

Schnellrecherche der SFH-Länderanalyse vom 3. August 2016 zu Eritrea: Bestrafung Minderjähriger für illegale Ausreise

Fragen an die SFH-Länderanalyse:

- Werden Minderjährige wegen illegaler Ausreise bestraft?

Die Informationen beruhen auf einer zeitlich begrenzten Recherche (Schnellrecherche) in öffentlich zugänglichen Dokumenten, die uns derzeit zur Verfügung stehen.

1 Bestrafung Minderjähriger wegen illegaler Ausreise

Es gibt keine zuverlässigen Informationen, dass Minderjährige, welche Eritrea illegal verlassen haben, nicht mehr bestraft werden. Auch im neuen Bericht des SEM «Focus Eritrea» vom 22. Juni 2016 finden sich keine zuverlässigen Informationen, dass Minderjährige wegen illegaler Ausreise nicht mehr bestraft werden.

Vgl.: SEM, Focus Eritrea, Update Nationaldienst und illegale Ausreise, 22. Juni 2016:

www.sem.admin.ch/dam/data/sem/internationales/herkunftslander/afrika/eri/ERI-ber-easo-update-nationaldienst-d.pdf.

Die limitierte Informationsgrundlage wird einleitend im Bericht «Focus Eritrea» des SEM deutlich zum Ausdruck gebracht: *«Der Zugang zu Informationen über Eritrea, insbesondere bei menschenrechtlichen Themen, ist schwierig. Das eritreische Informationsministerium kontrolliert alle Medien in Eritrea. Forscher, Journalisten und Vertreter von Menschenrechtsorganisationen können in der Regel nicht oder nur sehr eingeschränkt vor Ort recherchieren. Die eritreischen Behörden selbst veröffentlichen kaum detaillierte Informationen zum Nationaldienst. Auch in der Umsetzung der Gesetzgebung zu Nationaldienst und illegaler Ausreise sind die Behörden nicht transparent und veröffentlichen keine Richtlinien oder Ausführungsbestimmungen. Somit fallen bei Eritrea essentielle Informationsquellen zu jenen Themen, welche für die Asylpraxis relevant sind, weg.»* (SEM, Focus Eritrea, S.13.)

Unzuverlässige Informationen der Regierung. Im aktuellen Bericht des SEM «Focus Eritrea» sind es einzig die Regierungsvertreter, die gegenüber der SEM Fact-Finding Delegation behaupteten, dass Minderjährige nicht mehr bestraft werden. Das SEM zitierte Yemane Gebreab, Head of Political Affairs der *People's Front for Democracy and Justice*, nach einem Gespräch vom 11. März 2016 in Asmara wie folgt: *«Eine spezielle Behandlung bestehe für Minderjährige, die in der Regel strafflos entlassen oder für kurze Zeit in ein «Rehabilitationszentrum» gebracht würden.»* (SEM, Focus Eritrea, S. 25) Wie das SEM selbst feststellt, konnten über diese Zentren im Rahmen der *Fact-Finding Mission* trotz mehrfacher Nachfrage keine Informationen eingeholt werden. (SEM, Focus Eritrea, S. 25)

Unzuverlässige diplomatische Quelle. Eine einzige nicht näher beschriebene diplomatische Quelle geht davon aus, dass Minderjährige *«in der Regel»* straffrei aus-

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gehen würden. Es wird nicht erläutert, unter welchen Umständen dies nicht die Regel wäre. Dieselbe Quelle wusste – wie andere befragte diplomatische Quellen – auch nicht, welche Behörde für die Verhängung der Strafen und deren Umsetzung zuständig ist. Die Quelle geht davon aus, dass die Bestrafung nicht im Rahmen von regulären und transparenten Gerichts- oder Administrativverfahren festgelegt wird. Da diese Quelle solch grundlegende Unsicherheiten und Wissenslücken aufweist, kann nicht davon ausgegangen werden, dass deren Aussage bezüglich der Nichtbestrafung von Minderjährigen zuverlässig ist. (SEM, Focus Eritrea, S. 25)

