

OPERATIONAL GUIDANCE NOTE

ERITREA

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1. Introduction

- 1.1** This document evaluates the general, political and human rights situation in Eritrea and provides guidance on the nature and handling of the most common types of claims received from nationals/residents of that country, including whether claims are or are not likely to justify the granting of asylum, Humanitarian Protection or Discretionary Leave. Caseowners must refer to the relevant Asylum Instructions for further details of the policy on these areas.
- 1.2** This guidance must also be read in conjunction with any COI Service Eritrea Country of Origin Information published on the Horizon intranet site. The material is also published externally on the Home Office internet site at:
- http://www.homeoffice.gov.uk/rds/country_reports.html
- 1.3** Claims should be considered on an individual basis, but taking full account of the guidance contained in this document. In considering claims where the main applicant has dependent family members who are a part of his/her claim, account must be taken of the situation of all the dependent family members included in the claim in accordance with the Asylum Instructions on Article 8 ECHR. If, following consideration, a claim is to be refused, caseowners should consider whether it can be certified as clearly unfounded under the case by case certification power in section 94(2) of the Nationality Immigration and Asylum Act 2002. A claim will be clearly unfounded if it is so clearly without substance that it is bound to fail.

Source documents

- 1.4** A full list of source documents cited in footnotes is at the end of this note.

2. Country assessment

- 2.1** From 1962 until its independence in 1993, Eritrea was a province of Ethiopia. A formal Constitution providing for democratic freedoms was adopted on 23 May 1997, but has yet to be fully implemented.¹ The government has twice scheduled elections in accordance with the constitution but cancelled them without explanation. The President has been reported to say that elections might not take place for another 30 to 40 years. Government officials have also stated that implementation of the constitution is not possible until the border demarcation with Ethiopia is finalised.²
- 2.2** Relations between Eritrea and Ethiopia deteriorated in 1997 when both countries accused the other's troops of border incursions. Fighting erupted in May 1998 in the border region and lasted until a comprehensive peace agreement was signed in Algiers on 12 December 2000, following which the two sides were separated by a UN peace-keeping force and a buffer zone – the Temporary Security Zone (TSZ).³
- 2.3** On 13 April 2002, the Eritrea-Ethiopia Boundary Commission (EEBC) announced its decision on the border dispute. The determination gave something to both sides and was initially welcomed by the two governments, though relations between the two countries continued to be strained with complaints from both about the operation of the TSZ. Demarcation was due to follow in 2003. However, when it became clear that the town of Badme (the town in which the border dispute erupted) lay inside Eritrean territory, Ethiopia challenged the EEBC's conclusions. While Ethiopia claims to accept the EEBC's decision, it has so far refused to allow the Commission's border ruling to be put into practice. Following an inconclusive meeting at the Hague in September 2007, the EEBC stated that it would go ahead with a "paper" border demarcation at the end of November 2007, regardless of progress on the ground.⁴ The UN's withdrawal of peacekeeping troops on the border in July 2008 has provoked fears that Ethiopia and Eritrea will resume a military conflict. Ethiopian troops are stationed deep in territory awarded to Eritrea.⁵
- 2.4** The Eritrean People's Liberation Front (EPLF), which led the 30-year war of independence and has controlled the country since, became the People's Front for Democracy and Justice (PFDJ) in 1994. This is the only officially recognised political party in Eritrea. The PFDJ initially outlined an ambitious plan for a transition to a multiparty democracy. However the government continued to postpone presidential and legislative elections.⁶
- 2.5** The human rights situation in Eritrea is universally reported as very poor. The country remains a highly repressive state in which dissent is suppressed and nongovernmental political, civic, social, and minority religious institutions largely forbidden to function. Reported human rights abuses have included: unlawful killings by security forces; torture of prisoners and arrest of national service evaders; interference in the judicial system; round ups of young men and women for military service; discrimination against women and societal discrimination based on sexual orientation.⁷ There were also no visits to prisons by NGOs which the government prevented from operating during 2008 and prison conditions were considered to be harsh.⁸

3. Main categories of claims

- 3.1** This Section sets out the main type of asylum claim, human rights claim and Humanitarian Protection claim (whether explicit or implied) made by those entitled to reside in Eritrea. It

¹ COIS Eritrea Country Report (History & Constitution)

² USSD 2008

³ COIS Eritrea Country Report (History)

⁴ FCO Country Profile on Eritrea 8 October 2007

⁵ BBC articles "UN ends Africa Horn Peace force" & "UN fears new Ethiopia-Eritrea"

⁶ COIS Eritrea Country Report (History & Political System)

⁷ COIS Eritrea Country Report (Human Rights)

⁸ USSD 2008

also contains any common claims that may raise issues covered by the Asylum Instruction on Discretionary Leave. Where appropriate it provides guidance on whether or not an individual making a claim is likely to face a real risk of persecution, unlawful killing or torture or inhuman or degrading treatment/ punishment. It also provides guidance on whether or not sufficiency of protection is available in cases where the threat comes from a non-state actor; and whether or not internal relocation is an option. The law and policies on persecution, Humanitarian Protection, sufficiency of protection and internal relocation are set out in the relevant Asylum Instructions, but how these affect particular categories of claim are set out in the guidance below.

- 3.2** Each claim should be assessed to determine whether there are reasonable grounds for believing that the claimant would, if returned, face persecution for a Convention reason - i.e. due to their race, religion, nationality, membership of a particular social group or political opinion. The approach set out in *Karanakaran* should be followed when deciding how much weight to be given to the material provided in support of the claim (see the Asylum Instruction on Considering the Asylum Claim).
- 3.3** If the claimant does not qualify for asylum, consideration should be given as to whether a grant of Humanitarian Protection is appropriate. If the claimant qualifies for neither asylum nor Humanitarian Protection, consideration should be given as to whether he/she qualifies for Discretionary Leave, either on the basis of the particular categories detailed in Section 4 or on their individual circumstances.
- 3.4** This guidance is **not** designed to cover issues of credibility. Caseowners will need to consider credibility issues based on all the information available to them. (For guidance on credibility see the Asylum Instructions on 'Considering the Asylum' and 'Assessing Credibility in Asylum and Human Rights Claims'.
- 3.5** All Asylum Instructions can be accessed on the Horizon intranet site. The instructions are also published externally on the Home Office internet site at:

<http://www.ukba.homeoffice.gov.uk/documents/asylumpolicyinstructions/>

3.6 Pentecostals

- 3.6.1** Most Eritreans make an asylum and/or human rights claim based on alleged state mistreatment on account of them being Pentecostals.
- 3.6.2** **Treatment.** The as yet unimplemented constitution provides for freedom of religion, however, in practice the Government severely restricts this right for all but the four sanctioned religious groups – Orthodox Christians, Muslims, Catholics and the Evangelical Church of Eritrea (affiliated with the Lutheran World Federation).⁹ Although there is no state religion, the government has close ties to the Orthodox Church and is suspicious of newer groups – in particular, Protestant Evangelical, Pentecostal, and other Christian denominations not traditional to Eritrea.¹⁰ For the past five years, a campaign by the government against Christian minorities has focussed mainly on the evangelical and pentecostal movements.¹¹
- 3.6.3** In May 2002, the government ordered several minority churches referred collectively as the Pentes (including Born Again Christians, Pentecostals, Full Gospel and other small protestant groups) to close down. These churches were required to register with the Department of Religious Affairs in order to reopen. Although the churches were reported to have complied with the requirement and were informally allowed to continue to worship, none of them were known to have been officially registered by 19 September 2008.

