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OPERATIONAL GUIDANCE NOTE

ERITREA

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1. Introduction

- 1.1** This document summarises the general, political and human rights situation in Eritrea 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 Eritrea Country of Origin Information at:

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

- 1.2** This guidance is intended to provide clear guidance on whether the main types of claim are or are not likely to justify the grant 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 From 1962 until its independence in 1993, Eritrea was a province of Ethiopia. A UN-supervised referendum in April 1993 resulted overwhelmingly in favour of independence. A Transitional Constitution was decreed on 19 May 1993. A formal Constitution providing for democratic freedoms was adopted on 23 May 1997, but has yet to be fully implemented.¹

2.2 Following independence in 1993, relations between Eritrea and Ethiopia were cordial. Relations deteriorated in 1997 following the introduction of a new Eritrean currency; the Nakfa. Fighting erupted in May 1998 and the subsequent border war lasted until a cessation of hostilities agreement was signed on 18 June 2000. This was followed by a comprehensive peace agreement on 12 December 2000. The two sides were separated by a UN peace-keeping force and a buffer zone.²

2.3 On 13 April 2002, the International Tribunal at The Hague decided 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 sides about the operation of the Temporary Security Zone. In March 2003, the Boundary Commission determined that Badme (the town in which the conflict erupted) lay inside Eritrean territory. While Ethiopia claims to accept the Boundary Commission's decision, it has so far refused to allow the Commission's border ruling to be put into practice. 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 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.³ 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.⁴

2.4 The Eritrean People's Liberation Front (EPLF), which led the 30-year war of independence and has controlled the country since, became the People's Front for Democracy and Justice (PFDJ) in 1994. This is the only officially recognised political party in Eritrea. The PFDJ initially outlined an ambitious plan for a transition to a multiparty democracy, however elections due in 1997 and 2001 were postponed. There is presently no indication as to when, or if, these elections will take place.⁵

2.5 A split in the PFDJ in September 2001, resulted in the arrests of 15 PFDJ members. The whereabouts of 11 of these remains unknown and they are now widely known as the G15 group of dissidents. They include Ministers and high-profile officials. They were allegedly arrested because they publicly expressed strong criticisms of the President. Of the original 15, four escaped arrest, three were out of the country and one withdrew his support for the group. There were no developments in 2005 on the 2002 arrests of individuals associated with the detained group of 11 PFDJ/national assembly members and of diplomats who

¹ COIS Eritrea Country of Origin Information Report October 2006 (History & Constitution)

² COIS Eritrea Country Report (History)

³ COIS Eritrea Country Report (History, Recent Developments & Annex A)

⁴ BBC world news 17 October 2006

⁵ COIS Eritrea Country Report (History & Political System)

were recalled from their posts. At least four of these detainees, in addition to many detained in previous years, remained in prison without charges at the end of 2005.⁶

