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UNHCR POSITION ON

RETURN OF REJECTED ASYLUM SEEKERS TO ERITREA

6/5-04

BACKGROUND

Following a UN-supervised referendum, the State of Eritrea declared independence from Ethiopia in September 1993. This had been preceded, in 1991, by the end of the protracted war of independence, which had caused hundreds of thousands of Eritreans to leave their country in search of protection, notably in the neighboring countries. These changes triggered the urge amongst the refugees to return, and already in 1992 as many as some 70,000 Eritrean refugees returned spontaneously to their home country.

In 1995, the Government of the State of Eritrea signed an agreement with UNHCR to initiate a voluntary repatriation project. In addition, the Government of the State of Eritrea took a number of measures to create conditions conducive for the voluntary return of its nationals who had sought asylum abroad. These actions included, *inter alia*, the proclamation of the right and freedom of every Eritrean national to return to Eritrea without fear of persecution on account of having been a refugee. The Government also announced its commitment to facilitate refugees' voluntary repatriation and to assist in their re-integration. As a result of these measures, including the safeguards provided in the agreement between UNHCR and the State of Eritrea, many more Eritrean refugees were able to repatriate to Eritrea. A Tripartite Agreement for the voluntary repatriation of refugees between UNHCR and the Governments of the State of Eritrea and the Republic of Sudan was signed in April 2000.

However, in May 2000 a full-scale war broke out between Eritrea and Ethiopia in the wake of the military conflict that had started two years earlier, due to an unsettled dispute on the demarcation of the border as well as other political and economic factors. As a result, a number of Eritrean nationals who were resident in the area of conflict became either displaced internally or refugees in neighboring countries, principally Sudan. Eritrea and Ethiopia signed an Agreement on the Cessation of Hostilities on 18 June 2000, which was followed on 12 December 2000 by a Comprehensive Peace Agreement resulting in the establishment of a Temporary Security Zone under United Nations supervision between the two countries. The Eritrea-Ethiopia Boundary Commission, which was also established in the peace agreement, delivered its delimitation decision on 13 April 2002. However, this decision is disputed by Ethiopia, with the result that the border demarcation has been suspended. The Temporary Security Zone between the two countries continues to be monitored by the United Nations Mission in Ethiopia and Eritrea (UNMEE), whose mandate was recently extended until 15 March 2004 by the UN Security Council.

Meanwhile, within days of the signing of the Ceasefire Agreement, the "new" Eritrean refugees began to repatriate. From July to November 2000, 58,000 refugees returned, 27,600 through the organized voluntary repatriation programme, and the remainder did so spontaneously. Nearly 33,000 persons were assisted to return from

Sudan in 2001 and some 19,000 persons in 2002. In October 2002, the voluntary repatriation from Sudan to Eritrea was suspended, due to armed clashes in Sudan close to the Eritrean border (Kassala State). The operation was resumed in June 2003 and continues to date. At the time of issuing this note, some 35,000 refugees in Sudan, who have registered for voluntary repatriation, are waiting to return.

On 8 May 2002, UNHCR announced that the "ceased circumstances" cessation Clauses, under Article 1. C. (5) of the 1951 Convention relating to the Status of Refugees and Article I . 4. (e) of the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, would be applicable to Eritrean refugees as from 31 December 2002. The cessation clauses apply to Eritreans, who fled their country as a result of the war of independence which ended in 1991 or the border conflict between Eritrea and Ethiopia which ended in June 2000. Hence, the application of the cessation clauses is limited in scope and does not extend to the refugees who fled and are not able to return to Eritrea on other grounds, i.e. well-founded fear of persecution.

SITUATION IN ERITREA¹

Eritrea is a one-party state which, throughout its independence, has been ruled by the People's Front of Democracy and Justice (PFDJ), formerly called Eritrean People's Liberation Front (EPLF), led by President Isaias Afwerki. The Constitution that was ratified in 1997 provides for democratic freedom; however, its provisions in this regard are yet to be implemented. National elections, originally scheduled for 1997, have not been held. The draft electoral law and the draft law regulating the formation and activities of political parties, prepared in 2001, have not been acted upon², and the National Assembly elections scheduled for December 2001 were postponed indefinitely³. Officials have stated that the elections have been delayed because of continuing tensions with Ethiopia and problems caused by dissidents and the private press.⁴

In September 2001, the government clamped down on increasing criticisms of the government by arresting eleven members of the National Assembly for voicing their opposition to government policies.⁵ Ten journalists were also arrested in the same month, when the government shut down all the privately-owned news media.⁶ In the

¹ This section is intended to give a short overview of the situation in Eritrea and the recent developments. It is not meant to substitute for eligibility guidelines and does not deal with groups at risk - some of which are not mentioned at all - in any comprehensive manner.

