

# ***INDEPENDENT EXPERT REPORT WRITTEN TO***

**Connection e.V.**

**&**

**Förderverein Pro Asyl e.V.**

**(Germany)**

**Written By**

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## Table of Contents

1. Introduction .....	1
2. Nature of the instruction and its background .....	1
2.1. The questions .....	2
2.2. Background of the questions .....	2
2.3. Contextual background about the overall political situation in Eritrea .....	5
3. Professional background and methodological approach .....	7
4. Addressing the questions .....	10
4.1. What is a “diaspora status”? .....	11
4.2. The “Residence Clearance Form” (RCF) .....	11
4.3. The specific answers .....	15
4.3.1. Under what conditions can diaspora status be acquired in Eritrea? .....	15
4.3.2. Is the diaspora status limited in time? For how long? .....	16
4.3.3. What information is available on travellers and returnees? .....	17
4.3.4. Punishment for illegal departure and military draft or desertion? .....	20
5. Conclusion .....	21

## **1. Introduction**

- [1] This Independent Expert Report (hereinafter the report or the expert report) is prepared pursuant to a joint instruction received from Connection e.V. (International Support of Conscientious Objectors and Deserters) and Förderverein Pro Asyl e.V., the final version of which was agreed upon on 10 February 2022. Both are German non-governmental organisations (hereinafter the instructors), working on asylum rights and other related areas of concern. The exact nature of our instruction is described in Section 2 below.
- [2] In preparation of this expert report, we follow the same research methodology we used previously in the preparation of similar other expert reports (numerous of them), either in our individual capacity or in collaboration with other experts. While we further elaborate our methodological approach in Section 3 below, we note that we present our opinion, conclusions, and findings with the sole purpose of assisting decision makers to reach an informed conclusion about the questions asked by the instructors. In doing so, our expert report is limited to our qualifications as experts on the country conditions in Eritrea. Our CVs are annexed as separate attachments.
- [3] Our expert report is presented in the following manner. Following the present introductory section, in Section 2, we spell out the exact nature of the questions we received from the instructors. We also provide a contextual background about the factors that have given rise to the set of questions, including a brief account of the overall political situation in Eritrea (without which it is difficult to portray a complete picture of our expert report). In Section 3, we explain our professional background and the methodological approach we have used in the preparation of this expert report (which, as noted above, is the same with other expert reports we have authored in the past). In Section 4, we discuss the questions addressed to us by the instructors. In Section 5, we conclude by underscoring our main findings.

## **2. Nature of the instruction and its background**

- [4] The instructors asked us to address a total of 14 questions (4 major questions and 10 sub-questions), which are broadly related to the diaspora status of Eritrean refugees. Indirectly, they are also related to the overall political situation in Eritrea, particularly the situation of human rights in the country, as we explain below. Therefore, in addition to explaining the background or the factors that have given rise to the set of questions, we also find it relevant to provide context (albeit succinctly) about the overall political situation in Eritrea. First, we cite the set of questions in verbatim as were addressed to us by the instructors. For ease of reference, we have slightly rearranged the questions in sequencing/numbering.

## **2.1. The questions**

[5] The following are the questions addressed to us by the instructors.

### **1. Under what conditions can diaspora status be acquired in Eritrea?**

- 1.1. What are the criteria for obtaining diaspora status?
- 1.2. Is the stay abroad a condition for diaspora status?
- 1.3. Is a residence permit and thus the possibility of returning abroad a prerequisite for diaspora status?
- 1.4. Who is excluded from obtaining diaspora status?

### **2. Is the diaspora status limited in time? For how long?**

- 2.1. Does the time limit differentiate between persons who return to Eritrea temporarily and those who return permanently?

### **3. What information is available on travellers and returnees?**

- 3.1. Are there arrests/prosecutions of persons who entered with diaspora status?
- 3.2. How many people travel to Eritrea via diaspora status?
- 3.3. Is it known how many people of the following groups of Eritreans abroad enter Eritrea under diaspora status (e.g. exiles who came during the civil war against Ethiopia, people with dual citizenship, second/third generation, recognised refugees, people with residence status)?
- 3.4. What happens if persons with diaspora status return to Eritrea permanently?

### **4. Is a punishment for illegal departure only imposed in cases where there is also a military draft or desertion?**

- 4.1. Does the expiry of the exit visa without timely return also constitute an illegal departure?

## **2.2. Background of the questions**

[6] In addressing the initial version of the questions, the law office provided us with relevant background information, presented here in a summarised version, explaining the factors that have given rise to the questions.

[7] The general understanding is that the questions are prompted by a growing level of rejection of asylum claims of Eritreans by the German Federal Office for Migration and Refugees (hereinafter BAMF based on its German acronym), whose decisions are in turn promoted by some most recent judgements of German courts (overwhelming rejections of asylum claims by Eritreans). One of such judgements, cited by the instructors, is a judgement delivered on

27 October 2021 by the High Administrative Court of Hamburg (with reference number 19 A 4603/19). The essence of the judgement, as will be clarified below, is that there are certain categories of Eritrean asylum seekers, who are no longer considered as risking the danger of persecution, and thus they do not qualify for asylum protection. This is related to a group of Eritreans who can obtain a so-called “diaspora status,” further explanation of which is also given below.

- [8] Based on the above cited judgement and similar others, there is now a growing understanding or perception on the part of German courts and BAMF that Eritreans can be granted diaspora status after a stay of three years in Germany or abroad, and this would mean that they are no longer in need of international refugee protection, because such a diaspora status supposedly protects them (at least temporarily) from persecution and coercive and indefinite military conscription if they return to Eritrea. In this respect, we believe that the questions that are asked to us by the instructors are fundamentally linked with the predicament that awaits returned asylum seekers. In explaining this new development further, the instructors note as follows by citing a decision of BAMF, dated 16 November 2021, with reference number AZ 8315681-224:

The refugee status granted to the foreigner and the recognition as a person entitled to asylum are to be revoked in accordance with section 73 (1) sentence 1 [the] Asylum Act. (...) Eritreans who left the country illegally and have stayed abroad for at least three years can legalise their status as ‘Eritreans abroad’ by paying the diaspora tax and, if necessary, signing a confession of remorse, with the consequence that the legal provisions on desertion, refusal of service and illegal departure are not applied to this group of persons. Practice shows that this status allows unhindered temporary entry and exit.

- [9] The relevant part of the judgement of the High Administrative Court of Hamburg (cited above) is quoted by the instructors as follows:

It is reasonable for the applicant to obtain diaspora status. In principle, a person does not need protection in the Federal Republic of Germany if he or she can avert an asserted threat in his or her home country or in another target state of deportation through reasonable conduct of his or her own, which includes in particular voluntary departure and return to the home country. (...) Obtaining diaspora status by paying the 2% tax and signing form 4/4.2 is objectively reasonable.

