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OPERATIONAL GUIDANCE NOTE

ETHIOPIA

CONTENTS

1. Introduction

1.1 This document summarises the general, political and human rights situation in Ethiopia and provides information on the nature and handling of claims frequently received from nationals/residents of that country. It must be read in conjunction with any COI Service Ethiopia Country of Origin Information at:

http://www.homeoffice.gov.uk/rds/country_reports.html

1.2 This document is intended to provide clear guidance on whether the main types of claim are or are not likely to justify the granting of asylum, Humanitarian Protection or Discretionary Leave. Caseworkers should refer to the following Asylum Policy Instructions for further details of the policy on these areas:

API on Assessing the Claim
API on Humanitarian Protection
API on Discretionary Leave
API on the European Convention on Human Rights
API on Article 8 ECHR

1.3 Claims should be considered on an individual basis, but taking full account of the information set out below, in particular Part 3 on main categories of claims. 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 API on Article 8 ECHR.

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 The Provisional Military Administrative Council (known as the Derg) which had ruled Ethiopia since the 1974 revolution was overthrown in May 1991 when rebels of the Ethiopian People's Revolutionary Democratic Front (EPRDF) led by Meles Zenawi captured Addis Ababa. After elections for a Transitional Government in 1992, he presided over the establishment of Ethiopia's current political structures. In a decisive break with Ethiopia's tradition of centralised rule, the new institutions are based on the principle of ethnic federalism, designed to provide self-determination and autonomy to Ethiopia's different ethnic groups.[1]

2.2 Ethiopia's current constitution was adopted in December 1994, with executive powers vested in the Prime Minister. Meles Zenawi has occupied this post since 1995. Elections in 1995 and 2000 gave the component parties of the EPRDF an overwhelming majority of seats in the national parliament. The regional governments are similarly dominated by the EPRDF affiliated parties (ie the Tigray Peoples' Liberation Front (TPLF) in Tigray region, the Amhara National Democratic Movement (ANDM) in Amhara region, the Oromo People's Democratic Organisation (OPDO) in Oromia and the Southern Ethiopia People's Democratic Front (SEPDF) in Southern Nations) Dr Negasso Gidada became President in 1995. He was replaced by Girma Wolde Giorgis in October 2001.[2]

2.3 Prime Minister Meles is a founder member of the TPLF. Since 2001 he has moved to develop a new power base that draws more heavily on the non-Tigrayan parties within the EPRDF alliance. Ethiopia has a deeply authoritarian political tradition but there has been some opening up of political space and increased opposition participation in political life.[3]

2.4 However, opposition parties remain profoundly weak and divided over policy, identity and tactics. Two prominent coalitions dominate the scene - 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. They are made up of smaller parties, such as the Southern Ethiopian Peoples Democratic Coalition (SEPDC) and Oromo National Congress (ONC), that assert a regional identity outside the EPRDF fold. Other older political groups, such as the Oromo Liberation Front (OLF), are outlawed and remain locked in the logic of armed struggle.[4]

2.5 Official tallies in the weeks following the 15 May 2005 general election indicated that opposition parties had made enormous gains in parliament but had fallen well short of obtaining a majority. The largest opposition coalition, the Coalition for Unity and Democracy (CUD), refused to accept those results, alleging that it had been robbed of outright victory by widespread government fraud. The government, in turn, has accused the CUD of conspiring to overthrow the government by force. At the end of 2005 it was still unclear whether the CUD would take its seats in parliament.[5]

2.6 These tensions exploded in early June 2005, when protests broke out in Addis Ababa in defiance of a government ban on public assemblies. Police and military forces responded with excessive force, killing at least thirty-six unarmed civilians and wounding more than 100. Security forces then arrested several thousand opposition supporters throughout the country. In November 2005 negotiations between the government and leading opposition parties broke down, sparking a fresh wave of protests. Ethiopian security forces again reacted with brutality, killing at least 46 people and arresting more

