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Responses to Information Requests

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18 November 2015

ERI105226.E

Eritrea: Situation of people returning to the country after they either spent time abroad, claimed refugee status, or were seeking asylum (September 2014-June 2015)

Research Directorate, Immigration and Refugee Board of Canada, Ottawa

1. Situation of People Returning to Eritrea: Overview

In correspondence with the Research Directorate, a senior research fellow at the German Institute of Global and Area Studies (GIGA) [1] who specializes in the Horn of Africa and who has conducted field research in Eritrea stated that

those [Eritreans] who fled during the independence struggle or left Eritrea legally during the 1990s and received asylum are usually welcomed as visitors, unless they engage in activities in opposition to the [People's Front for Democracy and Justice, PFDJ] regime. Those who left Eritrea in recent years (after the introduction of the open-ended national service in 2002) and claimed asylum because they fled from the atrocities of the current regime must fear arrest, torture and conscription into the military where they are facing abuse and forced labour. (Senior Research Fellow 13 June 2015)

In a telephone interview with the Research Directorate, a Human Rights Watch representative who conducts research on Eritrea and who has interviewed Eritrean refugees in Europe indicated that

if [the person] is involved in anything political, or [is] speaking out against the Eritrean Government, or refuses to pay the 2 [percent] income tax and sign the letter of apology, or [is] eligible for military service (of age for military service), then they will be detained upon their return to Eritrea. (Human Rights Watch 16 June 2015)

The Human Rights Watch representative explained that the person will be detained, imprisoned and "general[ly]" released into military conscription (ibid.). The same source provided an example in which a family who had been living in Sudan as "registered refugees" returned to Eritrea in 2014, and that upon their return to Eritrea, they were arrested and detained; the son of the family indicated that he was questioned about why the family left Eritrea, he was accused of spying, was "made to stay in awkward, painful positions" and had "the bottoms of his feet ... beaten with a stick" (ibid.).

The US Department of State's *Country Reports on Human Rights Practices for 2014* indicates that [i]n general citizens had the right to return, but citizens residing abroad had to show proof they paid the 2 percent tax on foreign earned income to be eligible for some government services, including passport renewals and real estate transactions. Persons known to have broken laws abroad, contracted serious contagious diseases, or been declared ineligible for political asylum by other governments had their visas and visa requests to enter the country considered with greater scrutiny than others. (25 June 2015, 13)

The same source also states that "[m]any persons who fled the country remained in self-imposed exile due to their religious and political views and fears that they would be conscripted into national service if they returned" (ibid.).

The Human Rights Watch representative indicated that returnees who are detained upon arrival are imprisoned in a variety of locations and prisons, including underground containers, shipping containers and cells (16 June 2015). A 2015 UN Commission of Inquiry on Eritrea, which included first-hand testimony from 550 interviewees in third countries and 160 written submissions (UN 5 June 2015, 1), indicates that according to witnesses interviewed, returnees who were detained were "made to undertake forced labour and were frequently punished by prison guards for inconsequential matters"; they were also denied drinking water in temperatures of up to 50 degrees Celsius (ibid., para. 433). Furthermore, returnees in detention were not provided with an opportunity to contact their families, nor were detainees informed of the length of their detention (ibid., para. 435).

2. Exit Visas and Penalties for Illegal Exit

Sources indicate that Eritreans require an exit visa in order to leave the country (Eritrea 1992a, Art. 17; US 25 June 2015, 13), and that this requirement also applies to dual nationals (ibid.).

Furthermore, Article 17 of Proclamation 82/1995 of National Service provides the following, regarding "travelling abroad":

Any Eritrean citizen under the obligation of National Service in compliance with this Proclamation may be allowed to travel abroad;

1. Upon giving evidence that he is exempted from National Service or that he has completed his service by producing a Certificate of Service or
2. By producing a registration card and entering into a bond of 60.000 Birr [Nafka (UN 5 June 2015, para. 406)] [approximately \$C7,618] as security that he will return to resume his duty when called upon to do so. For the execution of these conditions the Ministry of Defence will take the necessary measures. (Eritrea, 1995)

