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Eritrea

I am here: [Home](#) > [Laws & Policy](#) > [Country Specific Policy](#) > [Operation Guidance Notes](#) > [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 province. It must be read in conjunction with the CIPU Eritrea Country Report April 2005 and any CIPU Eritrea Bulletins.

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.](#)

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.

Source documents

1.4 Where paragraph numbers have been cited, these refer to the CIPU Eritrea Country Report April 2005. Other source documents are listed 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. [4.1 - 4.12 & 5.1]

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 Nafka. 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. [4.13 - 4.17]

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.

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[4.18 ? 4.23]

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. [4.7, 5.26 - 5.31]

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. [6.15, 6.56 ? 6.63]

2.6 Although the Constitution provides for freedom of speech, in practice there has been no independent media since the arrest of the G15. In September 2001, the Government closed eight privately run newspapers and arrested 10 leading journalists, who continue to be held without charge or trial. All TV and radio stations are government-owned, as is the only newspaper. The Government uses libel law to intimidate journalists, with editors and journalists being threatened, detained or forced to perform hard labour. [6.9 - 6.15]

2.7 The Constitution provides for freedom of religion, however the government restricts this right in the case religious groups that do not have a long history in the country (this includes several Protestant denominations, Jehovah's Witnesses). [6.16] The unimplemented Constitution also provides for free assembly and association and the right for citizens to change their government peacefully, however these rights were restricted in practice as the PFDJ continues to maintain its position as the sole legitimate party. [6.44 - 6.47]

2.8 Human rights monitoring is overseen jointly by the Ministry of Foreign Affairs and the Ministry of Local Government. All non-governmental organisations (NGOs) must register with the Eritrean Relief and Refugee Commission. Most independent national NGOs that might be critical of the Government are generally prevented from operating. International NGOs have also been subject to Government restrictions on their work. [6.150 - 6.151]

2.9 The Government has introduced some initiatives to improve the situation of women. Nevertheless, Eritrean society is largely patriarchal and in practice women's status is inferior to that of men. [6.98 - 6.102]

2.10 Homosexual activity is illegal for men and women and there have been reports that such acts have been prosecuted and punished. [6.121 - 6.123]

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 flight are set out in the relevant API's, 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 Also, this guidance does not generally provide information on whether or not a person should be excluded from the Refugee Convention or from Humanitarian Protection or Discretionary Leave. (See API on Humanitarian Protection and API on Exclusion under Article 1F or 33(2) and API on DL)

All APIs can be accessed via the [IND website](#).

3.6 Members of non-sanctioned religious groups

Many Eritrean applicants claim asylum due to alleged state persecution on account of their membership of a non-sanctioned religious group. 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 the activities of non-sanctioned groups and individual members, including non-religious social functions. [6.20 ? 6.27]

3.6.1 Jehovah's Witnesses (draft evaders)

3.6.1.1 Some of those alleging persecution on the basis of their affiliation to a non-sanctioned group are Jehovah's Witnesses who have encountered ill treatment amounting to persecution by the authorities, or fear future ill treatment by the authorities, on account of their objection to military service.

3.6.1.2 Treatment. The small community of fewer than 1,600 Jehovah's Witnesses has experienced discrimination at the hands of the authorities, including the breaking-up of meetings and random detentions without trial. While the authorities have not allowed Kingdom Halls to be set up and worship 'underground' is illegal also, meetings are permitted to take place providing they do not involve more than 5 persons. The Ethiopian Government operates a policy of not deporting Jehovah's Witnesses of Eritrean origin on grounds of religious repression. [6.30 ? 6.35]

3.6.1.3 Jehovah's Witnesses have refused on religious grounds to participate in national service or to vote, which has led to widespread criticism that Jehovah's Witnesses collectively were shirking their civic duty. The Government has singled out Jehovah's Witnesses who were conscientious objectors for harsher treatment than that received by followers of other faiths for similar actions. Jehovah's Witnesses who did not participate in national service have been subject to dismissal from the civil service, revocation of their trading licenses,

eviction from government-owned housing, and denial of passports, identity cards, and exit visas. [6.34 - 6.37] [1a] (p 4)

3.6.1.4 In January 2004, it was reported that approximately 40 Jehovah's Witnesses were arrested while praying in a private home in Asmara and detained. About 15 of these reportedly remained in detention at the end of 2004. A further 6 Jehovah's Witnesses were allegedly detained without charge or trial during 2004 for failing to participate in national service. According to the Office of General Counsel for Jehovah's Witnesses Society, 20 Jehovah's Witnesses remain imprisoned without charge, these individuals have been detained for varying periods, some for more than ten years. [6.36][1a] (p 4)