- [10] The instructors further noted that there is a general understanding on the part of the German authorities that a refugee status can be revised three years after it is granted. This can happen, for instance, if the situation in the country-of-origin changes. Based on such review, the status can be revoked. In Germany, this process is known as revocation procedure, as noted to us by the instructors. This means that based on the other general assumption presented above, certain Eritrean refugees who are presumed to be able to

obtain a diaspora status after a stay of three years in Germany or abroad can have their refugee status revoked or their asylum claim rejected. The instructors believe that the new position of the German authorities is not reasonable and in order to show this they believe that it is imperative to commission an expert opinion, which addresses the set of questions listed above. This is the context in which this expert report is being written.

[11] In addition to the above, it would be helpful to add the following additional remarks building on a written input we received from Sara Palacios Arapiles (a Spanish human rights lawyer and an expert of Eritrean asylum research),<sup>1</sup> on how this new trend started to take a firm ground in Germany. She made the remarks based on her on-going research work, the focus of which is a comparative study of decisions made by different jurisdictions (mainly European) about asylum applications by Eritreans. In her input, Palacios Arapiles systematically chronicles how the Higher Administrative Courts of Saarland, Hamburg, Hessen, Munich and Münster have, one after the other, rendered similar judgements, the final analysis of which is in line with the summary background provided to us by the instructors.<sup>2</sup>

[12] Palacios Arapiles believes that the new trend on the part of German courts and BAMF traces its origin partly to a report of the Swiss State Secretariat for Migration of 22 June 2016, and partly to another report of September 2019 by the European Asylum Support Office (EASO) of the EU,<sup>3</sup> in which one of the present co-authors is cited numerous times. However, as we will be show below, at least the EASO report does not provide a clear-cut conclusion on the so-called issue of “diaspora status,” in a way that provides sufficient grounds for this kind of newly developing trend observed on the part of German courts and BAMF.

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<sup>1</sup> Palacios Arapiles is the same person who co-authored a major expert report in April 2021 (cited in note 5 below) together with one of the present co-authors (Mekonnen), commissioned by the Berlin-based Equal Rights Beyond Borders and its partner the International Refugee Assistance Project (IRAP). A description of her on-going research project (a doctoral thesis), supported by the Economic and Social Research Council of the UK (grant number ES/P000711/1), is available here: <https://gtr.ukri.org/projects?ref=studentship-1927756>.

<sup>2</sup> In her written input, Palacios Arapiles cites the following judgements: Higher Administrative Court of Hessen, Case 10 A 797/18.A, 30 July 2019; Higher Administrative Court of Hamburg, Case 4 Bf 205/18.A, December 2020; Higher Administrative Court of Hessen, Case 10 A 1939/20.A, 23 February 2021; Higher Administrative Court of Munich, Case 23 B 18.31593, 5 February 2020; Higher Administrative Court of Hamburg: Case 4 Bf 546/19.A, 2 September 2021; Higher Administrative Court of Hamburg: Case 4 Bf 106/20.A; Higher Administrative Court of Münster, Case 19 A 1857/19.A, 21 September 2020.

<sup>3</sup> European Asylum Support Office (EASO), “Eritrea: National Service, Exit, and Return,” Country of Origin Information Report, September 2019, [https://reliefweb.int/sites/reliefweb.int/files/resources/2019\\_EASO\\_COI\\_Eritrea\\_National\\_service\\_exit\\_and\\_return.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/2019_EASO_COI_Eritrea_National_service_exit_and_return.pdf) (hereinafter EASO Report 2019). In this report, Mekonnen is cited for more than 20 times as one of the main sources of the report.

- [13] While our focus in this expert report is obviously on the predicament of Eritrean asylum seekers and refugees (as requested by our instructors), we cannot avoid but emphasise on the fact that this new trend is part and parcel of a new development in Europe (not just in Germany), which is characterised by a gradual retreat from well-known international commitments on refugee rights – a clear example of which is the most recent and so-called “UK-Rwanda Deal” on asylum, which has given rise to a very stringent response on the part of the UNHCR, the UN Refugee Agency.<sup>4</sup>
- [14] Before moving to our answers to the questions addressed to us by the instructors, below we also need to provide a brief contextual background about the overall political situation in Eritrea. This is crucially important for a holistic understanding of the answers we provide to each of the questions asked to us by the instructors. A report of this nature, which is intrinsically linked to the problem of systematic and widespread human rights violations<sup>5</sup> in Eritrea, as well as the predicament of returned asylum seekers and refugees, or potential returnees, would indeed be incomplete without a contextual background (even succinctly) about the overall political situation in the country.

### 2.3. Contextual background about the overall political situation in Eritrea

- [15] Eritrea has a very problematic history of human rights violations. For purposes of our expert report, the post-independence political history of Eritrea can be broadly divided into two major historical episodes (each of them having their own several sub-episodes).<sup>6</sup> The first episode runs from May 1991 (when Eritrea emerged as a *de facto* independent state) to May 1998 (when it started a new armed conflict with neighbouring country, Ethiopia, commonly known as a border conflict). During the first historical episode, the country experienced a relatively peaceful political transition to a much-anticipated democratic political order, which has never materialised. However, this does not mean that even during that period there were

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<sup>4</sup> See the sources we cited in Section 5 below in relation to this discussion.

<sup>5</sup> We use the phrase “systematic and widespread human rights violations,” as used by the two main reports of the UN commission of inquiry of on human rights in Eritrea. These are: *First Report of the UN Commission of Inquiry on Human Rights in Eritrea*, A/HRC/29/42, 4 June 2015; *Second Report of the Commission of Inquiry on Human Rights in Eritrea*, A/HRC/32/47, 8 June 2016. Both reports are available at <https://www.ohchr.org/en/hr-bodies/hrc/co-i-eritrea/report-co-i-eritrea-0>.

<sup>6</sup> This categorisation draws partly on a similar expert opinion written to the 10th Chamber of the Administrative Court of Minden in August 2020 (by the first author, Mekonnen), as well as on Section 2 of the following work. Daniel Mekonnen and Sara Palacios Arapiles, “Access to Official Documents by Eritrean Refugees in the Context of Family Reunification Procedures: Legal Framework, Practical Realities and Obstacles,” Expert Report Commissioned by Equal Rights Beyond Borders and its partner the International Refugee Assistance Project (IRAP), April 2021, [https://equal-rights.org/site/assets/files/1286/report\\_access\\_to\\_official\\_documents\\_eritrea\\_equalrights\\_irap\\_may-2021.pdf](https://equal-rights.org/site/assets/files/1286/report_access_to_official_documents_eritrea_equalrights_irap_may-2021.pdf) (hereinafter Mekonnen and Palacios Arapiles 2021).

no human rights violations. There were, but their magnitude and coverage of reporting differs from those experienced in the second historical episode discussed below.

[16] The second episode covers the period from 1998 to the present time. During this time, Eritrea and Ethiopia fought a devastating armed conflict between May 1998 and June 2000. Although the conflict was officially resolved by two major agreements signed in June and December 2000 (the latter being the Algiers Peace Agreement), in our opinion its ramifications still have a lasting consequence to the overall political situation of Eritrea (including Ethiopia), particularly the enjoyment of fundamental rights and freedoms.

