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OPERATIONAL GUIDANCE NOTE

ETHIOPIA

CONTENTS

1. Introduction

1.1 This document provides UKBA case owners with guidance on the nature and handling of the most common types of claims received from nationals/residents of Ethiopia including whether claims are or are not likely to justify the granting of asylum, Humanitarian Protection or Discretionary Leave. Case owners must refer to the relevant Asylum Instructions for further details of the policy on these areas.

1.2 Case owners *must not* base decisions on the country of origin information in this guidance; it is included to provide context only and does not purport to be comprehensive. The conclusions in this guidance are based on the totality of the available evidence, not just the brief extracts contained herein, and caseowners must likewise take into account all available evidence. It is therefore essential that this guidance is read in conjunction with the relevant COI Service country of origin information and any other relevant information.

COI Service information is published on Horizon and on the internet at:

http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

1.3 Claims should be considered on an individual basis, but taking full account of the guidance contained in this document. In considering claims where the main applicant has dependent family members who are a part of his/her claim, account must be taken of the situation of all the dependent family members included in the claim in accordance with the Asylum Instruction on Article 8 ECHR. If, following consideration, a claim is to be refused, case owners should consider whether it can be certified as clearly unfounded under the case by case certification power in section 94(2) of the Nationality Immigration and Asylum Act 2002. A claim will be clearly unfounded if it is so clearly without substance that it is bound to fail.

2. Country assessment

2.1 Caseowners should refer to the relevant COI Service country of origin information material. An overview of the country situation including headline facts and figures about the

population, capital city, currency as well as geography, recent history and current politics can also be found in the relevant FCO country profile at:

http://www.fco.gov.uk/en/travel-and-living-abroad/travel-advice-by-country/country-profile/

2.2 An overview of the human rights situation in certain countries can also be found in the FCO Annual Report on Human Rights which examines developments in countries where human rights issues are of greatest concern:

http://centralcontent.fco.gov.uk/resources/en/pdf/human-rights-reports/human-rights-report-2009

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

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 All Asylum Instructions can be accessed via the Horizon intranet site. The instructions are also published externally on the Home Office internet site at:

http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions/

3.5 Credibility

3.5.1 This guidance is **not** designed to cover issues of credibility. Case owners will need to consider credibility issues based on all the information available to them. For guidance on credibility see the Asylum Policy Instruction on considering the protection (asylum) claim and assessing credibility. Case owners must also ensure that each asylum application has been checked against previous UK visa applications. Where an asylum application has been biometrically matched to a previous visa application, details should already be in the Home Office file. In all other cases, the case owner should satisfy themselves through CRS database checks that there is no match to a non-biometric visa. Asylum applications matched to visas should be investigated prior to the asylum interview, including obtaining the Visa Application Form (VAF) from the visa post that processed the application.

Actors of protection

3.5.2 Case owners must refer to the Asylum Policy Instruction on considering the protection (asylum) claim and assessing credibility. To qualify for asylum, an individual not only needs to have a fear of persecution for a Convention reason, they must also be able to

demonstrate that their fear of persecution is well founded and that they are unable, or unwilling because of their fear, to avail themselves of the protection of their home country. Case owners should also take into account whether or not the applicant has sought the protection of the authorities or the organisation controlling all or a substantial part of the State, any outcome of doing so or the reason for not doing so. Protection is generally provided when the authorities (or other organisation controlling all or a substantial part of the State) take reasonable steps to prevent the persecution or suffering of serious harm by for example operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and the applicant has access to such protection.

3.5.3 In Ethiopia, the Federal Police Commission reports to the Ministry of Federal Affairs, which is subordinate to parliament. Local militias also operate as local security forces in loose coordination with regional police and military, with the degree of coordination varying by region. National Intelligence and Security Service (NISS) officers are involved in all matters deemed to have implications for national security. Impunity remains a serious problem. The government has continued its efforts to provide human rights training for police and army recruits. It continued to seek assistance to improve and professionalise its human rights training and curriculum.[1]

3.5.4 During 2010 human rights abuses included unlawful killings, torture, beating, abuse and mistreatment of detainees and opposition supporters by security forces, arbitrary arrest and detention, particularly of suspected sympathisers or members of opposition or insurgent groups; police, administrative and judicial corruption; use of excessive force by security services in an internal conflict and counter-insurgency operations. [2] A new counterterrorism law passed by the government in July 2010 defines terrorist activity very broadly. According to Human Rights Watch, the law could be used to prosecute peaceful political protesters and impose the death penalty for offences as minor as damaging public property.[3]

