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Immigration and
Refugee Board of Canada

Commission de l'immigration
et du statut de réfugié du Canada

Eritrea: Situation of people returning to the country after they either spent time, claimed refugee status, or were seeking asylum abroad (July 2015-May 2017) [ERI105801.E]

Research Directorate, Immigration and Refugee Board of Canada, Ottawa

1. Requirements for Return

A 2016 report by the European Asylum Support Office (EASO), citing interviews with Eritrean government representatives conducted by the Swiss State Secretariat for Migration (SEM) [1] as part of a fact finding mission to Eritrea in February and March 2016, states the following:

According to information provided by the competent authority (Department for Immigration and Nationality), before returning to the country, people must obtain a passport or a laissez-passer travel document from Eritrean diplomatic mission abroad in order to be able to enter Eritrea legally. They must pay the diaspora tax (2% tax, rehabilitation and recovery tax). People who have refused to complete their national service or have deserted must also sign - again at the diplomatic mission - a repentance form (officially known as 'Form B4/4.2' or the 'Immigration and Citizenship Services Request Form'). In that form, they admit to having committed a criminal offence and accept the penalty for it. ...

Eritreans who have spent at least three years outside the country may, on their return to Eritrea, make an application for 'diaspora status' to the Department for Immigration and Nationality in Asmara. For that application, in addition to the documents mentioned above, they also require a supporting letter from the diplomatic mission that proves that they have lived outside Eritrea for more than three years. The Department issues a document called Residence Clearance Form to returnees who have 'diaspora status'. According to official information, people who hold this document are exempt from compulsory national service and - contrary to the provisions of Proclamation 24/1992 - may leave Eritrea again without an exit visa.

The Residence Clearance Form, and thus 'diaspora status', may also be obtained by people who are returning to Eritrea not just as visitors but who intend to resettle there in the long-term. However, the 'diaspora status' expires after three years of uninterrupted residence in Eritrea. Thereafter, the authorities regard the person as a resident of Eritrea once again, subject to the associated duties and obligations (national service, exit visas). Similarly, people who have resided in another country for fewer than three years are regarded as residents of Eritrea again and not as people with 'diaspora status' should they return to Eritrea. This may also mean that such people have to perform their national service again. (EU Nov. 2016, 29-30)

A 2016 report on a fact finding mission to Eritrea, conducted in January and February 2016 by Landinfo, an independent body within the Norwegian Immigration Authorities that provides country of origin information (Norway 27 Apr. 2016, 7), states the following:

Representatives of the Directorate of Immigration [in Eritrea] [...] claimed that Eritreans who have remained in exile for three years or more are considered "diaspora Eritreans", which means they do not have national commitments, such as completing national service. Whether the departure was illegal or not, was, according to the Directorate of Immigration, not essential. They can return home on holiday and visit and be able to stay in Eritrea for up to one year without losing their diaspora status. (Norway 27 Apr. 2016, 4)

A 2016 report on a UK Home Office fact finding mission to Eritrea, conducted in February 2016, cites Eritrean immigration officials and a Ministry of Foreign Affairs (MOFA) representative as stating that people who come back within the three years are allowed to enter Eritrea, but "[p]roblems come when they want to leave" (UK Feb. 2016, para. 11.7.17). According to the same source, Eritrean immigration officials and the MOFA representative explained that a person who has been away for less than three years is considered a citizen and has "to fulfil their obligations" (UK Feb. 2016, para. 11.7.16). Eritrean immigration officials and the MOFA representative further stated that the three year period "used to be shorter," one year, but in order to "discourage" people from leaving to avoid national service, "the limit was upped to three years" (UK Feb. 2016, para. 11.7.17).