[1] COIS Ethiopia Country Report October 2006 (History; Political overview)
[2] COIS Ethiopia Country Report (History; Constitution; Political system)
[3] COIS Ethiopia Country Report (Ethnicity in Ethiopian politics; Coalitions; EPRDF & Annex B)
[4] COIS Ethiopia Country Report (Political system; opposition parties…)
[5] COIS Ethiopia Country Report (National elections May 2005)

than 4000 in Addis Ababa and other towns. The government then ordered the arrest of several dozen opposition politicians, journalists, editors and civil society activists. Ethiopian authorities have indicated that several among them are likely to face charges of treason, which carries a potential sentence of death under Ethiopian law.[6]

2.7 In January 2006, the authorities freed more than 11,200 people seized following the political unrest in November 2005. There were further reports that over 2,000 prisoners were released without charge after prosecutors said they had played a minimal role in the violence. The Ethiopian High Court on 22 March 2006 dropped charges against 18 defendants. They were part of a group of 129 people - including 29 leaders of the opposition CUD alliance, 19 journalists and human-rights activists - on charges of conspiracy to overthrow the constitutionally installed government. The trial against the remaining 111 accused would continue. Meanwhile the authorities' clampdown on political and media opposition continued when prosecutors charged a new group of 151 people with incitement to violence and attempting to subvert the constitution in March 2006.[7]

2.8 In May 2006, members of Ethiopia's main opposition party walked out of the parliament to protest the nomination of a caretaker authority to run the capital, Addis Ababa, despite the opposition's victory in the city during the elections in May 2005. Sixty legislators from CUD walked out after Prime Minister Zenawi named an interim mayor and nine-member, politically neutral panel to administer Addis Ababa for the next year. Also in May 2006, the trial of Ethiopian opposition leaders and journalists accused of trying to overthrow the government after disputed elections in May 2005 resumed with the prosecution making its submissions about how the accused planned to carry out their alleged plot against the state. The 111 defendants – which include at least 54 officials of the country's main opposition party, the Coalition for Unity and Democracy (CUD) and 15 journalists – faced "charges of attempting to "overthrow the constitutional order through violence" and outrages against the constitution". Other charges include high treason and attempted genocide and twenty-five individuals are being tried in absentia. In June and July 2006 tens of thousands were displaced from their homes in the southern regions following land disputes between neighbouring Guji and Borena ethnic groups.[8]

2.9 Ethiopia agreed to grant independence to Eritrea after a UN supervised referendum in 2003 following a dispute over the ill-defined border which had erupted into military conflict in May 1998. There were an estimated 100,000 casualties. Hostilities concluded with the signing of the Algiers Peace Agreement of December 2000. This established a Boundary Commission to delimit and demarcate the border and established a 25km Temporary Security Zone (TSZ) between the two countries. A UN peacekeeping force (UNMEE) has been deployed along the TSZ since 2001. India, Jordan and Kenya are the major troop contributors to the 4000 strong force. Under the Peace Agreement, UNMEE is to remain in place until the delimitation and demarcation of the border had been completed.[9]

2.10 The Boundary Commission (BC) announced its decision on the border on 13 April 2002. Demarcation was due to follow in 2003. However, when it became clear that the town of Badme (where the hostilities started) had been awarded to Eritrea, Ethiopia challenged the BC's conclusions. In November 2004 Ethiopia announced its acceptance "in principle" of the BC ruling but progress on demarcation remains stalled. The international community continues its efforts to keep the peace process on track by underlining that the BC decision is final and binding and by urging both Governments to engage in political dialogue. Tensions continued with large numbers of troops massed on the disputed border in early 2005 and again at the end of October 2005 when Eritrea

[6] COIS Ethiopia Country Report (National elections May 2005)
[7] COIS Ethiopia Country Report (National elections May 2005 & Annex A)
[8] COIS Ethiopia Country report (Recent developments May, June & July 2006)
[9] COIS Ethiopia Country Report (Border conflict with Eritrea 1998-2006)

banned all UNMEE helicopter flights and vehicle movements on its side of the border In December 2005, Eritrea ordered out western UN troops serving in the UNMEE mission. In February 2006 the Witnesses to the Algiers Agreement met to discuss the impasse between Ethiopia and Eritrea. At their request, the Ethiopia-Eritrea Boundary Commission convened a meeting in London on 10-11 March 2006 to prepare to resume demarcation of the boundary. As of the end of September 2006, the dispute remains unresolved.[10] On 17 October 2006, it was reported that Eritrean troops had moved illegally into the border buffer zone to harvest crops, a move which threatens to further worsen relations and diplomacy with Ethiopia over border arrangements.[11]