The UN Commission of Inquiry states that Eritrea imposes "severe restrictions on citizens' departure from the country" (5 June 2015, para. 400). Testimony collected by the Commission found that "exit visas are issued to certain individuals without difficulty" such as older women (UN 5 June 2015, para. 403). The Commission also reported cases of people having difficulty obtaining exit visas, such as those who had to wait up to a year, or pay bribes (ibid., para. 405). Some applicants were denied exit visas without explanation for the refusal (ibid. para. 409). The Commission also stated that individuals with a "history of fall-out with the [g]overnment have little chance of being granted an exit visa," regardless of whether the individual has completed national service requirements (ibid. para. 410). The source further states that this ban also extends to family members (ibid. para. 410). In correspondence with the Research Directorate, an independent research consultant who has been publishing on Eritrea for the past 40 years and who conducted interviews with refugees who left Eritrea in 2015 stated that "leaving Eritrea is as dangerous and difficult as ever for those without exit visas, which are extremely difficult to get if still subject to national service" (29 June 2015). *Country Reports 2014* observes that the government "often denied national service recruits passports and exit visas on the grounds they had not completed their military duties" (US 25 June 2015, 12).

Article 29(2) of Proclamation 24/1992 on entry and exit visas from Eritrea provides that any person who attempts to enter or leave Eritrea in violation of the law, "[a]fter conviction ... shall be sentenced up to five years imprisonment or up to a fine of 10,000 [Nakfa (UN 5 June 2015, para. 420)] [approximately C\$630] or to both imprisonment and fine" (Eritrea 1992b).

The Danish Immigration Service (DIS) produced a report based on a fact-finding mission to Eritrea (1-17 October 2014) and Ethiopia (20-27 August 2014), which was conducted for the purpose of gathering information, among others, on national service and the "possibility for Eritreans to return if they have left the country illegally" [3] (Denmark Nov. 2014; ibid. Dec. 2014, 3-4). According to the DIS report, the Eritrean Ministry of Foreign Affairs stated that for those returning to Eritrea, "if a person has committed a crime, due process is respected" (Denmark Dec. 2014, 17). According to a former military interrogator interviewed by the UN Commission of Inquiry on Eritrea, when determining punishment for those caught fleeing, "the length of the sentence is at the discretion of the zonal commander" (5 June 2015, para. 420). The 2014 paper, *The Open-Ended Eritrean National Service: The Driver of Forced Migration*, by Professor Gaim Kibreab, a professor in the Department of Social Science at London South Bank University who researches the causes of forced migration in post-independence Eritrea (LSBU n.d.), states that punishment for military offences [such as desertion or draft evasion] "is carried out extrajudicially. For example, those who resist being captured while border-crossing may be shot to death in accordance with the government's 'shoot to kill' policy at both sides of the Eritrean border" (Kibreab 15-16 Oct. 2014, 12). In correspondence with the Research Directorate, an

associate professor of anthropology at the Indiana University of Pennsylvania who researches forced migration and socio-political issues in Eritrea indicated that

[t]he government of Eritrea operates in the absence of a rule of law, with well-documented practices that involve extrajudicial killings, arbitrary detention, and torture. Eritrean citizens fall under state scrutiny or are subjected to these practices if they are suspected of planning to leave the country illegally, or are caught in the act of leaving. People may be imprisoned multiple times for the same alleged offense. Family members of Eritreans who flee the country are also subject to detention. (18 June 2015)

The UN Commission of Inquiry states that people caught trying to flee are "systematically abused by border guards" (UN 5 June 2015, para. 420) and that for interviewees who were caught crossing the border out of Eritrea after 2010,

the length of detention appears to have decreased to between six months and two years for conscripts or men at draft age caught crossing the border. Upon release, detainees are usually made to sign that they would be executed if they attempt another escape. However, the Commission did not document execution of escapees other than one case of an individual caught fleeing to Sudan in 2004. Rather, repeat offenders reportedly receive longer 'sentences'. (UN 5 June 2015, para. 421)

In a May 2015 report on country conditions in Eritrea, the EU's European Asylum Support Office (EASO) [2] cites an April 2015 Norwegian-language report by Norway's independent Country of Origin Information Centre, LandInfo (Norway n.d.) as stating that "there are no reports on the treatment of people who merely left the country illegally without having deserted or evaded conscription" (EU May 2015, 54-55).