In correspondence with the Research Directorate, a Reader at the University of London Department of Anthropology and Sociology, who is also a member of the Centre for Migration and Diaspora Studies at the same university and who has researched Ethiopian and Eritrean refugees seeking asylum in the United Kingdom, provided the following information regarding the requirements for an Eritrean who wants to return to Eritrea:

The Eritrean government has formally set out the conditions which its nationals must meet in order to return, on the websites of many of its overseas embassies and consulates. The key criteria are as follows:

- a. Nationals who possess valid Eritrean passports do not require visas to enter/return to Eritrea.
- b. Members of the Eritrean Diaspora travelling on a foreign passport must apply for a visa.
- c. The key exception relating to point (b) is that if they possess a valid Eritrean national identity document they do not need a visa to enter Eritrea.
- d. Nationals who do not possess a passport can apply to an embassy for a travel document/Laissez Passer.
- e. All nationals, including members of the Diaspora are required to complete a "taxation form". This form relates to the payment of the 2% Diaspora tax on all forms of income earned while living abroad. [emphasis in the original] (Reader 15 May 2017)

The same source further stated that the information provided on this issue varies widely between different embassies/consulates (Reader 15 May 2017)

According to sources, the requirements to return to Eritrea are the same regardless of the returnee's immigration status, including if the person spent time abroad, claimed refugee status, or was seeking asylum (ECCC 25 May 2017; Reader 15 May 2017; Hotline for Refugees and Migrants 23 May 2017). The Reader explained that "[a]ll nationals seeking to return are required to register with the embassy and pay the diaspora tax," however,

there is one possible caveat. Eritrean embassies have been known to recognize and assist undocumented nationals in Israel, the UK and elsewhere who are willing to pay foreign exchange for an embassy issued travel document IF they sign an official "letter of regret" [Immigration and Citizenship Services Request Form]. (Reader 15 May 2017, underlined in the original)

The Reader further expressed the opinion that the policy concerning the "regret letter" remains in place because the Eritrean government has not officially retracted this requirement (Reader 15 May 2017). Similarly, in correspondence with the Research Directorate, the Eritrean Canadian Community Centre (ECCC) of Metropolitan Toronto, a non-profit organization that provides services for the Eritrean community including "settlement services, language classes, day care, and community programs for seniors" (Voices-Voix 1 Oct. 2012), indicated that individuals who left Eritrea to avoid military service, left illegally, or stayed abroad beyond the expiration of their leave, have to complete "'confession forms' admitting that they have committed offences" (ECCC 25 May 2017).

1.1 The Rehabilitation and Recovery Tax and the Immigration and Citizenship Services Request Form

According to the 2016 report of the UK Home Office fact finding mission to Eritrea, Eritrean immigration officials and the MOFA representative explained that the two per cent rehabilitation and recovery (RPP) tax is "an obligation of an Eritrean who lives abroad," whether they left Eritrea legally or not, and that the tax is collected "on the basis of Proclamation no 17/1991 and [Proclamation] no 67/1995" (UK Feb. 2016, para. 11.7.16). According to a 2015 report by the UN Human Rights Council, based on investigations that began in November 2014, Eritrean passports and other travel documents are delivered abroad after the payment of the two per cent tax (UN 5 June 2015, para. 440-441). Similarly, the United States (US) Department of State's *Country Reports on Human Rights Practices for 2016* indicates that to be eligible for some government services and documents, including exit permits and passport renewals, Eritreans residing abroad had "to show proof they paid the 2 percent tax on foreign earned income" (US 3 Mar. 2017, 14). The 2015 report by the UN Human Rights Council stated that "the non-payment of the [two per cent] Tax presents a risk for arrest and detention for those who travel back to Eritrea" (UN 5 June 2015, para. 440-441).

According to the same source, "Eritreans who have left the country unlawfully have to sign an 'Immigration and Citizenship Services Request Form' to regularise their situation before they can request consular services" (UN 5 June 2015, para. 442). By signing this form, individuals admit that they "regret having committed an offence by not completing the national service" and are "ready to accept appropriate punishment in due course" (UN 5 June 2015, para. 442). The 2016 report of the UK Home Office fact finding mission to Eritrea provides the following conversation with a MOFA representative:

The FFM [fact finding mission] team has seen a version of [the apology letter]. It says they must complete their national service. Do you tell the ministry of defense they haven't done it? No. Once the person left the country and stay[s] outside the country for three years, we consider them a member of the Diaspora. If they want to come back to visit, they must sign the letter. They can stay in the country for as long as they want. Then they must apply for an exit visa. To obtain this, they need to have signed the letter. (UK Feb. 2016, para. 11.7.16)

According to sources, Eritreans with dual nationality who enter the country "must obtain an exit visa" before leaving the country (US 22 Feb. 2017; Canada 2 May 2017). For further information on exit procedures, see Response to Information Request ERI105741 of March 2017.