[17] It is during the latter period, the post-1998 era, that the overwhelming majority and most grotesque human rights violations took place in the country. During this period, Eritrea as a political entity or a polity has become one of the most repressive systems in the world. Most of the observations we made herein are sufficiently reported by numerous authoritative reports, the most important of which are the two major reports of the UN commission of inquiry on human rights in Eritrea,<sup>7</sup> in which the commission has made a compelling conclusion on a *prima facie* case of crimes against humanity in Eritrea, further complicated by a dire socio-economic situation and a highly militarised political order.

[18] It is in this context that the country ended up becoming a “concentric circle of prisons,” rather than as a normally functioning state, as noted by a similar expert report from 2021, in which it is further contended:

All in all, Eritrea needs to be understood as a country the sustenance of which is premised on serving the narrow political end of the ruling class, which is nothing but that of a quintessential ideological obsession with regime preservation. Everything that is designed and implemented at policy and practice level has to be orientated in this context. This is true even in the most rudimentary aspects of social life in Eritrea. This was made possible by putting into place a vast and elaborate prison system (formal and informal) so much so that at times it is even difficult to distinguish the difference between the state of being free and not free in an Eritrean context.<sup>8</sup>

[19] As a matter of general practice, Eritrea suffers from a widespread problem of disrespect of the rule of law, which is further compounded by inconsistency and arbitrariness in the manner the government conducts its business. This problem is meticulously captured by the following observation of Schröder, a long-time researcher on Eritrea:

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<sup>7</sup> Cited in note 5 above.

<sup>8</sup> Mekonnen and Palacios Arapiles (2021), p. 13. See also the following statement: “The State of Eritrea is organised like a military detention centre under the absolute rule of Isaias Afwerki, a liberation hero turned a ... despot.” The statement comes from: Question asked at the European Parliament by Marc Tarabella, EU MEP from Belgium, 29 August 2014, [https://www.europarl.europa.eu/doceo/document/E-8-2014-006413\\_EN.html?redirect](https://www.europarl.europa.eu/doceo/document/E-8-2014-006413_EN.html?redirect).



In its governmental practice the Eritrean Government habitually ignores the official Proclamations and Legal Notices when it suits its interest. Its governmental practice overwhelmingly is based on internal directives, which were never made public, or on oral instructions usually emanating directly from the autocratic president. This reflects the “governance practice” of the EPLF during the liberation struggle, which the political leadership of Eritrea has not outgrown after independence.<sup>9</sup>

[20] Finally, we also note that in July 2018 Eritrea and Ethiopia signed a new peace agreement that (seemingly) ended the stalemate resulting from the 1998-2000 border conflict. As a result of this new agreement, the border between the two countries was reopened in September 2018. This happened only for a brief time, during which people were freely traveling across the borders without exit visa or other border controls even though the law requiring exit visa was in place. The opening of the common borders did not last long. In December 2018 the borders were closed again.<sup>10</sup> Again in November 2020, a new armed conflict erupted in the northern part of Ethiopia, in which Eritrean troops were actively involved since the very beginning. In our review, this may have its own repercussions on returned asylum seekers or refugees. In the next section, we explain our methodological approach.

### **3. Professional background and methodological approach**

[21] We are Eritrean legal professionals, who have previously worked as judges in Eritrea. We currently live in Switzerland (the first author) and the Netherlands (the second author). After leaving Eritrea, both of us have been formally trained in human rights and have conducted numerous such assignments over the past many years. In writing this expert report, we use the same methodology we have previously used in numerous other assignments. We give some concrete examples below.

[22] For over two decades, the first author (Mekonnen) has conducted extensive work of research, advocacy, adjudication, teaching, training, and consultancy, in the inter-related areas of International Human Rights Law and International Refugee Law. Previously, while in Eritrea, he served as Adult Education Teacher (1991-1992) and as Judge (1998-2003), including as a Senior Judge of the Central Provincial Court in Asmara, the capital city.<sup>11</sup>

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<sup>9</sup> Günter Schröder, “Marriage, Vital Events Registration and Issuance of Civil Status Documents in Eritrea,” May 2017, <https://migrationlawclinic.files.wordpress.com/2017/05/paper-gc3bcnther-schrc3b6der-eritrea-marriage.pdf>, p. 3.

<sup>10</sup> See, for example, EASO Report 2019, pp. 16-17.

<sup>11</sup> Between January 2002 and December 2003, he was in a paid and unpaid leave of absence to pursue his Master of Laws (LLM) in Human Rights at Stellenbosch University.

- [23] Over the past many years, Mekonnen has produced hundreds of academic and non-academic works (publications) on the overall situation of human rights in Eritrea in the form of peer reviewed journal articles, chapters in edited volumes, expert reports and/or sworn affidavits of various sorts, and conference presentations or speeches given in different places and times. Below are some of the most important examples of his expert reports, pertaining only to European and North American jurisdictions (courts or semi-judicial decision-making authorities).
- [24] Most recently, on 8 February 2022, he testified as an expert witness before the Immigration and Refugee Board of Canada, the country's main administrative tribunal on immigration and asylum. In April 2021, he accomplished one of his most important consultancies (expert reports), commissioned by the Berlin-based Equal Rights Beyond Borders and its New York-based partner the International Refugee Assistance Project (IRAP). The full title of the expert report is "Access to Official Documents by Eritrean Refugees in the Context of Family Reunification Procedures: Legal Framework, Practical Realities and Obstacles."<sup>12</sup>
- [25] Co-authored with Sara Palacios Arapiles and focusing on pertinent issues having direct relevance to the present assignment, the expert report has been widely received by European and UN entities working in the field of asylum research and practice, including some European decision-making authorities. Accordingly, various excerpts of the expert report have been cited by the following policy and/or decision-making authorities on asylum: a) the Higher Administrative Court of Hamburg;<sup>13</sup> b) UK Home Office's "Country Policy and Information Note Eritrea: National service and illegal exit;"<sup>14</sup> c) Country of Information Report of the Swedish Migration Agency;<sup>15</sup> d) Country Guidance Report on Eritrea of the Dutch Ministry of Foreign Affairs of 25 May 2021, in which the expert report is cited 38 times.<sup>16</sup> Since 21 September 2021, the expert report now included in the official evidence list for Eritrea of the Administrative Court of Berlin.<sup>17</sup> Its main findings have been presented at: a) an expert meeting of UNHCR's Global Refugee Family Reunification Network (FRUN) held on 2 June 2021; b) an expert meeting on family reunification of the National European Red Cross and

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<sup>12</sup> Available at [https://equal-rights.org/site/assets/files/1287/report\\_access\\_to\\_official\\_documents\\_eritrea\\_equalrights\\_irap\\_may-2021.pdf](https://equal-rights.org/site/assets/files/1287/report_access_to_official_documents_eritrea_equalrights_irap_may-2021.pdf).

