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Under henvisning til Udlændingestyrelsens skrivelser af 28. oktober og 30. august 2002 fremsendes hermed kopi af skrivelse af 27. november 2002 fra UNHCRs kontor i Stockholm vedrørende eritreiske asylansøgere med et underbilag, kopi af "Guidelines Relating to the Eligibility of Asylum Seekers from Eritrea" udarbejdet af UNHCR i Genève november 2002.

P.M.V

E.B.

Jesper Rohde

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Haut Commissariat des Nations Unies pour les réfugiés**UNHCR**
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27 November 2002

Notre/Our code: ROBNC/0358/02

Re Eritrean asylum seekers in Denmark

FKONG -		1 Bil.
- 2 DEC. 2002		
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Dear Mr. Wigotski,

In reply to your inquiry dated 31 October 2002 regarding Eritrean draft evaders applying for asylum in Denmark, we are able to share with you the enclosed Guidelines Relating to the Eligibility of Asylum Seekers from Eritrea, which we received today from our Headquarters in Geneva.

We hope the guidelines will be of use to you in this connection.

Yours sincerely,

Annika Linden
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Mr. Bent Wigotski, Department for Consular Matters, Royal Danish Ministry of Foreign Affairs

Guidelines Relating to the Eligibility of Asylum Seekers from Eritrea

Historical Background

Following centuries long contests between Spain, Portugal and the Ottoman Empire and the subsequent rule of Italy from 1885 to 1941, the British forces pushed out the Italian troops and occupied Eritrea in the second world war in 1941. After the war, as from 1949, Eritrea was administered as a UN trust territory until the United Nations established Eritrea as an autonomous entity federated with Ethiopia in 1952. In 1962, the Emperor Haile Selassie, without consulting the UN, terminated Eritrea's federal status and annexed it to Ethiopia.

Armed struggle to free Eritrea from the Ethiopian control began in 1961 under the leadership of the Eritrean Liberation Front (ELF). The mid-1960s and late 1970s were marked by splits within the ELF and the appearance of the reformist Popular Liberation Forces, renamed in 1977 as Eritrean People's Liberation Front (EPLF). Two civil wars between these movements took place in 1972-1974 and early 1980s.

The resistance to the Ethiopian rule increased after the 1974 overthrow of Emperor Haile Selassie and the accession to power of the Provisional Military Administrative Committee (PMAC), also known as the Dergue regime. Thousands of people joined the Eritrean resistance after the 1977 "Red terror" campaign of political repression. The EPLF developed from a guerrilla force into a regular army obtaining significant military victories.

In May 1991, after 30 years' armed struggle for independence, the Eritrean People's Liberation Front (EPLF) forces, in alliance with a coalition of Ethiopian resistance movements centered around the Tigray People Liberation Front (TPLF), defeated Haile Selassie's communist successor, Mengistu Haile Mariam. Eritrea became formally independent on 24 May 1993, after a UN-supervised referendum in April resulted in a 99.8 per cent vote in favour of independence. The international recognition followed on 28 May 1993.

A transitional legislature, the National Assembly was established. It was and still is composed exclusively of members of the EPLF, which was subsequently renamed as People's Front for Democracy and Justice, PFDJ. Mr. Isaias Afwerki, the leader of the EPLF/PFDJ, was elected President of the State by the National Assembly. President Afwerki assumed the roles of head of state, head of government, head of State Council and head of National Assembly. The constitution, ratified in 1997, is yet to be implemented fully, pending parliamentary elections and because of the resumption of the Ethiopia-Eritrea border conflict, which de facto brought into effect a state of emergency.

In the immediate aftermath of the establishment of Eritrean independence, relations between Eritrea and Ethiopia and their respective two ruling parties were cordial. The two states initially maintained an open border policy, allowing free movement of people and trade. Their relations began to seriously deteriorate in the late 1990's, primarily as a result of economic disputes over what had been perceived as unequal trade terms. The culmination point was reached in 1997 on the decision by Eritrea to introduce a separate currency, the Nakfa. A dispute erupted between the two

governments over post-Nakfa trade, which severely disrupted the flow of goods, money and workers across the border. When local attempts at arbitration failed to resolve a border dispute in the Badme area in May 1998, the conflict erupted into war.

The first period of fighting lasted from May to June 1998, after which there was an eight-month pause. Deportations from Ethiopia of Eritreans and Ethiopian citizens of Eritrean origin took place, and *vice versa*. By the end of 1998, some 45,000 individuals out of an estimated total Eritrean population of 600,000 had been deported from Ethiopia to Eritrea. Some had left for other countries. Fighting recurred from February to June 1999, during which Ethiopia took the town of Badme. The last phase of fighting took place from May to June 2000, when Ethiopian troops pushed deep into Eritrea, occupying parts of Debub and Gash Barka provinces.

