

# OPERATIONAL GUIDANCE NOTE

## ETHIOPIA

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### 1. Introduction

- 1.1** This document evaluates the general, political and human rights situation in Ethiopia 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 Ethiopia 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](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 Instruction 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** Ethiopia is a federal republic under the leadership of Prime Minister Meles Zenawi and the ruling Ethiopian People's revolutionary Democratic Front (EPRDF) Coalition. Based on the principle of ethnic federalism, the republic is designed to provide self-determination and autonomy to Ethiopia's different ethnic groups. Since 2001, Prime Minister Meles has moved to develop a new power base that draws more heavily on the non-Tigrayan parties within the EPRDF alliance and there has been some opening up of political space and increased opposition participation in political life.<sup>1</sup>
- 2.2** Two prominent opposition coalitions dominate the scene in Ethiopia - the United Ethiopian Democratic Forces (UEDF) formed in 2001 and the newer Coalition for Unity and Democracy (CUD) formed in 2004. Both coalitions query the principle of ethnic federalism and assert a national identity.<sup>2</sup>
- 2.3** The most recent elections in May 2005 were marred by human rights abuses. However, domestic and international observers reported that polling throughout the country was generally credible and an important step in the country's democratisation efforts.
- 2.4** Following the May 2005 elections there were political demonstrations as opposition parties refused to accept the results. Civil disobedience was encouraged and violence ensued.<sup>3</sup> Politically motivated disappearances of tens of thousands of civilian protestors persisted into 2006 and an independent commission of inquiry into the alleged use of force by security forces in June and November 2005 found that security officials held over 30000 civilians incommunicado for up to three months in detention centres located in remote areas. However, at the end of 2006 all but a few hundred of these prisoners were released. Those who remained in custody faced trial in June 2007. At the end of their trial they were found guilty but were later pardoned in August 2007.<sup>4</sup>
- 2.5** The human rights situation in Ethiopia remains poor. There have been reports of: political disappearances; the mistreatment of detainees and opposition supporters by security forces; poor prison conditions; restrictions on press freedom and harassment of journalists for publishing articles critical of the government; restrictions on freedom of assembly and freedom of association; and, the discrimination and abuse of women and children.<sup>5</sup>

### **Ogaden**

- 2.6** In June 2007, the Ethiopian government launched a military offensive in the eastern part of the country (the Somali region) in response to increasing attacks by the Ogaden National Liberation Front (ONLF), an armed opposition group demanding self-determination for the region.<sup>6</sup> The scale and intensity of military operations seems to have declined from a peak in mid 2007 but NGOs reported persistent abuses<sup>7</sup>.
- 2.7** In the areas of Ogaden affected by the conflict it was reported that Ethiopian forces carried out public executions, sexually abused women and girls, mistreated suspects in detention and diverted food aid.<sup>8</sup> The military continued to severely restrict access to conflict affected regions and the Ethiopian government had not reversed its decision to evict the International Committee of the Red Cross from the region in July 2007. There

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<sup>1</sup> USSD 2008

<sup>2</sup> COIS Ethiopia Country Report (Political system; opposition parties...)

<sup>3</sup> COIS Ethiopia Country Report (Human Rights)

<sup>4</sup> COIS Ethiopia Country Report (Recent Developments)

<sup>5</sup> USSD 2008

<sup>6</sup> Human Rights Watch World Report 2008

<sup>7</sup> USSD 2008

<sup>8</sup> Human Rights Watch World Report 2008

were also no serious efforts to investigate or ensure accountability for war crimes and crimes against humanity committed in Ogaden.<sup>9</sup> In response to allegations of human rights abuses in the Ogaden region, the government conducted an investigation. It found that there were no systematic human rights abuses but rather evidence of one or two cases of abuse and one of torture. However, the selection of a former ruling party leader to lead the investigation opened questions about the independence of the investigation.<sup>10</sup>

