MARRIAGE, VITAL EVENTS REGISTRATION & ISSUANCE OF CIVIL STATUS DOCUMENTS IN ERITREA

Amended and expanded version of a paper presented at the "Expert meeting: Proving family ties in Eritrean family reunification cases" organised by the Migration Law Clinic of the Free University of Amsterdam and the Refugee Agency of the Netherlands held 7 March 2017 at the Free University of Amsterdam.

Professional Background

By training I am a historian and social scientist (University of Giessen, University of Monrovia, University of Hanover), but I have been working as an independent researcher, consultant and author for many years. I have been following the developments in the Horn of Africa since 1965 and, over the years, this region has become one of the main focuses of my professional expertise and research. Since 1973 I have been in constant contact with most of the armed liberation movements, but also with most of the purely political movements that have been and still are active in the Horn of Africa. Since the mid-1970s, I have published numerous publications on events in the Horn of Africa and have given a large number of lectures and presentations in academic or other public settings. Since 1980, I have repeatedly and for longer periods visited the Horn of Africa for research and work purposes. From 1984 to 1991 I worked as a consultant for the refugee program of the International Social Service-German Branch specializing in family reunions.

From 1991 to 2000, I worked in Ethiopia as a consultant for various development organizations (AGKED, GIZ, Friedrich Ebert Foundation, Heinrich Böll Foundation, and Lutheran World Federation). From 2001 to 2009, I have worked repeatedly in Eritrea as a researcher and a development expert. Since 2012 I have visited Ethiopia a total of twelve times for research, most recently in March-April 2017.

Through my long-term relationships with the Horn of Africa, I have developed over the years an extensive archive of published and unpublished materials and documents on the Horn of Africa as well as an extensive network of contacts and information in the countries of the Horn and their diasporas worldwide. I am in constant contact and exchange with a great number of researchers, scholars and experts of numerous disciplines dealing with the Horn of Africa and refugee issues.

Since 1978, I have prepared expert reports in more than 300 asylum procedures of mainly Eritreans and Ethiopians in Germany. Since 2006 I have prepared expert reports in more than 750 asylum procedures in numerous countries outside Germany (Great Britain, USA, Switzerland, Netherlands, Norway, Belgium, and Israel). I have also given testimony in person or by telephone in asylum proceedings before courts in Germany, Great Britain, the Netherlands, Norway and USA.

During my work for the International Social Service, I have had to deal intensively with the civil law relating to vital events in Eritrea, the registration of vital events in Eritrea and the issuing of vital events certificates in Eritrea. On these topics I have repeatedly carried out training lectures for staff of civil registration offices in Frankfurt and other cities. Since then, I have continued to work on these topics and kept my knowledge on them up to date. This happened on the one hand during repeated stays in Eritrea, on the other through contacts with Eritrean legal and administrative experts and information obtained from members of the Eritrean diaspora in Europe, Sudan and Ethiopia.
Since 2006, I have produced in numerous asylum procedures and family reunion cases of Eritreans in Europe and in the USA. Expert reports on these matters.

On 16 June 2016, I presented at the Van Vollenhoven Institute (Leiden Law School) of the University of Leiden during the 34th anniversary symposium of RIMO (Vereniging tot bestudering van het Recht van de Islam en het Midden-Oosten, Universiteit Maastricht) on "Proof of Marriage and Descent in the Context of Migration", a lecture on Legal and Social Issues Relating to Marriage and Paternity in Eritrea.

1 General Considerations

1. Various factors and processes have shaped the social and legal concepts relating to marriage in Eritrea, the two most important ones being:

- the multi-ethnic (9 ethnic communities) and multi-religious (two major religious communities) composition of its population
- the succession of different political powers actually ruling over parts or the whole of what today constitutes Eritrea (traditional Ethiopian Empire and Turco-Egyptian Empire until 1890, Italy 1890-1941, Great Britain 1941-1952, Ethiopia 1952-1991, Eritrean Government since 1991).

2. Eritrea as a distinct political entity arose at the end of the 19th century when Italy organised its colonial conquests on the Red Sea as the Colonia Eritrea. In the centuries before, parts of the later Eritrea partly belonged to the Ethiopian Empire, partly to the Funjreich of the Sudan, or were independent small polities of tribes and ethnic communities. The later Eritrean coast belonged to the Ottoman Empire since the middle of the 16th century. During the 19th century, West- and North Eritrea, later also East Eritrea belonged to the Turko-Egyptian Sudan.

3. The Italian colonial rule ended in 1941. Until 1952 Eritrea was under British military administration. From 1952, Eritrea was an autonomous region within the framework of the Eritrean-Ethiopian Federation. In 1962 Ethiopia dissolved the Federation and declared Eritrea to be the 14th Province of Ethiopia. As early as 1961 an armed liberation war began, which lasted until 1991.

4. With the liberation of Asmara on 24 May 1991 through the forces of the Eritrean People’s Liberation Front (EPLF) Eritrea became a de-facto independent political entity, although under international law it officially remained part of Ethiopia till the official declaration of independence on 24 May 1993 and the immediate recognition of this through the Ethiopian government.

5. The leadership of the EPLF elected in the EPLF Congress of 1987 established itself in Asmara as the Provisional Government of Eritrea (PGE). In June 1992, the PGE was restructured along the lines of a regular government and proper government offices were established. On 24 May 1993 the PGE officially became the Government of (the State of) Eritrea (Go(S)E). The presidential system of the government in place since May 1991 has not been legalised through any elections. It is enshrined in the Constitution adopted in 1997 but the Constitution was never put in force. Since its formation the institutions of Go(S)E have been repeatedly restructured and office holders changed.