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

3.6.1.6 Internal Relocation. As this category of applicants' 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.

3.6.1.7 Caselaw.

IAT Determinations: AI (Eritrea) [2004] UKIAT 00147 promulgated 3 June 2004: An assessment by the IAT of the real risk on return to Eritrea of a Jehovah's Witness. This case was dismissed on its particular facts. However, whilst not making a definitive finding, the Tribunal was prepared to accept that as a result of a recent deterioration in the conditions in which the Jehovah's Witness community in Eritrea find themselves, members who live as part of that community, or who would be perceived as being Jehovah's Witnesses face persecution.

3.6.1.8 Conclusion. If it is accepted that the applicant is a practising Jehovah's Witness who has either previously come to the attention of the authorities for having refused to complete military service or may reasonably be considered to object to military service for religious reasons, then they will have a well-founded fear of persecution and should be granted refugee status.

3.6.2 Other non-sanctioned religious groups

3.6.2.1 Some applicants will claim asylum due to their membership of other non-sanctioned religious groups and the authorities' discriminatory position on, and treatment of, such groups.

3.6.2.2 Treatment. In mid-2004, members of non-sanctioned groups made up less than 3% of the total population [1a] (p 1). In 2001, the government began closing "Pente" facilities ("Pentes" include Born Again Christians, Pentecostals, Full Gospel, and other smaller Protestant groups). Following a May 2002 government decree stipulating that all religious groups must register or cease all religious activities, all religious facilities not belonging to the Orthodox Christian, Muslim, Catholic, or Evangelical Christian faiths were closed. The authorities also informed unregistered groups that a standing law would be used to stop political meetings or other gatherings of more than five persons in private homes. [6.20 - 6.27] [1] (p 3)

3.6.2.3 The government required these churches to register and receive authorisation to reopen. The churches were informed that partial registrations would not be accepted. By the end of 2004, no churches had been authorised to reopen. [1b] (p 6) Between mid-2003 and 2004, there were numerous credible reports that police arbitrarily detained over 400 members of non-sanctioned groups, including: the Protestant churches (Rhema, Full Gospel, Kalehiwot, and Mesert Cristos churches), the Philadelphia church, and the Bethel church and

other minority Christian groups. On occasions police tortured those detained for their religious beliefs. By mid-2004, there were estimated to be more than 200 religious prisoners still in detention. There also were credible reports that some of the detainees were required to sign statements repudiating their faith or agreeing not to practice it as a condition for release. In some cases where detainees refused to sign, relatives were asked to do so on their behalf. [6.20 ? 6.27] [1a] (p 4)

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

3.6.2.5 Internal Relocation. As this category of applicants' 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.

3.6.2.6 Caselaw.

IAT Determinations: YT (Eritrea) [2004] UKIAT 00218 promulgated 9 August 2004. 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.

3.6.2.7 Conclusion. If it is accepted that the applicant is a practising member of an unsanctioned religious group in this category and they have demonstrated that they will have a well-founded fear of persecution in Eritrea, they should be granted refugee status.

3.7 Military service

3.7.1 Many Eritrean applicants will claim asylum on the basis that they will be at risk of ill treatment 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. All citizens (men and women) between the ages of 18 and 40 are required to participate in the National Service Program, which includes military training as well as civic action programs. In addition, some national service inductees have been released back to their civilian jobs, while nominally kept in the military because their skills are deemed critical to the functioning of the Government or the economy. These individuals are required to forfeit to the Government, earnings in excess of the national service salary and also are required to perform farm labour. The maximum penalty for refusing to do national service is three years imprisonment. [5.59]

3.7.3 The Government does not excuse those individuals who object to military service for reasons of religion or conscience, nor does the Government allow alternative service. Members of the Jehovah's Witnesses religious group have experienced harassment and restrictions 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. [5.56 - 5.58]

3.7.4 The army resorted to various forms of extreme physical punishment to force objectors, including some Jehovah's Witnesses (see 3.6 above), to undertake military service. It has been reported that the police subject deserters and draft evaders to various military disciplinary actions including prolonged exposure to the sun in temperatures of up to 113°F and the tying of the hands and feet for

extended periods of time. [5.62]

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

3.7.6 Internal Relocation. As this category of applicants' fear is of ill treatment/persecution by the state authorities, relocation to a different area of the country to escape this threat is not feasible.