### **Oromia**

**2.8** In Oromia, Ethiopia's most populous state, government authorities used the longstanding insurgency by the Oromo Liberation Front (OLF) to imprison, harass and physically abuse critics. Individuals were reported to have been informally accused of supporting the OLF. Supporters of the Oromo National Congress (ONC) and the (OFDM) were also reported to have suffered similar treatment.<sup>11</sup> For example, in late October 2008, officials arrested at least 53 ethnic Oromos (some reported as high as 200), including university lecturers, businessmen, and housewives, many with no apparent political affiliation, for alleged support to the banned OLF. Many supporters of the mainstream political opposition OFDM were also arrested during the same time period for the same charges.<sup>12</sup>

**2.9** One of the most prominent human rights organisations is the Ethiopian Human Rights Council (EHRCO). However, government officials routinely discounted EHRCO's reports and labelled it a political organisation.<sup>13</sup> Human Rights Watch reported that members of EHRCO were also regularly subjected to government harassment and intimidation. The Oromo focused Human Rights League though allowed to register in 2005, remains inactive.<sup>14</sup>

### **Relations with Eritrea**

**2.10** 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).<sup>15</sup>

**2.11** 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. 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.<sup>16</sup>

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<sup>9</sup> Human Rights Watch World Report 2009

<sup>10</sup> USSD 2008

<sup>11</sup> Human Rights Watch World Report 2008

<sup>12</sup> USSD 2008

<sup>13</sup> USSD 2008

<sup>14</sup> Human Rights Watch World Report 2008

<sup>15</sup> COIS Eritrea Country Report (History)

<sup>16</sup> BBC articles "UN ends Africa Horn Peace force" & "UN fears new Ethiopia-Eritrea"

### 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 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 Members of the OLF, ONLF or IUP**

- 3.6.1** Most claimants will make an asylum and/or human rights claim based on mistreatment at the hands of the state authorities due to membership of, involvement in or perceived involvement in one of the main armed opposition groups: the Oromo Liberation Front (OLF), the Ogaden National Liberation Front (ONLF) or al-Ittihad al-Islamia (Islamic Union Party).
- 3.6.2 *Treatment.*** The OLF is a political organisation that seeks self determination for the Oromo people. Since 1992, it has formed an armed opposition against the Ethiopian government carrying out low level guerrilla operations and advocating boycotts of all elections. It has also clashed with rival Oromo rebel groups.
- 3.6.3** The ONLF is an ethnically based, nationalist insurgent movement operating in the Somali region of Ethiopia. It seeks greater autonomy for the Ogadeni people and has support from Eritrea and the Somali Islamic Union Party (al-Ittihad-al-Islam) a party which has been fighting for an Islamic state in Somalia.<sup>17</sup>

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<sup>17</sup> COIS Ethiopia Country Report (OLF/OLNF)

- 3.6.4** Both the OLF and the ONLF have been outlawed by the Ethiopian government. However, armed elements of the OLF and the ONLF still continue to operate within Ethiopia and have clashed with government forces on numerous occasions resulting in the death of an unknown number of civilians, government security forces, and OLF and ONLF troops and members.<sup>18</sup> Amnesty reported an upsurge in the struggle against the OLF and the ONLF during 2007.<sup>19</sup>
- 3.6.5** In April 2007, the ONLF attacked an exploration site killing five Chinese oil workers, 50 armed guards and 20 nearby villagers. The group was also responsible for two bombings in May 2007 that killed 17 and left dozens wounded.<sup>20</sup> Following these incidents, the Ethiopian authorities launched a counter insurgency campaign in the five areas of the Somali zone affected: Fiiq, Korahe, Gode, Wardheer and Dhagabur. According to both Amnesty and Human Rights Watch the campaign has involved mass arrests, torture, rape and extra judicial executions of alleged ONLF supporters by government forces who act with impunity. They have also reported that civilians have been forcibly removed from their homes and conscripted into government militia groups.<sup>21</sup> For its part, ONLF has continued its campaign killing suspected government collaborators and indiscriminately mining roads used by government convoys.<sup>22</sup>
- 3.6.6** According to Human Rights Watch, the Ethiopian authorities in Oromia have used the fact of the long standing insurgency by the OLF to imprison harass and physically abuse critics including school children. Victims are informally accused of supporting the OLF. Supporters of the Oromo National Congress (ONC) and the Oromo Federalist Democratic Movement (OFDM) which are registered opposition political parties suffer similar treatment. In March 2007, Ethiopian security officials allegedly executed 19 men and a 14 year old girl in North Eastern Oromia and in August 2007, arrested over 200 people in Western Oromia including OFDM members on suspicion of OLF links.
- 3.6.7** **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.
- 3.6.8** **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."*
- 3.6.9** 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 none state actors, and it would not be unduly harsh to expect them to do so, then asylum or humanitarian protection should be refused.