2.11 The government's already poor human rights record deteriorated markedly in 2005. After the May 2005 elections, serious human rights abuses occurred in June 2005 when the opposition parties refused to accept the announced results. This continued in November 2005 after the CUD called for civil disobedience which resulted in widespread riots and excessive use of force by the police and military. The aftermath of elections has laid bare the deeply entrenched patterns of political repression, human rights abuse and impunity that characterise the day-to-day reality of governance in much of the country. Throughout 2005, the government severely clamped down on freedom of expression, assembly and the media with the arrest of hundreds of opposition politicians, journalists, editors and civil society activists. During 2005, paramilitary groups committed unlawful killings, including political killings. The Ethiopian Human Rights Council (EHRCO) reported that from January to March 2005 armed militia killed several members of the opposition All-Ethiopia Unity Party/Coalition for Unity and Democracy (AEUP/CUD) in the Amhara Region.[12]

2.12 Like opposition parties, civil society and civil society organisations in Ethiopia do not enjoy complete freedom. Rather since 2004 legal restrictions on civil society associations and NGOs have increased. According to one source the current Ethiopian legislation stems from the old Civil Code and 1964 Associations Registration and Regulation Act, which requires associations to register with the Ministry of Justice. A further draft law was prepared and was due to be submitted to the Council of Ministers and Parliament in 2005. The existing laws and new draft law allows the government, throught the Ministry of Justice, extensive powers over civil society associations and NGOs, and thus maintains the government's control over civil society.[13]

2.13 A number of indigenous NGOs that have the aspect of ethnic welfare organisations have fallen foul of the government and have been closed down. The Mecha-Tuluma Association was seen as a political wing of the OLF and closed down. The Ogaden Welfare Society (OWS) in the Somali regional state was banned in 2002 and a number of its members were arrested and detained. The OWS had been active since 1992. At the time of its closure it had 200 staff and was responsible for feeding 1,000 children weekly, as well as caring for 500,000 people in Somali Region and 12,000 IDPs in South-Eastern Ethiopia. Human rights NGO, the Ethiopian Human Rights Council (EHRCO) that was openly critical of the government, has had several of its leading members arrested and charged in the past, and again in the aftermath of the 2005 elections and protests. A representative of the international NGO Action Aid is also among those currently arrested and charged with treason. Leading members of the Sidama Development Group have been arrested in local protests over administrative zones.[14]

2.14 State oppression of ethnic groups such as the Oromos continued in 2005. In rural areas in Oromia, local officials often threaten to withhold vital agricultural inputs such as

[10] COIS Ethiopia Country Report (Border conflict with Eritrea 1998-2006)
[11] BBC world news 17 October 2006
[12] COIS Ethiopia Country Report (National elections May 2005 & Human Rights Introduction)
[13] COIS Ethiopia Country Report (Human Rights Institutions…)
[14] COIS Ethiopia Country Report (Human Rights Institutions…)

fertilizer from impoverished farmers if they speak out against them or their policies. In other cases, local officials selectively enforce harsh penalties for the non-repayment of debts to justify the imprisonment of their critics or the seizure of their property. In the months prior to the May 2005 elections, regional officials in Oromia created new quasi-governmental structures used to subject the rural population to intense levels of surveillance and to impose restrictions on farmers' freedoms of movement, association and speech. Furthermore, the Ethiopian government has taken no meaningful action to address widespread atrocities committed by Ethiopian military forces in the remote southwestern region of Gambella. Federal authorities have refused even to investigate human rights abuses so severe that they may rise to the level of crimes against humanity and continue to allow the authors of those crimes the enjoyment of near-total impunity.[15]

3. Main categories of claims

3.1 This Section sets out the main types of asylum claim, human rights claim and Humanitarian Protection claim (whether explicit or implied) made by those entitled to reside in Ethiopia. It also contains any common claims that may raise issues covered by the API 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 APIs, but how these affect particular categories of claim are set out in the instructions 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 API on Assessing the 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. Caseworkers will need to consider credibility issues based on all the information available to them. (For guidance on credibility see para 11 of the API on Assessing the Claim)

3.5 All APIs can be accessed via the IND website at:

http://www.ind.homeoffice.gov.uk/ind/en/home/laws___policy/policy_instructions/apis.html

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

[15] COIS Ethiopia Country Report (Ethnic groups; Oromos)

(OLF), the Ogaden National Liberation Front (ONLF) or al-Ittihad al-Islamia (Islamic Union Party).