6. Although de-facto-independent since May 1991, Eritrea, which had to build up state structures and its own body of laws from scratch, remains till today one of the most "underlegislated" countries of the world. Since June 1991 the new Eritrean government has
officially promulgated only about 300 Proclamations (Laws) and Legal Notices, which were published in the Eritrean Legal Gazette, practically all without ever being ratified by the nominally existing Transitional National Assembly.

7. 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.

8. Although now fully independent since more than 25 years administrative practices have not yet stabilised. Since some years a Civil Service Proclamation is in the drafting stage but it is unknown, when it will be finalised.

9. There is no official standardisation of administrative forms and formats for governmental acts or of the English or Tigrinnic or Arabic terminology to be used in them.

10. With the spread of computer use in the Eritrean administration it has become practice of offices equipped with computers no longer to use printed formats for documents but instead format templates stored in the computer and called up when a document is needed. These templates are usually prepared by the office in question without any standardization and thus for the same type of document widely varying formats could be used by the different offices issuing them. Even within the same office, templates could vary over time, as existing templates are lost and new ones have to be prepared, or when there is a change of the official issuing such documents.

11. Using long out-dated names of offices in official documents is rather common. Until today the National-ID cards have as issuing authority the Provisional Government of Eritrea - EPLF, which ceased to exist on 24 May 1993. Until recently Eritrean passports had as issuing authority the Ministry of Interior, although it was abolished already in 1996.

12. Many officials in the administration are either former fighters, which exhibit a marked disregard for what they consider to be "useless" formalities, or ill-motivated National Service recruits rendering underpaid work services. This attitude is directly reinforced by the President himself, who is constantly mocking and making fun of "bureaucratic rules".

13. The attitude of officials towards the public is often uncooperative and bureaucratic. Service often is slow and the civil service is considered to be weak and inefficient and since 2001 also growingly corrupt. The performance of many offices has suffered a decline through the massive exodus of civil servants as part of the large-scale flight of mainly younger and better educated Eritreans across the border since September 2001.

2 Civil Law in Eritrea

14. Reflecting the changing history of Eritrea and the different political rule over different parts or the entire territory of today's Eritrea, there are many different elements and influences in the legal history and reality of the country.

15. In pre-colonial Eritrea, "civil-law" questions were dealt with in more than two dozen local
customary and primarily two religious (Christian-Orthodox and Islamic) laws. The local customary laws were orally transmitted and applied and were renewed and modified at regular intervals by legal assemblies of the respective communities. It was only after the start of the Italian colonial rule that a process began to codify the various customary laws in writing. The interpretation of the customary laws was the responsibility of the elders of the respective legal community. The religious laws were laid down in writing and were interpreted and applied by Christian priests and Islamic jurists.

16. Also under colonial rule, customary or religious law continued to be applied in most civil law matters including marriage. In addition, there were civil- of the law provisions of the Italian colonial administration (1890-1941), the British military administration (1941-1952) and the autonomous Eritrean government (1952-1962) for specific legal areas and certain population groups. After the adoption of the Ethiopian Civil Code (ECC) in May 1960, its provisions became binding for Eritrea and applied until May 1991.²

17. After several years of preparatory work, in 1987 EPLF Department of Law circulated a draft new civil code, which was to be applied in liberated areas under the control of the EPLF and ultimately throughout Eritrea. However, the final version of this Code (EPLF Civil Code / EPLF-CC), finalised in 1988, never came into force because the concentration of the EPLF on the final victory over the Ethiopian army made the implementation of this law a secondary concern.³

18. Parallel to the drafting of the EPLF-CC the EPLF’s legal department also dealt with the modernization of the various customary laws. Until the end of the liberation war, a majority of the traditional customary laws of the Tigrinnic and some other ethnic groups were modified according to the EPLF’s ideas, and the amended versions were ratified by popular assemblies. The amendments aimed primarily at removing obsolete regulations and replacing them with provisions more appropriate to current social and legal contexts.

19. After taking power in Asmara the EPLF, now acting as PGE, decided not to make the EPLF-CC the Civil Code of Eritrea. Instead, in September 1991 the PGE passed the provisional Civil Code of Eritrea (TCCE), which retained most of the provisions of the ECC, but was modified in some areas by various provisions of the EPLF-CC.⁴

20. By 1999, the Eritrean Ministry of Justice had prepared a draft of a new Civil Code of Eritrea to replace the TCCE. However, it took many more years to complete the final version of new Eritrean Civil Code (ErCC) and to put it into force in May 2015.⁵

21. ErCC retained many of the articles of ECC without substantial changes. Some, however, were substantially modified to reflect current conditions in independent Eritrea. There are no longer references to articles of EPLF-CC replacing or modifying articles of EC.

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1 On the customary laws oft he Tigrinnic communities see the excellent study of Friederike Kemink: The Tegreñña Customary Law Codes, Paideuma: Mitteilungen zur Kulturkunde, Vol 37 (1991), pp. 55-72, Frobenius-Institut Frankfurt
3 No copy of this code could be found, The date of its issuance had been given by Tekle Abraha, graduate of law of Aix en Provence, former EPLF-fighter and Law Lecturer University of Asmara 1994-2003, now living in Germany, consulted 21 January 2017.
22. Parallel to the process of drafting a new civil code, the revision and modernization of the traditional customary law, which had been suspended after the victory in May 1991, was reintroduced after 2000. The revised customary laws, which are now largely in line with the Civil Code, are now the used in the customary courts, which deal with a considerable portion of simple civil law issues at the local level.