- 2.6** Developments in 2006 to the end of July included a tightening of entry / exit regulations limiting of the movement of non-Eritrean nationals brought in on 1 June 2006; an increase of pressure on religious groups, both registered and not registered as part of greater drive towards increasing the number of people under-going national military training and service; and further distancing from outside agencies and governments with concerns about the distribution of food aid and the mounting economic emergency and possible famine. Externally, there were further calls by the Eritrean Government for the UN boundary decisions to be enforced, along with increased tension on the Ethiopian border having previously interfered with UN personnel deployment, and then again in May 2006; reports in July 2006 of the Eritrean Government possibly assisting the Islamist factions in southern Somalia to increase pressure on the Ethiopian government; and a reported agreement with the government of Sudan, pacifying the Sudan / Eritrea border.⁷
- 2.7** The human rights situation in Eritrea is very poor. Detention without charge is common. Freedom of expression is severely restricted and political critics and journalists have been held for long periods. The law prohibits torture; however, there were numerous reports that security forces resorted to torture and physical beatings of prisoners, particularly during interrogations. During 2005 security forces severely mistreated and beat army deserters, draft evaders, and members of non-sanctioned religious groups. Security forces subjected deserters and draft evaders to various disciplinary actions that included prolonged sun exposure in temperatures of up to 120 degrees Fahrenheit or the binding of the hands, elbows, and feet for extended periods. Dissent, nongovernmental political, civic, social, and minority religious institutions are largely forbidden. Prison visits by international human rights organisations are prohibited. Plagued by famine and heightened tensions with Ethiopia over their joint border, Eritrea has remained a highly repressive state in which dissent is suppressed and non-governmental political, civic, social, and minority religious institutions are largely forbidden to function.⁸
- 2.8** Over the past decade or so the government has arrested thousands of citizens for expressing dissenting views, practicing an “unregistered” religion, avoiding endless military conscription, attempting to flee the country, or on suspicion of not fully supporting government policies. Mass arrests began in September 2001 with the detention of eleven leaders of the PDFJ who questioned President Isayas Afewerki’s erratic and autocratic leadership. The government arrested publishers, editors and reporters and closed all independent newspapers and magazines. The arrests continued in 2005 and included three leaders of government-affiliated labour unions, the only unions allowed to operate in the country.⁹
- 2.9** Most of those arrested are held indefinitely in incommunicado detention. None are formally charged, given access to lawyers or brought to trial. Some prisoners are released but are warned not to talk about their imprisonment or treatment. Some manage to escape and flee the country. As of September 2005, the World Food Programme reported that 10,000 fleeing Eritreans are in refugee camps in Ethiopia, two hundred of whom fled since January 2005, with two hundred to three hundred more arriving monthly.¹⁰
- 2.10** In 2005 there continued to be severe limits on the activities of non-governmental organisations (NGOs). From the first years of independence both international and local NGOs have been tightly controlled. Financial controls were also tightly mandated, with organisations only allowed to maintain an office in the country if administration comprised

⁶ COIS Eritrea Country Report (History, Political System & Annex B)

⁷ COIS Eritrea Country Report (Recent Developments)

⁸ COIS Eritrea Country Report (Human Rights Introduction)

⁹ COIS Eritrea Country Report (Human Rights Introduction, Military Service & Freedom of Religion)

¹⁰ COIS Eritrea Country Report (Human Rights Introduction, Police & Humanitarian Issues)

less than 10% of the overall budget. Local organisations, of which there are 14, are required by law to rely mainly on local rather than international financial support, although in practice this requirement is not met.¹¹

- 2.11** Women have a legal right to equal educational opportunities, equal pay for equal work, and equal property rights; however, in practice men retain privileged access to education, employment, and control of economic resources, with greater disparities in rural areas than in cities. Women generally did not enjoy a social status equal to men. Sexual harassment was unpunished and female genital mutilation (FGM) widespread.¹² Homosexual activity is illegal for men and women and there have been reports that such acts have been prosecuted and punished.¹³

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 the country of Eritrea. 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 applicant 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 applicant does not qualify for asylum, consideration should be given as to whether a grant of Humanitarian Protection is appropriate. If the applicant 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 Pentecostals

- 3.6.1** Most Eritreans make an asylum and/or human rights claim based on alleged state mistreatment on account of them being Pentecostals.

¹¹ COIS Eritrea Country Report (Human Rights Institutions...)

¹² COIS Eritrea Country Report (Women)

¹³ COIS Eritrea Country Report (Lesbian, Gay, Bisexual and Transgender Persons)