3. Requirement to Pay Diaspora Taxes and Sign an Apology Letter

According to the DIS, Eritrean authorities have stated that people who illegally exited the country may return without fear of punishment after they have paid the diaspora tax and signed the "repentance form" or "apology letter" (Denmark Dec. 2014, 17). The Eritrean Ministry of Foreign Affairs indicates that the two percent income tax can be paid at an Eritrean embassy (Denmark Dec. 2014, 17). Citing the April 2015 LandInfo report, EASO states that Eritrean authorities claim that people who have left illegally may return without fear of punishment after paying the diaspora tax and signing a repentance form, but that "they may be sent to a six-week training course to 'enforce their patriotic feelings'" (EU May 2015, 55).

In contrast, other sources indicate that paying the tax and signing an apology letter does not guarantee that a returnee will not face punishment (Research consultant 29 June 2015; Senior Research Fellow 13 June 2015). The Senior Research Fellow explained that

[t]he form of regret [letter] or "taesa" in Tigrinya states that "I, whose name is the above-stated citizen, hereby confirm with my signature that all the foregoing information which I have provided is true and that I regret having committed an offence by failing to fulfill my national obligation and that I am willing to accept the appropriate measures when decided." (13 June 2015)

The Senior Research Fellow highlighted that signing the letter "includes accepting any punishment the government might deem appropriate," noting that the rule of law is absent, and that "arbitrary arrests and forced disappearances, abuse and torture are common" (13 June 2015). Likewise, the research consultant commented that the signing of apology letters "is an admission of guilt and is routinely held over the signer's head to prevent future oppositional or dissident activity" (29 June 2015).

The Associate Professor stated that

[t]here are Eritreans from the diaspora who pay the 2 [percent] tax and are able to return to their country periodically. However, the diaspora is diverse, and is composed of recent migrants and Eritreans who migrated abroad during the thirty year independence struggle. People within either group are in varying positions [with regard] to the state, as they may have left due to reasons that would make it dangerous for them to return to their country even if they pay the 2 [percent] tax: political affiliation, religious identity, etc. Some of these Eritreans would absolutely not be able to return safely to Eritrea. There are no clear rules or conditions that would determine the safe return of any particular Eritrean. (18 June 2015)

The research consultant said that he is not aware of any one who has signed a letter, paid the tax, and gone back to Eritrea live (29 June 2015).

4. Returning After Desertion and Draft Evasion

Article 37(3) on "Escape from National Service" in Proclamation 82/1995 of National Service provides the following:

Any citizen who knowing that he has the duty of serving in the National Service, avoids the performance of his duty by escaping abroad, will be recorded in the Ministry of Regional Administration and in the Ministry of Interior and if he does not return to perform his service until the age of 40 years he will be liable to punishment or to an imprisonment of 5 years until the age of 50 and his rights to licence, Visa, land tenure and the rights to work will be suspended. (Eritrea 1995)

According to a 2012 UK report on Eritrea, UK embassy officials in Eritrea indicate that the Eritrean government has stated that returnees will not be punished as long as they have not committed any criminal offences (UK 17 Aug. 2012, 43). Without providing details, the DIS report cites an unidentified Western embassy as stating that "the government's attitude towards deserters and evaders in Eritrea has changed for the better. As such, evaders and deserters are not subjected to protracted imprisonment, not exposed to physical harm and finally, not considered as political opponents" (Denmark Dec. 2014, 21).

In contrast, the research consultant stated that, with regards to the situation of returnees, since September 2014, "little has changed in practical terms for those who left illegally" (29 June 2015). Several sources indicate that deserters and draft evaders are imprisoned if they return (Human Rights Watch 16 June 2015; Associate Professor 18 June 2015). The 2015 UN Commission of Inquiry states that "[i]f caught, draft evaders and deserters are severely punished" (UN 5 June 2015, para.1241). The research consultant indicated that those who avoid or flee national service are "subject to punishment, often draconian in nature" (Research consultant 29 June 2015). The same source added that "indefinite extension of national service ... has not been publicly rescinded and no announcement has been made within the country that it will be wound down" (ibid.). Similarly, Human Rights Watch indicates that there has not been "any verifiable change in practice" regarding limitations on the length of national service (2 July 2015).