3 Marriage in Eritrea

Before colonial rule

23. Prior to colonial rule there existed in Eritrea basically two forms of law to regulate marriages and paternity:
   a) the customary laws of the various local ethno-cultural communities.
   b) The religious laws of the Orthodox Christians and the Muslim as well as those of small religious minorities (Jews, Hindu, non-Orthodox Christians in the Muslim areas).

24. There was a certain amount of interplay between customary and religious laws relating to marriage, stronger so for the Muslim than for the Christians.

25. Among the Christian Tigrinnic speaking communities each larger local sub-community had its own set of customary laws and thus regulations concerning marriage, divorce and paternity. However, most agreed in the core elements.

26. The religious laws regulating marriage for the Muslim and the Christian Orthodox were codified in the legal texts of these beliefs.

27. For those populations falling under the rule of the Ethiopian Empire the legal codes of the Empire such as the Fetah Negest became applicable in the case of legal disputes relating to marriage and paternity, which could not be settled at local level under customary and/or religious law.

28. The same applied to populations falling under the jurisdiction of the Islamic Funj-State and later the Turco-Egyptian State in Sudan. There also the secular powers became involved in lawsuits relating to marriage and paternity, when no solution was found at local level under customary or religious law.

29. The various customary and religious laws regulating marriage did not specify minimum ages for betrothal and contracting marriage. However, most had provisions postponing the consummation of marriages to the post-puberty period of the females.

30. A common core concept of the different Christian customary laws was the prohibition of marriage between paternal relatives down to seven generations and maternal and in-law relatives down to four generations.

31. A widow could remarry only after 180 days had passed after the death of the husband.

32. There was no written contract of marriage in customary law but an oral contract only concluded in the presence of witnesses from both families involved. Christian religious marriages could be registered at the local Church, where the ceremony was conducted. Muslim religious marriages frequently had a written contract issued and could be registered in a Sharia court.

33. Each customary law had its own regulations relating to divorce. All customary laws
permitted the unilateral repudiation of the wife by the husband for various reasons listed in the laws. All customary laws also had specific rules for involving family or community arbitrators to which either husband or wife might turn with a petition for divorce.

34. Under Christian religious law, divorce was not allowed. As a consequence a Christian could divorce and remarry only under customary law. Among Muslims there was no such limitation.

35. In regard to paternity all customary laws in Eritrea except the Kunama were patrilineal in reckoning descent, the Kunama matrilineal.

36. Among Christians and Muslims a child was considered to be the legitimate child of a man, when born in the marriage of this man or within a period of 9 months after divorce or the death of the father.

37. The child was given the proper name of the father as its patronymic.

38. In traditional religious and customary law the mother had the prerogative of naming the father when a child was born out of wedlock. A child, of whom the mother was unwilling or unable to name the biological father, was given the patronymic of the mother as its patronymic.

39. Contestation of paternity theoretically was possible but rarely successful and there were time limits for the right of a man to contest the paternity of a child.

**From Italian Rule to Independence (1890-1991)**

40. Since the establishment of the Colonia Eritrea in 1890 created Eritrea as a distinct political unit marriage, divorce, and paternity were regulated within a specific three-dimensional legal framework composed of customary, religious and statutory laws, which mostly were applicable to different sectors of Eritrean society.

41. Until May 1960 marriages concluded in Eritrea were governed by the rules of the respective local customary or the different religious laws or civil law provisions of the Italian colonial administration (1890-1941), the British military administration (1941-1952) or the Autonomous Eritrean government (1952-1962).

42. Under colonial rule the indigenous population of Eritrea as well as members of the various non-Western religious minorities living in Eritrea continued to regulate marriage according to their customary and religious laws without any noticeable interference of the colonial power.

43. With the arrival of other Christian beliefs in colonial Eritrea, the emerging non-Orthodox Christian communities also used their own religious laws in relation to marriage, divorce, and paternity.

44. Marriages of indigenous Eritreans were concluded almost exclusively under customary or religious laws. Marriages under statutory civil law were extremely rare for members of the indigenous population. Marriages of nationals of Western countries living in Eritrea were, as a rule, done under the law of the country of origin. Italian law was also applied in

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6 In fact, the British Military Administration and the autonomous Eritrean Government continued to use the Italian colonial legislation and practice in matters relating to marriage and many other civil legal issues.
cases of marriages between Italian nationals and Eritrean partners. Such marriages were usually registered with the Asmara Civil Status Office (Public Registry Office).

45. According to legal thought and practice in Eritrea a marriage, irrespective of the applied law was valid when no objections to the marriage have been raised and the applicable ceremony was concluded.\(^7\)

46. After the promulgation of the Ethiopian Civil Code (ECC) in May 1960 for marriages in Eritrea its regulations were applied till September 1991.

47. The ECC explicitly recognised civil religious and customary marriage (§§577-579) as equal and equally legally valid forms of marriage.

48. Different from legal marriages are irregular unions established when a man and a woman live together as husband and wife without having contracted marriage (§§708-721).

49. As before, also under the application of ECC the validity of the marriage was established through the conclusion of the marriage ceremony and not dependent on the issuance of a certificate or the registration of the marriage.