3.5.5 The law provides for an independent judiciary. Although the civil courts operate with independence, the criminal courts remain weak, overburdened and subject to significant political intervention and influence. Judicial inefficiency, lengthy trial delays and lack of qualified staff often result in serious delays in trial proceedings. The government continues to decentralise and restructure the judiciary along federal lines. The regional judiciary is increasingly autonomous. The federal judicial presence is limited - because of this, many citizens residing in rural areas do not have reasonable access to the federal judicial system and are forced to rely on traditional conflict-resolution mechanisms such as the Elders' Councils from which women are sometimes excluded.[4]

Internal relocation

3.5.6 Case owners must refer to the Asylum Policy Instructions on both internal relocation and gender issues in the asylum claim and apply the test set out in paragraph 339O of the Immigration Rules. It is important to note that internal relocation can be relevant in both cases of state and non-state agents of persecution, but in the main it is likely to be most relevant in the context of acts of persecution by localised non-state agents. If there is a place in the country of return where the person would not face a real risk of serious harm and they can reasonably be expected to stay there, then they will not be eligible for a grant of asylum or humanitarian protection. Both the general circumstances prevailing in that part of the country and the personal circumstances of the person concerned including any gender issues should be taken into account, but the fact that there may be technical obstacles to return, such as re-documentation problems, does not prevent internal relocation from being applied.

[1] US State Country Report on Human Rights Practices (USSD): Ethiopia, April 2011
[2] USSD Ethiopia, April 2011; UN Committee against Torture 1-19 November 2010
[3] Freedom House, Freedom in the World report 2010
[4] USSD Ethiopia, April 2011

3.5.7 Although the law provides for freedom of movement within the country, foreign travel, emigration and repatriation, the government restricts these rights in practice. Since the military began significant counter-insurgency operations in the Ogaden region in 2007, the government has continued to limit the access of diplomats, NGOs and journalists in the Somali region. The government allowed some humanitarian access but restricted the ability to investigate reports of human rights abuses. Throughout 2010, the government severely restricted the movement of persons into and within the Ogaden area. The conflict between government and insurgent forces in the Ogaden area of the Somali region has resulted in the displacement of thousands of persons resulting in an estimated 247,700 IDPs.[5]

3.6 Members of the OLF or ONLF

3.6.1 Most claimants will make an asylum and/or human rights claim based on mistreatment at the hands of the state authorities due to membership of, involvement in or perceived involvement in one of the main armed opposition groups: the Oromo Liberation Front (OLF), or the Ogaden National Liberation Front (ONLF).

3.6.2 ***Treatment.*** Armed conflicts over international boundaries, internal armed conflicts between government forces and insurgency groups operating in various parts of the country, and local conflicts over water, pasture resources and administrative boundaries, have all taken place in Ethiopia in the past decades. Ethiopia went to war with neighbouring Somalia (from 1977 to 1978) and Eritrea (from 1998 to 2000) over their shared boundaries. Ongoing internal conflicts with insurgency groups including the Ogaden National Liberation Front (ONLF) in the Ogaden area of the eastern Somali region and the Oromo Liberation Front (OLF) in the south of the country have continued to affect people's lives and livelihoods.[6]

3.6.3 The Oromo are the largest single ethnic group in Ethiopia, around 40% of the population, and dwell in areas principally in south and central Ethiopia. Though there is a high degree of social integration with Ethiopia's Amharic speakers, some Oromo resent Amharic and Tigray rule which has given rise to a number of revolts. In 1973, the OLF began an armed struggle for Oromo self-determination and local autonomy from the Amhara monarchy. It is classified by the Ethiopian authorities as a terrorist organisation. Reports indicate that the Ethiopian government continues to suppress dissent in Oromia and has detained hundreds of people suspected of supporting the OLF. Militants belonging to the OLF have recently called for all of Ethiopia's ethnic and religious groups to emulate the Tunisian and Egyptian revolts and unite in deposing the Tigrayan-dominated government. In early 2010, a joint operation along the border by Ethiopian and Kenyan military forces is reported to have resulted in the arrest of at least 120 OLF fighters and the seizure of a quantity of arms, grenades and missiles. [7]