- 3.6.2 *Treatment.*** The as yet unimplemented constitution provides for freedom of religion, however in practice the Government severely restricts this right for all but the four sanctioned religious groups – Orthodox Christians, Muslims, Catholics and the Evangelical Church of Eritrea (affiliated with the Lutheran World Federation). The Government closely monitors and forcibly restricts the activities of non-sanctioned groups and individual members, including non-religious social functions.¹⁴
- 3.6.3** The Eritrean government engages in particularly severe violations of freedom of religion or belief. In 2004-5 it banned public religious activities by all religious groups that are not officially recognised, closed their places of worship, inordinately delayed action on registration applications by religious groups, arrested participants at prayer meetings and other gatherings, detained members of unregistered churches and other religious activists indefinitely and without charge, mistreated or even tortured some religious detainees, and severely punished armed forces members and national service inductees for possession of religious literature, including Bibles. Although there is no state religion, the government has close ties to the Orthodox Church and is suspicious of newer groups – in particular, Protestant Evangelical, Pentecostal, and other Christian denominations not traditional to Eritrea.¹⁵
- 3.6.4** Of the churches not registered or sanctioned by the authorities, those which have faced the most severe difficulties are those known as the Pente churches. The term covers a number of different Protestant, Pentecostal and Evangelical churches. The number of their adherents is difficult to establish but several sources report that there has been a rapid growth of evangelical churches in recent years and that independent Protestant churches have a following of 20,000. Among the oldest of them are Kale Hiwot (Word of Life), which has international links to SIM (Serving in Mission - which is not strictly a Pentecostalist church); Meserete Kristos (Christ is the Foundation), which has international links to the Mennonite church but is far more charismatic and Pentecostal than most Mennonite churches, and; Mulu Wengel (Full Gospel), which has no international links. All three of these churches also have an established and growing presence in Ethiopia as well as Eritrea.¹⁶
- 3.6.5** The Eritrean government's denials and assurances about its treatment of minority religious groups have not been sufficient to convince advocates of religious freedom elsewhere in the world that their actions are reasonable. As reports of government action against a variety of church followers continued to mount in 2005, the US government took the exceptional step in September 2005 of declaring Eritrea a "Country of Particular Concern" (CPC) on account of its restrictions on religious freedom. Christian advocacy organisations claimed that at the end of 2005, the number of Christians jailed for their beliefs had nearly doubled in the previous six months and had reached 1,778.¹⁷
- 3.6.6** Since the proscription of the independent Protestant churches in 2002, members of these churches have come under particular scrutiny while undergoing their military service. The secular aspirations of the PFJD are apparent in the army, which has no chaplains. Members of the four main faiths are permitted to practise their religion in local churches and mosques. However, members of the non-registered churches are not. Adherents are not allowed to meet together or worship or possess religious publications or receive pastoral care. Suspected evangelicals are arrested if caught worshipping or in possession of evangelical religious materials. Although it is difficult to obtain numbers for those detained for religious reasons while undertaking military service, there are indications from several sources that the military authorities have taken a particularly hard line. Government

¹⁴ COIS Eritrea Country Report (Freedom of Religion)

¹⁵ COIS Eritrea Country Report (Arbitrary arrest and detention; Freedom of Religion)

¹⁶ COIS Eritrea Country Report (Evangelicals Churches)

¹⁷ COIS Eritrea Country Report (Freedom of Religion)

spokesmen have cited Pentecostals, along with extremist Islamic groups, as threats to national security.¹⁸

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. 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.

3.6.9 Caselaw.

YT (Eritrea) [2004] UKIAT 00218. The appellant converted from being an Orthodox Christian to the Pentecostal Church. From an early age he was an activist in the Kale Hiwot ["Word of Life"] Church in Asmara, Eritrea. The Tribunal allowed this appeal stating that there is evidence of continued arrests on the basis of religion in 2003 and 2004, including a KHCE Pastor. There has not been a general relaxation in the Eritrean authorities' attitude towards minority churches.

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

3.7 Military service

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

3.7.2 Treatment. Under the revised national service regulations of 23 October 1995 (19), national service is compulsory for all citizens aged between 18 and 50 years, male and female. It consists of six months of military training (performed at Sawa military training centre near Tessenei in western Eritrea) and 12 months of 'active military service and development tasks in military forces' under Ministry of Defence authority. It extends to military reserve duties up to the age of 50. It may be continued under 'mobilisation or emergency situation directives given by the government'.¹⁹

3.7.3 National service is postponed for students, who must perform national service after their course. Graduation certificates are only presented on completion of national service. In addition, final year (16 year olds) school students and all higher education students are required to do two to three months' summer holiday work service under military control. In 2003, an extra final school year was added for all children to be undertaken at Sawa military training centre under military authority and including military-type training. They are then selected for higher education or conscripted into the army. In 2003, the government stopped admitting undergraduate students to the University of Asmara, where students were reputed for dissent and opposition to national service or work-service, and allocated them to technical colleges instead.²⁰