² US Department of State Country Reports on Human Rights Practices 2002: Eritrea

³ European Parliament Resolution on Eritrea, 7 February 2002

⁴ US Department of State Country Reports on Human Rights Practices 2002: Eritrea

⁵ US Department of State Country Reports on Human Rights Practices 2001: Eritrea; Human Rights Watch: Escalating crackdown in Eritrea: reformists, journalists, students at risk, 21 September 2001; Amnesty International: Arbitrary detention of government critics and journalists, 18 September 2002; European Parliament Resolution on Eritrea 7 February 2002; Inter-Parliamentary Union: Resolution adopted unanimously by the Governing Council at its 173rd session (Geneva, 3 October 2003)

⁶ Human Rights Watch: Cease persecution of journalists and dissidents, 16 May 2002; Amnesty International: Arbitrary detention of government critics and journalists, 18 September 2002; US Department of State Country Reports on Human Rights Practices 2001: Eritrea; European Parliament Resolution on Eritrea, 7 February 2002; Reporters Without Borders: Eritrea - 2003 Annual Report; Reporters Without Borders: Two years without independent press, 17 September 2003

two years since, many more individuals have been arrested - including civil servants, businesspeople, journalists, former freedom fighters, and elders who had sought to mediate between the government and its critics - either because of their ties to the dissidents or their perceived political views.⁷ Many of them, - including the above mentioned groups arrested in September 2001 - and allegedly scores of political prisoners detained in previous years, remain held incommunicado in secret detention places without charge or trial.⁸ At least 14 journalists were reported to be in prisons in Eritrea as of 17 September 2003, which qualified the country as "the biggest prison for journalists in Africa".⁹ Dozens of other journalists fled abroad.¹⁰

In August 2001, the government cracked down on a students' demonstration against the compulsory student vacation work programme under the national service regulations.¹¹ Approximately 450 students were detained and subjected to a work programme under harsher conditions than the original programme.¹² Reportedly they were not provided adequate food, water or shelter, and two of them are said to have died from heat-related causes.¹³ The students were released between September and November 2001, except for their leader, who was held incommunicado in detention in a secret location until he managed to escape to Ethiopia in August 2002.¹⁴

According to the Eritrean law, national military and development service is compulsory for 18 months for both men and women aged between 18 and 40. In practice, it has become indefinite as no meaningful demobilization has taken place so far. There is no right to conscientious objection.¹⁵ The government has deployed military police throughout the country using roadblocks, street sweeps, and house to house searches to find deserters and draft evaders.¹⁶ The government has also reportedly authorized the use of extreme force against anyone resisting or attempting to flee.¹⁷ There have been reports of resistance, especially by parents of draft-age

⁷ US Department of State Country Reports on Human Rights Practices 2001: Eritrea; US Department of State Country Reports on Human Rights Practices 2002: Eritrea; Human Rights Watch: Cease persecution of journalists and dissidents, 16 May 2002; Human Rights Watch World Report 2003; Human Rights Watch: Eritrea: Release Political Prisoners, 17 September 2003; Amnesty International: Arbitrary detention of government critics and journalists, 18 September 2002; Amnesty International Report 2003: Eritrea; Amnesty International: Eritrea: Human rights appeal for 10th independence anniversary, 19 May 2003; Amnesty International: Eritrea: Continued detention of prisoners of conscience and new arrests of members of religious groups, 18 September 2003

⁸ Ibid; Inter-Parliamentary Union: Resolution adopted unanimously by the Governing Council at its 173rd session (Geneva, 3 October 2003)