50. According to ECC proof of marriage was provided by a valid certificate of marriage (ECC, Art. 47, Art. 698), an Act of Notoriety (ECC Art. 47, Art 703) or proof of the possession of the status of spouses (ECC Art. 47, Art. 699.1):

"Two persons have the possession of the status of spouses when they mutually consider and treat themselves as spouses and when they are considered and treated as such by their family and by society." (ECC, § 699,1)

Since ECC does not make a statement about the nature of the marriage, the certificates of marriage, according to customary law, religious law and civil law, are equally valid as proof of marriage. The possession of status may be proved through four witnesses.

51. During the liberation struggle ELF and the EPLF had their own laws regulating civil status events among their fighters. The marriage regulations of the EPLF-CC were planned to be applicable to its fighters as well as the population in the liberated areas it administered but actually never put into practice.

52. In their marriage regulations ELF and EPLF largely followed the requirements of the ECC. However, as opposed to the ECC, both organizations had introduced an age limit of 18 years for marriages among their fighters. According to the testimony of ELF fighters, ELF fighters usually conducted a civil marriage before an official of ELF or a member of a local administration appointed by the ELF. However, in the ELF marriages according to customary or religious law were also accepted. For marriages of ELF fighters, the rule was that for female fighters under 30 years of age the age difference to the husband should not be more than ten years.

53. The EPLF had established special marriage regulations for its fighters in 1977. They stipulated a minimum age of 18 for men and women for new marriages and recognized only a civil marriage, which was concluded before a superior in the EPLF. Records of the

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\(^7\) Tekle Abraha, information obtained 17 Mai 2017, Suleiman Tsadig, Eritrean Lawyer and Judge, trained in secular and Islamic law in Khartoum and Morocco, 1992-2006 judge at various courts in Eritrea, 2006-2016 living in Ethiopia and Sudan, since 2017 refugee in Austria, interviewed by telephone 18 May 2017
54. Marriages of whatever kind contracted before entering into the EPLF were recognised as valid marriages by the EPLF.

55. The 1988 EPLF-CC exempted Muslims from the civilian population from the age limit of 18 years.

56. For marriages concluded within the various Liberation Fronts under their respective regulations usually marriage certificates were issued.

57. The Eritrean government established after May 1991 fully recognised the marriages concluded under the regulations of the various Liberation Fronts as valid marriages, when they were either documented through a marriage certificate of the respective front or confirmed through three witnesses or recognised through a court.

**After the end of the Liberation War (May 1991)**

58. In September 1991 the PGE passed the *Transitional Civil Code of Eritrea* (TCCE). Until then marriages in Eritrea continued to be conducted under the provisions of EEC. From September 1991 onward the provisions of TCCE were applied till May 2015, when the new ErCC entered into force.

59. In regard to marriages the TCCE retained most of the provisions of the ECC but amended some by articles of the EPLF-CC.

60. Concerning marriages the TCCE established that common conditions for all forms of marriage (civil, religious, customary) should apply but exempted Muslims from the age-limit of 18 years. TCCE modified the provisions of ECC Art. 581 relating to common interests of the couple and replaced it with Article 46 of the EPLF-CC.

61. TCCE had no explicit provisions on the validity of marriage, but according to established legal thought and practice in Eritrea, also under TCCE a marriage was valid from the moment the respective marriage ceremony had been concluded and the officiating civil servant or religious official or the families concerned had officially declared the couple to be married.

62. In regard to marriages ErCC basically retained the provisions of ECC and the changes introduced in TCCE but without reference to EPLF-CC. It cancelled the exemption of marriages contracted under Sharia Law from the binding conditions relating to age and introduced some minor other modifications.

63. According to §§ 518-521 of ErCC marriages may be contracted before a civil status officer or according to the religion of the parties or to local custom. A common condition for all forms of marriages is that both parties to the marriage have to be of the age of 18 years.

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8 Testimonies of various ELF- and ELF-fighter collected during numerous visits in Sudan and in EPLF-held areas in the 1980s
10 See footnote 7
64. Marriages contracted under violation of the age limit may be dissolved upon the application of any interested person or the public prosecutor. However, such a request for dissolution of a marriage cannot be made after the under-aged party to a marriage has reached majority.

65. According to ErCC Art. 620-622 a cohabitation of a man and a woman as a couple without marriage, creates after a period of at least five years in the case of the separation of the relationship or death of one partner certain claims with regard to maintenance, property sharing and inheritance analogous to regulations for regular marriages.

66. In regard to children from cohabitional relationships without marriage the provisions of Sections 609-610 shall apply with regard to custody rights after the end of the relationship through separation or death of a partner. For children from marital and implicitly non-marital relations, these articles stipulate that custody arrangements should be based upon the best interests of the child. If, however, there are no serious grounds for disagreement, the right to custody lies with the mother until the age of five.

67. Also ErCC has no explicit provisions on the validity of marriage, but according to established legal thought and practice in Eritrea, also under ErCC a marriage is valid from the moment the respective marriage ceremony had been concluded and the officiating civil servant or religious official or the families concerned had officially declared the couple to be married. Validity thus does not depend on the issuance of a marriage certificate or registration of the marriage with the civil authorities.

68. Proof of a legally valid marriage for all marriages is the presentation of a valid marriage certificate issued at the time of marriage or later according to the legal regulations (ErCC, Art. 588).

69. In the absence of a marriage certificate proof of the existence of a valid marriage may be provided by proof of the status of spouses:

"Two persons have the possession of the status of spouses when they mutually consider and treat themselves as spouses and when they are considered and treated as spouses by their family and society.

"The possession of the status of spouse may be proved by producing four witnesses, who have direct or indirect knowledge of the fact that marriage was concluded." (ErCC, Art. 589)

70. In cases where the possession of the status of spouses is not present or possession of the status is disputed, the existence of a valid marriage can be proved through an Act of Notoriety (ErCC Art Art. 590-592).