3.7.7 Caselaw.

IAT Determinations: SE (Eritrea) [2004] UKIAT 00295 CG promulgated 29 October 2004. IAT examined the issue of risk to this appellant as a draft evader. The Tribunal stated "If there is no evidence that the authorities have taken steps to call someone up, over a significant period of time during which such a person was eligible, it is hard to accept they would classify him or her as an evader the first time they came into contact with such a person. If Appellant's Counsel is right (in making this assertion), then the Eritrean government would view its entire population in the eligible age range as draft evaders. Plainly it does not". This case also deals with the issue of returnees in general (see Returns).

MA (Eritrea) [2004] UKIAT 00098 CG notified 04 May 2004. 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.

SEPET & another [2003] UKHL 15 - The ground upon which the appellants claimed asylum was related to their liability, if returned to Turkey, to perform compulsory military service on pain of imprisonment if they refused. The House of Lords in a unanimous judgement dismissed the appellants' appeals. The House of Lords found that there is no internationally recognised right to object to military service on grounds of conscience, so that a proper punishment for evading military service on such grounds is not persecution for a Convention reason.

NM (Eritrea) [2005] UKIAT 00073 promulgated 19 January 2005. 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 and that 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. See also IN (Eritrea) CG [2005] 00106 (Draft evaders - evidence of risk) promulgated 25 May 2005.

3.7.8 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 due interest to the authorities. In light of the Government's attitude towards military service, the treatment by the authorities of individuals known to have evaded military service is likely to amount to persecution under the terms of the Convention. The grant of asylum in such cases is therefore likely to be appropriate.

3.7.9 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. These 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.

3.7.10 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. While these claimants are unlikely to encounter ill treatment amounting to persecution within the terms of the 1951 Convention, if it is accepted that there is a real risk they would be perceived as a draft evader then the treatment they will encounter is likely to be inhumane or degrading. It will therefore be appropriate to grant Humanitarian Protection on Article 3 ECHR grounds.

3.7.11 Claimants who present an objection to military service for a Convention reason, such as members of unsanctioned religious groups (see above), would be subjected to harsher treatment as a result of these beliefs and should be granted refugee status.

3.8 Members of opposition political groups

Some applicants claim asylum 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.

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

3.8.1.1 Treatment. In 1987, the EPLF, uniting with an Eritrean Liberation Front (ELF) faction, agreed a policy objective of creating a multi-party democratic system in a future independent state. At independence in 1991 when the victorious EPLF formed the Provisional Government of Eritrea, there was no reconciliation between the ruling EPLF and the ELF. However, ELF members were allowed to return to Eritrea as individuals on condition that they renounced opposition. Some ELF members complied, such as the ELF-Unified Organisation, whose leaders were given government and military posts. Others, such as the ELF-Revolutionary Council [ELF-RC], remained in opposition - some launching a new armed struggle from bases in Sudan, others engaging solely in political opposition in exile. [6.65]

3.8.1.2 In 2000, the ELF-RC organisation was reported to still be active in exile, mainly in Sudan and Ethiopia. The Government's reaction to returning members of ELF or ELF-RC will depend on the position held in the organisations and the type of activity undertaken. There were reports in 2003 that the Government continued to hold numerous members of the ELF-RC in detention. Although the ELF-RC is quiet and seen as largely irrelevant in Eritrea, there may still be active members of the ELF factions in Eritrea, especially on the Sudanese border. [6.66 ? 6.67]

3.8.1.3 Founded in 2001 as breakaway group from the PFDJ, the EPLF-DP gained credibility in not being connected to Sudan or Ethiopia as most opposition groups are. Led by the former Defence Minister Mesfin Hagos, [Annex B] it was renamed the Eritrean Democratic Party (EDP) in February 2004. [3] While applicants claiming to be members of this group will allege their involvement in party meetings or as activists in underground 'cells', these have only been reported as operating outside Eritrea. There are no reports therefore that the

government harasses or discriminates against members of either the present EDP or its previous incarnation as the EPLF-DP in Eritrea.

3.8.1.4 Sufficiency of Protection. As this category of applicants' 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 applicants' 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.

3.8.1.6 Caselaw.

IAT Determinations: The following decisions all related to low-level ELF members and found that they would not face a real risk of persecution/Article 3 ill-treatment on return to Eritrea:

Sumon UKIAT 06094 [2003] promulgated 16 January 2003; AN (Eritrea CG) [2004] UKIAT 00300 promulgated 9 November 2004; Ghedle UKIAT 01112 [2002] promulgated 15 April 2002; Reta UKIAT 05352 [2002] promulgated 21 November 2002 where the IAT found no real risk of the appellant being deported from Ethiopia, effective monitoring of the repatriation of Eritrean civilians and prisoners of war by the ICRC, UNHCR ending the refugee status of many thousands of Eritreans need to show evidence of systematic abuse by the authorities.