According to the Reader,

[t]he letter of regret [is] an official form which individuals signed which provided the authorities with complete information about their activities in their host country... as well as full details about their Eritrean identity, family etc. in Eritrea. The form states:

"I, _____ (whose name is written above) confirm that previously given personal information is true; and that I regret having committed an offence by not completing the national service and am ready to accept appropriate punishment in due course."

Individuals who sign the form, pay the fee and secure a travel document were subject to interrogation and mistreatment on return and may well have been forcibly conscripted. (Reader 15 May 2017)

A 2016 written submission by the UN Special Rapporteur on the situation of human rights in Eritrea to the Standing Committee on Citizenship and Immigration of the House of Commons of the Parliament of Canada provides the following:

Signing the "apology letter" or "regret form" as a pre-condition for return does not protect returnees from further violations of their rights. On the contrary, returnees have to admit that they "regret having committed an offence by failing to fulfil their national obligations", which in most cases, means having fled from indefinite national service. This regret form opens the door to possibilities of further violations and gives the authorities a blank cheque to arbitrarily apply "any appropriate measures", in violation of human rights without the assurance for monitoring the returns. (UN 20 July 2016, 7)

2. Treatment of Returnees

A 2016 report by the Swiss SEM states the following:

For voluntary returnees from abroad who previously had evaded draft, deserted or left the country illegally, it seems that the draconian laws are not applied at the moment, provided they have regularised their relations to the Eritrean authorities prior to their return. According to a new,

unpublished directive, such returnees are exempt from punishment. It is understood that the majority of the individuals who have returned according to this directive effectively has not been persecuted. Nonetheless, concerns remain:

There is no legal certainty, because the directive has never been made public. (Switzerland 22 June 2016, 9)

Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

According to the 2016 Swiss SEM report,

[p]ersons who were critical to the Eritrean government during their time abroad are either denied return or would risk detention upon their return. The majority of Eritreans which so far returned did so voluntarily and only for temporarily. The long-term consequences of returns on a permanent base are still unknown. (Switzerland 22 June 2016, 9)

The June 2015 UN Human Rights Council report states that Eritreans voluntarily returning to their country may face arbitrary arrest, in particular if they are perceived as being associated with opposition movements abroad. (UN 5 June 2015, para. 444)

The ECCC stated the following concerning the treatment of returnees by the authorities upon arrival in Eritrea:

Depending on age, activities before and post existing Eritrea, affiliation or association..., returnees could be facing challenges, such as interrogations, arrest and harsh punishments upon return to their home country if they left Eritrea illegally (if that is the case), political activities outside of Eritrea, and even for making refugee claims against the state. Also, younger returnees risk the possibility of being recruited to indefinite military services.

...

Also, dual citizens of Eritrea and Canada, and Canadian citizens of an Eritrean background were able to go back and forth between Eritrea and Canada, as long as they are on good terms with the Eritrean government or are not considered as against the current government.

Having said that, the arbitrary nature of various [measures] taken by the Eritrean government and lack of legal protective mechanisms demonstrate the risk that returnees can face, especially if they are seen as harboring anti Eritrean government's feelings or political opinions. (ECCC 25 May 2017)

The US *Country Reports 2016* states that

[t]here were reports of citizens who left the country without exit visas being denied reentry. ... Others reported there were no consequences for returning citizens who had residency or citizenship in other countries.

...