71. ErCC also made the issuance of a marriage certificate for all three types of marriages mandatory. This also implies that the Eritrean authorities consider possession of a certificate of a religious or customary law marriage sufficient proof of marriage. ErCC does not contain provisions, which make the recognition of certificates of customary or religious marriages as valid proof of marriage dependent on the registration of such marriages with the civil authorities.

72. Among Eritrean Muslims marriages under purely customary law are extremely rare. The overwhelming majority of Eritrean Muslims concludes marriages under Sharia law. When

12 See footnote 7
a marriage has been concluded between Muslims according to local customary law, a religious marriage usually follows.

73. Among the Orthodox Christians marriages solely according to the applicable local customary law are still widespread and culturally considered to be more important than civil marriages. There are dozens of local customary laws, whose marriage rules are slightly different, but mostly in detail and not in substance. However, in the course of the modernization of the customary rights in the last decades the age limit of 18 years for men and women was also introduced into the customary laws.

74. In many cases, Orthodox Christians who have concluded a marriage under the local law of their residence place, also carry out an orthodox religious marriage.

75. Members of other Christian denominations and of the smaller non-Christian communities also mostly marry according their respective religious laws.

76. Today, most marriages are still concluded according to the applicable local customs and/or religious law. However, in urban areas civil marriage is spreading and more and more frequently after a customary and/or religious marriage also conduct a civil marriage.

4 Registration of marriage and the issuing of marriage certificates in Eritrea

77. Till May 1991 the registration of vital events (birth, marriage, death) in Eritrea was governed by the provisions of the Ethiopian Civil Code (ECC) of 1960.

78. The ECC mandated the keeping of Registers of Civil Status in each commune (§74), into which records of birth, death and marriage are to be entered (§§90-117). ECC Art. 118 introduces a duty to declare a marriage and to issue a marriage certificate for all valid forms of marriage. The obligation to declare a marriage is the responsibility of the institution conducting the marriage ceremony, the married couple and the witnesses. According to ECC Art. 62(c), marriage certificates are to be issued within one month after the marriage.

79. However, the institutional conditions for the implementation of the ECC provisions for the registration of civilian events and the preparation of certificates for vital events were not existing in Ethiopia including Eritrea. Therefore ECC stipulated in Art. 3360 that these provisions would remain invalid until a special proclamation to be published in the Negarit Gazeta declared them to be in force. However, until the adoption of the new ECC in 2003, such a proclamation had not been passed.

80. EPLF-CC from 1987 also included Art. On the mandatory registration vital events.13

Article 5: Civil Registration
Every local council shall be responsible for civil the registration of birth, death and marriage of persons/civilians within its legal administrative power.

Article 6: Birth Registration
A birth registration shall include, at least, the following information:
A. Birth date, Month, Year, Place
B. Gender
C. Name of the child up to three generation
D. Names, birth date and birth place of the parents

Article 7: Death Registration

A death registration shall, at least, include the following information:
A. Birth date, Month, Year and Place of the deceased
B. Date, Month and Year of Death and reason of death
C. Names, Birth Date and Birth Place of the parents
D. Name, Birth Date and Birth Place of the spouse and date of marriage

Article 8: Marriage Registration
The marriage registration shall include at least the following information:
A. Names, Birth Date and Birth Place of the couples
B. Names, Birth Date and Birth Place of witnesses
C. Marriage celebration Date, Month and Year

Article 9: Authorization to Issue a Copy of Registration
The local counsil shall be responsible to issue a copy of verified registration for lost registration; or obliged by a concerned body or by the court upon a formal request.

81. According to EPLF-CC, Art. 48, each newly married couple had to register its marriage with the nearest local administration in the presence of three witnesses. As far as is known, EPLF-CC did not contain the requirement that a marriage certificate be issued.

82. It should be stressed that these articles on registration in EPLF-CC rather expressed a wish than reality. The final version of this code never entered into force. Even if that had been the case, during the armed struggle the EPLF never had the necessary civilian administrative structures to actually implement these provisions in its liberated areas. Where local administrative councils did already exist there, they did not have the human and material resources to implement a comprehensive vital events registration system.14

83. The TCCE introduced in September 1991, deleted most of the ECC’s articles on the registration of civilian events and replaced them with the provisions of the EPLF-CC:

“Articles 5-9 of the EPLF Civil Code shall be applicable in combination with Articles 57, 58, 72 and 73 of the Ethiopian Civil Law of 1960. All Articles 47-153 of the Ethiopian Civil Law except the articles referred above are rejected.”15

84. However, these provisions were never really implemented let alone enforced, because also after May 1991 the successive governments of Eritrea established by the EPLF and its successor PFDJ did not have the human and material resources to establish for each local administrative area an office of vital events registration. The letter of the law should not be mistaken for administrative realities.

85. The Draft of the new Civil Code of Eritrea of 1999 basically repeated the provisions of ECC but did not mention the provisions of EPLF-CC incorporated into TCCE:

“Art. 56/62 Periods
Records of civil status shall be drawn up within the following periods:
(a) Three months from the date of birth for records of birth;
(b) One month from the date of death for records of death;
(c) One month from the date of marriage for records of marriage.”16

14 Tekle Abraha, loc. cit., personal experience in liberated areas of Eritrea during stay there August 1988.
86. A semi-official report from Eritrea in 2002 made it clear that TCCE regulations for the registration of civilian events were never implemented. It noted that the voluntary registration of civilian events took place only in eight cities (Asmara, Keren, Massawa, Dekemhare, Assab, Mendefera, Segeneyti and Akordet) and was completely lacking in rural areas.\(^{17}\)

87. Since 2008, civil registration offices (Public Registration Offices) have been established increasingly in the centers of subzobas (ne'ush zoba). According to an Eritrean source\(^ {18}\), however, at present not all of the about 70 subzoba administrations already have a civil registration office. There is no evidence that the process of setting up such offices also at the level of the local administration areas (memehedar akabi) has already begun.