<sup>13</sup> See Case 4 Bf 106/20.A, 27 October 2021 and Case 4 Bf 546/19.A, 2 September 2021.

<sup>14</sup> See report of September 2021, p. 20, available at [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1020555/ERI\\_CPIN\\_National\\_service\\_and\\_illegal\\_exit.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1020555/ERI_CPIN_National_service_and_illegal_exit.pdf).

<sup>15</sup> See report of 29 June 2022, available here <https://lifos.migrationsverket.se/dokument?documentAttachmentId=48539>, pp. 7-8.

<sup>16</sup> See <https://www.rijksoverheid.nl/documenten/ambtsberichten/2022/05/25/algemeen-ambtsbericht-eritrea-mei-2022>.

<sup>17</sup> See "Knowledge Resources" / Erkenntnismittel, available at <https://www.berlin.de/gerichte/verwaltungsgericht/service/erkenntnismittellisten/eritrea/>.

Red Crescent Societies held on 5 May 2021; c) a working group session with French NGOs hosted by UNHCR France on 6 July 2021; and d) a juridical seminar for asylum lawyers in Germany organised by the Catholic Academy of Franz Hitze Haus held on 30 September 2021. In March 2022, Mekonnen also co-authored another major expert report, commissioned by the Refugee Law Clinic, University of London, focusing on the Eritrean practice of the issuance of identity-proving documents.<sup>18</sup>

[26] In 2019, an expert report he wrote to a UK-based law office played a key role in reversing five successive rejections of an asylum claim that were in force for a period of 10 years since 2009 (in a case decided by the First-Tier Tribunal of the UK Immigration and Asylum Chamber). In November 2021, his expert opinion on asylum was cited by the Upper-Tier Tribunal of the same Chamber, along with a document originating from UNHCR Libya Office, as one of “the principal sources of evidence which have been relied on” by the Tribunal in pronouncing its judgement.<sup>19</sup> Similarly, in 2018 an expert report he wrote to another UK-based law office also played a key role in withdrawing a deportation order of an asylum seeker, ultimately securing a refugee status for the claimant (after a prolonged period of ten years). In August 2020, he authored a major expert opinion under direct instructions of the Administrative Court of Minden in Germany. At other occasions, he has given tailor-made expert presentations in closed sessions of European and other immigration authorities.

[27] The second author (Yohannes) has written numerous expert opinions to immigration lawyers from different jurisdictions, particularly to Dutch and British lawyers. Several expert opinions he wrote in the past were helpful in providing proper understanding to the Dutch Immigration Service and courts about Eritrean laws governing marriage and other related social affairs. He also actively contributed to various research projects focusing on Eritrean laws and the legal practice in Eritrea. While in Eritrea, he has served as a judge at sub-regional and regional (provincial) levels of the Eritrean judiciary, in which context he presided over civil and criminal cases on first instance and appellate levels. Among other things, he is the co-drafter of the *Draft Integrated Coastal Area Management Law of Eritrea* (2007), and he has taught Law of the Sea at the College of Marine Sciences and Technology in Eritrea (2008). He obtained his Bachelor of Laws (LLB) from University of Asmara in 2001 and his Master of Laws (LLM) from Maastricht University in 2014.

[28] The methodology we use in this expert report is, therefore, based on our accumulated wisdom of many years in which context we have carried out numerous investigations and

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<sup>18</sup> Daniel Mekonnen and Sara Arapiles Palacios, “The Eritrean Practice of the Issuance of Identity-Proving Documents with Particular Focus on the Case of Returnees from Ethiopia,” University of London, Refugee Law Clinic Briefing Paper No. 1, March 2022, <https://sas-space.sas.ac.uk/9673/>.

<sup>19</sup> *SGW v. Secretary of State for the Home Department*, Upper Tribunal (Immigration and Asylum Chamber), JR/227/2021, 26 November 2021, para 90.

authored commentaries related to country conditions in Eritrea, including on pertinent issues directly related to the questions asked by the instructors. As part of our everyday work as researchers continuously engaged in producing academic publications and various research outputs on Eritrea, we also maintain ardent contacts with a broad network of Eritreans from all walks of life: former government employees, former conscripts of the national military-service programme (NMSP), ordinary citizens and experts of different sorts. This has helped us in developing an extensive base of complimentary knowledge about Eritrea, which is regularly updated through our continued contacts with people inside Eritrea and those who have fled the country recently. To enhance the credibility of our account, whenever needed and possible, we cite credible sources of third parties, by way of supporting our claims and triangulating some assertions we make herein. We have also benefited from insights we have gathered from five interlocutors, one of whom is Palacios Arapiles (cited above) and the four others are cited in Section 4 of our expert report.

- [29] In preparing this expert report, we have made every effort to present our opinion as objective and neutral as possible. The nature of the facts in this case is within the realm of our expertise about country conditions in Eritrea. As experts, we comment only on matters that are within our ambit of expertise and in line with that this report is the product of our own opinion. This makes the essence of the methodological approach we normally use in the preparation of such kind of an expert report. In the next section, we will address the main questions that have been addressed to us by the law office.

#### **4. Addressing the questions**

- [30] As noted in Section 2 above, we have been asked to address a total of 14 questions, which are categorised under 4 major questions, each of them having several sub-questions. The nature of the questions is such that some of them may require relatively lengthy answers, with some contextual background, and others can be answered succinctly. While we address each question separately below, we start by the following remarks about the following inter-related concepts of “diaspora status” and its concomitant “Residence Clearance Form” (hereinafter RCF). In our view, these are the most important common threads to all questions asked by the instructors. Thus, by elaborating the meaning of these two key terms, we would be able to also address some of the key questions in a very general and easily understandable way. Indeed, we see a need to define the terms, explaining their meaning at the very rudimentary level of the proverbial layperson, and providing some relevant context as to how these terms came into being. The context we provide below also explains some of the questions indirectly (although we will return to reach of the questions one after the other).

#### 4.1. What is a “diaspora status”?

[31] To our knowledge, the concept of diaspora status was (arguably) popularised by the 2019 EASO Report, which we cite herein extensively. It refers to a status acquired by Eritreans living abroad after doing so for a specific period of time and after fulfilling certain pre-conditions. The following summary description by the 2019 EASO Report clarifies the concept:

Persons returning to Eritrea after living abroad are required to fulfil a number of conditions, most notably the payment of the 2% Rehabilitation and Reconstruction Tax and the signing of the ‘Letter of Regret’ for those who had left without fulfilling their national service duty. *De facto, the Eritrean authorities also expect a minimum of loyalty, i.e. no oppositional political activities abroad.* Returnees who fulfil these conditions are eligible for a privileged status, which allows them to leave Eritrea without an exit visa and relieves them from national service duty. However, this status is primarily meant for visiting diaspora Eritreans. Persons who stay in Eritrea for longer than six to twelve months (depending on the source) are considered residents again and liable to national service duty [emphasis ours].<sup>20</sup>

[32] As noted above clearly and as we will be show below, the diaspora status is indeed a “privileged status” offered by the Eritrean Government to Eritreans living abroad, offering them the privilege of entering and exiting the country freely, or without the cumbersome procedure of applying for entry and exit visas every now and then. That being the most important advantage, a diaspora status also relieves a person from the requirement of the country’s well-known obligation of an indefinite national-military service programme (NMSP), in which context the overwhelming majority of the country’s human rights violations take place. This is also the main reason for many asylum claims by Eritreans. A diaspora status manifests itself in the form of a so-called RCF, which is further elaborated below.