⁹ USSD Report on Human Rights Practices in Eritrea March 2007

¹⁰ COIS Eritrea Country Report (Arbitrary arrest and detention; Freedom of Religion)

¹¹ COIS Eritrea Country Report (Evangelical churches)

Government spokesmen have since cited Pentecostals, along with extremist Islamic groups, as threats to national security.¹²

- 3.6.4** During 2008, the authorities reportedly detained at least 125 members various unregistered churches. Numerous detainees were required to sign statements as a condition of their release repudiating their faith and there were continued reports that relatives were asked to sign for detainees who refused to sign such documents. There were also reports that many of those held were detained for failure to complete military service but significant numbers were held solely for belonging to unregistered religious groups.¹³ Some detainees were released after detentions of several days or less while others spent longer periods in confinement without charges or access to legal counsel or their families.¹⁴ Government restrictions made it difficult to determine the precise number of religious prisoners at any one time and release sometimes went unreported. However, the number of long term prisoners was reported to grow. As at September 2008, more than 3,225 Christians from unregistered groups were detained in prison. These reports included 37 leaders and Pastors of Pentecostal churches in detention, some for more than 3 years without due process.¹⁵
- 3.6.5** The Eritrean government's denials and assurances about its treatment of minority religious groups have not been sufficient to convince advocates of religious freedom elsewhere in the world that their actions are reasonable. In November 2006, the US Secretary of State redesignated the country a Country of Particular Concern under the International Religious Freedom Act for particularly severe violations of religious freedom.¹⁶
- 3.6.6** *Sufficiency of protection.* As this category of claimants' fear is of ill treatment/persecution by the state authorities, they cannot apply to these authorities for protection.
- 3.6.7** *Internal relocation.* This category of applicants' fear is of ill treatment/persecution by the state authorities. This does not mean that caseowners should automatically presume that internal relocation is not an option. As Lord Bingham observed in Januzi ([2006] UKHL 5):
- "The more closely the persecution in question is linked to the state, and the greater the control of the state over those acting or purporting to act on its behalf, the more likely (other things being equal) that a victim of persecution in one place will be similarly vulnerable in another place within the state. The converse may also be true. All must depend on a fair assessment of the relevant facts."*
- 3.6.8** Very careful consideration must be given to whether internal relocation would be an effective way to avoid a real risk of ill-treatment/persecution at the hands of, tolerated by, or with the connivance of, state agents. If an applicant who faces a real risk of ill-treatment/persecution in their home area would be able to relocate to a part of the country where they would not be at real risk, whether from state or non-state actors, and it would not be unduly harsh to expect them to do so, then asylum or humanitarian protection should be refused.

3.6.9 Caselaw.

YT (Eritrea) [2004] UKIAT 00218. The appellant converted from being an Orthodox Christian to the Pentecostal Church. From an early age he was an activist in the Kale Hiwot ["Word of Life"] Church

¹² COIS Eritrea Country Report (Freedom of Religion; Arrests & Evangelicals Churches)

¹³ USSD 2007

¹⁴ USSD International Religious Freedom Report 2008 - Eritrea

¹⁵ USSD International Religious Freedom Report 2008 - Eritrea

¹⁶ USSD International Religious Freedom Report 2008 - Eritrea

in Asmara, Eritrea. The Tribunal allowed this appeal stating that there is evidence of continued arrests on the basis of religion in 2003 and 2004, including a KHCE Pastor. There has not been a general relaxation in the Eritrean authorities' attitude towards minority churches.

3.6.10 Conclusion. State persecution of non-sanctioned religions such as Pentecostalism is systematic and widespread throughout Eritrea. If it is accepted that the claimant is a practising Pentecostal and they have demonstrated that they will have a well-founded fear of persecution, their claim is likely to engage the UK's obligations under the 1951 Convention. The grant of asylum in such cases is therefore likely to be appropriate.

3.7 Military service

3.7.1 Many Eritrean claimants make an asylum and/or human rights claim on the basis that they will be mistreated by the authorities for refusing to undertake military service or deserting from military service. Claimants may cite their religious beliefs, usually as Jehovah's Witnesses, as the reason why their objection has resulted in, or is likely to lead to, persecution.

3.7.2 Treatment. The main piece of legislation covering military service in Eritrea is the National Service proclamation issued by the government on 23 October 1995. National service is compulsory for all citizens aged between 18 and 50 years, male and female. It consists of six months of military training (performed at Sawa military training centre near Tessenei in western Eritrea) and 12 months of 'active military service and development tasks in military forces' under Ministry of Defence authority. It extends to military reserve duties up to the age of 50. It may be continued under 'mobilisation or emergency situation directives given by the government'.¹⁷

3.7.3 The Government does not excuse those individuals who object to military service for reasons of religion or conscience, nor does the Government allow alternative service. In November 2006, the government decreed that church leaders from the four state sanctioned religions were required to perform military and national service; previously religious leaders such as priests and clerics were exempt from national and military service. Although members of several religious groups, including Muslims, had been imprisoned in past years for failure to undertake military service, the government continues to single out Jehovah's witnesses for harsher treatment than that received by followers of other faiths for similar actions¹⁸

3.7.4 According to Human Rights Watch, conscripts are used in labour battalions on public works and on projects benefiting military commanders personally. Pay is nominal and working conditions often harsh. Over a dozen conscripts were reported to have died in the Summer of 2007 at the Wia military training camp near the Red Sea coast from intense heat, malnutrition and lack of medical care.¹⁹

3.7.5 Violations of military service may be punished under more severe penalties contained in Eritrea's criminal law including imprisonment of up to two years or a fine and a pecuniary penalty or both. Since 2005, Human Rights Watch has reported that families of conscription evaders are fined at least 50000 nafka (US\$ 3300) a large sum as yearly income is less than US\$1000. And, since late 2006, some family members have been conscripted to substitute for relatives.²⁰ To avoid national service by deceit or self-inflicted injury the same penalties apply, followed by national service. If the self inflicted injury precludes national service, the prison term is extended to three years. Those who travel abroad to avoid national service who return before they are forty years of age must then undertake national service; for those who return after that age, they are punished by imprisonment of five