Persons known to have broken laws abroad, contracted serious contagious diseases, or to have been declared ineligible for political asylum by other governments had their visas and visa requests to enter the country considered with greater scrutiny. (US 3 March 2017, 14)

In a correspondence with the Research Directorate, an Associate Fellow at the German Institute for Global Affairs' (GIGA)[3] Institute of African Affairs, who currently carries out research on diasporas and sanctions, as well as on Eritrea, explained the following:

The Eritrean government distinguishes two categories of Eritrean nationals: those who left the country during the independence struggle and established themselves abroad. They are still considered as Eritreans even if they have taken the nationality of their host country and are supposed to pay a 2% diaspora tax. Second-generation diaspora Eritreans born abroad also fall into this category. If they fulfill their national obligations (i.e. paying the rehabilitation tax and possibly making other donations) they are free to travel to Eritrea and leave with the exception of known opposition activists who would risk being arrested and jailed. They are not obliged to serve in the national service. However, there is one exception: If a diaspora Eritrean stays inside Eritrea for longer than one year, he/she loses the privilege of being exempted from the national service or serving in the neighbourhood militias for elderly people and is considered as an "ordinary Eritrean".

The second category are those who were born and raised inside Eritrea and are obliged to serve in the national service for undisclosed periods once they reach the age of 18. If they leave Eritrea illegally (without an exit visa) to escape from the service or to preempt conscription, they are considered as traitors who failed to fulfill their national duty. As to my knowledge, there is no difference if they claim refugee status or seek asylum, because the Eritrean government is aware that this is a necessary step to gain a residence status in a country outside Eritrea except for the Gulf States, where Eritreans are considered as labour migrants. The decisive criteria is if they left Eritrea illegally by crossing the border without the permission of the authorities. (Associate Fellow 8 May 2017)

The same source stated the following regarding the treatment of returnees by the authorities upon arrival in Eritrea:

Those who fled Eritrea prior to independence and got asylum before 1991 are free to travel to Eritrea for a visit unless they are known government opponents or human rights activists. Those who refuse [to pay] the 2% diaspora tax are usually not provided with an Eritrean passport and an entry visa or with a national identity card.

Those who fled the country after the introduction of the timely unlimited national service in 2002 are considered as traitors and/or deserters and face the danger of being imprisoned irrespective of [their] immigration status in other countries. There is absolutely no rule of law in Eritrea, so the punishment they expect may be arbitrary, depending on army commanders who may exercise jurisdiction against deserters, or possible bribes their families may pay to avoid imprisonment. Any Eritrean who is forced to return to their homeland against his or her will can face inhuman treatment including torture, imprisonment for unspecified periods and being forced to stay in a military training camp under very harsh conditions as a punishment. (Associate Fellow 8 May 2017)

The Reader stated the following regarding the situation of returnees in Eritrea:

It is clear that nationals and those of Eritrean descent in the Diaspora are returning to Eritrea, particularly for national holidays. However, regardless of a policy on indefinite conscription of nationals into the military/national service, it appears that nationals who live overseas and who possess a foreign passport are not conscripted when they visit Eritrea. It is not clear why this occurs but it is presumably related to the fact that these individuals continue to pay the 2% tax as well as other special taxes. (Reader 15 May 2017, underlined in original)

2.1 Returnees Who Claimed Refugee Status or Were Seeking Asylum

The 2016 written submission by the UN Special Rapporteur on the situation of human rights in Eritrea indicates that

[i]n Eritrea, people are arrested and detained without any formal charges. Therefore most people can only speculate about the reasons for arrest and detention; the following reasons are cited frequently: ... (k) failed asylum seekers and refugees who are returned to Eritrea. (UN 20 July 2016, 4-5).

Similarly, a 2017 report by Freedom House states that "Eritrean refugees and asylum seekers repatriated from other countries are detained" (Freedom House 2017). Regarding the act of claiming asylum in the UK, the 2016 report by the UK Home Office fact finding mission to Eritrea cites Eritrean immigration officials as explaining that they are not concerned with the reason an individual left, rather, "[a]ll we are looking at is how long they have been away; more than 3 years or not" (UK Feb. 2016, para. 11.10.2). According to the immigration officials, if an Eritrean has been away for less than three years, they need to complete the national service (UK Feb. 2016, para. 11.10.2). The Eritrean immigration officials interviewed also stated that "[a] person who wants to come back needs to sign an apology letter" (UK Feb. 2016, para. 11.10.3).

