters and issues provided for in this present Proclamation.

26. Duration

The duration of the Agency's services and existence shall, subject to completion of its mission in accordance with this Proclamation, be for an indefinite period.

27. Effective Date

This Proclamation shall enter into force on the date of its publication in the Gazette of Eritrean laws.

Done at Asmara this, 26th day of December, 1995.

Government of Eritrea.