3.6.2 ***Treatment.*** Clashes between members of the OLF and members of the OPDO (a member-party of the governing EPRDF coalition) during the run up to elections led to a final break with the EPRDF in 1992, after which the OLF went into armed opposition and in July 1996 signed a military co-operation agreement with the ONLF. The groups advocate self-determination for the Oromo People and the use of Oromo language and culture. The ONLF also receives support from the IUP, a Somali organisation which has been fighting for an Islamic state in Somalia.[16]

3.6.3 Occasional skirmishes between security forces and armed insurrectionary bands continued in many parts of the country in 2004. Security forces frequently arrest civilians, claiming they are members of the OLF in Oromia state or ONLF and IUP members in Somali state. Few of those arrested are brought to trial. Some are released; others are kept in arbitrary detention for prolonged periods, often without a hearing or cause shown, sometimes incommunicado. Frequent reports of extrajudicial executions and torture emerge from Somali region, but access to the region has been restricted by the military to such a degree that these reports are impossible to confirm.[17]

3.6.4 Authorities accused the OLF of organising the Oromo student demonstrations in the first half of 2004 after which 25 persons were charged with armed conspiracy and membership of the OLF. In July 2004 the Ethiopian government revoked the license of the venerable Oromo self-help association Mecha Tulema for allegedly carrying out "political activities" in violation of its charter. The police subsequently arrested four of the organisation's leaders on charges of "terrorism" and providing support to the OLF. The four were released on bail in August but were arbitrarily arrested a week later. In August 2004, several dozen individuals were arrested in and around the town of Agaro in Oromia and imprisoned for allegedly supporting the outlawed OLF. Some prisoners reported mistreatment while in custody and police reportedly threatened family members wishing to visit detained relatives. As of October 2004, the prisoners remained in detention even though none had been charged with any crime.

3.6.5 Armed elements of the OLF and the ONLF continued to operate within the country in 2005. Clashes with government forces on numerous occasions resulted in the death of an unknown number of civilians, government security forces, and OLF and ONLF troops and members. Throughout 2005 there were reports of renewed activity by the ONLF. In December 2005 the Ethiopian opposition radio and website Radio Freedom reported 11 separate ONLF actions against Ethiopian government forces in several different areas of the Somali National Regional State. The reports details only the casualties to the Ethiopian forces and not the ONLF or civilian casualties. A further four engagements were reported in January 2006, again claiming casualties from the Ethiopian army. The ONLF has warned against companies hoping to exploit natural gas reserves in the eastern Somali areas.[18] In August 2006, it was reported that an Ethiopian general had defected with 100 troops to join the OLF.[19]

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.

[16] COIS Ethiopia Country Report (Rebel groups/Illegal opposition parties; Opposition groups and political activists; Oromos; Somalis & Annex B)
[17] COIS Ethiopia Country Report (Rebel groups/Illegal opposition parties; Opposition groups and political activists; Oromos; Somalis & Annex B)
[18] COIS Ethiopia Country Report (Rebel groups/Illegal opposition parties; Opposition groups and political activists; Oromos; Somalis & Annex B)
[19] COIS Eritrea Country Report October 2006 (Latest news)

3.6.7 ***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.

3.6.8 ***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.

3.6.8 ***Conclusion.*** Though OLF, ONLF and IUP are outlawed armed opposition groups that are known to carry out organised attacks against the state authorities, ordinary low-level non-combat members who have not previously come to the adverse attention of the authorities are unlikely to be at real risk of persecution. The grant of asylum in such cases is therefore unlikely to be appropriate.

3.6.9 If it is accepted that the 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.

3.6.10 Caseworkers should note that members of the OLF, ONLF and IUP have been responsible for numerous 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 caseworkers should consider whether one of the Exclusion clauses is applicable. Caseworkers should refer all such cases within this category of claim to a Senior Caseworker in the first instance.