#### 4.2. The “Residence Clearance Form” (RCF)

[33] The RCF is an official document issued by the Eritrean Department of Immigration and Nationality (hereinafter the Department or the Immigration Department), in which a diaspora status is given effect. We note that the sample of such a form, presented on page 57 of the 2019 EASO Report, is the same with other samples we have seen in the past in the context of our previous research on other assignments. We also highlight on the following observation made by the 2019 EASO Report, which is crucial for our expert report (as we will explain further later): “Information about the term of validity of the ‘diaspora status’ and the Residence Clearance Form is contradictory.”<sup>21</sup>

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<sup>20</sup> EASO Report 2019, p. 9.

<sup>21</sup> EASO Report 2019, p. 58.

[34] While the 2019 EASO Report notes that the RCF has been issued since 2014,<sup>22</sup> other sources we spoke to in other previous assignments note that it may have been issued since 2013. This points to the fact that, as also noted by the 2019 EASO Report, the practice about the conferral of the diaspora status and the RCF is markedly inconsistent. This needs to be seen in the context of the remarks by Schröder we cited in Section 2 above. In most European jurisdictions, where Eritreans apply for asylum, there may be some degree of awareness about the diaspora status and the RCF. However, in other jurisdiction there is a relatively lesser degree of knowledge about these concepts, as was shown in 2020 in a confidential assignment undertaken by the first author.

[35] While it is true that the ultimate effect of the RCF has been that of formalising the diaspora status, it is important to go beyond that point by way of looking into how and why the document was introduced. According to previous research we have conducted on such and similar other topics,<sup>23</sup> the RCF was introduced as a solution to one persistent problem experienced by Eritreans living abroad. Inside Eritrea, these group of people are commonly (albeit colloquially) known as “beles,” which is a Tigrinya name of the seasonal cactus fruit (prickly pear). A very popular fruit in the highlands of Eritrea, *beles* is harvested and consumed mainly in the months of June to August (the rainy season), when most Eritreans living abroad visit the country, thus apportioning to them the colloquial nickname of *beles*.

[36] During the peak “beles months,” the Immigration Department experiences exceptional workload in processing exit visas, mainly to diaspora Eritreans who visit the country in large numbers during those months. It is important to recall that in Eritrea it is a standard legal requirement to obtain an exit visa for any traveller (Eritreans and foreigners alike, although there are some exceptions for foreigners) before they leave the country.<sup>24</sup> During the said peak months, it may take from a couple of days to few weeks to obtain an exit visa from the Department. For many Eritreans who live in Western countries, with the benefit of world class service delivery facilities, such a waiting time is unbearable.

[37] The RCF was, therefore, introduced following persistent complaints by diaspora Eritreans about excessive exit visa processing times during the peak “beles months.” The main purpose

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<sup>22</sup> EASO Report 2019, p. 57.

<sup>23</sup> One such example is a confidential expert report authored by the first author (Mekonnen) in 2020 under the formal instruction of a US-based immigration law office. Observations made here are also corroborated by information obtained from a former employee of the Department of Immigration and Nationality (Interlocuter 1).

<sup>24</sup> This is stipulated by Article 11 of Proclamation No. 24/1992 (*Proclamation Issued to Regulate the Provision of Travel Documents, the Entry into and Exit from Eritrea and Residence of Foreigners in Eritrea*). For exit visa, the law requires a valid travel document, exit visa and valid international health certificate. The Tigrinya title of the law reads as follows: *ጎዳሃህባ ሰናዳት መገሸጎን፣ ምእተው ናብ ወይ ምውጻእ ካብ ኤርትራን፣ ምንባር ወጻእተኛታት ኣብ ኤርትራን ንምቁጽጻር ዝወጸ ሓዋጅ።* A full version of the Proclamation is available at: <https://tile.loc.gov/storage-services/service/ll/lleritrea/eritre-an-proc-24-1992/eritrean-proc-24-1992.pdf>.

of the RCF was that of addressing the complaints from a “valuable” category of people, who are seen by the government as major sources of hard currency and instrumental also to its objective of asserting full control over diaspora communities, including the propaganda work related to that. Thus, attending to their concerns was beneficial to the government as well.

[38] Normally, an exit visa is issued for a single exit valid for one month. This is clearly stipulated by Article 17(1) of Legal Notice No. 4/1992 (*Legal Notice on Travel Documents and Immigration*).<sup>25</sup> Article 17(8) of the same legal notice introduced the possibility of issuing exit visas (for multiple exits) the validity of which is for a period of three months. While the introduction of the RCF can be seen as an expansion of this rule (to a period of 7 to 10 years), the practice related to the issuance of RCF itself was not proclaimed by law. Such is the practice in Eritrea, again recalling Schröder’s previous observation (cited in Section 2 above), on the inconsistent and haphazard way of doing things by the government.

[39] In practical terms, by obtaining the RCF the validity of which ranged between various years (7 to 10 years), frequent travels avoid the cumbersome bureaucratic delay they would have normally experienced by lining-up in long queues at the Immigration Department. Our observation regarding the length of the RCF is based on our previous research work on similar issues as well as information we obtained from three Interlocutors, who are knowledgeable about the matter. This information was obtained in the months of March and April 2022. Interlocutor 1 and Interlocutor 2 indicate that the RCF was valid for ten years. However, Interlocutor 3 stated that the length of the validity is now reduced to seven years.

[40] It is few years after the introduction of this new document (the RCF) that the concept of diaspora status begun to take a firm shape. In contrast, for Eritreans who live within Eritrea, the RCF and/or the diaspora status are arguably the highest manifestations of the government’s double standards in the way it treats its own citizens based on where they live: apparently, those living outside the country benefiting from a differential treatment compared to those who live inside the country (as elaborated further below).