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<sup>18</sup> COIS Ethiopia Country Report (OLF/OLNF)

<sup>19</sup> Amnesty International Report 2008

<sup>20</sup> Human Rights Watch June 2008

<sup>21</sup> Amnesty International Report 2008

<sup>22</sup> Human Rights Watch June 2008

### 3.6.10 *Caselaw.*

**Birru (Ethiopia) [1997] 14775.** The Tribunal found that merely being an Oromo will not put an individual at risk, nor is low level involvement with OLF ground for asylum.

**Fuad Feki Abbanega (Ethiopia) [2002] UKIAT 02620.** The Tribunal dismissed the appeal, finding that the appellant, of Oromo ethnicity, does not face a real risk on return to Ethiopia because of his support for the OLF. The IAT found that the “evidence as a whole does not support the view that anybody who is a supporter of the OLF faces a real risk for that reason alone. It does not even support the view that an OLF member is at a real risk simply because he is a member”.

**HA (Ethiopia) [2005] UKAIT 00136.** OLF members and sympathisers – risk. The Tribunal found a risk on return for an OLF sympathiser who had been detained on a previous occasion for OLF activities. Ethiopian authorities prioritise targeting known OLF members or sympathisers and those who have come to the previous attention of the authorities are likely to encounter a real risk of persecution by the authorities. Internal relocation is not a viable option.

**MB (Ethiopia) [2007] (CG) UKAIT 00030.** OLF members and sympathisers. The Tribunal found that members of, or those perceived by the authorities as being involved with, the OLF. OLF members and sympathisers and those specifically perceived by the authorities to be such members or sympathisers will in general be at real risk if they have been previously arrested or detained on suspicion of OLF involvement. So too will those who have a significant history, known to the authorities, of OLF membership or sympathy. Whether any such persons are to be excluded from recognition as refugees or from the grant of humanitarian protection by reason of armed activities may need to be addressed in particular cases.

**3.6.11 Conclusion.** The OLF, ONLF and IUP are outlawed armed opposition groups that are known to have carried out organised attacks against the state authorities. If it is accepted that a claimant has been involved in or is suspected of involvement in non-combat activities on behalf of one of these groups and has previously come to the adverse attention of the authorities then they are likely to be at real risk of persecution by the state authorities. The grant of asylum in such cases is therefore likely to be appropriate. Ordinary low-level non-combat members who have not previously come to the adverse attention of the authorities however are unlikely to be at real risk of persecution and the grant of asylum in such cases is therefore unlikely to be appropriate.

**3.6.12** Caseowners should note that members of the OLF, ONLF and IUP have been responsible for serious human rights abuses, some of which amount to war crimes and crimes against humanity. If it is accepted that a claimant was an active operational member or combatant for the OLF, ONLF and IUP and the evidence suggests he/she has been involved in such actions, then caseowners should consider whether one of the exclusion clauses is applicable. Caseowners should refer all such cases within this category of claim to a Senior Caseworker in the first instance.