3.7 Oromos

3.7.1 Many claimants will make an asylum and/or human rights claim based on mistreatment at the hands of the state authorities due to their membership of the Oromo ethnic group.

3.7.2 ***Treatment.*** Oromia is the largest and most populous of Ethiopia's nine regional states. It covers over 32% of the country's total land area and is home to at least 23 million people. Oromia surrounds the nation's capital, Addis Ababa, and divides Ethiopia's southwestern states from the rest of the country. While Oromia's population is ethnically diverse, the overwhelming majority of people who reside there are ethnic Oromo. The Oromo population is quite diverse in terms of history, religion and other factors, but the group shares a common language, Afan Oromo and a strong and distinct sense of ethnic and national identity. Oromo nationalism has evolved in response to the Oromo people's long, difficult and often antagonistic relationship with the Ethiopian state. Oromos who

come to the adverse attention of the authorities are usually those who are known to be involved with, or suspected of being involved with the OLF (see 3.6 above).[20]

3.7.3 There were multiple clashes early in the 2004 between police forces and Oromo students at a number of schools and universities, including institutions in Addis Ababa (AAU), Ambo, Alemaya, Nazereth, Awassa, Dilla, Debre Zeit, Jimma, and Bahir Dar . The Government accused the OLF of organising the demonstrations. Protests were directed in part at the Government's decision to move the capital of the Oromo Region from Addis Ababa to Nazaret (Adama).[21]

3.7.4 Following protests by Oromo students at several schools and the expulsion from AAU of 330 students, there were several incidents that resulted in deaths and injuries. In Ambo, hand grenades exploded in a school, killing several students and injuring others. At Alemaya Agricultural College and Adama Technical College, riots between Oromo and Tigrayan students armed with knives and sticks resulted in some severe injuries. A number of reports indicated that some of the Oromo students expelled from their universities were arrested on return to their home areas. In April 2004, approximately 600 Oromo students fled across the border to Kenya. Violence decreased during the latter half of 2004, although tensions remained high. By the end of 2004, almost all of the students were reported to have returned. Unlike in 2004, there were no reports in 2005 that the state authorities targeted ordinary Oromos for mistreatment on account of their ethnicity. [22]

3.7.5 ***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.

3.7.6 ***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.

3.7.7 ***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.

Hassan (Ethiopia) [2000] ImmAR83. The Tibunal found no evidence that persons in Ethiopia would be persecuted because they were Oromos or because of a family connection.

3.7.8 ***Conclusion.*** While there is evidence that Oromos who are active in, or who are suspected of being active in the OLF are likely to come to the attention of the authorities (see 3.6 above), there is no evidence that the state authorities systematically harass, discriminate or persecute Oromo Ethiopians solely on account of their ethnic origin. Claimants who express a fear of ill-treatment amounting to persecution by the state authorities solely on the basis of their Oromo ethnic origin are therefore not likely to qualify for asylum.

3.8 Members of the CUD alliance

3.8.1 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 with or perceived involvement with the opposition Coalition for Unity and Democracy (CUD) which includes the All Ethiopian Unity Party (AEUP), Rainbow Ethiopia, Ethiopians Democratic Party-

[20] COIS Ethiopia Country Report (Opposition groups and political activists & Oromos)
[21] COIS Ethiopia Country Report (Opposition groups and political activists & Oromos)
[22] COIS Ethiopia Country Report (Oromos)

Medhin (UEDP-ME) and the Ethiopian Democratic League (EDL). The CUD was formed in 2004 and is the strongest opposition coalition bloc in Ethiopian politics.[23]

3.8.2 ***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 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 which were violently suppressed by the authorities. [24]

3.8.3 The authorities began arresting members of the two opposition coalitions, the CUD and the United Ethiopian Democratic Front (UEDF) in mid-September 2005, following the announcement of the demonstrations planned for 2 October 2005.The CUD said up to 12 of its regional party offices had been shut down and officials detained. The Oromo National Congress (ONC), part of the UEDF coalition, made similar charges. In total, the CUD and the UEDF claim that over 850 people have been detained, mainly in the central Amhara and Oromia regions, and in the south. In October 2005, Ethiopian police arrested 34 members and supporters of the CUD on weapons charges amid government claims the group was attempting to foment a coup. Citing police officials, the state-run Ethiopian News Agency reported the backers of the CUD) had been detained in the southern Oromo region.[25]