88. Thus, according to all evidence and testimonies till May 2015 the registration of civilian events in these offices occurred on a voluntary base. The registers of civil events kept at these offices in no way were comprehensive.

89. All these offices also continued to issue certificates for civil events having occurred many years before the date of issuance of the certificate.

90. Finally, in May 2015, the new ErCC came into force. In large parts, its provisions on civil status issues and their registration and certification (Article 54-64) are based on the registration provisions of the ECC. The EPLF-CC regulations on registration, which were incorporated into TCCE, are no longer referred to.

91. Even though ErCC makes it compulsory to register marriages, it does not make the validity of the marriage dependent on the registration. As before, a marriage becomes valid, once the ceremony had been concluded and the officiating official, clergy or elders have pronounced the couple to be married.\(^ {19}\)

92. According to ErCC, Article 42, proof of a civilian status is done through state, religious and customary law civil status certificates, possession of the civil status or an Act of Notoriety. This provision clearly shows that there are still civil status events in Eritrea that can not be proved by civil status certificates.

93. According to ErCC, Article 56, in urban communes\(^ {20}\) birth certificates are to be issued within three month after the birth, marriage certificates within one month after the marriage ceremony, and death certificates within one month after the death. In rural areas where there are no civil registry offices, information on civilian events must be collected and recorded at least once a year.

94. If in urban communities the registration deadlines of a civil status event and the issuing of a certificate for it are missed, the event can only be entered into the register by a court order (ErCC, Art. 57). In rural areas, the registration of a civil event, having occurred more than two years ago, can be done only upon order of a court (ErCC, Art. 64).

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\(^{17}\) Demographic Profile and Birth Registration Status of Eritrea...

\(^{18}\) KT, Lecturer at Mai Nefhi Institute of Technology, specialist for documents and archiving of documents in Eritrea, e-mail 9 May 2017

\(^{19}\) See footnote 7

\(^{20}\) In ErCC there is no definition what constitutes an urban commune, where registration has to take place.
95. Although ErCC entered into force in May 2015, the necessary infrastructure for the full implementation of the mandatory registration of vital events and the enforcement of registration where it is technically possible still does not yet exist. Also, the implementation of ErCC Art. 57 and Art. 64 is at best incomplete and even for events having occurred after May 2015 but not registered in time is rather the exception than the norm.

96. ErCC also does not contain clear provisions on the handling of unregistered civil status events which occurred before the entry into force of ErCC. A full-coverage re-registration of vital events having occurred before May 2015, is neither planned, nor possible in terms of personnel or resources.

97. Under final provisions ErCC, Article 2775 stipulates that legal situations created before the entry into force of the ErCC remain valid. Therefore all marriages concluded under the previous legislation before May 2015 remain valid marriages irrespective of whether they are registered or not with secular offices.

98. It is important to stress the continuing substantial discrepancy between legal regulations and administrative practice. According to all available information from Eritrea21, the same situation as before the coming into force of ErCC continues to exist with regard to the registration of vital events. Even after May 2015, the majority of the newly occurring vital events remain unregistered. However, in the larger urban communes the rate of the registration of vital events and the issuance of corresponding certificates is increasing. Also the vast majority of vital events having occurred before May 2015 till today remain unregistered and no certificates have been issued for them.

99. If documentary proof of the occurrence of a hitherto unregistered vital event, irrespective of whether it occurred prior or after May 2015, is required, the only possibility to obtain a certificate documenting this event is to contact one of the existing registration offices and request a retro-active certification. This can be executed based on other relevant documents (bapism certificates, ecclesiastical marriage certificates, etc.) or the statements of competent witnesses.

100. Thus, it continues to be administrative reality in Eritrea that unregistered vital events having occurred before or after May 2015 will be registered and a certificate issued for them years and even decades after the event occurred.

101. In the past and to a large degree even in the present people rarely need civil status certificates when with the authorities. As a result, the need to acquire certificates of civil status has so far mainly existed for people of Eritrean origin living abroad, when the authorities of the country of residence might demand such documents. In recent years, the need for documentary proof of marriage has increased within Eritrea, as certain public services such as access to public housing or subsidised food are conditional upon presenting proof that a couple requesting these services is legally married.

102. Until recently, the retro-active registration and certification of a civil status event could be carried out by each of the Public Registration Offices existing at the time of the application. However, such applications were most frequently made in Asmara.

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21 Based on interviews with recent Eritrean refugees conducted October-November in Sudan and Ethiopia as well as on information from relatives of Eritrean refugees living in Germany collected in the period December 2016 to April 2017
103. Today, such offices exist in all the larger cities and in the administrative centers of a number of the subzobas. An exception are the subzobas within Asmara, which do not have such an office. With the growing spread of registration offices, the authorities increasingly refer applicants for a retro-active registration and certification to the Public Registration Offices to the subzoba, where the event occurred, provided this subzoba already has such an office. Applicants from subzobas, where such offices do not yet exist are advised to use the office in one of the larger towns. Actually most applicants from subzobas without a registration office still make use of the office in Asmara.22

5 Population registers
104. Different from the civil events registers existing in the larger urban communes and already in some centres of subzobas are the electronic population registers, which have gradually been introduced since 2001 throughout the country for all local administrations. The data of the population registers of the local administrations are combined at the level of the subzobas to a subzoba population register. At the level of the zones (regions), the population registers of the subzobas are merged into a regional population register.