3.6.4 The ONLF was formed in 1984 and drew heavily on the former membership of the Western Somalia Liberation Front (WSLF), an organisation which sought the secession of the ethnic Somali region of Ogaden. Somalia's support for the WSLF provoked a full-scale war with Ethiopia in 1977 when Somalia invaded the Ogaden region, only to be defeated the following year when the Soviet Union shifted its support from Somalia to the Ethiopian junta. This defeat undermined the Barre regime and contributed to the eventual collapse of the Somali state in 1991. WSLF went into decline and opposition to Ethiopian control of Ogaden was increasingly taken up by the ONLF. Since 1992, the group has called for a referendum to determine the future of the Ogaden region. The ONLF is dominated by the Ogaden clan and is frequently accused of prioritising its own clan interests. [8]

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[5] USSD Ethiopia, April 2011

[6] International Crisis Group "Ethiopia: Ethnic Federalism and its Discontents, Africa Report N°153 – 4 September 2009;Internal Displacement Monitoring Centre "Ethiopia: Monitoring of conflict, human rights violations and resulting displacement still problematic" 20.01.11

[7] US Library of Congress: Ethiopia – Other Movements and Fronts: Oromo Groups; Internal Displacement Monitoring Centre "Ethiopia: Monitoring of conflict, human rights violations and resulting displacement still problematic". 20 January 2011; Jamestown Foundation "Ethiopia: Terrorism Monitor Volume: 9 Issue: 9", 3.03.11; Refugee Documentation Centre (Ireland) Legal Aid Board "Ethiopia – whether persons of Oromo ethnicity…" 25.03.11

[8] Jane's World Insurgency and Terrorism: Ogaden National Liberation Front (ONLF) (Ethiopia), GROUPS – AFRICA – ACTIVE: 21 December 2010

3.6.5 Since it was outlawed in 1994, the ONLF has engaged in low-intensity armed conflict with the government. In 2007 the Ethiopia National Defence Force (ENDF) began significant counter-insurgency operations in the Ogaden in response to the killing of Chinese and domestic oil exploration workers. During 2010, fighting between government forces, including local militias resulted in continued allegations of human rights abuses by all parties to the conflict. In October 2010, another insurgent group the United Western Somali Liberation Front, as well as the "Salahdin Ma'ow faction" of the ONLF, signed a peace agreement with the government and ceased hostilities. The "Admiral Osman faction" of the ONLF, consisting of hard-core fighters and supported by the Eritrean government, denounced the peace talks and staged attacks against government forces.[9]

3.6.6 The government has allowed some humanitarian access to the Ogaden region but has restricted the ability to investigate reports of human rights abuses. Credible reports of human rights abuses continued although these diminished dramatically after the signing of the two peace agreements. Civilians, international NGOs and other aid agencies operating in the region reported that both government security forces and the ONLF were responsible for abuses and harsh techniques used to intimidate the civilian population. Reliable reports indicated that special police and local militias, both accountable to the Somali regional government, forcibly relocated whole villages believed to be supportive of the ONLF. Reliable sources reported increasingly violent ONLF attacks on police and military during 2010.[10]

3.6.7 ***Actors of protection.*** See 3.5.2 – 3.5.5

3.6.8 ***Internal relocation.*** See 3.5.6 – 3.5.7

3.6.9 ***Caselaw***

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

3.6.10 ***Conclusion.*** Case owners must assess the credibility of the applicant and the evidence they submit in accordance with the relevant Asylum Instructions (see para 3.2 – 3.5 above). The OLF and ONLF are outlawed armed opposition groups that are known to have carried out organised attacks against the state authorities. If it is accepted that a claimant has been involved in or is suspected of involvement in non-combat activities on behalf of one of these groups and has previously come to the adverse attention of the authorities then they are likely to be at real risk of persecution by the state authorities. The grant of asylum in such cases is therefore likely to be appropriate. Ordinary low-level non-combat members who have not previously come to the adverse attention of the authorities however are unlikely to be at real risk of persecution and the grant of asylum in such cases is therefore unlikely to be appropriate.

3.6.11 Notwithstanding certain restrictions (see 3.5.7), Ethiopian citizens are generally able to travel freely within the country and change their place of residence without obtaining official permission. However, as this category of applicants' fear is of ill-treatment/persecution by the state authorities, and the government administers tight control of the entire state, then in general internal relocation to escape that persecution will not be an option.

[9] USSD Ethiopia April 2011
[10] USSD April 2011

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

3.7 Members of opposition political parties

3.7.1 Some claimants will make an asylum or human rights claim based on mistreatment at the hands of the state authorities due to membership of, or involvement with, political opposition groups.