¹⁷ COIS Eritrea Country Report (Military Service)

¹⁸ USSD Country Report on Human Rights Practices in Eritrea 2006

¹⁹ Human Rights Watch World Report 2008 - Eritrea

²⁰ Human Rights Watch World Report 2008 - Eritrea

years and lose rights to own a business licence or apply for an exit visa, land ownership or a job. Those who assist others to avoid national service can receive two years imprisonment and/or a fine. In reality, draft evaders or deserters who have been caught in recent years have been detained incommunicado for extended periods of time.²¹

- 3.7.6** On 22 May 2008, Awate reported that “giffa” or round ups had taken place in Asmara which targeted two groups of young people: those registered for national service but who had taken a leave of absence without permission and those over the age of conscription who had not voluntarily signed up for national service.²² In its 2008 report, USSD reported that the government continued to authorise the use of lethal force against individuals resisting or attempting to flee during military searches for deserters and draft evaders, and the practice reportedly resulted in deaths during the year. There were also reports that individuals were severely beaten and killed during roundups of young men and women for national service during 2008.²³
- 3.7.7** In practice, there may be some gender based exemptions or modification of conscription. There are also medical exemptions which are set out in the Proclamation on National Service with modifications. Regarding women conscripts, exemptions referred to in some documents have included: Muslim women, nursing mothers, women with children, married women and women over the age of 27.
- 3.7.8** According to the FCO, the age for military then national service for men is 18 to 57 and for women 18 – 47. Women do routinely perform national service over the age of 27 but are unlikely to have to do military training if they have not done so already. Married women and mothers should be exempt from military service and able to leave Eritrea before the age of 47.²⁴
- 3.7.9** There have been reports that demobilisation from military/ national service had ceased and that those who had completed national service were being recalled and national service through conscription of both men and women between the ages of 18 and 40 had been extended indefinitely.²⁵
- 3.7.10 *Sufficiency of protection.*** As this category of claimants’ fear is of ill treatment/persecution by the state authorities, they cannot apply to these authorities for protection.
- 3.7.11 *Internal relocation.*** This category of applicants’ fear is of ill treatment/persecution by the state authorities. This does not mean that caseowners should automatically presume that internal relocation is not an option. As Lord Bingham observed in Januzi ([2006] UKHL 5):
- “The more closely the persecution in question is linked to the state, and the greater the control of the state over those acting or purporting to act on its behalf, the more likely (other things being equal) that a victim of persecution in one place will be similarly vulnerable in another place within the state. The converse may also be true. All must depend on a fair assessment of the relevant facts.”*
- 3.7.12** Careful consideration must be given to whether internal relocation would be an effective way to avoid a real risk of ill-treatment/persecution at the hands of, tolerated by, or with the connivance of, state agents. If an applicant who faces a real risk of ill-treatment/persecution in their home area would be able to relocate to a part of the country where they would not be at real risk, whether from state or non state actors, and it would not be unduly harsh to expect them to do so, then asylum or humanitarian protection should be refused.

²¹ COIS Eritrea Country Report (Military Service; Draft evaders)

²² COIS Eritrea Country Report (Military Service; Round-ups)

²³ USSD 2008

²⁴ COIS Eritrea Country Report (Military Service)

²⁵ COIS Eritrea Country Report (Military Service)

3.7.13 *Caselaw.*

MA (Eritrea) [2004] UKIAT 00098. IAT consider the case of a female draft evader. If the appellant is returned and treated as a draft evader she is likely to have her Article 3 rights breached. Appeal granted on human rights only. HAILE UKIAT06696 [2003] promulgated 20 February 2003: (Army deserter granted leave on Article 3 grounds) Relying on US State Dept report which cited harsh extra-judicial punishment and a UNHCR letter of 8 August 2002 which recommended against the return to Eritrea of draft evaders and deserters from military service.

SE (Eritrea) [2004] UKIAT 00295. IAT examined the issue of risk to this appellant as a draft evader. The Tribunal stated "If there is no evidence that the authorities have taken steps to call someone up, over a significant period of time during which such a person was eligible, it is hard to accept they would classify him or her as an evader the first time they came into contact with such a person. If Appellant's Counsel is right (in making this assertion), then the Eritrean government would view its entire population in the eligible age range as draft evaders. Plainly it does not". This case also deals with the issue of returnees in general (see Returns).

NM (Eritrea) [2005] UKIAT 00073. Draft evaders – evidence of risk. The Tribunal found that those who are suspected of draft evading and refusing conscription are at risk of ill treatment and torture. The situation is not normal in Eritrea so far as the Government's attitude towards military service. Being perceived as a draft evader does carry political connotations in the eyes of the authorities to the extent that the appellant would be at risk of serious harm for a Convention reason: her perceived opposition to the government.

IN (Eritrea) CG [2005] 00106. Draft evaders - evidence of risk, summary at para 44: There is no material distinction to be drawn between deserters and draft evaders. The issue is simply whether the Eritrean authorities will regard a returnee as someone who has sought to evade military service or as a deserter. The fact that a returnee is of draft age is not determinative. The issue is whether on the facts a returnee of draft age would be perceived as having sought to evade the draft by his or her departure from Eritrea. If someone falls within an exemption from the draft there would be no perception of draft evasion. If a person has yet to reach the age for military service, he would not be regarded as a draft evader: If someone has been eligible for call-up over a significant period but has not been called up, then again there will normally be no basis for a finding that he or she would be regarded as a draft evader. Those at risk on the present evidence are those suspected of having left to avoid the draft. Those who received call up papers or who were approaching or had recently passed draft age at the time they left Eritrea may, depending on their own particular circumstances, on the present evidence be regarded by the authorities as draft evaders.

The Tribunal in IN stated that **NM** is not to be treated as authority for the proposition that all returnees of draft age are at risk on return. In that case the Tribunal found on the facts that the appellant would be regarded as a draft evader and also took into account the fact that there was an additional element in the appellant's background, the fact that her father had been a member of the ELF, which might put her at risk on return.

HF (Eritrea) [2005] UKAIT00140. Married women – exempt from draft. The Tribunal found on the basis of expert evidence that married women are exempt from call-up for compulsory military service that the appellant did not have a compelling claim for asylum on either Convention or ECHR grounds. The Tribunal found that the Adjudicator had not made a material error of law and that the determination of the original appeal would stand.

KA Eritrea CG [2005] UKAIT 00165. Draft related risk categories updated. **IN** is affirmed. Persons who would be perceived as draft evaders or deserters face a real risk of persecution as well as treatment contrary to Article 3 (113(b)). Returnees generally are not at real risk (113(c)). Persons of draft age are not by that reason alone at real risk. In each case something more must be shown (113(d) & (i)). Persons of draft age are currently at risk unless: (i) they can be considered to have left legally (a person who lacks credibility will not be assumed to have left illegally); (ii) they have not been in Eritrea since the start of the war with Ethiopia in 1998; (iii) they have never been to Eritrea and are able to show there was no draft evasion motive behind their absence (113(f)). Someone falling within these sub-categories would still be at risk if they hold conscientious objections to military service. But the reasons of conscience would have to be unusually strong (113(g)).