⁹ Reporters Without Borders: 2003 Annual Report - Eritrea; Reporters Without Borders: Two years without independent press, 17 September 2003; Reporters without borders: Fifteen journalists still held in utmost secrecy, 20 August 2003

¹⁰ Ibid; Amnesty International Report 2003: Eritrea

¹¹ Human Rights Watch: Escalating crackdown in Eritrea: reformists, journalists, students at risk, 21 September 2001; US Department of State Country Reports on Human Rights Practices 2001: Eritrea; US Department of State Country Reports on Human Rights Practices 2002: Eritrea; Amnesty International: Arbitrary detention of government critics and journalists, 18 September 2002; European Parliament Resolution on Eritrea, 7 February 2002

¹² Ibid.

¹³ Ibid.

¹⁴ US Department of State Country Reports on Human Rights Practices 2001: Eritrea; Amnesty International: Arbitrary detention of government critics and journalists, 18 September 2002

¹⁵ US Department of State: International Religious Freedom Report 2002, Eritrea; Amnesty International: Eritrea: Continued detention of prisoners of conscience and new arrests of members of religious groups, 18 September 2003

¹⁶ US Department of State Country Reports on Human Rights Practices 2002: Eritrea

¹⁷ Ibid.

girls, which resulted in deaths of both soldiers and civilians.¹⁸ In some instances, authorities are said to have arrested or detained for several hours or even days individuals, including pregnant women, children under age 18, and citizens of other countries, who were not subject to national service obligations or had proper documentation showing they had completed or were exempt from national service.¹⁹ It is reported that the army resorted to various forms of severe physical punishment to force objectors, including some Jehovah's witnesses, to perform the military service.²⁰ The punishments used against deserters, conscription evaders and army offenders reportedly included such measures as the tying of the hands and feet for extended periods of time and prolonged sun exposure at high temperatures.²¹

The comprehensive drafting appears to have become the main cause of the flight of asylum seekers.²² It has also had an impact on the Eritrean society at large. For instance, the drafting of many civilians into the national service, including court administrators, defendants, judges, lawyers, and others involved in the legal system, has reportedly had a significant negative impact on the judiciary.²³ In 2001, the High Court was reduced from 7 benches to 3 benches, and provincial, zone and village court personnel were reduced by 40 per cent.²⁴ Even before these developments, the judiciary system was reported to be weak and subjective to executive interference.²⁵ There exists a system of special courts, which have banned defense counsel and the right of appeal, allowed the executive branch to mete out punishment without respect to due process, and sometimes subjected the accused to double jeopardy.²⁶ The judges of the special courts are senior military officers, most of whom have little or no legal experience.²⁷ The special courts have jurisdiction over some criminal cases, but the Attorney General has also allowed the special courts to retry civilian court cases, including those decided by the High Court.²⁸ In July 2001, the President of the High Court (Chief Justice) made public criticisms about the government interference with the judiciary and the illegality of the special court system.²⁹ He was dismissed by the Minister of Justice on 7 August 2001.³⁰

There are four major religions in Eritrea: Orthodox Christianity, Islam, Catholicism and the Evangelical Lutheran.³¹ For several years, the small community of Jehovah's witnesses has been reported to be harassed, discriminated against and subjected to

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ Ibid; Amnesty International: Eritrea: Human rights appeal for 10th independence anniversary, 19 May 2003

²¹ Ibid.

²² Amnesty International: Eritrea: Continued detention of prisoners of conscience and new arrests of members of religious groups, 18 September 2003

²³ US Department of State Country Reports on Human Rights Practices 2001: Eritrea

²⁴ Ibid.

²⁵ Ibid.; Human Rights Watch: Escalating crackdown in Eritrea: reformists, journalists, students at risk, 21 September 2001; Amnesty International: Arbitrary detention of government critics and journalists, 18 September 2002

²⁶ US Department of State Country Reports on Human Rights Practices 2002: Eritrea; Amnesty International: Arbitrary detention of government critics and journalists, 18 September 2002

²⁷ US Department of State Country Reports on Human Rights Practices 2002

²⁸ Ibid.

²⁹ US Department of State Country Reports on Human Rights Practices 2001; Amnesty International: Arbitrary detention of government critics and journalists, 18 September 2002; Human Rights Watch: Escalating crackdown in Eritrea: reformists, journalists, students at risk, 21 September 2001

³⁰ Ibid.