3.7.2 ***Treatment.*** Aside from during the Italian occupation of 1936-1941, the ancient Ethiopian monarchy maintained its freedom from colonial rule. In 1974, a military junta deposed Emperor Haile Selassie (who had ruled since 1930) and established a socialist state. Colonel Mengistu Haile Mariam emerged as the leader of the provisional Military Administrative Council (known as the Derg) in 1977 which became a brutal Marxist dictatorship. Ethiopia was wracked by civil war for most of the Derg period, including a secessionist war in the northern province of Eritrea, an irredentist war with Somalia, and regional rebellions – notably in Tigray and Oromia. After coups, uprisings, wide-scale drought and refugee problems, the regime was toppled by a coalition of rebel forces, the Ethiopian People's Revolutionary Democratic Front (EPRDF) in 1991 when Meles Zenawi took the leadership. The first multiparty elections were held in 1995.[11]

3.7.3 Although there are more than 901 ostensibly opposition parties, in simultaneous national and regional parliamentary elections in May 2010 the EPRDF and its allies received approximately 79% of the votes cast but won more than 99% of all legislative seats to remain in power for a fourth consecutive five-year term. The relatively few international officials that were allowed to observe the elections concluded that technical aspects of the vote were handled competently but some also noted than an environment conducive to free and fair elections was not in place prior to election day. Several laws, regulations and procedures implemented since the 2005 national elections created a clear advantage for the EPRDF throughout the electoral process. There was ample evidence that unfair government tactics – including intimidation of opposition candidates and supporters – influenced the extent of that victory. Coupled with the 2008 local elections, in which the EPRDF and its affiliates took all but four of 3.4 million seats after a boycott by most of the opposition, the May electoral cycle solidified the EPRDF's domination at every level of government.[12]

3.7.4 The EPRDF comprises several ethnic-based parties including the Tigray People's Liberation Front (TPLF), the Amhara National Democratic Movement (ANDM), the Oromo People's Democratic Organization (OPDO) and the South Ethiopia People's Democratic Movement. In the 2005 elections the opposition mainly comprised the Coalition for Unity and Democracy (CUD), the United Ethiopian Democratic Forces (UEDF) and the Oromo Federalist Democratic Movement (OFDM). In the 2010 elections, the biggest opposition force was a Unity for Democracy and Justice (UDJ) led eight-party alliance, the Ethiopian Federal Democratic Forum (FORUM), known as "Medrek" (meaning "forum" in Amharic). Medrek is composed of UDJ, Oromo Federal Democratic Movement (OFDM), Arena Tigray for Democracy and Sovereignty (ARENA), Ethiopian Democratic Unity Movement (EDUM), Oromo People's Congress (OPC), Somali Democratic Alliance Forces (SDAF), and United Ethiopian Democratic Forces (UEDF).The All Ethiopian Unity Organization (AEUO), which

[11] FCO country profile 3 December 2010
[12] USSD April, 2011

had been a part of the CUD in 2005, ran in the 2010 elections on its own platform [13]

3.7.5 Prior to the 2010 elections, Prime Minister Meles threatened opposition leaders with post-election criminal prosecution for unspecified violations of the electoral code of conduct although there were no prosecutions at the end of 2010. At the local level, thousands of opposition activists complained of EPRDF sponsored mistreatment ranging from harassment in submitting candidacy forms to beatings by local militia members. There were some reports of arrests of opposition party members and forced closure of political party offices throughout the country. Some opposition leaders were reportedly discouraged or physically blocked from travelling to their constituencies. There were credible reports in 2010 that teachers and other government workers had their employment terminated if they belong to opposition political parties.[14]

3.7.6 There was no proof that the government or its agents committed any politically motivated killings during 2010. There were no reports of politically motivated disappearances although there were innumerable reports of local police, militia members and NISS seizing individuals, especially opposition political activists, for brief periods of incommunicado detention. Opposition political party leaders reported frequent, systematic abuse and intimidation of their members and supporters by police and local militias. They stated that victims of such abuse did not seek redress from the authorities for fear of provoking retaliation. When opposition parties submitted hundreds of such reports for consideration, they were generally dismissed for lack of evidence or procedural defects.[15]

3.7.7 Birtukan Mideksa, leader of the UDJ was freed from jail in October 2010. She was one of several opposition leaders imprisoned for life after the 2005 poll. They were later pardoned, but Ms Birtukan was rearrested for violating the terms of her release.[16]

3.7.8 ***Actors of protection.*** See 3.5.2 – 3.5.5

3.7.9 ***Internal relocation.*** See 3.5.6 – 3.5.7

3.7.10 ***Caselaw***

HB (Ethiopia) 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.]