[41] In this context, it is not difficult to understand that the RCF is intended to those who travel back to Eritrea frequently. To our knowledge, the RCF is not a mandatory document. For instance, for a person who wants to visit Eritrea only once, the RCF has no practical relevance, because the individual can do so by applying for a one-off entry and exit visa on her/his

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<sup>25</sup> The Tigrinya version reads: *ኢትዮጵያ ሰነድ መገኘት ኢምግራሽንን*: A full version of the legal notice is available at: <https://tile.loc.gov/storage-services/service/ll/eritrea/eritrean-notice-4-1992/eritrean-notice-4-1992.pdf>. In an Eritrea context, a *Proclamation* is the equivalent of what may be known in other jurisdictions as an act of parliament or legislation; and a *Legal Notice* is the equivalent of what may be known in other jurisdictions as a regulation or ordinance. On the Eritrean experience of law-making process, see in general Simon Weldehaimanot and Daniel Mekonnen, “The Nebulous Making Process in Eritrea,” *Journal of African Law* (2009) 53(2), pp. 171-193.

passport or travel document. It needs to be remembered that the RCF can be obtained by a broad range of Eritreans living abroad, such as those who left Eritrea during the liberation struggle era (pre-1991 era), including those who now have citizenships of other countries and their descendants. Needless to say, this is also related to one of the main questions that has been addressed to us by the instructors (sub-question 3.3 addressed below).

[42] If a traveller is a resident of a foreign country, the concept of diaspora status is also applicable to them by default – because central to this concept is the ability to travel back to Eritrea and exit without experiencing the obfuscating obstacles that are applicable to ordinary Eritreans living in the country, including the obligation to be enlisted in the country’s mandatory and indefinite NMSP.

[43] In order to better understand the above argument, we need to explain the most common practice in Eritrea, as established by a well-known judicial decision of UK’s Upper Tier Tribunal of Immigration and Asylum Chamber.<sup>26</sup> In Eritrea, only a very limited category of people is “lawfully” allowed to travel outside the country by obtaining a passport and exit visa. This also means that access to a passport and an exit visa is intrinsically linked with a person’s presumed ability to travel outside Eritrea.<sup>27</sup>

[44] The category of people described above is sometimes known as individuals entitled to the “privilege of lawful exit” from Eritrea.<sup>28</sup> According to the UK judgement cited above, the list of individuals who would normally benefit from the rare “privilege of lawful exit” from Eritrea are: (i) men aged over 54; (ii) women aged over 47; (iii) children aged under five (with some scope for adolescents in family reunification cases); (iv) people exempt from national service on medical grounds; (v) people travelling abroad for medical treatment; (vi) people travelling abroad for studies or for a conference; (vii) business and sportsmen; (viii) former freedom fighters (*tegadelti*) and their family members; and (ix) authority representatives in leading positions and their family members.<sup>29</sup> Nonetheless, due to the high level of inconsistency on how the government conducts its business (again recalling Schröder’s previous observation) and the unfettered discretion of government officials on such matters, persons meeting the above criteria may be denied exit visa with or without sufficient explanation. We now turn to the specific answers of each of the questions addressed to us by the instructors.

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<sup>26</sup> *MST and Others (national service – risk categories) Eritrea CG* [2016] UKUT 00443 (IAC), para. 4.

<sup>27</sup> Mekonnen and Palacios Arapiles 2022, p. 7.

<sup>28</sup> Mekonnen and Palacios Arapiles 2022, p. 7.

<sup>29</sup> *MST and Others*, para. 4.



### 4.3. The specific answers

[45] In this section, we address each of the 14 questions separately, categorised below in 4 major sub-classifications.

#### 4.3.1. Under what conditions can diaspora status be acquired in Eritrea?

[46] There are four sub-questions under this question: What are the criteria for obtaining diaspora status? Is the stay abroad a condition for diaspora status? Is a residence permit and thus the possibility of returning abroad a prerequisite for diaspora status? Who is excluded from obtaining diaspora status?

[47] As a matter of general practice, there are no clearly defined, publicly accessible guidelines or directives on how a person obtains a diaspora status. Much of the work in this regard depends on inferences drawn from indicators developed in the context of engagement with a range of official documents originating from Eritrea. We have done this in the past on several occasions, including in matters related to immigration procedures. We have also updated ourselves by informal interviews we conducted most recently (in March and April 2022) with: Interlocutor 1, a former Eritrean employee of the Immigration Department; Interlocutor 2, a former Eritrean public prosecutor and judge; Interlocutor 3, a former Eritrean public prosecutor and judge; and Interlocutor 4, a former Eritrean judge. The answers to most of the questions in this expert report are greatly complemented by insights we received from these interlocutors.

[48] The answer to sub-question 1 to 4 above is as follows. As a matter of common practice, a diaspora status is obtained when a person resides in a foreign country for a limited period. This means that it is indeed necessary for a person to stay abroad in order to be considered for a diaspora status. To our knowledge, the period for which a person has to reside abroad in order to obtain a diaspora status is not well settled, although it seems the most likely time is that of three years (according to most recent practice).

[49] However, one key consideration is that the person must have obtained some sort of a residence permit or an identity card in order to be considered for a diaspora status. This means that individuals with an indeterminate asylum case may not fall under this category. Likewise, the possibility of returning abroad is also a prerequisite for a diaspora status. In this regard, we agree with the observation made by the 2019 EASO Report to the following effect: "... applicants need a valid residence permit or foreign citizenship abroad."<sup>30</sup> Interlocutor 1 makes a distinction between Eritreans holding Eritrean passport and those holding foreign

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<sup>30</sup> EASO Report 2019, p. 58.

passport. To qualify for the RCF, he notes that those holding Eritrean passport have to show that they have been in a foreign country for three years (over and above fulfilling other requirements, such as signing the regret form).

[50] However, in our view the most important pre-condition is political loyalty to the government, which takes place through the payment of the so-called 2% diaspora income tax and the signature of the so-called regret form. It is this aspect of the practice, which makes is very controversial. As shown by a 2021 expert report of Mekonnen and Palacios Arapiles, the 2% diaspora income tax and the regret form are administered by the diplomatic missions of Eritrea, where applicants must appear in-person.<sup>31</sup> According to the same report, and our own research of many years, these procedures are available only to those that must demonstrate unquestionable political loyalty to the Government of Eritrea. In other words, this also means that those who are regarded as politically disloyal are unable to obtain a diaspora status. Given that asylum applicants present their claims on the basis of persecution suffered from the government in their country of origin, it is practically impossible for such applicants to go to the embassy of the same government from which they have fled and demonstrate political allegiance.

[51] Most importantly, we cite the 2019 EASO Report in which it is clearly stated that meeting any of the above cited conditions for “diaspora status” is not a guarantee against persecution, apparently upon return to Eritrea.<sup>32</sup> From previous research work, we know cases of individuals who were persecuted upon return on the basis of imputed political opinion. For instance, an individual personally known to one of the present authors was once persecuted upon return for the mere act of not obtaining an Eritrean national identity card (as will be further discussed below). The act was considered as a repudiation of the sovereign existence of Eritrea as an intendent state. In concluding this paragraph, we note that according to a study conducted by Norwegian experts in 2017, the overwhelming majority of Eritreans (80%) who lived in Ethiopian refugee camps at that time also believed that they would be at risk of persecution if they were to be returned to Eritrea.<sup>33</sup>

#### 4.3.2. Is the diaspora status limited in time? For how long?

[52] There is one additional sub-question under this one: Does the time limit differentiate between persons who return to Eritrea temporarily and those who return permanently?

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<sup>31</sup> Mekonnen and Palacios Arapiles 2021, pp. 38-39.