According the 2016 Landinfo report, "a number" of Eritreans who have been granted asylum or residence permit return to Eritrea for visit or holiday (Norway 27 Apr. 2016, 3-4). Based on interviews with international representatives and diplomatic sources in 2013 and 2015, and confirmed by sources Landinfo spoke to in Asmara in January and February 2016, the same source adds that "[t]hese Eritrean exiles have probably restored their relations with the authorities by signing a so-called repentance letter, by paying the 'two per cent tax' and by not participating in activities critical of the government" (Norway 27 Apr. 2016, 4).

2.2 People Forcibly Returned

Concerning examples of recent returns of failed asylum seekers, specifically enforced returns rather than voluntary, the 2016 report of the UK Home Office fact finding mission cites Eritrean immigration officials as

stating that "if a person is forcibly returned they must stay within the country" (UK Feb. 2016 para. 11.7.21). Concerning enforced returns, the same source further cites the MOFA representative as stating that "our policy is to prefer voluntary returns. But if a host country decides to repatriate them by force, we will accept them. But we should negotiate first" (UK Feb. 2016 para. 11.7.21).

The 2015 report by the UN Human Rights Council states that "with a few exceptions, those who have been forced to return...have been arrested, detained and subjected to ill-treatment and torture" (UN 5 June 2015, para. 444). The same source explains the following about forced repatriation:

A common pattern of treatment of returnees is their arrest upon arrival in Eritrea. They are questioned about the circumstances of their escape, whether they received help to leave the country, how the flight was funded and whether they had contact with opposition groups based abroad. Upon their repatriation, witnesses said they were detained between ten weeks and five years in harsh conditions of detention, subject to torture and punishment and sometimes to forced labour. (UN 5 June 2015, para. 1070)

Similarly, according to the US Department of State *Trafficking in Persons Report 2016*, Eritreans "deported from abroad [...] were vulnerable to being arrested, detained, harassed, or recalled into national service upon return" (US June 2016, 166). The 2016 report by the Swiss SEM states the following:

There is hardly any information available regarding the treatment of forcibly returned persons. In the last few years, only the Sudan (and possibly Egypt) forcibly repatriated Eritreans. As opposed to voluntary returnees, those forcibly returned are not able to regularise their relation to the Eritrean authorities prior to returning. The few available reports indicate that the authorities treat them similarly as persons apprehended within Eritrea or while leaving illegally. For deserters and draft evaders, this means being sent back to National Service after several months of detention. Regularisation is not necessary for persons who have not reached conscription age yet or who have fulfilled their National Service duty already. (Switzerland 22 June 2016, 9)

According to a 2016 report by the UN Human Rights Council, in May 2016, 442 Eritreans were expelled from Sudan and prior to the expulsions, were held in a Sudanese prison and visited by Eritrean authorities who "register[ed] the identities of those to be returned" (UN 8 June 2016, para. 98). The same source further reports that "witnesses also reported that upon arrival in Eritrea, the returnees were arrested and detained" (UN 8 June 2016, para. 98).

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] The SEM is a Swiss federal office that "regulates the conditions under which people can enter Switzerland and decides who will receive protection from persecution" (Switzerland 1 Jan. 2015).

[2] The information provided by the ECCC is based on "information [they] have heard over time from members of the Eritrean community who travelled to Eritrea and returned, those who are unable to go to Eritrea due to fear, as well as what [has] been reported in Eritrean and other media outlets" (ECCC 25 May 2017).

[3] The GIGA is an independent social science research institute based in Germany that analyses "political, social and economic developments in Africa, Asia, Latin America, and the Middle East, as well as global issues" (GIGA N.d.).

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Oral sources: Eritrea – Consulate in Australia, Consulate General in Toronto, Embassy in the United States; Eritrean Canadian Community Association of Calgary; Eritrean-Canadian Human Rights Group of Manitoba; Human Rights Concern Eritrea; Journalist; Lawyers in Eritrea; Professor, Pennsylvania State University; Professor, Tilburg University; Research Professor, London South Bank University; Senior Researcher, Human Rights Watch; Senior Researcher and Advocate, Human Rights Watch.

Internet sites, including: Al Jazeera; Amnesty International; ecoi.net; Eritrea – Ministry of Information; Factiva; Fédération internationale des ligues des droits de l'homme; Human Rights Concern Eritrea; Human Rights Watch; International Crisis Group; *Norway Today*; Refugee International; United Nations – Refworld.

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