3.7.11 ***Conclusion.*** There were reports of brief periods of detention and/or mistreatment of opposition activists particularly in the pre-election environment. If it is accepted that a claimant is a prominent activist within one of the opposition parties, known to the Ethiopian authorities and likely to be/remain of adverse interest, a grant of asylum is likely to be appropriate.

3.7.12 Ethiopian citizens are generally able to travel freely within the country and change their place of residence without obtaining official permission. However, as this category of applicants' fear is of ill-treatment/persecution by the state authorities, and the government administers tight control of the entire state, then in general internal relocation to escape that persecution will not be an option.

3.8 Persons of mixed Ethiopian/Eritrean origin

[13] Inter Parliamentary Union database; Ethiopian Review "Opposition alliance MEDREK faces internal crisis ahead of election", 19.04.10
[14] USSD, April 2011
[15] USSD, April 2011
[16] BBC News "Ethiopian opposition leader Birtukan Mideksa freed" 6.10.10

3.8.1 Some claims will raise the issue of whether the claimant considers himself/herself to be Ethiopian or Eritrean, and the state authorities' treatment of those who consider themselves of mixed ethnicity. Though this will not usually be a main or sole basis for a claim, it will be necessary to establish the applicant's parentage, length of time spent in Eritrea and the location of the alleged persecution to substantively assess the wider claim.

3.8.2 ***Treatment.*** The USSD states that the government stopped forcibly deporting Eritreans and Ethiopians of Eritrean origin after it signed the cessation of hostilities agreement with Eritrea in June 2000. According to the UNHCR, deportations from Ethiopia of persons of Eritrean origin have not happened since June 2001. In January 2004 directives were issued by the Ethiopian immigration department to regularise the status of Eritreans remaining in Ethiopia.[17]

3.8.3 In October 2010 the Ethiopian government announced a new policy that allows exiled Etritreans living in Ethiopia to become permanent legal residents of Ethiopia with full entitlement to public services. The number of Eritrean asylum seekers increased in 2010, with approximately 1,000 to 1,500 new arrivals per month, according to IOM. Approximately half departed monthly on secondary migration through Egypt and Sudan to go to Europe and other final destinations.[18]

3.8.4 In April 2010 the government opened a new refugee camp for Eritreans, Adi Harush. The UNHCR reported 44,823 Eritrean refugees living in Ethiopia at the end of 2010. In August 2010 the government announced an out-of-camp policy for Eritrean refugees, a change to its previous requirement that all refugees remain in designated camps unless granted permission to live elsewhere.[19]

3.8.5 ***Actors of protection.*** See 3.5.2 – 3.5.5

3.8.6 ***Internal relocation.*** See 3.5.6 – 3.5.7

3.8.7 Caselaw

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

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

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

It had been accepted by the AIT that the appellant (EB), an Ethiopian national of Eritrean descent, had had her identity documents taken by the Ethiopian authorities around the year 2000, had left

[17] Canadian Immigration and Refugee Board Research Directorate Response to Information Request. ETH100909.E. Ethopia: The deportation of Eritreans to Eritrea by Ethiopia, including who is considered an Ethiopian (August 2004-January 2006); USSD 2001
[18] USSD, April 2011
[19] USSD, April 2011

Ethiopia in 2001 and had subsequently visited the Ethiopian embassy in London on two occasions who had refused to issue her with a passport because she did not have the required documents. In their findings on the case, the Tribunal referred to **MA and others [2004] UKIAT 00324** which stated that loss of nationality on its own did not amount to persecution. The Tribunal concluded that EB's loss of nationality was a result of her leaving Ethiopia and the deprivation of her documents in Ethiopia was not of itself an activity which resulted in ill treatment to her whilst she was in Ethiopia.

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

The Court of Appeal findings in EB were as follows:

- By arbitrarily depriving someone of their citizenship, that person lost their basic right to freely enter and leave their country which was at odds with Article 12 of the International Covenant on Civil and Political Rights 1966 and Article 15 of the Universal Declaration of Human Rights (Paragraph 68). There was no difference between the removal of identity documents in EB's case and a deprivation of citizenship – the "precariousness is the same; the "loss of the right to have rights" is the same; the "uncertainty and the consequent psychological hurt" is the same." The act of depriving EB of her identity documents amounted to persecution at the time it occurred and that persecution would last as long as the deprivation itself.