WA Eritrea [2006] UKIAT 00079. On the basis of the evidence now available, Muslim women should not be excluded from being within the draft related at risk category. The evidence indicates that Muslim women, per se are not exempt from military service. In some areas, however, local protests prevent their call up and in others the draft is not so strictly implemented. With this addition (amending para 113 of the determination), the draft related risk categories in KA (Draft –related risk categories updated) Eritrea CG [2005] 00165 are reaffirmed. In particular it remains the case that in general someone who has lived in Eritrea for a significant period without being called up would not fall within the category of a draft evader. The evidence indicates that the administration of National service is devolved to six regional commands and the degree to which recruitment is carried out varies from region to region. In considering risk on return a decision maker should pay regard to any credible evidence relating to the particular region from whence an appellant comes and the degree to which recruitment is enforced within that particular area. NB: This decision should be read with AH (Failed asylum seekers – involuntary returns) Eritrea CG [2006] UKAIT 00078

MA Eritrea CG [2007] UKAIT 00059. A person who is reasonably likely to have left Eritrea illegally will in general be at real risk on return if he or she is of draft age, even if the evidence shows that he or she has completed Active National Service, (consisting of 6 months in a training centre and 12 months military service). By leaving illegally while still subject to National Service, (which liability in general continues until the person ceases to be of draft age), that person is reasonably likely to be regarded by the authorities of Eritrea as a deserter and subjected to punishment which is persecutory and amounts to serious harm and ill-treatment.

Illegal exit continues to be a key factor in assessing risk on return. A person who fails to show that he or she left Eritrea illegally will not in general be at real risk, even if of draft age and whether or not the authorities are aware that he or she has unsuccessfully claimed asylum in the United Kingdom.

This Country Guidance supplements and amends to the above extent the Country Guidance in IN (Draft evaders – evidence of risk) Eritrea CG [2005] UKIAT 00106, KA (draft-related risk categories updated) Eritrea CG UKAIT 00165, AH (Failed asylum seekers – involuntary returns) Eritrea CG [2006] UKAIT 00078 and WA (Draft-related risks updated – Muslim Women) Eritrea CG [2006] UKAIT 00079.

GM (Eritrea); YT (Eritrea); MY (Eritrea) EWCA Civ 833. Court of Appeal (CoA) 17 July 2008.

The CoA found that the burden of proof is on the applicant to show that they have left Eritrea illegally. The Court referred to the case of R v Home Secretary Eritrea p Sivakumaran [1988] which said that the question in any particular case is...whether there is a reasonable degree of likelihood that the applicant left Eritrea illegally.

Whilst the CoA said that the question of illegal exit raises particular difficulties, the court underlined what was said in Ariaya and Sammy v SSHD [2006], another draft military service case that considered draft evasion as well as illegal exit, that persons who fail to give a credible account of material particulars relating to their history and circumstances cannot easily show that they would be at risk solely because they are of eligible draft age. The CoA also echoed the approach taken in MA Eritea CG [2007] that a finding as to whether an Eritrean applicant has shown that it is reasonably likely he or she left the country illegally is....crucial in deciding risk on return to that country.

3.7.14 Conclusion. The Government effectively views those who evade service or desert from the military as political opponents and treatment by the authorities of individuals known to have deserted or evaded military service is likely to amount to persecution under the terms of the 1951 Convention. If it is accepted that a claimant is a person of military service age or who is approaching military service age, who is not medically unfit and has left Eritrea illegally before undertaking or completing Active National Service (as defined in Article 8 of the 1995 Proclamation) then it is reasonably likely they will be of interest to the Eritrean authorities as a deserter or evader of national service. This includes claimants of military service age who have left the country illegally and who have been “demobilised” from Active National Service but who the authorities would still consider to be subject to National Service and liable for recall. However, the burden of proof is on the applicant to show that they have left Eritrea illegally.

3.7.15 For those applicants of military service age who have demonstrated that they have left Eritrea illegally and who are not excluded from the 1951 Convention under Article 1F, a grant of asylum is likely to be appropriate. A person of or approaching draft age who fails to show that he or she left Eritrea illegally is not reasonably likely to be regarded with

serious hostility on return, even if the authorities are or would be reasonably likely to be aware that that person had made an unsuccessful asylum claim abroad. If someone falls within an exemption from the draft or is outside the age for military service there would be no perception by the authorities of draft evasion. Such claimants are unlikely to encounter ill treatment amounting to persecution within the terms of the Convention. The grant of asylum in these cases is therefore not likely to be appropriate.

3.8 Members of opposition political groups

Some claimants will make an asylum or human rights claim based on threats or harassment by the authorities on account of their membership of, or association with, opposition political groups such as the Eritrean Democratic Party (EDP) (formerly the Eritrean People's Liberation Front Democratic Party EPLF-DP), the Eritrean National Alliance (ENA) or the Eritrean Liberation Party or as activists in support of the 11 detained members of the G15 group of dissidents.²⁶

3.8.1 Members of the ENA/ EDA including the ELF and the EDP

3.8.1.1 Treatment. There is no official political opposition in Eritrea. The unimplemented constitution states that every citizen has the right to form organisations for political ends. However, the government has not allowed the formation of any political parties other than the People's Front for Democracy and Justice (PFDJ) and has said that it will not implement the constitution until the border demarcation with Ethiopia is finalised.²⁷

3.8.1.2 There are a number of opposition political groups that have since 2004 operated in exile outside of Eritrea under the umbrella of the Eritrean National Alliance (ENA) also known as the Eritrean Democratic Alliance (EDA) which are highly critical of the current regime. These groups have little physical presence in Eritrea. Their polemics are followed via the internet on sights including Asmara.com and Awate.com.