3.7.4 The Government does not excuse those individuals who object to military service for reasons of religion or conscience, nor does the Government allow alternative service. Members of the Jehovah's Witnesses religious group have experienced harassment and

¹⁸ COIS Eritrea Country Report (Freedom of Religion; Arrests & Evangelicals Churches)

¹⁹ COIS Eritrea Country Report (Military Service)

²⁰ COIS Eritrea Country Report (Military Service; School leavers and conscription)

arbitrary detention because of their refusal to undertake military service. Some Muslims have objected to universal military service with regard to the requirement that women perform military duty.²¹

- 3.7.5** Article 37 (Penalties) of the National Military Service provisions, issued by the Government of Eritrea on 23 October 1995, reported that a range of sanctions exist for avoiding national service. Any violation of this Proclamation may be punished under more severe penalties contained in Eritrea's criminal law. Violations of the Proclamation can be punished by imprisonment of up to two years or up to 3,000 Nafka pecuniary penalty or both. To avoid national service by deceit or self – inflicted injury the same penalties apply, followed by national service. If the self inflicted injury precludes national service, the prison term is extended to three years. Those who travel abroad to avoid national service who return before they are forty years of age must then undertake national service; for those who return after that age, they are punished by imprisonment of five years and lose rights to own a business licence or apply for an exit visa, land ownership or a job. Those who assist others to avoid national service can receive two years imprisonment and/or a fine. In reality, draft evaders or deserters who have been caught in recent years have been detained incommunicado for extended periods of time.²²
- 3.7.6** On 4 November 2005, security forces in Asmara arrested thousands of people suspected of evading military conscription. People were arrested at places of work, in the street, at roadblocks and at home. Prisoners were taken to Adi Abeto army prison near Asmara. That night, a prison wall was apparently pushed over by some prisoners, killing four guards. Soldiers opened fire and shot dead at least a dozen prisoners and wounded many more. In July and again in November 2005 in the Debub region in the south, parents and other relatives of individuals who had evaded conscription or fled the country were arrested and accused of complicity. They were only released if they deposited a bond of between 10,000 and 50,000 nakfas (US\$660 – US\$3,000 equivalent) to produce the missing family member.²³ On 24 February 2006 a new round of *giffa* (round-ups) had been launched in the Anseba region, including the rounding up and transportation of 17 year olds from three high schools in Keren to Wia (on the eastern coast). Other high schools in the northern Red Sea region were similarly cleared a few days previously.²⁴
- 3.7.7** ***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.
- 3.7.8** ***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.
- 3.7.9** ***Caselaw.***

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

SE (Eritrea) [2004] UKIAT 00295. IAT examined the issue of risk to this appellant as a draft evader. The Tribunal stated "If there is no evidence that the authorities have taken steps to call someone up, over a significant period of time during which such a person was eligible, it is hard to accept they would classify him or her as an evader the first time they came into contact with such a person. If Appellant's Counsel is right (in making this assertion), then the Eritrean government would view its

²¹ COIS Eritrea Country Report (Military Service; Conscientious objection)

²² COIS Eritrea Country Report (Military Service; Draft evaders)

²³ COIS Eritrea Country Report (Military Service; Round-ups)

²⁴ COIS Eritrea Country Report (Military Service; Round-ups)

entire population in the eligible age range as draft evaders. Plainly it does not". This case also deals with the issue of returnees in general (see Returns).

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

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

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

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

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

Women of draft age are not at risk if they are Muslim, married, mothers, or carers (113(e)). Performance of military service does not of itself give rise to a real risk (113(h)). "Persons who fail to give a credible account of material particulars relating to their history and circumstances cannot easily show that they would be at risk solely because they are of eligible draft age" (113(i)).

3.7.10 Conclusion. If it is accepted that the claimant is of military service age, has previously received call-up papers and left the country having refused to undertake military service, or has undertaken military service or training but has escaped, then it is likely that they will be of interest to the authorities. As the Government effectively views those who evade service or desert from the military as political opponents, the treatment by the authorities of individuals known to have deserted or evaded military service is likely to amount to persecution under the terms of the 1951 Convention. In cases where claimants are not excluded from the 1951 Convention under Article 1F, a grant of asylum is likely to be appropriate.