EASO states that, according to a 2015 report of a Norwegian LandInfo fact-finding mission to Eritrea, respondents "believed that deserters and draft evaders were held in prison for several weeks or months and were then reassigned to national service" (EU May 2015, 42). The Danish fact-finding report in 2014 interviewed two international organizations that both indicated that returnees would have to perform military service upon return; and one organization stated that deserters and evaders would face detention for up to a week (Denmark Dec. 2014, 18). According to Kibreab's 2014 paper, draft evaders and deserters are "routinely subjected to torture and detention under severe conditions" (Kibreab, 15-16 October 2014, 18, 12-13). The source adds that detention can last up to several years (Kibreab 15-16 Oct 2014, 5). *Country Reports 2014* similarly states that "[r]efusal to perform military or militia service, failure to enlist, fraudulent evasion of military service, and desertion were punished by lengthy imprisonment or other arbitrary forms of punishment" (US 25 June 2015, 3). The UN Committee on the Rights of the Child states in its 2015 concluding observations on Eritrea that children in detention, particularly children accused of attempting to avoid military service or fleeing the country "routinely face torture, cruel and degrading treatment, including corporal punishment" (8 June 2015, para. 36).

5. Returned Failed Refugee Claimants and Asylum Seekers

According to an unidentified Western embassy in Asmara cited in the DIS report "Eritrea will not give assurances regarding human rights and will not allow European countries to monitor unsuccessful asylum seekers who have been returned to Eritrea" (Denmark Dec. 2014, 43). Similarly, the Senior Research Fellow stated that "[a]gainst the background of the alarming human rights situation in the country and the absence of transparency from the side of the government, [the] safety [of people who return to Eritrea] cannot be monitored by foreign governments or independent institutions" (13 June 2015). The Senior Research Fellow stated that "nobody who fled the regime and asked for asylum is currently able to return safely" (13 June 2015). The Associate Professor stated that "[a]lthough the government may declare that asylum seekers can return safely to their country, in the absence of a rule of law, and in the face of pervasive human rights violations, there is no guarantee of the safety of Eritreans who return to their country" (18 June 2015).

The research consultant explained that for those returning to Eritrea, issues arise about "whether they participated in oppositional political activity, much of which is monitored by government supporters and reported back ... , and whether they sought and/or received refugee status and are traveling on another country's passport" (Research consultant 29 June 2015). The same source added that "the government has made it extremely difficult to monitor what happens to returnees, especially those involuntarily returning or doing so under pressure" (ibid.).

According to the UN Commission of Inquiry on Eritrea, which received information from witnesses about forced repatriations of Eritreans, "individuals forcefully repatriated are inevitably considered as having left the country unlawfully, and are consequently regarded as serious offenders, but also as 'traitors'" (UN 5 June 2015, para. 431). The UN explained that returnees are

questioned about the circumstances of their escape, whether they received help to leave the country, how the flight was funded, whether they [have] contact with opposition groups based abroad, etc. Returnees are

systematically ill-treated to the point of torture during the interrogation phase...After interrogation, they are detained in particularly harsh conditions, often to ensure that they will not escape again. (ibid., para. 431-432)

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of sources consulted in researching this Information Request.

Notes

[1] GIGA is a Hamburg-based research institute, partly funded by the German government, that conducts research on political, economic and social developments in Africa, Asia, Latin America and the Middle East (GIGA n.d.b). The GIGA Institute of African Affairs researchers work with local partners "to gain comprehensive knowledge of developments in the region" and continuously monitor developments in the sub-Saharan region (ibid. n.d.a).

[2] EASO is an EU agency established to act as a "centre of expertise on asylum" and enhance practical cooperation on asylum matters among EU members (EU n.d.).

[3] The methodology of the DIS report cited in this Response has been criticized by one of the sources interviewed by the fact-finding mission, Professor Kibreab (Kibreab 31 Mar. 2015; ibid. 27 Nov. 2014; The Local 1 Dec. 2014), as have other NGOs (ibid.; Human Rights Watch 17 Dec. 2014), academics (Group 31 Mar. 2015), and the UNHCR, which clarified that it is not the UN agency cited in the DIS report (UN Dec. 2014, para. 3, 4). None of the information cited in this Response from the DIS report originates with Professor Kibreab. In a 24 July 2015 correspondence with the Research Directorate, the Head of Division for the DIS Country-of-Origin Information unit stated that the re-issued 18 December 2014 version of the report "remains on the DIS website and continues to be used by DIS decision-makers alongside other available country information" (Denmark 24 July 2015).

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Internet sites, including: Amnesty International; ecoi.net; Eritrea – Ministry of Information; The Foreigner; Freedom House; Human Rights Concern Eritrea; United Nations – Committee on the Elimination of Discrimination Against Women, Refworld.

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Date modified: 2016-01-05