3.8.1.3 The ENA/ EDA includes the EIS (Arafa movement), the ELF (Eritrean Liberation Front) and ELF factions, EDP (the Eritrean Democratic Party), the ENSF (the Eritrean National Salvation Front) and the EIJ (Eritrean Islamic Jihad) and is split into two camps²⁸. The first camp comprises those which form a secular nationalist bloc. This faction includes the EDP, the ENSF and the ELF-RC. The second camp led by the ELF tends to represent regional, religious and ethnic constituencies.²⁹ The ENA/ EDA were reported by Awate.com in February 2005 as having been instrumental in setting up a conference of opposition groups in Khartoum.³⁰

3.8.1.4 USSD reported at least one politically motivated killing during 2008.³¹ Amnesty has also recorded that there were frequent reports of arrests of government critics during 2008 and no tolerance of dissent. In addition, eleven former government Ministers and Eritrea liberation veterans (the G15 activists) who had called for reform had remained in secret detention their whereabouts since 2001.³²

3.8.2 G15 activists

3.8.2.1 Among the more prominent political prisoners detained in Eritrea are the 11 former independent movement leaders and government ministers known as the Group of 15 (G15) who were jailed in September 2001 after publicly criticising undemocratic practices pursued

²⁶ COIS Eritrea Country Report (Opposition in exile & Annex B)

²⁷ USSD 2008

²⁸ Freedom House – Countries at the Crossroads – Eritrea 2007

²⁹ EDP website - <http://selfi-democracy.com>

³⁰ COIS Eritrea Country Report (Opposition groups and political activists)

³¹ USSD 2007

³² Amnesty 2007 report

by the President of Eritrea. As at the end of 2008, the G15 detainees were still in prison and their whereabouts remained unknown.³³

3.8.2.2 A report titled 'The obscure and tragic end of the G-15' published on 31 August 2006,³⁴ presents information about the political prisoners since their arrest up to 2006. It claims that the prisoners are held at a prison complex at Eiraeiro alongside other political prisoners. Prior to 2003, the G15 group were held at Embatkala a former naval facility. Of the prisoners and of the G15 group prior to transfer to Eiraeiro, nine people are mentioned as having died in detention. The article claims food, clothing and hygiene are basic; the prisoners are held in solitary confinement, in chains, and totally *incommunicado*. Other reports corroborate this and have pointed to possible instances of torture of the G15 activists during their detention.³⁴

3.8.2.3 Sufficiency of protection. As this category of claimants' fear is of ill treatment/persecution by the state authorities, they cannot apply to these authorities for protection.

3.8.2.4 Internal relocation. This category of applicants' fear is of ill treatment/persecution by the state authorities. This does not mean that caseowners should automatically presume that internal relocation is not an option. As Lord Bingham observed in Januzi ([2006] UKHL 5):

"The more closely the persecution in question is linked to the state, and the greater the control of the state over those acting or purporting to act on its behalf, the more likely (other things being equal) that a victim of persecution in one place will be similarly vulnerable in another place within the state. The converse may also be true. All must depend on a fair assessment of the relevant facts."

3.8.2.5 Very careful consideration must be given to whether internal relocation would be an effective way to avoid a real risk of ill-treatment/persecution at the hands of, tolerated by, or with the connivance of, state agents. If an applicant who faces a real risk of ill-treatment/persecution in their home area would be able to relocate to a part of the country where they would not be at real risk, whether from state or non-state actors, and it would not be unduly harsh to expect them to do so, then asylum or humanitarian protection should be refused.

3.8.2.6 Caselaw.

AN Eritrea [2003] (CG) UKIAT 003300. ELF-RC low level members – risk. Members or supporters likely to come to the attention of the authorities were confined to anything that could be interpreted as terrorism or violence. (Para. 27)

3.8.2.7 Conclusion. Applicants who express a fear of being targeted by the authorities on the basis that they are, or were, low or medium-level members of parties under the umbrella of the ENA/ EDA and who have not come to the attention of the authorities are unlikely to be able to adduce a well-founded fear of persecution within the terms of the 1951 Convention or a need for Humanitarian Protection on ECHR grounds. For claimants who are able to demonstrate that they are a high-level former opposition party activist, the grant of asylum is likely to be appropriate as they are likely to be of interest to the Eritrean authorities.

3.8.2.8 There is no evidence of a reform movement based on the beliefs and policies of the G15. Though there continue to be numerous reports of politically motivated detentions, and while those detained since 2001 on account of their association with the G15 group remain in detention, there have been no further confirmed arrests or detentions

³³ Freedom House "Countries at the crossroads – Eritrea"

³⁴ COIS Eritrea Country Report (Political Opposition, Torture in police detention).

of G15-associated activists since.³⁵ Applicants claiming to fear arrest or detention on account of their low to medium-level activism in support of the detained members of the G15 group will not usually qualify for asylum, however those who can establish that they are high profile activists and have previously come to the attention of the authorities may qualify for asylum.

3.9 Persons of mixed Ethiopian/Eritrean origin

- 3.9.1** A significant proportion of claims will raise the issue of whether the claimant considers him/herself to be Eritrean or Ethiopian, and the state authorities' treatment of those with some element of mixed ethnicity. Though this will not usually be a main or sole basis for a claim, it will be crucial to establish the applicant's parentage, length of time spent in a particular country and location of alleged persecution to substantively assess the wider claim.
- 3.9.2 *Treatment of Eritreans of Ethiopian origin in Eritrea.*** There have been no reports in recent years that the Eritrean authorities have harassed and detained deportees of Eritrean origin from Ethiopia while their status was checked. Expellees were asked to fill out a detailed registration form and were issued the same type of registration card that Eritrean refugees returning from exile received. Once registered, the deportees were entitled to the standard government assistance for returning refugees: including short-term housing, food, and settlement aid; medical coverage; and job placement assistance.³⁶
- 3.9.3 *Treatment of Ethiopians of Eritrean origin in Eritrea.*** During the border war the Ethiopian Government detained and deported Eritreans and Ethiopians of Eritrean origin without due process. Deportations ceased following the signing of the cessation of hostilities agreement in June 2000. Between June and August 2001 this agreement was broken but this has been the only breach and all returns are now voluntary and administered by the ICRC. During 2007, 2585 Ethiopians were repatriated to Ethiopia and 112 Eritreans from Ethiopia under the auspices of the ICRC.³⁷
- 3.9.4** There were 16,000 Ethiopians estimated to have temporary residence in Eritrea in 2005, including 600 Ethiopians in the Gash Barka region to which the UNHCR had no access or responsibility. The Government issued residency permits to Ethiopians living in the country for a fee; however, it did not issue them exit visas. According to the UNHCR Ethiopians must renew their residency permits every year. In February 2007, the Canadian Immigration Board noted that persons of Ethiopian origin continue to face discriminatory practices in Eritrea including demand for payment or high repatriation fees.³⁸
- 3.9.5** As regards entitlements to Eritrean nationality, caseworkers should note that the criteria for citizenship and nationality, including the legal requirement of three witnesses to confirm a claimant's identity and background, as set out in full in the COIS Eritrea Country Report in the section titled Citizenship and Nationality.
- 3.9.6 *Sufficiency of protection.*** As this category of claimants' fear is of ill treatment/persecution by the state authorities, they cannot apply to these authorities for protection.
- 3.9.7 *Internal relocation.*** Internal relocation is not relevant to this category of claim.
- 3.9.8 *Caselaw.***

YL Eritrea CG [2003] UKIAT 00016. Nationality, Statelessness – Ethiopia-Eritrea. The Tribunal surmised that the only relevant question is whether this appellant can find 3 witnesses of appropriate