³¹ US Department of State Country Reports on Human Rights Practices 2002

detention, because of their refusal, on religious grounds, to vote or participate in national service.³² In May 2002, the government reportedly ordered several minority churches, referred collectively as the “Pentes” (including Born Again Christians, Pentecostals, Full Gospel and other small Protestant groups) to close down.³³ They were required to register with the new Department of Religious Affairs and receive authorization to reopen.³⁴ Although the churches reportedly complied with the registration requirements, which included providing extensive details of members and funds, and were informally allowed to continue to worship,³⁵ none of them were known to have been officially registered by 19 September 2003.³⁶ Instead, it is reported that, particularly between February and May 2003, hundreds of members of more than twelve evangelical churches were arrested.³⁷ They were reportedly tortured and ill-treated in order to force them to sign statements abandoning their faith.³⁸ The members were also told that their prayer meetings and church gatherings were illegal.³⁹ They were reportedly held without charge or trial, contrary to the human rights protections (which also guarantee religious freedom), under the laws and Constitution of Eritrea.⁴⁰

On 19 and 20 August 2003, over 200 teenage school students from all over Eritrea, who were sent to Sawa Military camp in western Eritrea for a compulsory 3-month summer course under new pre-National Service education regulations, were allegedly beaten for possessing bibles.⁴¹ 57 of them, 27 girls and 30 boys, are said to have been arrested and put in unventilated, over-crowded and extremely hot shipping containers, without adequate food or medical care.⁴² Six of them were still reported to be held in underground cells in solitary confinement as of 27 November 2003.⁴³ In total, over 330 members of minority faiths were believed to be detained in different parts of the country at that time.⁴⁴

SITUATION OF RETURNEES

a) Refugees who have returned voluntarily under UNHCR’s voluntary repatriation programme

³² Ibid.; US Department of State: International Religious Freedom Report 2002, Eritrea.

³³ Ibid.

³⁴ Ibid; Amnesty International: UA 348/03: Eritrea, 27 November 2003

³⁵ Amnesty International UA 348/03, Eritrea, 27 November 2003

³⁶ Amnesty International UA 272/03, Eritrea: Twelve members of the Eritrean Bethel Church, 19 September 2003; Amnesty International UA 348/03, Eritrea, 27 November 2003

³⁷ Ibid.

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ Ibid.

⁴¹ Amnesty International UA 269/03, Eritrea: 57 male and female students – members of minority Christian churches, 18 September 2003; Amnesty International, Eritrea: Continued detention of prisoners of conscience and new arrests of members of religious groups, 18 September 2003; Amnesty International: UA 348/03, Eritrea, 27 November 2003

⁴² Amnesty International UA 269/03, Eritrea: 57 male and female students – members of minority Christian churches, 18 September 2003; Amnesty International, Eritrea: Continued detention of prisoners of conscience and new arrests of members of religious groups, 18 September 2003

⁴³ Amnesty International: UA 348/03, Eritrea, 27 November 2003

⁴⁴ Ibid.

UNHCR monitors the return of refugees in the context of its organized voluntary repatriation programmes. In this context the returnees have been well received and assisted to re-integrate. UNHCR's monitoring activities have not revealed any incidents of reprisals or persecution perpetuated by the Government of the State of Eritrea against refugees who voluntarily elected to return to their country, and did so under the auspices of UNHCR's voluntary repatriation programme. A few returnees have been, apparently by mistake, drafted to national service "prematurely" (the Eritrean government has generally provided for a one year leave from drafting for the returning refugees), but they have usually been released after interventions by UNHCR and its governmental implementing partner. The voluntary repatriation programme continues and UNHCR hopes to be able to assist as many refugees as possible to repatriate, including the remaining 35,000 refugees who are currently registered for voluntary repatriation in Sudan.