## 3.7 **Members of the CUD alliance**

**3.7.1** Some claimants will make an asylum or human rights claim based on mistreatment at the hands of the state authorities due to membership of, involvement / perceived involvement with the opposition Coalition for Unity and Democracy (CUD). The CUD includes the All Ethiopian Unity Party (AEUP), Rainbow Ethiopia, Ethiopians Democratic Party-Medhin (UEDP-ME) and the Ethiopian Democratic League (EDL). It was formed in 2004 and is the strongest opposition coalition bloc in Ethiopian politics.<sup>23</sup>

**3.7.2 Treatment.** In the May 2005 elections the newly formed CUD led by AEUP Chair Shawel Hailu won 109 seats in the House of Representative, including all 23 Addis Ababa seats and others in Amhara, Southern and Oromiya regions. The CUD also won 136 out of 138 seats in the regional administration for Addis Ababa region and a substantial share

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<sup>23</sup> COIS Ethiopia Country Report (Coalition for Unity and Democracy)

of the seats in the Amhara regional council. However, the ruling EPRDF did not recognise the substantial gains made by the CUD due to registration irregularities and re-ran a highly contentious poll after which President Meles declared his party the winner. This immediately prompted widespread anti-government protests by opposition parties, media and human rights groups in mid-2005. These were violently suppressed by the authorities who arrested members of the two opposition coalitions, the CUD and the United Ethiopian Democratic Front (UEDF) in mid-September 2005.<sup>24</sup>

**3.7.3** Whilst political prisoners detained following the 2005 elections tried and found guilty in June 2007 were pardoned in August 2007 and included 31 members of the CUD alliance,<sup>25</sup> according to the USSD, during 2007, the CUD reported further arrests of its members and the forced closure of most political party offices throughout the country. There were credible reports from opposition party members that in small towns, authorities detained persons in police stations for long periods without charge or without access to a judge and that sometimes these persons' whereabouts were unknown for several months.<sup>26</sup> There were also reports of politically motivated killings and disappearances of CUD members. For example, in December 2007, three government militiamen abducted Welelaw Muche from his home and arrested him. One of the militiamen shot him to death in a nearby forest but no arrests were made as at the end of 2008. Further, of the 37 CUD members arrested and tortured in May 2006, the courts released 26 on a 5,000-birr (£351) bail in October 2007 but denied bail to nine others who remained in jail at the end of 2008. The other two individuals died in prison.<sup>27</sup>

**3.7.4 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.

**3.7.5 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."*

**3.7.6** 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.

**3.7.7 Caselaw.**

**HB (Ethiopian) CG [2004] UKIAT 00235.** State persecution of members of opposition political parties (EPD/UEPD). The Tribunal found no objective evidence to the effect that UEDP or EDP members are subject to routine persecution. [These two parties are closely aligned to and partnered the AEUP to form the opposition CUD coalition that contested the parliamentary elections in May 2005.]

<sup>24</sup> COIS Ethiopia Country Report (Coalition for Unity and Democracy)

<sup>25</sup> COIS Ethiopia Country Report (Coalition for Unity and Democracy – CUD)

<sup>26</sup> USSD 2007 (Section 2)

<sup>27</sup> USSD 2008

**3.7.8 Conclusion.** Though hundreds of members, activists and leaders from all opposition parties were arrested and detained for long periods in the second half of 2005 following the disputed May 2005 elections, the mass release of political detainees of all levels in 2006 together with the pardoning in August 2007 of those tried and found guilty in June 2007 has highlighted an improvement in the stand-off between the ruling EPRDF and opposition political parties. Nevertheless, the political situation remains unstable with the forced closure of party political offices throughout the country and continuing political arrests, killings and disappearances.

**3.7.9** If it is accepted that the claimant is a prominent activist or high profile leader within the CUD alliance of parties then it is likely that they will still be of adverse interest to the authorities and will be able to demonstrate a real risk of ill-treatment amounting to persecution under the terms of the 1951 Convention. The grant of asylum is likely to be appropriate in such cases. However, the calming of the political situation in 2006/2007 means that claimants who have adduced evidence of mid or low profile activism or association within the CUD alliance of parties are unlikely to be at risk of ill treatment amounting to persecution. In such cases the grant of asylum is not likely to be appropriate.