3.7.11 Nevertheless, an individual of military service age is not automatically viewed as an evader or deserter simply because they fall within the age range. If the claimant is of military service age but has not received call-up papers, has not previously received any other direction to undertake military service, has completed their military service or has not previously come to the adverse attention of the authorities, then it is unlikely that they will be of undue interest to those authorities. Similarly, if someone falls within an exemption from the draft, is outside the age for military service or has been eligible for call-up over a significant period but has not been called up there would be no perception by the authorities of draft evasion. Such claimants are unlikely to encounter ill treatment amounting to persecution within the terms of the Convention. The grant of asylum in these cases is therefore not likely to be appropriate.

3.8 Members of opposition political groups

Some claimants will make an asylum or human rights claim based on threats or harassment by the authorities on account of their membership of, or association with, opposition political groups such as the Eritrean Liberation Front – Revolutionary Council (ELF-RC), the Eritrean Democratic Party (EDP) (formerly the Eritrean People's Liberation Front Democratic Party EPLF-DP) or as activists in support of the 11 detained members of the G15 group of dissidents.²⁵

3.8.1 Members of the ELF-RC or the EDP (formerly the EPLF-DP)

3.8.1.1 Treatment. The unimplemented Constitution states that every citizen has the right to form organisations for political ends. The government did not allow the formation of any political parties other than the PFDJ. Three political parties – the EDP, the ELF-RC, and the Eritrean National Alliance (ENA) – beam weekly shortwave radio programs to Eritrea via satellite. These and other opposition groups also maintain active Web sites, as do several unaffiliated groups in Eritrea's very active diaspora, most of them highly critical of the Isaias regime. The most prominent of those opposed to the current government are Awate.com and Asmarino.com. Government supporters in the diaspora also maintain a number of sites, the most prominent of which is Dehai.org.²⁶

3.8.1.2 Since late 2004, the opposition has continued to operate in exile. In 2005, an umbrella group, the ENA emerged. The ENA were reported by Awate.com in February 2005 as having been instrumental in setting up the conference of opposition groups in Khartoum, with Hiruy T Bairu confident of a solid agreement as the results.²⁷

3.8.1.3 Individual opposition groups have continued to operate in exile. For instance, the Eritrean Democratic Party (EDP) was reported in June 2006 that it was to hold its second regular congress in Milan, Italy in July 2006. On 23 November 2005, the Eritrean opposition website Meskerem.com reported that the Eritrean government was using the medium of Sudanese opposition groups to make contact with Eritrean opposition groups in exile in Sudan. However, the Eritrean opposition groups found the government's conditions over 'conduct of talks' unacceptable.²⁸

3.8.1.4 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.

3.8.1.5 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.

²⁵ COIS Eritrea Country Report (Freedom of political expression & Annex B)

²⁶ COIS Eritrea Country Report (Freedom of political expression)

²⁷ COIS Eritrea Country Report (Opposition groups and political activists)

²⁸ COIS Eritrea Country Report (Opposition groups and political activists)

3.8.1.6 Case law.

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

3.8.1.7 Conclusion. Applicants who express a fear of being targeted by the authorities on the basis that they are, or were, low or medium-level members of the ELF-RC or the EDP (or previous members of the EPLF-DP) are unlikely to be able to adduce a well-founded fear of persecution within the terms of the 1951 Convention or a need for Humanitarian Protection on ECHR grounds. For claimants who are able to demonstrate that they are a high-level former EPLF-DP, current EDP or ELF-RC activist, the grant of asylum is likely to be appropriate.

3.8.2 G15 activists

3.8.2.1 Treatment. The G15 group comprises members of the Central Committee of the PFDJ, many of whom had been senior EPLF military or political leaders during the liberation struggle. Following the arrest and detention of 11 of the group on 18 September 2001 on account of their suspected conspiracy to block Government reforms, there were reports in 2002 that dozens of other people were detained by the security police for supporting views expressed in the G15 open letter and in some cases for criticising the G15 detentions. Some elders were reported to have been detained after trying to mediate between the Government and its critics. Arrests also have in many cases been difficult to confirm because of the secrecy and pervasive intimidation.²⁹

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

3.8.2.3 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.