105. The population registers serve as the basis for the issue of the residence (newari) cards, which have been introduced step by step in all local administrative units since 2003. A residence card usually, but not always contains the personal reference number of the card holder from the corresponding electronic population register. The reference number begins with a combination of three letters, followed by numbers. The first two letters refer to the region [AS = Maekel (Central) (Asmara), ZD = Debub (South), GB = Gash-Barka, KE = Anseba (Keren), SK = Semien Keyh Bahri (Northern Red Sea), DK = Debub Keyh Bahri (Southern Red Sea)]. The third letter indicates whether the identity card was issued for an individual (C) or a family (F).

106. Since the introduction of the population registers, all married couples are expected to register their marriage with the local population register of their place of residence. There is no law (proclamation) on that matter, but according to information from Eritrean sources23 there is an an unpublished directive from the Presidential Office to the Ministry of Local Government. The ministry then ordered the local administrations to set up the population registers.

107. The mandatory registration of marriages with the local population registers applies to all forms of marriages. Most married couples, including those newly married, comply with this order, as proof of the married status through a printout from the population register or the residence card is important for married women to get the exemption from the national service and for families for the permission to purchase subsidized foodstuffs and other goods from the governmental People's Shops.

108. However, it should be stressed that the validity of a marriage does not depend on the entry of this marriage in the population register. Legally speaking, the printout from the population register does not replace a state-issued certificate of marriage.

6 Civil Registration Office
109. The name of the civil registration office as well as its place in the local administrative structures varies from administration to administration and even within the same administration over time. Other names used are for example Civil Status Office or Public

22 Information obtained from many refugees from Eritrea interviewed in Sudan and Ethiopia in October/November 2016 and confirmed by KT, 9 May 2017
23 ST, 17 May 2017, KT, 9 May 2017
The Civil Registration Office records births and civil, religious and customary marriages, deaths, adoptions and related matters and issues the relevant certificates. For past unregistered civil events the registration in the relevant civil registry and issuance of certificates is retro-active and done only upon request.

All documents issued by such an office should have a registration number and, since the introduction of the population register, the population register reference number of persons for whom the documents are issued. However, this is not the case everywhere. Some civil registration offices outside Asmara still do not include the personal population reference number from the population register into the document, but include the number of the National ID-card. Documents including the personal population reference number often differ where this number is placed in the document. With some documents, the personal reference number is found in the head of the document. For others, the personal reference number of the persons for whom the document is issued is given in their personal data. The marriage certificates normally must be signed by the head of this office and bear the seal of the office. The name and position of the official are normally printed or stamped below the signature. However, it should be stressed that this is not observed by all civil registration offices or at all times. There are genuine marriage certificates where some of these elements except the signature are missing.

In Asmara, the civil Registration Office is part of the Public Registration Office. Until the administrative restructuring of the country in 1996, the few civil registration offices in the cities were part of the administration of the respective municipalities. In 1996, the municipality of Asmara, which had the status of one of Eritrea's regions, was abolished and integrated into the new Central Region (Zoba Maekel). Since then, there is no separate municipal administration for Asmara City. Until 2014, for administrative purposes Asmara was divided into 13 local administrations, which were directly under the administration of the Central Region. Since the beginning of 2014, however, these areas have been elevated to the level of sub-zobas. Within these new sub-zobas new local administrations have been created. The rest of the central region outside Asmara City is divided into three sub-zones. The Public Registration Office of the former city administration is responsible for the registration of all civil status events of the central region and the issuing of certificates for them.

The administrations of the other major cities of Eritrea with municipal status were also abolished in 1996. While the former municipalities of Masawa, Keren and Assab became sub-zobas, which also included the immediate rural hinterland of these cities, other cities were integrated into new sub-zobas, which included not only these cities, but also larger rural areas. The civil registration offices of the former municipalities were now responsible for the registration of vital events and the issuing of corresponding certificates for the respective entire sub-zoba.

_Registration Office_. In 1997, a genuine marriage certificate issued in Asmara had as the issuing authority "Municipality of Asmara, Census and Civil Status Section". A genuine birth certificate issued in Asmara in 2010 names as the issuing authority "Municipality of Asmara, Public Registration Office." A genuine marriage certificate from Keren issued 2016 has as the issuing body "Civil Status Unit, Social Service Branch, Keren City Administration, Region of Anseba, Ministry of Local Administration, State of Eritrea."
114. With the increasing establishment of civil registration offices in the administrative centers of sub-zobas outside the Central Region, these became responsible for the registration of the vital events of the respective subzoba and the issuing of civil status certificates.

115. There are no binding regulations concerning the language in which civil registration offices issue documents on civil status events. They could be done bilingual in Tigrinnic and Arabic, Tigrinnic and English, or trilingual in English, Tigrinnic or Arabic, or monolingual in Tigrinnic, Arabic or English. Most commonly and especially, if the applicant does not express a preference, they are issued in Tigrinnic and Arabic or in Tigrinnic and English. Monolingual certificates in English or Arabic are only issued upon the explicit request of the applicant. In the past years, however, the issuance of bilingual certificates in English and Tigrinnic has become more and more common.