<sup>32</sup> EASO Report 2019, p. 59.

<sup>33</sup> This observation is based on a survey collected from a total of 153 partisans. See Andreas Holm Røsberg and Kjetil Tronvoll, “Migrants or Refugees? The Internal and External Drivers of Migration from Eritrea,” Project Report, 2017, [https://www.udi.no/globalassets/global/forskning-fou\\_i/asylmottak/migrants-or-refugees-internal-and-external-drivers-of-migration-from-eritrea.pdf](https://www.udi.no/globalassets/global/forskning-fou_i/asylmottak/migrants-or-refugees-internal-and-external-drivers-of-migration-from-eritrea.pdf), p. 92.

[53] Our research, present and past, shows that the diaspora status, as given effect by the RCF, is limited by time. In our understanding, there are two types of time limits or lengths of validity. The first one is related to the overall length of the RCF, which varied between 7 and 10 years. The second one is related to the length of time for which a person with an RCF can stay in Eritrea.

[54] For Eritreans, who return permanently, the answer is rather straightforward. For instance, as regards the obligation of fulfilment of the NMSP, they would be treated like any other Eritrean in the country upon return to Eritrea. For those who return temporarily, the validity of their diaspora status depends on the length they spend in Eritrea after their return. The length varies from time to time, ranging between 1 and 3 years. Citing the experience of an individual, who travels to Eritrea from time to time using the RCF, Interlocutor 2 notes that in the context of Covid-19 the length of validity of the RCF has been extended to 3 years. Presumably, it was less than 3 years before Covid-19. It needs to be noted that such kind of changes are given effect by periodic notices that may be communicated to concerned individuals once they have approached the relevant government sector, the Immigration Department, or the diplomatic corps of Eritrea. As in many other areas of government practice, there is no consistent way of doing things in this regard as well.

#### 4.3.3. What information is available on travellers and returnees?

[55] There are four sub-questions under the above broader question: Are there arrests/prosecutions of persons who entered with diaspora status? How many people travel to Eritrea via diaspora status? Is it known how many people of the following groups of Eritreans abroad enter Eritrea under diaspora status (e.g. exiles who came during the civil war against Ethiopia, people with dual citizenship, second/third generation, recognised refugees, people with residence status)? What happens if persons with diaspora status return to Eritrea permanently?

[56] In this section, the longest answer we provide is to the first sub-question. Although it is difficult to present estimates in numbers, arrests or prosecutions of persons who enter Eritrea with a diaspora status are not uncommon. Below we discuss some concrete examples, some of which are personally known to the first author in the context of a previous expert opinion he authored for a UK-based immigration law office.

[57] Before that, we provide the following general context known to us by virtue of our long-time research work on the overall situation of human rights in Eritrea. As a matter of general practice, in implementing their persecutory policies, Eritrean authorities do not post an arrest

warrant, be it at the airport or elsewhere, where a person has to be detained. Wanted people are simply detained or arrested at the airport or elsewhere in a manner that is highly unpredictable and markedly inconsistent. No one would know for sure if they will be arrested on arrival at the airport or somewhere else until the actual act of detention takes place.

[58] Individuals who are suspected of harbouring a dissenting political opinion and have taken the risk of traveling back to Eritrea will hardly make it safely out of the country. In such kind of experiences, most of the time the illegal detention takes place not necessarily on arrival at the airport. It may take place after arrival and after the person has stayed in the country for few days or weeks, or at the airport when they try to return to their destination.

[59] From previous research, we also know that representatives of the National Security Agency or the secret police at the airport regularly conduct background check-up of Eritreans who live in other countries and who travel back to Eritrea for various purposes. The background check-up may take from few minutes to several hours or days. As a result, chances are not equal for all people to be detained right after arrival at the airport, unless they have a well-known public profile as political dissidents (and it is less likely for such kind of people to travel to Eritrea in the first place). After background check-up, if the secret police find traces of political dissent, as would be reported to them regularly by the diplomatic corps of Eritrea or so-called “mahbere-com”<sup>34</sup> agents, they detain the person either by going to her/his residence address as would be recorded when entering the airport or when the person returns to the airport for her/his return flight. The following are some concrete examples.

[60] The first example is related to a young man, whose story is completely anonymised. He was born to Eritrean parents in a foreign country, and he visited Eritrea as a returnee based on a diaspora status (in 2014). While he was in Eritrea, the local authorities realised that he did not have an Eritrean national identity (ID) card, the standard documentation known as “nay meninent wereqet” (ናይ መንነት ወረቅት). He was asked as to why he did not apply for an Eritrean ID card, to which he said he did not need it. On occasions, not having an Eritrea ID

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<sup>34</sup> This is the term commonly used by pro-Eritrean Government community initiatives throughout the world, including Y-PFDJ of Young-PFDJ elements, some of which were said to have been involved in acts of espionage, as established by the Court of Amsterdam in 2016. See *Bahlbi vs. Van Reisen* (Case No. C/13/596714/KG ZA 15–1352 CB/MV), Court of Amsterdam, Judgment of 10 February 2016, para. 4.4, unofficial English translation available at [http://www.eepa.be/wcm/dmdocuments/English\\_translation\\_plus\\_Dutch\\_original\\_judgment\\_Bahlbi\\_vs\\_Van\\_Reisen.pdf](http://www.eepa.be/wcm/dmdocuments/English_translation_plus_Dutch_original_judgment_Bahlbi_vs_Van_Reisen.pdf). In para. 4.6 of the judgement, the court said that PFDJ’s diaspora-based youth movement, known as Y-PFDJ (Young People’s Front for Democracy and Justice): “is to be characterized as the extended arm of a dictatorial regime and that through this organization intelligence is being passed to the regime.” This means, in other words, involvement in acts of espionage.

card is considered by the Eritrean authorities as an expression of political opinion equivalent to a non-recognition of the sovereign existence of the State of Eritrea.

[61] The man was indeed confronted with the wild accusation indicated above, and accordingly he was intensely interrogated by agents of the secret police. He was released after he promised to apply for an Eritrean ID card immediately after his return to his country of residence, apparently via the Eritrean Embassy in the same country. This shows two things. Firstly, the act for which this man was interrogated may seem irrelevant (at face value) to warrant the kind of intense interrogation he was subjected to. But in reality, it was seen by the local authorities as a major issue. Secondly, it also shows that as far as the persecutory behaviour of the Eritrean authorities is concerned, while the most common grounds for which people may persecuted are overtly political, at times less political issues can also become major issues of concern. This points out to the highly unpredictable nature of how individuals may end up being persecuted in Eritrea.