Amnesty International und UN-Untersuchungskommission. Das SEM verweist auch auf *Amnesty International* und die UN-Untersuchungskommission, die beiden öffentlich publizierten und somit auch nachvollziehbaren Quellen. Von beiden Quellen wird beschrieben, dass auch Minderjährige für die illegale Ausreise bestraft werden: *«Sowohl Amnesty International als auch die UN-Untersuchungskommission berichten, dass auch Fälle von Minderjährigen bekannt seien, die beim illegalen Grenzübertritt inhaftiert wurden. Amnesty International erwähnt 16- und 17-Jährige (und bezieht sich dabei auf die Jahre 2014 und 2015), während die UN-Untersuchungskommission summarisch und ohne Zeitangabe von «Kindern» spricht. Diese würden sowohl als Alleinreisende als auch in Begleitung ihrer Eltern inhaftiert. 2016 berichtete die UN-Untersuchungskommission auch von Vergewaltigungen von Frauen und Mädchen an der Grenze, ohne diese Vorfälle zu datieren. In einem Vorfall 2015 hätten sich Frauen und Mädchen vor Soldaten entkleiden müssen.»* (SEM, Focus Eritrea, S. 27)

Fazit des SEM zu Strafmass für illegale Ausreise. Das SEM kommt bezüglich des Strafmasses für illegale Ausreise ohne vorangegangene Desertion oder Dienstverweigerung zum Schluss, dass es *«unklar»* sei, wie hoch das Strafmass sei und welcher Einfluss dem Faktor Alter beigemessen wird. Die Zuständigkeit für die Festlegung des Strafmasses sei *«unklar»*, mehrere Quellen würden die Armee nennen. Es sei aber wahrscheinlich, dass zumindest bei einem Teil der Bestrafungen interne Richtlinien zum Einsatz kommen würden. Da diese aber nicht zugänglich seien und die Behörden keine Urteile veröffentlichen, sei ihr Vorgehen *«intransparent»* und in einigen Fällen wahrscheinlich auch *«willkürlich»*. (SEM, Focus Eritrea, S. 28)

Amnesty International, Dezember 2015:

«However, according to the testimonies of people who have fled the country, most of the attempts are made on foot, across the porous borders with Sudan in the west and Ethiopia in the south. A small number of people interviewed in 2015 had crossed in a vehicle. In all cases, these were reported to be military vehicles, where the person fleeing had found and paid a smuggler to arrange their passage across the border.

The information collected from Amnesty International's interviews indicates that most, if not all, people caught attempting to cross the border are arrested and detained arbitrarily. 15 people interviewed by Amnesty International who fled Eritrea in 2014 and 2015 reported that they had made one or two previous attempts to flee the country and had been caught, arrested and detained arbitrarily. These included several people as young as 16 or 17 years old at the time of their detention.

These detentions are arbitrary because the detained individuals are not charged with any offence, brought before a judicial authority, able to challenge their detention before a competent court or given access to a lawyer. Detainees are often held incommunicado throughout their detention. No-one interviewed by Amnesty International in 2015 who had been detained when trying to flee communicated with their families while in detention. As with other groups of prisoners, the absence of due process and lack of transparency made it impossible to know how many are detained in Eritrea for trying to flee. However, the information given in interviews with former detainees indicates that detention on this basis is commonplace. (...)

Children have also been detained when caught fleeing. Several former detainees interviewed by Amnesty International were under 18, or had been at the time of their detention. The presence of many 16 and 17 year olds among newly-arrived asylum seekers interviewed also suggests a number of children are among those caught attempting to cross the borders.

Tesfalem, a 17 year old boy, told Amnesty International what happened when he was caught near the border with Ethiopia,

“Last year [2014], when I was in 9th grade, I tried to escape because I am afraid of Sawa and military service. But they caught me in Tserona [near the Ethiopian border]. I was taken to a place where I was kept for a week. When the cell was full, they took us to Dekemhare where they clarified the status of the people who had been caught. They confirmed I am a student and underage. I was held for six months as punishment then released. I was 16 at the time. In Dekemhare, the underage prisoners were in a container. We were maybe 50 people, all there for trying to escape the country. We had one window, and one jerry can in the corner to use as a toilet. It smelt so bad. We got one serving of bread in the morning and one at night.”