116. To date, there is no mandatory national uniform format for birth, marriage, or death certificates issued by civil registration offices. Each local office has its own formats and these can also vary over time with the change of officials in these offices.

117. For a civil law marriage the presentation of the National ID-Card (menenet) as well as the printout from the relevant population register and the residence (newari) card is required. For the registration of a customary or religious law marriage, these documents as well as the religious marriage document or the marriage contract according to customary law have to be presented. However, also in this regard, offices might vary in the requirements. The married couples have to fulfil.

118. The same requirements apply to retroactive registrations of marriages, requested by married couples living in the country. If a retroactive registration is applied, in which at least one spouse lives abroad, it must be shown that the partner living abroad has paid the full 2% national tax. Also in such cases, pertinent information as to the National ID-card number and population register number to the extent that the partner(s) living abroad had such number before leaving the country, has to be supplied.

119. The marriage certificates issued by the office in Asmara since 1991 do not have a uniform format. They show variations in the header and arrangements of the lines, and even errors in spelling. This reflects that the forms used were not printed from a permanent master template but that each time the supply of forms was finished a new template was made in the office and then copies run from it. Due to this procedure it was not uncommon that in the preparation of a template small variations or even spelling mistakes slipped into it.

120. Since a number of years, the office in Asmara no longer uses pre-printed paper forms. Instead, digital templates for civil status certificates are kept in its computer system. It has separate templates for each of the languages or language combinations, in which the certificate is to be issued. When a certificate is to be issued, the official calls up the needed template in the computer and fills in the pertinent data.

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25 Information obtained 6 April 2010 by telephone from YT, a former Eritrean colleague of me in Frankfurt (translator for refugee counselling offices and asylum cases), since 1994 employee of the German Embassy in Eritrea, whom I had asked to unofficially contact officials of the Public Registration Office known to him to obtain information on the current formats and practices of this office. Given the highly distrustful attitude of Eritrean officials towards any direct information requests, information such as the one here under consideration can be only indirectly obtained through personal contacts of a trusted contact person with a relevant official.

26 KT, 9 May 2017

27 YT, 6 April 2010, telephone consultation
Although the Municipality of Asmara no longer exists, till today the Public Registration Office of Central Region issues civil status certificates showing the logo of the Municipality of Asmara and the header Municipality of Asmara Public Registration Office.

Till early 2007 Goitom Sebhatleab was the head of the Public Registration Office. Since then Tesfamikael Tesfalidet heads this office.  

7 Non-Governmental Civil Status Documents

Apart from civil registration offices, also religious institutions issue civil status certificates. At least the larger congregations of the Orthodox, the Catholic, and the Evangelical-Lutheran Church keep usually handwritten marriage and baptismal registers. None of the three major churches have central marriage and baptismal registers celebrates in their congregations. All Christian churches issue marriage and baptism certificates. In the past, this was mostly only on request, but increasingly it is done directly in the context of the event (marriage or baptism).

From 1991 to 2002, the marriage and baptism certificates of all Christian churches officially registered with the Office of Religious Affairs of the Eritrean Government have been accepted by government agencies as evidence of the corresponding vital event. Since May 2002, the state only accepts certificates of the three officially recognized Christian churches (Orthodox, Catholic, Evangelical-Lutheran).

As a rule, the congregation in which the vital event took place issued the corresponding certificate. These are done in Tigrinnic or Tigrinnic and English on preprinted templates, which are hand-filled by an official the local congregation in which the event was celebrated. Each church has its own form, and even within the same church there are variations between the formats of the different parishes / churches / dioceses.

All churches in Eritrea, including the Orthodox, use the Gregorian calendar in such documents. An Orthodox church might use the Ethiopian or Gregorian calendar in the Tigrinnic part of a marriage or baptismal document and the Gregorian in the English part.

Often marriage or baptism certificates for events having been celebrated in a local church years or even decades ago are retroactively issued by the respective church, when there is a need for such a certificate.

None of the churches have a general and uniform format for marriage and baptismal certificates. Each local church has its own formats. Therefore marriage and baptismal certificates issued by local religious authorities, although generally conforming to an established format, often vary in details.

Islamic marriages usually are not celebrated in the mosque, but in families, but they must be officially registered and confirmed by the local Sharia Court. Also marriages, which are concluded in mosques, must be confirmed by the Sharia court responsible for the area where the marriage was celebrated. The Sharia courts are integrated into the civil courts and therefore form part of the state judiciary. However, the execution of an Isla-

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28 Same source, the latter official is still in office in 2017, KT 9 May 2017
29 The information in EASO Eritrea-Country Focus, Mai 2015, p55, footnote 480 p55 that the Eritrean Orthodox Church always uses in its civil event documents the Ethiopian Calendar is incorrect.
A certificate of marriage by a Sharia court does not replace the obligation to register this marriage with the relevant civil registration office.

8 Summary

- Civil, religious and customary law marriages are equally allowed and valid marriages.
- Although according to law registration of marriages is now obligatory, in actual practice most marriages celebrated after May 2015 marriages are still not registered at the marriage registers of civil service offices.
- The overwhelming majority of marriages concluded before May 2015 is not registered with the civil service offices.
- The validity of a marriage does not depend on its registration or the possession of a marriage certificate.
- Proof of marriage is done through proof of possession of status of spouses through presentation of a valid civil, religious or customary marriage document, testimony of competent witnesses or an Act of Notoriety sanctioned by a court.
- There is no single and uniform format for civil event certificates.