[62] The second example is related to the predicament of a man who was abducted from the airport for an act that would normally not be considered a major issue, and something that is believed to have been taking place for quite a prolonged period of time. The man was abducted from Asmara Airport in circumstances that are linked with the controversy of Al-Diae community school in Asmara. Leaders and students at the school were actively involved in a short-lived anti-government protest in October 2017, by which reason many people were arrested by the government. At the time, these incidents of arrests were widely reported by international rights groups, including the UN special rapporteur on the situation of human rights in Eritrea.<sup>35</sup>

[63] The man who was abducted from the airport was a long-time financial contributor to Al-Diae, a practice he was doing long time before the controversy of October 2017. The person is someone who would perfectly qualify for a diaspora status. He was abducted after his trip to the country, to visit an ailing family member. The man was not involved in any other political activity that he was fearless when he decided to travel to Eritrea. On arrival, he was abducted for a reason that no one would expect it to be a major ground for persecution, not

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<sup>35</sup> See "Statement by Ms. Sheila B. Keetharuth, Special Rapporteur on the situation of human rights in Eritrea at the 37th session of the Human Rights Council," 12 March 2018, available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22821&LangID=E>. See also UK Parliament, "Haji Mussa Mohammed Nur: Written Question – 131369," 6 and 13 March 2018, available at <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2018-03-06/131369>.

to mention the fact that he has been doing this for many years. This example shows that obtaining a diaspora status is not a guarantee for persecution upon return to Eritrea.

[64] Now we turn to the second and the third sub-questions, which are very much related to the number of people who travel to Eritrea via diaspora status, including their breakdown in terms of those who left the country during the liberation struggle era, people with dual citizenship, second/third generation Eritreans abroad, recognised refugees, and people with residence status. In an Eritrean context, it is extremely difficult to have precise answer for each of these sub-categorisations.

[65] The Eritrean Government does not have the habit of publishing official statistics not only about how it does its business, but even about ordinary socio-economic facts. This practice traces its roots to the secretive political culture of the political organisation in control of the government, the People's Front for Democracy and Justice (PFDJ), dating back to the liberation struggle era (pre-1991), during which time it was operating under a different name: the Eritrean People's Liberation Front (EPLF).

[66] However, we recognise that citing the Eritrean Ministry of Foreign Affairs, the 2019 EASO Report (on page 58) notes that "an average of 95 000 Eritreans living abroad travel to Eritrea yearly." In contrast, a former employee of the Immigration Department, to whom we spoke in March 2022 (Interlocutor 1), notes that the exact number of people who enter the country is known only to the Immigration Department. In fact, the person notes that the Immigration Department has a detailed breakdown of numbers, which are used only for internal evaluation and monitoring purposes and such numbers have never been made public in their accurate form. The person further notes that figures by other government entities are based on mere estimates and often released with ulterior political motives.

[67] The last sub-question we address in this section is: as to what happens to a person if they return to Eritrea permanently. The answer to this is rather straightforward. A person who returns to Eritrea permanently is treated the same way as all other Eritreans in the country, which also means that depending on their age they may be required to enlist for the NMSP.

#### 4.3.4. Punishment for illegal departure and military draft or desertion?

[68] The question above is shortened for formatting purposes; its full version reads as follows: Is a punishment for illegal departure only imposed in cases where there is also a military draft or desertion? It is followed by another question: Does the expiry of the exit visa without timely return also constitute an illegal departure?

[69] The answer to the first sub-question is partly provided in our definition of the RCF, in which we also discuss the concept of “privileged lawful exit” from Eritrea. This means that anyone who is not included in the category of people who fall under the above description (the list of which is also provided in Section 4.2 above) cannot exit the country. Most people who leave the country illegally are within the age range of the NMSP (thus subject to military conscription). Nonetheless, as far as the “crime of illegal exit” is concerned, it is not necessary for the “crime” to be committed in the context of a military draft or desertion. In an Eritrean context, leaving the country without an exit visa by itself is a criminal act. This is clearly stipulated in Article 29(2)(d) of Proclamation No. 24/1992 (*Proclamation to Govern the Issuance of Travel Documents, and the Entry, Exit and Residence of Foreigners in Eritrea*). The law states that exiting (or attempting to exit) Eritrea without a valid exit visa is a crime punishable by imprisonment not exceeding 5 years, or by a fine of Birr/Nakfa 10 000, or by both – imprisonment and fine.

[70] Regarding the second sub-question, our understanding is that the expiry of an exit visa (lack of timely return) does not necessarily constitute an illegal departure, save for some exceptional circumstances. Individuals who travel on official visit (such as for official work or government sponsored or approved scholarship programme) are normally expected to return to Eritrea after completion of the period of their official visit (impliedly the period for which the exit visa was granted). In such kind of situations, delayed return may risk the danger of being treated as an instance of illegal overstay abroad. For other travellers, the risk is almost non-existent. For entrants, or people traveling to Eritrea based on the RCF, expiry of the latter may constitute loss of the diaspora status, in which case the holder of the RCF maybe treated like any other Eritrean upon expiry of the RCF. In the next section, we conclude our main findings.

## 5. Conclusion

[71] In this expert report, we have undertaken the main task of addressing a set of 14 questions, categorised under 4 broader sub-classifications, related to the so-called “diaspora status” of Eritreans and its concomitant the RCF. A clear understanding of these two inter-related terms is key in understanding the answers we provided to each of the questions addressed to us by the instructors. Therefore, we started by providing a description of the two inter-related terms as understood by the layperson.

[72] It follows that there are certain pre-conditions that need to be fulfilled in order for Eritreans residing abroad to attain a diaspora status. A person may attain a diaspora status after a minimum stay of six months and maximum of three years, in which context they must

be able to prove their residence in a foreign country by producing a residence permit or another equivalent document (such as an ID card).

[73] The possibility of returning abroad is also a prerequisite for diaspora status, over and above the other two most common requirements: 1) payment of the 2% diaspora income tax, and 2) signature the regret form. The last two requirements are very much linked with the political loyalty of individuals, which means that persons who are unable to demonstrate such loyalty are unable to obtain a diaspora status. Most importantly, a diaspora status is not a guarantee against any persecution that may take place in Eritrea. This is true because as shown in Section 2.3 above Eritrea still suffers from a widespread problem of human rights violations in which context the government conducts its business in a markedly inconsistent and unpredictable manner.

[74] In our professional opinion, the diaspora status is limited by time. While the validity of the RCF itself may range from 7 to 10 years, the period in which a person can stay in Eritrea without losing her/his diaspora status ranges from 1 to 3 years. In the context Covid-19, the maximum limit was extended to 3 years. Eritrea does not have the practice of publishing official statistics. In that sense, it is not possible to accurately establish the exact number of people who travel back to Eritrea.

[75] Our research shows that there were incidents in the past involving arrests/prosecutions of persons who entered with diaspora status. Individuals who return to Eritrea on a permanent basis are treated like any other person who lives in the country (for instance, in terms of the requirement of the NMSP). Lawful exit from Eritrea is allowed only to a very limited category of people, who fall under the description of the “privilege of lawful exit.” Anyone who exits the country outside this parameter is liable for punishment irrespective of whether the exit happens in the context of military conscription or not. Except for exit visas that are issued for official travel purposes, expiry of an exit visa is not a major cause of persecution.