3.8.2.4 Conclusion. There is no evidence of a reform movement based on the beliefs and policies of the G15. Though there were many reports of politically motivated detentions in 2005, and while those detained in 2002 on account of their association with the G15 group remained in detention without charge, there were no further confirmed arrests or detentions of G15-associated activists in 2005.³⁰ Applicants claiming to fear arrest or detention on account of their low to medium-level activism in support of the detained members of the G15 group will not usually qualify for asylum, however those who can establish that they are high profile activists and have previously come to the attention of the authorities may qualify for asylum.

3.9 Persons of mixed Ethiopian/Eritrean origin

3.9.1 A significant proportion of claims will raise the issue of whether the claimant considers him/herself to be Eritrean or Ethiopian, and the state authorities' treatment of those with some element of mixed ethnicity. Though this will not usually be a main or sole basis for a claim, it will be crucial to establish the applicant's parentage, length of time spent in a particular country and location of alleged persecution to substantively assess the wider claim.

²⁹ COIS Eritrea Country Report (History; September 2001, Political system, Torture in police detention & Annex C)

³⁰ COIS Eritrea Country Report (History; September 2001, Political system, Torture in police detention & Annex C)

- 3.9.2 *Treatment of Eritreans of Ethiopian origin in Eritrea.*** There have been no reports in recent years that the Eritrean authorities have harassed and detained deportees of Eritrean origin from Ethiopia while their status was checked. Expellees were asked to fill out a detailed registration form and were issued the same type of registration card that Eritrean refugees returning from exile received. Once registered, the deportees were entitled to the standard government assistance for returning refugees: including short-term housing, food, and settlement aid; medical coverage; and job placement assistance.³¹
- 3.9.3 *Treatment of Ethiopians of Eritrean origin in Eritrea.*** During the border war the Ethiopian Government detained and deported Eritreans and Ethiopians of Eritrean origin without due process. Deportations ceased following the signing of the cessation of hostilities agreement in June 2000. In June 2001 this agreement was broken but this has been the only breach and all returns are now voluntary and administered by the ICRC. On 11 November 2005, 298 Ethiopian civilians were repatriated from Eritrea to Ethiopia under ICRC auspices. The group included 8 unaccompanied minors, 2 elderly persons and 2 sick persons who were returning home to their families. As part of the same operation, 15 Eritrean civilians were repatriated from Ethiopia to Eritrea. This group included 4 unaccompanied minors who were also returning home with their families.³²
- 3.9.4** There are 16,000 Ethiopians estimated to have temporary residence in Eritrea in 2005, including 600 Ethiopians in the Gash Barka region to which the UNHCR had no access or responsibility. The Government issued residency permits to Ethiopians living in the country for a fee; however, it did not issue them exit visas. The Ethiopian Government did not have an agreement with Eritrea to receive rejected asylum seekers, and therefore granted status to some Eritreans who did not qualify as refugees. At the border, local authorities identified most Eritrean arrivals and referred them to the Administration for Refugee and Returnee Affairs (ARRA) for status hearings, which then transferred them to a camp.³³
- 3.9.5** As regards entitlements to Eritrean nationality, caseworkers should note that the criteria for citizenship and nationality, including the legal requirement of three witnesses to confirm a claimant's identity and background, is set out in full in the COIS Eritrea Country Report; Citizenship and Nationality.
- 3.9.6 *Sufficiency of protection.*** As this category of claimants' fear is of ill treatment/persecution by the state authorities, they cannot apply to these authorities for protection.
- 3.9.7 *Internal relocation.*** Internal relocation is not relevant to this category of claim.
- 3.9.8 *Caselaw.***

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

³¹ COIS Eritrea Country Report (Eritreans from Ethiopia)

³² COIS Eritrea Country Report (Ethiopians in Eritrea)

³³ COIS Eritrea Country Report (Ethiopians in Eritrea)

entirely consistent with the position as set out in the Embassy's 29th August 2002 letter (at para 40). Not having identified 3 witnesses, her application had to fail. (para 53). *This case continues to be the leading caselaw on mixed Ethiopia-Eritrean nationality.*