³⁵ COIS Eritrea Country Report (History; September 2001, Political system, Torture in police detention & Annex C)

³⁶ COIS Eritrea Country Report (Eritreans from Ethiopia)

³⁷ USSD 2007

³⁸ COIS Eritrea Country Report (Ethiopians in Eritrea)

standing to say that she is who she says she is, i.e. a person born in Eritrea with an Eritrean father. (para 52)

We [the Tribunal] think it reasonably likely the appellant can find three such witnesses. We appreciate that she has been to the Eritrean Embassy, although it may or may not be significant that her visit predates the letter of 29 August already cited. We also appreciate that it appears she was asked a number of questions relating to whether she had a referendum ID card and whether she paid 2% of her earnings to the Eritrean Authorities and whether she had paid £500 toward border defence costs. We also appreciate that she was told her application could not succeed. However, there is nothing in these statements of truth to suggest that the appellant was told that possession of a referendum ID card and payment of 2% of her earnings or £500 towards border defence costs were necessary preconditions to be eligible for Eritrean nationality. And the reason she was refused was stated as being that she could not provide evidence which can vouch for her Eritrean identity regardless of whether she can speak Tigrigna. Plainly, in our view, refusal in these terms was entirely consistent with the position as set out in the Embassy's 29th August 2002 letter (at para 40). Not having identified 3 witnesses, her application had to fail. (para 53). *This case continues to be the leading caselaw on mixed Ethiopia-Eritrean nationality.*

MA and others (Eritrea) [2004] UKIAT 00324. Ethiopia – Mixed ethnicity-dual nationality. The IAT heard 3 appeals together due to common features. All the claimants originated from Ethiopia but are partly or wholly of Eritrean ethnic background. The appeals all raised an issue of whether nationals or former nationals of Ethiopia face persecution as a result of their ethnicity arising from a risk of discriminatory withdrawal of their nationality and a risk of deportation to Eritrea. The appeals also raise the issue of whether entitlement to Eritrean nationality deprives a claimant of a right to protection under the 1951 Convention. The following assessments were made:

The risk arising from mixed ethnicity The Tribunal is not satisfied that the evidence shows that Ethiopians of Eritrean or part Eritrean ethnicity fall within a category which on that basis alone establishes that they have a well-founded fear of persecution. An effective deprivation of citizenship does not by itself amount to persecution but the impact and consequences of that decision may be of such severity that it can be properly categorised as persecution. One such consequence may be that if returned to Ethiopia there would be a risk of deportation or repatriation to Eritrea. The Tribunal is not satisfied that there is now a government policy of mass deportations and it must follow that there is now no real risk for persons of Eritrean descent generally of deportation on return. The Tribunal accepted that some Ethiopians of Eritrean descent remaining in Ethiopia may be at risk of persecution because of their ethnicity. This depends upon the individual facts of each case.

Entitlement to dual nationality The Tribunal then considered whether claimants that are at risk of persecution in Ethiopia do not qualify as refugees because they can look to Eritrea for protection. Starting point is Article 1(A)(2) of the Convention which provides that a person who has more than one nationality shall not be deemed to be lacking the protection of the country of his nationality if, without any valid reason based on well founded fear, he has not availed himself of the protection of one of the countries of which he is a national. In the present appeals the claimants assert that they have effectively been deprived of their Ethiopian citizenship. The reason for this is their Eritrean background. If they qualify for Eritrean citizenship and there are no serious obstacles to their being able to apply for and obtain such citizenship, there is no reason in principle why they should not look to the Eritrean authorities for protection. It is not open to a claimant to defeat the provisions of the Refugee Convention by doing nothing and by failing to make an application for citizenship. The Tribunal is satisfied that if the evidence shows that a claimant is entitled to nationality of a country, the provisions of Article 1(A)(2) apply. He shall not be deemed to be lacking the protection of the country of his nationality if without any valid reason based on a well-founded fear he has not availed himself of the protection of that country. In most cases this will involve making an application for his/her nationality to be recognised. A claimant cannot decline to take up a nationality properly open to him without a good reason, which must be a valid reason based on a well founded fear. The protection offered by a state of second nationality must be "effective". It will be a question of fact in each case whether the claimant has a nationality which will provide him with effective protection.

FA Eritrea CG [2005] UKIAT 00047. Eritrea – Nationality. This appellant claimed to have been born in Asmara but moved to Ethiopia when she was a child. The Adjudicator considered objective evidence and found that the appellant was entitled to Eritrean nationality and would be able to relocate there.

The Adjudicator was entitled to take into account all evidence when concluding that this appellant is entitled to Eritrean nationality. She did not fail to attach weight to the 1992 Nationality Proclamation

and did not err in accepting the evidence in the Home Office Report (Fact-Finding Mission to Eritrea 4-18 November 2002) when considering how the Proclamation was interpreted and applied by the authorities (paras 20-21). The Tribunal follow the case of **YL**, (and in turn **Bradshaw [1994] ImmAR 359**) in considering the correct approach to determining nationality. (Para 24). The test identified as "one of serious obstacles" in **YL** is followed and a claimant would be expected to exercise due diligence in respect of such a test. (Para 26).

EB Ethiopia CoA [2007] EWCA Civ 809 Ethiopia – Nationality. This was a Court of Appeal case against a Tribunal (AIT) decision to refuse asylum or leave to remain on human rights grounds. The appeal gave rise to the general issue of treatment of persons with Eritrean ancestral connections who had left Ethiopia.

It had been accepted by the AIT that the appellant (EB), an Ethiopian national of Eritrean descent, had had her identity documents taken by the Ethiopian authorities around the year 2000, had left Ethiopia in 2001 and had subsequently visited the Ethiopian embassy in London on two occasions who had refused to issue her with a passport because she did not have the required documents. In their findings on the case, the Tribunal referred to **MA and others [2004] UKIAT 00324** which stated that loss of nationality on its own did not amount to persecution. The Tribunal concluded that EB's loss of nationality was a result of her leaving Ethiopia and the deprivation of her documents in Ethiopia was not of itself an activity which resulted in ill treatment to her whilst she was in Ethiopia.

On referral of EB to the Court of Appeal, the Court of Appeal looked at the case of **Lazarevic [1997] 1 WLR 1107**, upon which the Tribunal in **MA** based their decision. The Court of Appeal noted that the Tribunal in **MA** found that if a State arbitrarily excludes one of its citizens such conduct can amount to persecution in that a "person may properly say both that he is being persecuted and that he fears persecution in the future." The Court of Appeal noted that in **MA**, the Tribunal emphasised the word 'can' and that it was not the act of depriving someone of their citizenship that was persecutory but the consequences of such an act could amount to persecution. The Court of Appeal disagreed with this position in **MA**. The Court of Appeal said that in the case of **Lazarevic** the deprivation of citizenship had not been found to be persecutory due to the fact that the situation in that case did not include a convention reason. In EB's case the identity documents were removed for a convention reason – therefore the question to be answered was "whether the removal of identity documents itself constituted persecution for a Convention reason or could only be such persecution if it led to other conduct which could itself be categorized as ill-treatment".