Robel, another 17 year old boy interviewed, was detained for six months in Gergera after he was caught trying to flee. He was held in a room with 150 other people and, for the first month of his detention, was not allowed to leave the cell.

Most of the people interviewed by Amnesty International who had been detained, said that **when they were released from detention, they were either sent for military training if they had not yet been conscripted or back to National Service if they were already conscripted.** Seble, a young man who had already completed his initial training and then further military training, reported that he was sent for training again after release from detention,

“I tried to go to Ethiopia but I was caught and detained for seven months in Gergera. Then I was sent for re-training in Mai Seraw and assigned to the military.”» Quelle: Amnesty International, Eritrea: Just deserters: Why indefinite National Service in Eritrea has created a generation of refugees, 2. Dezember 2015, S. 44-45: www.amnesty.org/en/documents/afr64/2930/2015/en/.

UN Office of the High Commissioner on Human Rights, Juni 2015:

«1066. **The Commission found that unaccompanied children caught crossing the border equally undergo interrogation and are subjected to ill-treatment and torture, before being sent to prison.**

One victim, who was 14 at the time of his first attempt, explained: “We did not know the persons who arrested us. They asked us where we were going. At first we told them that we were visiting a village, but later when they beat us, we told the truth. They tied our hands and legs at the back together.” Another victim, who was 16 years old when he was caught, was interrogated for two years, during which time he was beaten. A witness described the situation of Ethiopian children caught at the border who were detained with him: “Among the children who were in the prison were two 11-year old Ethiopian children from the village of Adi Hibtai. The Ethiopian children were in a very distressing condition. Before reaching Adi Abeito prison, they had passed through four prisons and through a lot of questioning, harassment and intimidation.”». Quelle: UN Office of the High Commissioner on Human Rights, Report of the detailed findings of the Commission of Inquiry on Human Rights in Eritrea, A/HRC/29/CRP.1. 5. Juni 2015, S. 298:
www.ohchr.org/Documents/HRBodies/HRCouncil/CoIEritrea/A_HRC_29_CRP-1.pdf.

UN Office of the High Commissioner on Human Rights, Juni 2016:

«121. **Furthermore, women and girls who try to flee the country are at increased risk of sexual and gender-based violence.** The Commission heard evidence about recent cases of women and girls being raped in Eritrea when trying to leave the country, **including a 14 year-old girl who was raped by soldiers and became pregnant.** Although women are aware of the possibility to be raped when trying to flee the country, many still prefer to leave Eritrea. One witness explained that:

“Before our attempted [flight in June 2015], fearing what could happen on our journey, [two female relatives] had a contraceptive injection [...] to prevent unwanted pregnancy. Because you hear about rapes, this is why they had this injection. Women trying to flee often have this injection, because we know what can happen.”

122. **Moreover, in some instances, women and girls who tried to flee the country and were arrested by soldiers guarding the border were forced to strip naked, or nearly naked, and submitted to acts of sexual violence, which in some cases amounted to rape, as described by one witness who tried to flee in April 2015:**

“What was really sad...we were men, women and **children**...they obliged everyone to take off all their clothes so they could search them. [...] All the guards were men. They searched the women and were touching them. The women couldn't say no. They felt bad and we felt bad but could do nothing. They searched everywhere, even the genitals, with their hands. They even laughed about it. **Even put their fingers inside the women's genitals and the little girls' genitals – 5-year-old girl, a 9-year-old girl. The girls cried.**”» Quelle: UN Office of the High Commissioner on Human Rights, Re-

port of the detailed findings of the Commission of Inquiry on Human Rights in Eritrea – A/HRC/32/CPR.1., 8. Juni 2016, S. 31:

www.ohchr.org/Documents/HRBodies/HRCouncil/CoIEritrea/A_HRC_32_CRP.1_read-only.pdf.