3.8.4 Some 29 CUD leaders, including its Chairman, Hailu Shawl, Vice Chair, Ms Birtukan Mideksa and Mayor-elect, Berhanu Nega, along with other elected CUD representatives, have been detained since November 2005. In December 2005 the detained leaders embarked on a hunger strike in protest at their incarceration. They face a number of serious charges, including trying to undermine the constitution. Some other elected CUD representatives have refused to take up their seats in parliament or the regional assembly. [26]

3.8.5 In January 2006, the authorities freed more than 11,200 people seized following the political unrest in November 2005. Over 2,000 prisoners were released without charge after prosecutors said they had played a minimal role in the violence. A police statement said they had released 2,252 prisoners whose participation in the violence was minimal. 734 prisoners detained after fighting erupted in the capital were freed on 6 January 2006 The exact number of those still held by Ethiopian authorities remained unclear. On 22 March 2006, the Ethiopian High Court dropped charges against 18 defendants, part of a group of 129 people - including 29 leaders of the opposition CUD party, 19 journalists and human-rights activists - on charges of conspiracy to overthrow the constitutionally installed government.[27]

3.8.6 In May 2006, members of the Ethiopia's main opposition party walked out of the parliament to protest the nomination of a caretaker authority to run the capital, Addis Ababa, despite the opposition's victory in the city during the elections in May 2005. Sixty legislators from CUD walked out after Prime Minister Zenawi named an interim mayor and nine-member, politically neutral panel to administer Addis Ababa for the next year. Also in May 2006, the trial of Ethiopian opposition leaders and journalists accused of trying to overthrow the government after disputed elections in May 2005 resumed with

[23] COIS Ethiopia Country Report (National elections May 2005 & Political system; Opposition parties)
[24] COIS Ethiopia Country Report (National elections May 2005 & Political system; opposition parties)
[25] COIS Ethiopia Country Report (Political system; opposition parties)
[26] COIS Ethiopia Country Report (National elections May 2005 & Political system; opposition parties)
[27] COIS Ethiopia Country Report (National elections May 2005)

the prosecution making its submissions about how the accused planned to carry out their alleged plot against the state. The 111 defendants – which include at least 54 officials of the country's main opposition party, the Coalition for Unity and Democracy (CUD) and 15 journalists – faced charges of attempting to "overthrow the constitutional order thourgh violence" and "outrages against the constitution". Other charges include high treason and attempted genocide and twenty-five individuals are being tried in absentia.[28]

3.8.7 ***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.

3.8.8 ***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.

3.8.9 ***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.]

3.8.10 ***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 the early part of 2006 has highlighted an improvement in the stand-off between the ruling EPRDF and opposition political parties. Nevertheless, the political situation as of April 2006 remains very tense with the major issues connected to the May 2005 elections essentially unresolved.

3.8.11 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 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.

3.9 Persons of mixed Ethiopian / Eritrean origin

3.9.1 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.

3.9.2 ***Treatment.*** As a result of the 1998 to 2000 war with Eritrea, thousands of persons were displaced internally. Of the approximately 350,000 IDPs resulting from the border war, approximately 225,000 IDPs have been resettled. During 2003 1,579 cases of Eritrean civilians waiting to return to Eritrea in the country were pending with the International

[28] COIS Ethiopia Country Report (Recent developments May 2006)

Red Cross (ICRC). There were several ICRC overseen returnee occasions during 2004.[29]

3.9.3 The law requiring citizens and residents to obtain an exit visa before departing the country was eliminated in July 2004. Eritreans and Ethiopians of Eritrean origin had their status regularised by the Government in 2004. During 2005, the ICRC repatriated 427 Ethiopians from Eritrea to Ethiopia and repatriated 192 Eritreans from Ethiopia to Eritrea. Most Eritreans and Ethiopians of Eritrean origin registered with the government and received identity cards and six-month renewable residence permits that allowed them to gain access to hospitals and other public services. However, there were anecdotal reports that local government officials denied 'indignant' Eritreans the right to free medical services.[30]

3.9.4 As regards entitlements to Ethiopian nationality, caseworkers should note that the criteria for citizenship and nationality is set out in full in the COIS Ethiopia Country Report; Citizenship and Nationality.