The Court of Appeal findings in EB were as follows:

- By arbitrarily depriving someone of their citizenship, that person lost their basic right to freely enter and leave their country which was at odds with Article 12 of the International Covenant on Civil and Political Rights 1966 and Article 15 of the Universal Declaration of Human Rights (Paragraph 68). There was no difference between the removal of identity documents in EB's case and a deprivation of citizenship – the "precariousness is the same; the "loss of the right to have rights" is the same; the "uncertainty and the consequent psychological hurt" is the same." The act of depriving EB of her identity documents amounted to persecution at the time it occurred and that persecution would last as long as the deprivation itself.
- Therefore contrary to the position of the Tribunal in EB and that of the Tribunal in MA; "the taking of EB's identity documents was indeed persecution for a Convention reason when it happened and the AIT in MA were wrong to conclude that some further (presumably physical) ill treatment was required". (Paragraph 70).

3.9.9 Conclusion. Applicants of Eritrean descent who claim to be Ethiopian, have lived in Ethiopia all their lives and fear persecution in Ethiopia should be considered as Ethiopian and their wider claim assessed accordingly. Guidance on the handling of such claims is included in the Ethiopia OGN.

3.9.10 Where an applicant is of Eritrean descent and claims to have been deprived of Ethiopian citizenship, caseowners should instead, in line with *MA & others Eritrea 2004*, assess whether they would qualify for Eritrean citizenship. If an applicant does qualify for Eritrean citizenship they would not be entitled to asylum in the UK as protection should have been sought in the first instance from the Eritrean authorities (see paragraphs 106 and 107 of the UNHCR handbook on Procedures and Criteria for Determining Refugee Status).

Caseowners should therefore make clear reference to an applicant's entitlement to, and protection of, Eritrean nationality.

3.9.11 Where a caseowner is satisfied that a claimant is of Eritrean descent and has been deprived of Ethiopian citizenship but does not qualify for citizenship in Eritrea, a grant of asylum is likely to be appropriate. This is because in the case of *EB Ethiopia 2007*, the Court of Appeal found that arbitrarily depriving someone of their citizenship was contrary to Article 12 of the International Covenant on Civil and Political Rights 1966 and Article 15 of the Universal Declaration of Human Rights effectively amounting to persecution and continuing to amount to persecution as long as the deprivation of citizenship itself lasted.

3.9.12 Claimants of mixed parentage who have lived in Ethiopia for most of their lives, but consider themselves Eritrean – usually by virtue of them having been deported to Eritrea relatively recently – and claim to fear persecution in Eritrea, should be considered as Eritrean and their wider claim assessed accordingly. **For guidance on mixed or disputed nationality cases and returns see [Returns](#) paragraph 5.2.**

3.10 Prison conditions

3.10.1 Claimants may claim that they cannot return to Eritrea due to the fact that there is a serious risk that they will be imprisoned on return and that prison conditions in Eritrea are so poor as to amount to torture or inhuman treatment or punishment.

3.10.2 The guidance in this section is concerned solely with whether prison conditions are such that they breach Article 3 of ECHR and warrant a grant of Humanitarian Protection. If imprisonment would be for a Refugee Convention reason, or in cases where for a Convention reason a prison sentence is extended above the norm, the claim should be considered as a whole but it is not necessary for prison conditions to breach Article 3 in order to justify a grant of asylum.

3.10.3 *Consideration.* Prison conditions for the general prison population in 2008 were harsh and life threatening. There were reports that prisoners were held in underground cells or in shipping containers with little or no ventilation in extreme temperatures. The shipping containers were reportedly not large enough to allow all those incarcerated to lie down at the same time.³⁹

3.10.4 There were credible reports that the detention centre conditions for persons temporarily held for evading military service were also harsh and life threatening in 2008. Unconfirmed reports suggested there may be hundreds of such detainees. Draft evaders were typically held for one to 12 weeks before being reassigned to their units, although some were held for as long as two years. At one detention facility outside Asmara, detainees reportedly were held in an underground hall with no access to light or ventilation and sometimes in very crowded conditions. Some detainees reportedly suffered from severe mental and physical stress due to these conditions. There were also reports of multiple deaths at the W'ia military camp due to widespread disease and lack of medical care.⁴⁰

3.10.5 There was a juvenile detention centre in Asmara however juvenile offenders were often incarcerated with adults. Pretrial detainees generally were not held separately from convicted prisoners. Visits by family members were generally permitted except for family members of detainees arrested for national security reasons and those detained for evading military service.⁴¹

3.10.6 There were no visits from local human rights organisations which the government prevented from operating during the year. The government permitted the International

³⁹ USSD 2008 (Section 1c)

⁴⁰ USSD Country Report on Human Rights Practices in Eritrea 2008

⁴¹ USSD 2008 (Section 1c)

Committee of the Red Cross (ICRC) to visit several Ethiopian soldiers who the government claimed were deserters from the Ethiopian army and to visit and register Ethiopian civilian detainees in police stations and prisons. However, the government did not permit the ICRC to visit other prisoners or detainees.⁴²

3.10.7 *Case law.*

MO (Eritrea) [2003] UKIAT 00108. The IAT found that prison conditions are worse than European standards however despite the spartan conditions are not considered a breach of Article 3.

MA (Eritrea) [2004] UKIAT 00098. IAT consider the case of a female draft evader. If the appellant is returned and treated as a draft evader she is likely to have her Article 3 rights breached. Appeal granted on human rights only. HAILE UKIAT06696 [2003] promulgated 20 February 2003: (Army deserter granted leave on Article 3 grounds) Relying on US State Dept report which cited harsh extra-judicial punishment and a UNHCR letter of 8 August 2002 which recommended against the return to Eritrea of draft evaders and deserters from military service.

The Tribunal also considered detention conditions on return for draft evaders. The IAT allowed the appeal finding that, based on the experience of failed asylum seekers of draft age who were detained on return after having been deported from Malta in 2002, prison conditions including forced labour, beatings, torture and a lack of medical care, food and sanitation leading to disease and in some cases death are quite likely to be in breach of Article 3.

SE (Eritrea) [2004] UKIAT 00295. Deportation – Malta 2002 – General Risk. The IAT found that the relevance of the MA decision extended only to the detention conditions for female draft evaders, and did not denote a general risk to all failed asylum seekers returned to Eritrea.