Tekle UKIAT05316 promulgated 20 November 2002 where the applicant (and both of her parents) had a "medium high" profile in the ELF-RC, had continued to be involved in the organisation whilst in the UK and been previously detained and abused in Eritrea. Ashmelash UKIAT05039 promulgated 31 October 2002 where the applicant was a long-standing supporter of the ELF-RC and continued to participate in its activities in London. The IAT found that there would be a serious possibility that she might come to the attention of the authorities on return and be at risk of persecution.

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. [6.56 - 6.63]

3.8.2.2 Sufficiency of Protection. As this category of applicants' 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 applicants' 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. [6.63] Though there were many reports of politically motivated detentions in 2004, 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 2004. [1b] (p 3) 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 confirm 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 applicant considers him/herself to be Eritrean or Ethiopian, and the state authorities' treatment of those with some element of mixed ethnicity. Though this will not usually be a main or sole basis for a claim, it will be crucial to establish the applicant's parentage, length of time spent in a particular country and location of alleged persecution to substantively assess the wider claim.

3.9.2 Treatment of Eritreans of Ethiopian origin in Eritrea. Unlike in 2002, there were no reports during 2003 that the Eritrean authorities 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. [6.88 - 6.89] In 2004, the integration of some 75,000 Ethiopians of Eritrean origin deported from Ethiopia continued. [1b] (p 1)

3.9.3 Treatment of Ethiopians of Eritrean origin in Ethiopia. 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. [6.90 - 6.97]

3.9.4 As regards entitlements to Eritrean nationality, caseworkers should note that following discussions with the Eritrean Embassy in London the Home Office has had certain points clarified: (i) Any person born in Eritrea or with an Eritrean parent would be eligible for Eritrean nationality. (ii) The political views of the three witnesses required to prove Eritrean heritage are not relevant to the establishing of nationality. (iii) The political views of the applicant for nationality are not relevant to establishing eligibility for nationality and obtaining an Eritrean passport. (iv) Voting in the 1993 Referendum is not a necessary precondition to establishing nationality. (v) Paying a 2% tax on nationals overseas does not preclude eligibility for Eritrean nationality or obtaining an Eritrean passport. (vi) Claiming refugee status overseas does not preclude eligibility for Eritrean nationality or obtaining an Eritrean passport.

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

3.9.6 Internal Relocation. Internal relocation is not relevant to this category of claim.

3.9.7 Caselaw.

IAT Determinations: SOLOMON (UKIAT 00670 promulgated 12 March 2002) Solomon lived in Ethiopia: his Ethiopian father served with the Dergue army, Solomon was detained for seven months in 1999 and his Eritrean mother was deported in that year. The Tribunal dismiss his appeal, finding "no reasonable likelihood that he would not be readmitted" or "of persecution on return". Currently 200,000 Eritrean people live in the Addis Ababa area. KAHSAYE (UKIAT 00770 promulgated 19 March 2002) By contrast with SOLOMON above, the tribunal allowed the appeal of KAHSAY, who was however wealthy, 62 and in fragile health.

GHEDLE (UKIAT 01112 promulgated 15 April 2002) found that Ghedle's mother was Eritrean and his father Ethiopian: he had lived in both countries and had low-level ELF involvement. The tribunal found "no reasonable likelihood that this appellant will not be accepted as an Eritrean national on his return" and dismissed his appeal on both asylum and human rights grounds.

MA and others (UKIAT 00324 Promulgated 22 December 2004) **Ethiopia - Mixed ethnicity-dual nationality.** The IAT heard 3 appeals together due to common features. All the claimants originated from Ethiopia but are partly or wholly of Eritrean ethnic background. The appeals all raised an issue of whether nationals or former nationals of Ethiopia face persecution as a result of their ethnicity arising from a risk of discriminatory withdrawal of their nationality and a risk of deportation to Eritrea. The appeals also raise the issue of whether entitlement to Eritrean nationality deprives a claimant of a right to protection under the 1951 Convention. The following assessments were made:

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

Entitlement to dual nationality The Tribunal then considered the issue of whether if the claimants that are at risk of persecution in Ethiopia, they 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 in the case of a person who has more than one nationality, shall not be deemed to be lacking the protection of the country of his nationality if, without any valid reason based on well founded fear, he has not availed himself of the protection of one of the countries of which he is a national. In the present appeals the claimants assert that they have been effectively been deprived of their Ethiopian citizenship. The reason for this is their Eritrean background. If they qualify for Eritrean citizenship and there are no serious obstacles to their being able to apply for and obtain such citizenship, there is no reason in principle why they should not look to the Eritrean authorities for protection. It is not open to a claimant by doing nothing and by failing to make an application for citizenship to defeat the provisions of the Refugee Convention. The Tribunal is satisfied that if the evidence shows that a claimant is entitled to nationality of a country, the provisions of Article 1(A)(2)

apply. He shall not be deemed to be lacking the protection of the country of his nationality if without any valid reason based on a well-founded fear he has not availed himself of the protection of that country. In most cases this will involve making an application for his/her nationality to be recognised. A claimant cannot decline to take up a nationality properly open to him without a good reason, which must be a valid reason based on a well founded fear. The protection offered by a state of second nationality must be "effective". It will be a question of fact in each case whether the claimant has a nationality, which will provide him with effective protection.

3.9.8 Conclusion. Applicants 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 have a compelling claim for asylum.

3.9.9 Applicants of mixed parentage who have lived in Ethiopia all their life and fear persecution in Ethiopia, such individuals should be considered as Ethiopians and their wider claim assessed accordingly. If these individuals claim to be Eritrean however, they would have 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.

3.9.10 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.

3.10 Prison conditions

3.10.1 Applicants 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 Treatment. Conditions in Eritrean prisons are spartan and prison visits by local and international human rights organisations are generally not allowed, however this has improved in recent years and the Red Cross is now allowed access to some prisoners. There are no juvenile detention centres so children are often imprisoned with adults. Many observers believe that the police occasionally resort to torture and physical beatings, particularly during interrogations. [5.49 - 5.50]

3.10.3 Caselaw.

IAT Determinations: [2003] UKIAT 00108 promulgated 29 October 2003 found that prison conditions are worse than European standards however despite the spartan conditions are not considered a breach of Article 3.

MA Eritrea CG [2004] UKIAT 00098 promulgated 4 May 2004. 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 CG [2004] UKIAT 00295 promulgated 29 October 2004. 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.

3.10.4 Conclusion Whilst prison conditions in Eritrea are poor with forced labour, beatings, torture and a lack of medical care, food and sanitation leading to disease all being reported, these conditions are unlikely to reach the minimum level of severity required to reach the Article 3 threshold. Therefore 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, such as the seriousness or nature of the offence, the likely length of detention and the likely type of detention facility. These will need to be taken into account along with an individual's personal characteristics such as their age, gender and state of health. Individual cases, where the claimant demonstrates a real risk of imprisonment for a substantial period of time upon return, or where the claimant demonstrates a particular likelihood of ill-treatment, will need to be considered together with any personal characteristics which make the individual particularly vulnerable. Where taken together all these factors amount to a breach of Article 3 a grant of Humanitarian Protection will be appropriate. Where the real risk of imprisonment is related to one of the five Refugee Convention grounds a grant of asylum 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](#))

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 not covered by the categories below which warrant a grant of DL - see the [API on Discretionary Leave](#).

4.3 Unaccompanied minors

4.3.1 The policy on unaccompanied minors is set out in the API on Children. Unaccompanied minors who have not been granted asylum or HP can only be returned where they have family to return to or there are adequate reception arrangements. At the moment we do not have sufficient information to be satisfied that there are adequate reception arrangements in place.

4.3.2 Unaccompanied minors without a family to return to, or where there are no adequate reception arrangements, should if they do not qualify for leave on any more favourable grounds be granted Discretionary Leave for the period detailed in Asylum Policy Instruction on 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 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.

4.4.3 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. 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. Further detailed information is set out in the current Country Report. [5.67 - 5.82]

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. Failed asylum seekers are returned to Asmara.

5.2 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. [2a][2b] 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.

5.3 Caselaw.

IAT Determinations: GY (Eritrea) [2004] UKIAT 00327 promulgated 30 December 2004. 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 00295 and the conclusion that there is no general risk on return for ordinary failed asylum seekers was correct.

SE (Eritrea) [2004] UKIAT 00295 CG promulgated 29 October. 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.

5.4 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. Additional references

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[2] UN High Commission for Refugees (UNHCR)

a. Position on return of rejected asylum seekers to Eritrea, January 2004.

b. Interpretation of UNHCR positions relating to Eritrea, 11 April 2005.

[3] Amnesty International

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June 2005

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