Therefore contrary to the position of the Tribunal in EB and that of the Tribunal in MA; "the taking of EB's identity documents was indeed persecution for a Convention reason when it happened and the AIT in MA were wrong to conclude that some further (presumably physical) ill treatment was required". (Paragraph 70).

KA (statelessness: meaning and relevance) Stateless [2008] UKAIT 00042
1. Statelessness does not of itself constitute persecution, although the circumstances in which a person has been deprived of citizenship may be a guide to the circumstances likely to attend his life as a non-citizen.
2. The Refugee Convention uses nationality as one of the criteria of the identification of refugees: there is no relevant criterion of 'effective' nationality for this purpose.

MA (Disputed Nationality) Ethiopia [2008] UKAIT 00032
The appellant was born to parents of Eritrean descent but had always resided in Ethiopia. It was claimed that her husband had been involved with the ELF (Eritrean Liberation Front), had been deported to Eritrea in 1999 and subsequently imprisoned due to his involvement with the ELF. The appellant feared that if returned to Eritrea she would face imprisonment based on her husband's involvement with the ELF and if returned to Ethiopia she feared deportation to Eritrea.

The findings in MA were as follows:

- The Tribunal concludes that a two step approach to deciding the question of disputed nationality should be followed. Firstly, is the person entitled to the nationality in question by law (the *de jure* question)? Secondly, is it reasonably likely that the person concerned will be accepted back into that country as one of its nationals (the *de facto* question)? (paragraph 110).

- This determination replaces what the IAT said regarding the proper approach in cases of disputed nationality in YL (Nationality – statelessness – Eritrea – Ethiopia) Eritrea CG [2003] UKIAT 00016 (paragraph 110). It also replaces MA (Ethiopia – mixed ethnicity – dual nationality) Eritrea [2004] UKIAT 00324.

- The *de jure* question is an exclusively legal question and is a necessary element of the definition under the Refugee Convention, Article 1A(2). To answer the *de jure* question, nationality laws, expert evidence, documentation, evidence from the appellant, agreement among the parties and evidence from the FCO can all be considered. The ways in which nationality must be assessed are the subject of guidance given by the Tribunal in **Smith** 00/TH/02130. It may also be relevant to consider what actions the relevant authorities have taken e.g. the issuing of a passport or the removal of means to prove nationality (paragraphs 81 – 82).

- Where nationality laws contain elements of discretion, e.g. character, conduct, or length of residence, the question of whether the appellant has taken or could take the relevant steps to acquire the nationality is relevant. The Tribunal affirms its previously stated view concerning the importance of the claimant taking relevant steps, where discretion is involved (paragraph 83).

- If the person is a *de jure* national there is a presumption that the country concerned will give him the same treatment as other nationals (paragraph 86).

- If the answer to the *de jure* question is that it has not been shown that the appellant is a national of the country concerned, then the appellant is a national of another state, or is stateless (paragraph 84).

- The *de facto* question, "Is it reasonably likely that the authorities of the state concerned will accept the person concerned if returned as one of its own nationals?" is purely factual. The question is to be addressed on a hypothetical basis, and this approach has been endorsed by the Court of Appeal in EB [2007] EWCA Civ 809] (paragraph 85).

MA (Ethiopia) [2009] EWCA Civ 289

The appellant (MA) appealed against the decision of the AIT, **MA (Disputed Nationality) Ethiopia [2008] UKAIT 00032,** (above) dismissing her appeal against the decision of the Secretary of State refusing her asylum claim. The following points were held:

- The AIT had perceived the issue to be whether MA would face the risk of being denied her status as a national; it was assumed that would, if established, constitute persecution. Having recourse to legal and factual nationality was likely to obscure that question (EB (Ethiopia) SSHD [2007] EWCA Civ 809 (2009) considered). It followed that the AIT's analysis of how MA would be treated if returned to Ethiopia was wrong in law.

- The case was unusual, in that it became apparent during the hearing before the AIT that the outcome of the appeal was dependent upon whether the Ethiopian authorities would allow MA to return to Ethiopia. Normally, if the essential issue before the AIT was whether someone would be returned or not, the AIT should usually require the appellant to have taken all reasonable and practical steps to obtain the requisite documentation for return. There was no reason why MA should not visit the embassy to obtain the relevant documents. Such an approach entailed no injustice to MA; it did not put her at risk, but was consistent with the principle that, before an asylum applicant could claim protection from a surrogate state, he should first have taken all reasonable steps to secure protection from the home state (R v SSHD Ex p Bradshaw (1994) Imm. AR 359 considered). The AIT did not approach matters in that way.