3.9.5 ***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.

3.9.6 ***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.

3.9.7 ***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 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 (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:

[29] COIS Ethiopia Country Report (Ethnic groups; Eritreans in Ethiopia, Deportations and repatriations, Repatriated Ethiopian refugees)
[30] COIS Ethiopia Country Report (Ethnic groups; Eritreans in Ethiopia, Deportations and repatriations, Repatriated Ethiopian refugees)

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 deprival 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)

3.9.8 ***Conclusion.*** Since the end of forced repatriations in 2000/1 there has been no evidence that the Ethiopian authorities harass, discriminate or ill treat individuals who have spent time in Eritrea and/or consider themselves to be part Eritrean. Any claimant who cites mixed ethnicity as the sole or main reason for their asylum application 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.

3.9.9 Claimants of mixed parentage, who claim to be Ethiopian, have lived in Ethiopia all their life, and fear persecution in Ethiopia, should be considered as Ethiopian and their wider claim assessed accordingly. In the absence of a risk of forced deportation of those of mixed ethnicity from Ethiopia to Eritrea, applicants who fall into this category will not normally have a claim to asylum.

3.9.10 Claimants of mixed parentage who have lived in Ethiopia all their life and fear persecution in Ethiopia should be considered as Ethiopians and their wider claim

assessed accordingly. If these individuals claim to be Eritrean however, they would have a right to Eritrean nationality and should therefore seek the protection of their Eritrean nationality before applying for international protection in accordance with paragraphs 106 and 107 of the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status. Caseworkers should make clear reference to the applicant's entitlement to, and protection of, Eritrean nationality when considering such cases.

3.9.11 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 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.

3.10.2 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 and pre-trial detention centre conditions remained very poor in 2005, and overcrowding continued to be a serious problem. Prisoners often were allocated fewer than 21.5 square feet of sleeping space in a room that could contain up to 200 persons. The daily meal budget was approximately 25 cents (2 birr) per prisoner, and many prisoners had family members deliver food daily or used personal funds to purchase food from local vendors. Prison conditions were unsanitary, and access to medical care was unreliable in 2005. There was no budget for prison maintenance.[31]

3.10.4 In detention centres police often physically abused detainees in 2005. Diplomatic observers reported first-hand accounts of such beatings from Addis Ababa University student detainees in Oromia. Authorities generally permitted visitors, but sometimes denied them access to detainees. While statistics were unavailable, there were some deaths in prison due to illness and poor health care. Prison officials were not forthcoming with reports of such deaths.[32]

3.10.5 During 2005 the International Committee of the Red Cross (ICRC) generally had access to federal and regional prisons, civilian detention facilities, and police stations throughout the country, and conducted hundreds of visits involving thousands of detainees. The government also granted diplomatic missions access, subject to advance notification, to prison officials. Authorities allowed the ICRC to meet regularly with prisoners without third parties being present. The ICRC received permission to visit military detention facilities where the government detained suspected OLF fighters. The ICRC also continued to visit civilian Eritrean nationals and local citizens of Eritrean origin detained on alleged national security grounds.[33]

3.10.6 ***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

[31] COIS Ethiopia Country Report (Prison conditions)
[32] COIS Ethiopia Country Report (Prison conditions)
[33] COIS Ethiopia Country Report (Prison conditions)

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 API 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 API 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 API on Discretionary Leave and the API 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 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 care and support arrangements, should if they do not qualify for leave on any more favourable grounds be granted Discretionary Leave for a period of three years or until their 18th birthday, whichever is the shorter period.

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. 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.[34]

4.4.3 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

[34] COI Service Ethiopia Country Report (Medical issues)

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 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 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.

6. List of source documents

- UK Home Office RDS-IND COI Service Ethiopia Country of Origin Information Report October 2006 http://www.homeoffice.gov.uk/rds/country_reports.html
- UK Home Office RDS-IND COI Service Eritrea Country of Origin Information Report October 2006 http://www.homeoffice.gov.uk/rds/country_reports.html
- BBC World News "Eritrea incursion to 'pick crops'" 17 October 2006 http://news.bbc.co.uk/1/hi/world/africa/6057352.stm

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