3.10.8 *Conclusion.* Whilst prison conditions in Eritrea for are poor with reports of overcrowding, lack of medical care, food and sanitation leading to disease all being particular problems, these conditions will not normally be sufficiently severe to meet the high Article 3 threshold. Even where claimants can demonstrate a real risk of imprisonment on return to Eritrea a grant of Humanitarian Protection will not generally be appropriate. However, the individual factors of each case should be considered to determine whether detention will cause a particular individual in his particular circumstances to suffer treatment contrary to Article 3, relevant factors being the likely length of detention, the likely type of detention facility and the individual's age and state of health. Where in an individual case treatment does reach the Article 3 threshold a grant of Humanitarian Protection will be appropriate.

4. Discretionary Leave

- 4.1** Where an application for asylum and Humanitarian Protection falls to be refused there may be compelling reasons for granting Discretionary Leave (DL) to the individual concerned. (See Asylum Instructions on Discretionary Leave). Where the claim includes dependent family members consideration must also be given to the particular situation of those dependants in accordance with the AI on Article 8 ECHR.
- 4.2** With particular reference to Eritrea the types of claim which may raise the issue of whether or not it will be appropriate to grant DL are likely to fall within the following categories. Each case must be considered on its individual merits and membership of one of these groups should *not* imply an automatic grant of DL. There may be other specific circumstances related to the applicant, or dependent family members who are part of the claim, not covered by the categories below which warrant a grant of DL - see the Asylum Instructions on Discretionary Leave and on Article 8 ECHR.
- 4.3 Minors claiming in their own right**
- 4.3.1** Minors claiming in their own right who have not been granted asylum or HP can only be returned where they have family to return to or there are adequate care and support

⁴² USSD 2008 (Section 1c)

arrangements. At the moment we do not have sufficient information to be satisfied that there are adequate care and support arrangements in place.

- 4.3.2** Minors claiming in their own right without a family to return to, or where there are no adequate reception, care and support arrangements, should if they do not qualify for leave on any more favourable grounds be granted Discretionary Leave for a period as set out in the relevant Asylum Instructions.

4.4 Medical treatment

- 4.4.1** Applicants may claim they cannot return to Eritrea due to a lack of specific medical treatment. See the IDI on Medical Treatment which sets out in detail the requirements for Article 3 to be engaged.
- 4.4.2** Eritrea's health care system is relatively basic and cannot currently provide satisfactory treatment for all medical conditions. However, the range of treatments and medications available is constantly developing. As at 2008, anti retroviral treatment (ART) was provided to all medically eligible. Mental health treatment was also available as part of the primary care system. Further detailed information is set out in the Eritrea Country of Origin Information Report; Medical issues.⁴³ The Article 3 threshold will not be breached in the great majority of medical cases and a grant of Discretionary Leave will not be appropriate.
- 4.4.3** Where a caseworker considers that the circumstances of the individual applicant and the situation in the country reach the threshold detailed in the IDI on Medical Treatment making removal contrary to Article 3 a grant of discretionary leave to remain will be appropriate. Such cases should always be referred to a Senior Caseworker for consideration prior to a grant of Discretionary Leave.

5. Returns

- 5.1** Factors that affect the practicality of return such as the difficulty or otherwise of obtaining a travel document should not be taken into account when considering the merits of an asylum or human rights claim. Where the claim includes dependent family members their situation on return should however be considered in line with the Immigration Rules, in particular paragraph 395C requires the consideration of all relevant factors known to the Secretary of State, and with regard to family members refers also to the factors listed in paragraphs 365-368 of the Immigration Rules.
- 5.2** The Immigration (Notices) (Amendment) Regulations 2006 came into force on 31 August 2006. These amend the previous 2003 Regulations, allowing an Immigration Officer or the Secretary of State to specify more than one proposed destination in the appealable Decision Notice. Where there is a suspensive right of appeal, this will allow the Asylum and Immigration Tribunal (AIT) to consider in one appeal whether removal to any of the countries specified in the Decision Notice would breach the UK's obligations under the Refugee Convention or the European Convention on Human Rights, thus reducing the risk of sequential appeals. More than one country, e.g. Ethiopia and Eritrea, may only be specified in the Notice of Decision where there is evidence to justify this. Evidence may be either oral or documentary. Caseworkers are advised that their Decision Service Team/admin support unit must be instructed to record both countries on the Notice of Decision/Removal Directions for relevant cases.
- 5.3** The UNHCR has recommended that governments refrain from all forced returns and that Eritreans should be afforded complementary protection. UNHCR's position is based on a broad assessment of the situation in Eritrea. We do not dispute that it presents an accurate overview of the general humanitarian situation and the serious social and security problems

⁴³ COIS Eritrea Country Report (Medical issues)

inherent in the country.⁴⁴ However, asylum and human rights claims are not decided on the basis of the general situation - they are based on the circumstances of the particular individual and the risk to that individual. We do not therefore accept UNHCR's conclusion, based on their overview of the general situation that it is unsafe for all persons who have been found not to be in need of some form of international protection to return to Eritrea.

5.4 **Caselaw.**

SE (Eritrea) [2004] UKIAT 00295. The IAT assess the risk on return to Eritrea of a mere returnee. The Tribunal reviewed the UNHCR "Position on the return of Rejected Asylum Seekers to Eritrea" dated 20 January 2004 and stated "It falls short of stating that all returnees face a well-founded fear of persecution". The IAT conclude that the mere fact of being a returnee to Eritrea does not mean that someone will face a real risk of serious harm.

GY (Eritrea) [2004] UKIAT 00327. The IAT granted permission to appeal on the issue of whether the appellant would be at risk as a failed asylum seeker on return to Eritrea. The analysis of the objective evidence in **SE** and the conclusion that there is no general risk on return for ordinary failed asylum seekers was correct.

KA Eritrea CG [2005] UKAIT 00165. Draft related risk categories updated. **IN** is affirmed. Returnees generally are not at real risk (113(c)).

AH Eritrea [2006] UKIAT 00078. Neither involuntary returnees nor failed asylum seekers are as such at real risk on return to Eritrea. The country guidance on this issue in (Draft evaders - evidence of risk) Eritrea CG [2005] UKIAT 00106 and KA (Draft related risk categories updated) Eritrea CG [2005] UKIAT 00165 is confirmed. NB: This decision should be read with WA (Draft related risks updated- Muslim Women) Eritrea CG [2006] UKIAT 00079

5.5 Eritrean nationals may return voluntarily to any region of Eritrea at any time by way of the Voluntary Assisted Return and Reintegration Programme run by the International Organisation for Migration (IOM) and co-funded by the European Refugee Fund. IOM will provide advice and help with obtaining travel documents and booking flights, as well as organising reintegration assistance in Eritrea. The programme was established in 2001, and is open to those awaiting an asylum decision or the outcome of an appeal, as well as failed asylum seekers. Eritrean nationals wishing to avail themselves of this opportunity for assisted return to Eritrea should be put in contact with the IOM offices in London on 0800 783 2332 or www.iomlondon.org.

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