b) Persons deported to Eritrea

Between 30 September and 3 October 2002, 233 persons were deported from Malta to Eritrea. 170 of them were reported not to have sought asylum, whereas 53 had been rejected in the asylum procedure (which was not known to UNHCR at the time). They were reportedly arrested immediately on arrival in Asmara and taken to detention incommunicado. The Eritrean authorities neither acknowledged the detentions nor revealed the whereabouts of the detainees to their families or the public.⁴⁵ Subsequent reports have suggested that those with children and those over 40 (the conscription limit) may have soon afterwards been released, but that the remainder were - and still are - kept in incommunicado detention in secret places, described as halls made of iron sheets and underground bunkers. According to different sources, the detainees were deprived of their belongings (including shoes and clothes to change), subjected to forced labor, interrogated and tortured (e.g. by beating, tying up and exposing to sun as described above). The dwellings are said to be congested and lack any facilities for personal hygiene. Food and water provided for the detainees are inadequate and unclean. Consequently, many of the detainees have succumbed to illnesses, notably various skin conditions and diarrhea. Medical treatment is said not to be available. Some detainees are believed to have died of their diseases and/or injuries. At least one person was allegedly killed by shooting during an escape attempt.⁴⁶

CONCLUSIONS

Based on various reports, it appears that the human rights situation in Eritrea has seriously deteriorated in the past two years.⁴⁷ Human rights violations continue to be

⁴⁵ Amnesty International, Malta: The Government should suspend deportations of Eritreans, 10 October 2002

⁴⁶ Sources withheld for security reasons

⁴⁷ US Department of State Country Reports on Human Rights Practices 2001: Eritrea; Human Rights Watch: Escalating crackdown in Eritrea: reformists, journalists, students at risk, 21 September 2001; European Parliament Resolution on Eritrea, 7 February 2002; Human Rights Watch: Cease persecution of journalists and dissidents, 16 May 2002; Amnesty International: Arbitrary detention of government critics and journalists, 18 September 2002; US Department of State Country Reports on Human Rights Practices 2002: Eritrea; US Department of State: International Religious Freedom Report 2002, Eritrea; Inter-Parliamentary Union: Resolution adopted unanimously by the Governing Council at its 173rd

reported, *inter alia*, with regard to the treatment of opposition political groups and movements, freedom of expression, freedom of religion, arbitrary detention and detention conditions (including reports of torture, ill-treatment and forced labor), and treatment of draft evaders/deserters.⁴⁸

Against this background, it appears that the deportees from Malta to Eritrea may have faced persecution owing to an imputed political opinion, conscientious objection or other reasons. It cannot be excluded that future deportees would face a similar risk.

It is again emphasized that the scope of the cessation clauses for Eritrean refugees announced by UNHCR in May 2002 is limited to persons who fled their country as a result of the war of independence which ended in 1991, or the border conflict between Eritrea and Ethiopia which ended in June 2000. Other Eritrean refugees, i.e. those fleeing persecution, remained and continue to be unaffected by the cessation clauses. It is also underlined that the applicability of the cessations clauses is always rebuttable and, upon request, each individual case is to be examined on its merits. In this context, the possibility of a valid *sur place* claim should not be excluded.

In light of the above, UNHCR recommends that asylum claims submitted by Eritrean asylum seekers should undergo a careful assessment to determine their needs for international protection. It is also recommended that states refrain from all forced returns of rejected asylum seekers to Eritrea and grant them complementary forms of protection instead, until further notice. This position will be reviewed in the second half of 2004.

UNHCR GENEVA
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session (Geneva, 3 October 2003); Reporters Without Borders: Eritrea - 2003 Annual Report; Human Rights Watch World Report 2003; Amnesty International Report 2003: Eritrea; Amnesty International: Eritrea: Human rights appeal for 10th independence anniversary, 19 May 2003; Reporters without borders: Fifteen journalists still held in utmost secrecy, 20 August 2003; Human Rights Watch: Eritrea: Release Political Prisoners, 17 September 2003; Reporters Without Borders: Two years without independent press, 17 September 2003; Amnesty International: Eritrea: Continued detention of prisoners of conscience and new arrests of members of religious groups, 18 September 2003; Amnesty International UA 269/03, Eritrea: 57 male and female students – members of minority Christian churches, 18 September 2003; Amnesty International UA 272/03, Eritrea: Twelve members of the Eritrean Bethel Church, 19 September 2003; Amnesty International UA 348/03, Eritrea, 27 November 2003

⁴⁸ Ibid.