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

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

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

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

The Adjudicator was entitled to take into account all evidence when concluding that this appellant is entitled to Eritrean nationality. She did not fail to attach weight to the 1992 Nationality Proclamation and did not err in accepting the evidence in the Home Office Report (Fact-Finding Mission to Eritrea 4-18 November 2002) when considering how the Proclamation was interpreted and applied by the authorities (paras 20-21). The Tribunal follow the case of **YL**, (and in turn **Bradshaw [1994] ImmAR 359**) in considering the correct approach to determining nationality. (Para 24). The test identified as "one of serious obstacles" in **YL** is followed and a claimant would be expected to exercise due diligence in respect of such a test. (Para 26).

3.9.9 Conclusion. 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 Eritrea due to the fact that there is a serious risk that they will be imprisoned on return and that prison conditions in Eritrea are so poor as to amount to torture or inhuman treatment or punishment.

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

3.10.3 *Treatment.* Prison conditions for the general prison population were poor in 2005. There were reports that prisoners were held in shipping containers with little or no ventilation in extreme temperatures. At Aderser, near Sawa, there were reports that prisoners were held in underground cells. There were substantial reports that prison conditions for persons temporarily held for evading military service were also poor. Unconfirmed reports suggested there may be hundreds of such detainees. Draft evaders were typically held for 1 to 12 weeks before being reassigned to their units. At one detention facility outside Asmara, detainees reportedly were held in an underground hall with no access to light or ventilation, and in sometimes very crowded conditions. Some detainees reportedly suffered from severe mental and physical stress due to these conditions.³⁴

3.10.4 In addition to psychological abuse, solitary confinement and abysmal conditions, escapees report the use of physical torture. Several persons detained for evading national service died after harsh treatment by security forces, including the binding of hands and feet behind the head. In addition several detainees who suffered from ill health in prison died within days of their release from lack of medical care.³⁵

3.10.5 Local groups and human rights organisations were not allowed to monitor prison conditions in 2005. The government prohibited the ICRC from visiting the unknown number of Ethiopian soldiers who the government claimed were deserters from the Ethiopian army or to visit any Eritrean detainees or prisoners, although the ICRC was allowed to visit and register Ethiopian civilian detainees in police stations and prisons. Authorities generally permitted three visits per week by family members, except for detainees arrested for reasons of national security or for evading national service.³⁶

³⁴ COIS Eritrea Country Report (Prison conditions)

³⁵ COIS Eritrea Country Report (Prison conditions)

³⁶ COIS Eritrea Country Report (Prison conditions; Monitoring of prisons)

3.10.6 Caselaw.

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

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

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

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

3.10.7 Conclusion. Whilst prison conditions in Eritrea for non-draft evaders are poor with reports of forced labour, beatings, torture and a lack of medical care, food and sanitation leading to disease all being particular problems, these conditions will not normally be sufficiently severe to meet the high Article 3 threshold. In addition to these adverse conditions there are reports that officials act with impunity and regularly mistreat inmates. The information available does not suggest that particular groups of inmates are more at risk of such mistreatment than others. There is no evidence that the mistreatment is of such a systematic nature as to make removal a breach of Article 3 on these grounds.

3.10.8 Even where claimants can demonstrate a real risk of imprisonment on return to Eritrea a grant of Humanitarian Protection will not generally be appropriate. However, the individual factors of each case should be considered to determine whether detention will cause a particular individual in his particular circumstances to suffer treatment contrary to Article 3, relevant factors being the likely length of detention, the likely type of detention facility and the individual's age and state of health. Where in an individual case treatment does reach the Article 3 threshold a grant of Humanitarian Protection will be appropriate.