- Lacking evidence as to how MA would have been treated had she made a proper application, the AIT sought to resolve the issue by considering whether someone in her position was likely to be allowed to be returned or not. It followed that the AIT had erred in law as it ought not to have engaged in that enquiry without first establishing that MA had taken all reasonable and practical steps to obtain authorisation to return. Generally, remittal would be appropriate; however the position in respect of MA's efforts to obtain permission were known, since she had given evidence that she had gone to the Ethiopian embassy and asked for a passport, but told staff there she was Eritrean. That could not constitute a reasonable or bona fide attempt to obtain necessary documentation. Therefore, there was

no ground to enable the AIT to find that she had acted in good faith and taken all reasonable and practical steps to obtain a passport, and any remission would be futile.

- (Obiter) it was not possible to state as a universal proposition that deprivation of nationality had to be equated with persecution (EB considered).

The Court of Appeal held that whilst the AIT had erred in law by considering whether an asylum seeker of Ethiopian nationality was likely to be allowed to return to Ethiopia without first establishing whether she had taken all reasonable and practical steps to obtain authorisation to return, remittal was inappropriate as on the evidence, she had not made a bona fide attempt to obtain the necessary documentation.

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

3.8.9 Where an applicant is of Eritrean descent and claims to have been deprived of Ethiopian citizenship, case owners should, in line with *MA (Ethiopia) [2009] EWCA Civ 289,* assess whether they would qualify for Eritrean citizenship. If an applicant does qualify for Eritrean citizenship they would not be entitled to asylum in the UK as protection should have been sought in the first instance from the Eritrean authorities (see paragraphs 106 and 107 of the UNHCR handbook on Procedures and Criteria for Determining Refugee Status). Case owners should therefore make clear reference to an applicant's entitlement to Eritrean nationality.

3.8.10 An applicant of Eritrean descent who has been deprived of Ethiopian citizenship but does not qualify for citizenship in Eritrea, may qualify for asylum, unless there are reasons why on the facts of the individual case they do not. This is because in the case of *EB Ethiopia 2007*, the Court of Appeal found that arbitrarily depriving someone of their citizenship was contrary to Article 12 of the International Covenant on Civil and Political Rights 1966 and Article 15 of the Universal Declaration of Human Rights effectively amounting to persecution and continuing to amount to persecution as long as the deprivation of citizenship itself lasted.

3.8.11 However, case owners should note the subsequent findings of the Asylum and Immigration Tribunal in *KA (statelessness: meaning and relevance) Stateless [2008] UKAIT 00042.* The Tribunal found that statelessness does not of itself constitute persecution, although the circumstances in which a person has been deprived of citizenship may be a guide to the circumstances likely to attend his life as a non-citizen.

3.8.12 Case owners should also note the *obiter* findings in *MA (Ethiopia) [2009] EWCA Civ 289* that "it is not possible to state as a universal proposition that deprivation of nationality must be equated with persecution (*EB* considered)". Lord Justice Stanley Burnton agreed that deprivation of a person's nationality *can* amount to persecution but that such deprivation, while relevant to the determination of refugee status, is not necessarily in itself sufficiently serious as to amount to persecution...."It will do so if the consequences are sufficiently serious".

3.8.13 Applicants 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. Consideration must be given to any

claim of illegal exit from Eritrea, although the burden of proof remains with the applicant to demonstrate this.

For guidance on mixed or disputed nationality cases and returns see Returns paragraph 5.2.

3.9 Prison conditions

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

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

3.9.3 ***Consideration.*** The country has three federal and 120 regional prisons. There are also many unofficial detention centres throughout the country, most located at military camps. According to the USSD, prison and pre-trial detention centre conditions in 2010 were harsh and in some cases life threatening. Severe overcrowding was common, especially in sleeping quarters. The government provided approximately eight birr ($0.50) per prisoner per day for food, water and health care. Many prisoners supplemented this with daily food deliveries from family members or by purchasing food from local vendors. Medical care was unreliable in federal prisons and almost non-existent in regional prisons. Water shortages caused unhygienic conditions and most prisons lacked appropriate sanitary facilities. Many prisoners had serious health problems in detention but received little treatment. [20]

3.9.4 Juveniles were sometimes incarcerated with adults who were awaiting execution. Male and female prisoners generally were separated. Authorities generally permitted visitors. During 2010 the International Committee of the Red Cross (ICRC) visited regional prisons but, like all international organisations and NGOs, remained barred from visiting federal prisons, which held persons accused or convicted of crimes against national security, and all prisons in the Somali region. Regional authorities allowed NGO representatives to meet regularly with prisoners without third parties being present. The Ethiopian NGO Justice for All-Prison Fellowship Ethiopia (JFA-PFE) was granted access to various prison and detention facilities, including federal prisons. JFA-PFE ran a “model” prison in Adama with significantly better conditions compared with other prisons. The government and prison authorities were generally cooperative in dealing with NGO efforts to effect improvements in prison conditions.