### **3.8 Persons of mixed Ethiopian / Eritrean origin**

**3.8.1** Some claims will raise the issue of whether the claimant considers himself/herself to be Ethiopian or Eritrean, and the state authorities' treatment of those who consider themselves 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 Eritrea and the location of the alleged persecution to substantively assess the wider claim.

**3.8.2 Treatment.** Following the 1998 to 2000 war with Eritrea, thousands of people were displaced internally in Ethiopia and the Government pursued a policy to forcefully repatriate Ethiopians of Eritrean parentage to Eritrea. This policy finished in 2000/2001.<sup>28</sup> Repatriations of Ethiopians from Eritrea to Ethiopia and vice versa do still take place but are now voluntary and made with the assistance of the International Red Cross (ICRC). During 2008, 52 civilians, including 22 minors, were repatriated from Ethiopia to Eritrea.<sup>29</sup>

**3.8.3** The war with Eritrea also gave rise to a legally anomalous situation for Eritreans and Ethiopians of Eritrean origin in relation to what their citizenship status in Ethiopia was. In January 2004, the authorities issued a Directive on Residence for Eritrean Nationals in Ethiopia. This directive regularised the situation of Ethiopians of Eritrean origin, dual nationals, and Eritreans. Under the terms of the Directive any person of Eritrean origin who was resident in Ethiopia when Eritrea became an independent State in 1993 and who continued to maintain a permanent residence in Ethiopia up until the Directive was issued could apply to have their stay in Ethiopia regularised.

**3.8.4** Most Eritreans and Ethiopians of Eritrean origin register with the government and receive identity cards and six-month renewable residence permits that allow them to gain access to hospitals and other public services. However, there were anecdotal reports that local government officials denied indigent Eritreans the right to free medical services.<sup>30</sup>

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<sup>28</sup> Human Rights Watch World Report 2001  
<http://www.hrw.org/wr2k1/africa/ethiopia.html>

<sup>29</sup> ICRC - <http://www.icrc.org/web/eng/siteeng0.nsf/htmlall/eritrea-news-080109?opendocument>

<sup>30</sup> COIS Ethiopia Country Report (Ethnic groups; Eritreans in Ethiopia, Deportations and repatriations, Repatriated Ethiopian refugees)

- 3.8.5** With regard to entitlements to Ethiopian nationality, caseowners should note that the criteria for citizenship and nationality is set out in full in the COIS Ethiopia Country Report; Citizenship and Nationality.
- 3.8.6** ***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.
- 3.8.7** ***Internal relocation.*** As this category of claimants' fear is of ill treatment/persecution by the state authorities, relocation to a different area of the country to escape this threat is not feasible.
- 3.8.8** ***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 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 29<sup>th</sup> 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 (Ethiopia) [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 the issue of 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 been 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 by doing nothing and by failing to make an application for citizenship to defeat the provisions of the Refugee Convention. 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).

**3.8.9 Conclusion.** The Ethiopian government has now stopped its policy of forced deportation of those of Eritrean descent from Ethiopia to Eritrea and there is now no real risk for persons of Eritrean descent of deportation from Ethiopia to Eritrea on return. Any claimant who cites a risk of forced deportation on account of their Eritrean descent will not be able to demonstrate treatment amounting to persecution within the terms of the 1951 Convention. The grant of asylum in such cases is therefore not appropriate. However, caseowners should still consider whether an applicant is at risk of treatment amounting to persecution in Ethiopia on account of their Eritrean ethnicity and each case should be considered on its individual merits. Any assessment must also include consideration of any wider claim relating to deprivation of citizenship in Ethiopia on account of Eritrean descent.