3.10.9 Prison conditions in Eritrea for military service offenders are severe and taking into account conditions in prisons and detention facilities, routine torture and an absence of adequate medical care, conditions are likely to reach the Article 3 threshold. Where caseworkers believe that a military service offender is likely to face imprisonment on return to Eritrea they should also consider whether the claimant's actions means they fall to be excluded from Humanitarian Protection (HP). Where caseworkers consider that this may be the case they should contact a senior caseworker for further guidance. Where individual claimants are able to demonstrate a real risk of imprisonment on return to Eritrea and exclusion is not justified, a grant of HP 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 Eritrea the types of claim which may raise the issue of whether or not it will be appropriate to grant DL are likely to fall within the following categories. Each case must be considered on its individual merits and membership of one of these groups

should *not* imply an automatic grant of DL. There may be other specific circumstances related to the applicant, or dependent family members who are part of the claim, not covered by the categories below which warrant a grant of DL - see the 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** Applicants may claim they cannot return to Eritrea due to a lack of specific medical treatment. See the IDI on Medical Treatment which sets out in detail the requirements for Article 3 to be engaged.
- 4.4.2** Eritrea's health care system is relatively basic and cannot currently provide satisfactory treatment for all medical conditions. However, the range of treatments and medications available is constantly developing. Further detailed information is set out in the Eritrea Country of Origin Information Report; Medical issues.³⁷ The Article 3 threshold will not be breached in the great majority of medical cases and a grant of Discretionary Leave will not be appropriate.
- 4.4.3** Where a caseworker considers that the circumstances of the individual applicant and the situation in the country reach the threshold detailed in the IDI on Medical Treatment making removal contrary to Article 3 a grant of discretionary leave to remain will be appropriate. Such cases should always be referred to a Senior Caseworker for consideration prior to a grant of Discretionary Leave.

5. Returns

- 5.1** Factors that affect the practicality of return such as the difficulty or otherwise of obtaining a travel document should not be taken into account when considering the merits of an asylum or human rights claim. Where the claim includes dependent family members their situation on return should however be considered in line with the Immigration Rules, in particular paragraph 395C requires the consideration of all relevant factors known to the Secretary of State, and with regard to family members refers also to the factors listed in paragraphs 365-368 of the Immigration Rules.
- 5.2** The Immigration (Notices) (Amendment) Regulations 2006 came into force on 31 August 2006. These amend the previous 2003 Regulations, allowing an Immigration Officer or the Secretary of State to specify more than one proposed destination in the appealable Decision Notice. Where there is a suspensive right of appeal, this will allow the Asylum and Immigration Tribunal (AIT) to consider in one appeal whether removal to any of the countries specified in the Decision Notice would breach the UK's obligations under the Refugee Convention or the European Convention on Human Rights, thus reducing the risk of sequential appeals. More than one country, e.g. Ethiopia and Eritrea, may only be specified in the Notice of Decision where there is evidence to justify this. Evidence may be

³⁷ COIS Eritrea Country Report (Medical issues)

either oral or documentary. Caseworkers are advised that their Decision Service Team/admin support unit must be instructed to record both countries on the Notice of Decision/Removal Directions for relevant cases.

5.3 The UNHCR has recommended that governments refrain from all forced returns. The UNHCR's position paper provides a broad assessment of the situation in Eritrea and we do not dispute that it presents an accurate overview of the general humanitarian situation and the serious social and security problems inherent in the country.³⁸ However, asylum and human rights claims are not decided on the basis of the general situation - they are based on the circumstances of the particular individual and the risk to that individual. We do not therefore accept UNHCR's conclusion, based on their overview of the general situation that it is unsafe for all persons who have been found not to be in need of some form of international protection to return to Eritrea.

5.4 Case law.

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

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

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

5.5 Eritrean nationals may return voluntarily to any region of Eritrea at any time by way of the Voluntary Assisted Return and Reintegration Programme run by the International Organisation for Migration (IOM) and co-funded by the European Refugee Fund. IOM will provide advice and help with obtaining travel documents and booking flights, as well as organising reintegration assistance in Eritrea. The programme was established in 2001, and is open to those awaiting an asylum decision or the outcome of an appeal, as well as failed asylum seekers. Eritrean nationals wishing to avail themselves of this opportunity for assisted return to Eritrea should be put in contact with the IOM offices in London on 020 7233 0001 or www.iomlondon.org.

6. List of source documents

- UK Home Office RDS-IND Eritrea Country of Origin Information Report October 2006 at 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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³⁸ COIS Eritrea Country Report (UNHCR position papers).