3.9.5 ***Conclusion.*** Prison conditions in Ethiopia are poor, with overcrowding and a lack of medical care, food and sanitation and conditions may breach the Article 3 threshold in some cases. Where an individual is able to demonstrate a real risk of a significant period of detention or imprisonment on return to Ethiopia, and exclusion under Article 1F is not justified, a grant of Humanitarian Protection may be appropriate.

4. Discretionary Leave

4.1 Where an application for asylum and Humanitarian Protection falls to be refused there may be compelling reasons for granting Discretionary Leave (DL) to the individual concerned. (See Asylum Instructions on Discretionary Leave) Where the claim includes dependent

[20] USSD, April 2011

family members consideration must also be given to the particular situation of those dependants in accordance with the Asylum Instructions on Article 8 ECHR.

4.2 With particular reference to Ethiopia the types of claim which may raise the issue of whether or not it will be appropriate to grant DL are likely to fall within the following categories. Each case must be considered on its individual merits and membership of one of these groups should *not* imply an automatic grant of DL. There may be other specific circumstances related to the applicant, or dependent family members who are part of the claim, not covered by the categories below which warrant a grant of DL - see the Asylum Instructions on Discretionary Leave and on Article 8 ECHR.

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 (a) they have family to return to; or (b) there are adequate reception and care arrangements. Those who cannot be returned should, if they do not qualify for leave on any more favourable grounds, be granted Discretionary Leave for a period as set out in the relevant Asylum Instructions.

4.4 Medical treatment

4.4.1 Applicants may claim they cannot return to 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 As in most developing countries in the early 1990s Ethiopia's main health problems were communicable diseases caused by poor sanitation and malnutrition and exacerbated by the shortage of trained manpower and health facilities. The Ethiopian government goal is to have a health care system and integrated primary health care at the community level emphasising disease preventive aspects. Over the past few years the Ethiopian government has sought to reform the health service system. In 1998, the government launched a twenty-year health development implementation strategy, known as the Health Sector Development Programme (HSDP) with a series of five-year investment programmes.[21]

4.4.3 Although the health care system in Ethiopia is relatively basic and is unlikely to provide treatment for all medical conditions, the Article 3 threshold will not be reached in the majority of medical cases and a grant of Discretionary Leave will not usually be appropriate. Case owners should contact Country of Origin Service for details of availability of treatment in individual cases. Where a case owner 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 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 There is no policy which precludes the enforced return to Ethiopia of failed asylum seekers who have no legal basis of stay in the United Kingdom.

5.2 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

[21] WHO country profile: Ethiopia; US Congress country studies;

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.

5.3 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 Decision Notice (this entails a right of appeal). Where there is a suspensive right of appeal, this will allow the Tribunals Service 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.

5.4 Ethiopian nationals may return voluntarily to any region of Ethiopia at any time by one of three ways: (a) leaving the UK by themselves, where the applicant makes their own arrangements to leave the UK, (b) leaving the UK through the voluntary departure procedure, arranged through the UK Immigration service, or (c) leaving the UK under one of the Assisted Voluntary Return (AVR) schemes. The AVR scheme is implemented on behalf of the UK Border Agency by Refugee Action which will provide advice and help with obtaining any travel documents and booking flights, as well as organising reintegration assistance in Ethiopia. The programme was established in 1999, and is open to those awaiting an asylum decision or the outcome of an appeal, as well as failed asylum seekers. Details can be found on Refugee Action's web site at:

www.refugee-action.org/ourwork/assistedvoluntaryreturn.aspx

6. List of source documents

A full list of source documents cited in footnotes in this guidance is set out below:

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BBC News "Ethiopian opposition leader Birtukan Mideksa freed" 6.10.10
http://www.bbc.co.uk/news/world-africa-11483828

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Italian development cooperation website in Ethiopia
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US Congress country studies
http://countrystudies.us/ethiopia/75.htm

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