**3.8.10** 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.

**3.8.11** 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.

**3.8.12** 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.**

### **3.9 Prison conditions**

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

**3.9.2** 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.

- 3.9.3 Consideration.** Ethiopia has 3 federal prisons, 117 regional prisons and many unofficial prisons. Prison and pretrial detention centre conditions remained harsh and life threatening during 2008. Severe overcrowding was a problem. In early 2008, prison populations were reported to have decreased by 10000 due to pardons but increased again due to ethnic conflicts and economic crimes. Prisoners often had less than 22 square feet of sleeping space in a room that could contain up to 200 persons and sleeping in rotations was not uncommon in regional prisons. Many prisoners supplemented food allocations with deliveries from their families or purchasing food from local vendors. Prison conditions were unsanitary and there was no budget for prison maintenance. Medical care was unreliable in federal prisons and almost non-existent in regional prisons.
- 3.9.4** While statistics are unavailable, there were some deaths in prison in 2008 due to illness and poor health care. Prison officials were not forthcoming with reports of such deaths. Several pardoned political prisoners had serious health problems in detention but received little treatment. Juveniles were sometimes incarcerated with adults if they could not be accommodated at the juvenile remand prisons.
- 3.9.5** During 2008, the International Committee of the Red Cross (ICRC) visited regional prisons only. The government continued to prevent ICRC representatives from visiting police stations and federal prisons throughout the country including those where opposition, civil society, and media leaders were held. Regional authorities allowed the ICRC to meet regularly with prisoners without third parties being present. The local NGO Prison Fellowship Ethiopia (JFA-PFE) was granted access to various prison and detention facilities, including federal prisons. The government also periodically granted diplomatic missions access to regional prisons and prison officials, subject to advance notification.<sup>31</sup>
- 3.9.6 Conclusion.** Whilst prison conditions in Ethiopia are poor, with overcrowding and a lack of medical care, food and sanitation leading to disease all being reported, conditions are unlikely to reach the Article 3 threshold. Therefore even where claimants can demonstrate a real risk of imprisonment on return to Ethiopia 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 Asylum Instructions on Article 8 ECHR.
- 4.2** With particular reference to Ethiopia 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.

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<sup>31</sup> USSD 2008

### **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 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** Claimants may claim they cannot return to Ethiopia due to a lack of specific medical treatment. See the IDI on Medical Treatment which sets out in detail the requirements for Article 3 and/or 8 to be engaged.
- 4.4.2** Ethiopia's health care system is relatively basic and cannot currently provide satisfactory treatment for all medical conditions. Only around 45% of the country in January 2007 was reported to have adequate primary healthcare. The major reasons for the poor coverage of health services in Ethiopia are the limited physical access of the population to health facilities and staff, as illustrated by the facility to population ratio. Currently, health facilities for a population of some 58 million people comprise 89 hospitals, 191 health centres, 1,175 health posts and 2,515 health stations. The available health care facilities are also unevenly distributed across regions.<sup>32</sup>
- 4.4.3** Tuberculosis is now one of the leading causes of death in the country. All appropriate drugs for the treatment of Tuberculosis are available throughout the country. Treatment centres for heart and eye diseases have also opened in the past decade. There is very limited treatment for psychiatric problems. The cost of anti-retroviral treatment for HIV/AIDS has diminished considerably in the past five years with greatly improved availability country-wide.<sup>33</sup>
- 4.4.4** Where a caseworker considers that the circumstances of the individual claimant and the situation in the country reach the threshold detailed in the IDI on Medical Treatment making removal contrary to Article 3 or 8 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 Secretary of State to specify more than one proposed destination in the appealable

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<sup>32</sup> COIS Ethiopia Country Report (Medical issues)

<sup>33</sup> COIS Ethiopia Country Report (Medical issues)

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. Caseowners 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** Ethiopian nationals may return voluntarily to any region of Ethiopia 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 Ethiopia. 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. Ethiopian nationals wishing to avail themselves of this opportunity for assisted return to Ethiopia should be put in contact with the IOM offices in London on 020 7233 0001 or [www.iomlondon.org](http://www.iomlondon.org).

## **6. List of source documents**

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