Following persistent mediation efforts by the international community, Ethiopia and Eritrea signed a comprehensive Peace Agreement in Algiers on 12 December 2000. On April 13, 2002 the Eritrea-Ethiopia Boundary Commission rendered a decision on the delimitation of the border between the two countries. Cessation of refugee status was announced by UNHCR on 8 May 2002 for Eritreans who had 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.

Key political organizations

The Eritrean Liberation Movement (ELM) was established in 1958 in Port Sudan by four young men. The movement was secular, discouraging confessional rivalry. The ELM was partly influenced by the Sudanese Communist party, especially in structure and recruitment policies. It was organised through clandestine cells, each of them entrusted with recruiting a limited number of members and an obligation of the members to donate part of their earnings to the nationalist cause and attend regular meetings. The ELM adopted a strategy of liberation by coup d'état and principally opposed the armed resistance. But in 1963, the ELM accepted the idea of armed struggle and deployed arms and fighters in the country. The Eritrean Liberation Front (ELF) placed an ultimatum on the ELM asking them to either unite with the "existing liberation front" or be eliminated. When the ELM deployed a group of fighters to Eritrea in 1965, they were ambushed and disarmed, some of them killed. That event marked the demise of the ELM.

The Eritrean Liberation Front (ELF) emerged in July 1960. The ELF emphasised the armed struggle as the only alternative to Ethiopian domination. It initially gathered members of the expatriate Eritrean student community in Cairo. ELF's targets for recruitment were in the rural areas of the western lowlands. ELF raised support for the armed struggle from both the Arab nations and in the mid-1970 from China and Cuba, which brought to a more radical Marxist-oriented party philosophy. Hamid Idriss Awate's group of 13 ELF fighters in the Barka region firing of first shots in 1961, is commonly seen as the beginning of the liberation struggle.

The ELF organisational structure was largely based on religious and ethnic affiliations. The leadership was based in Cairo and the party had the backing of the Eritrean Muslim population. The organisational structure within Eritrea was based on territorial zonal divisions with separate military leaderships (4 Moslem and 1 Christian

Zone). The Supreme council represented the movement in exile, with a revolutionary military command in Kassala. The warlordism at the zonal level brought about fractionalism and divisions, based on religious and ethnic affiliations. The popularity of the ELF diminished. The harsh methods used by some of the zonal lords to gather support for the Eritrean Liberation Army (ELA- army of the ELF), unpopular amongst the Christian rural community, were used in late 1960s by the Ethiopians as a reason to strike back and gather international support for continued occupation of Eritrean territories. In 1968, fighters trained in China and Syria (one of them being Isaias Afwerki), returned back and began mobilisation for reforms of the ELF. However, the reforms ended in internal violence and terror and eventually 3 factions broke away from the ELF: **People's Liberation Front (PLF)**, **Eritrean Liberation Front - People's Liberation Front (ELF-PLF)** and **ELF-Ubel**. The fragmentation was mostly based on territorial claims and regional rivalries. The breakaway factions fought two civil wars (1972-1974 and 1980-1981). In the second civil war (1980-1981) the ELF was defeated by the EPLF and driven to the Sudan.

The Eritrean People's Liberation Front (EPLF) was formed in 1977. It is led by Isayas Afwerki and it formed the Government of Eritrea after independence. The party was transformed into a political organisation in 1994 and was renamed to **People's Front for Democracy and Justice (PFDJ)**. To date it is the only authorised political organisation in Eritrea.

Since 1982, the ELF broke into several factions. The most important faction being the **Eritrean Liberation Front -Revolutionary Council (ELF-RC)**, which sees itself as the legitimate leadership of the ELF as a whole and therefore claims to be a pivot of the Eritrean liberation. ELF-RC's main difference with the Government of Eritrea is on the need for democratisation, national dialogue and political pluralism. Ahmed Mohamed Nasser, the former Head and the Chairman of the executive team, was replaced by Seyoum Obga Michael in August 2002. Dr. Habte Tesfamariam is the President/Speaker of the legislative body / 37-member Revolutionary Council. A prominent member of ELF-RC is Ibrahim Mohammed Ali.

The Eritrean Liberation Front - Central Command (ELF - CC) appeared in 1982. The leader is Abdallah Idriss. It is a Marxist oriented party. In 1987, a considerable number of its members left and joined the EPLF.

The Eritrean Liberation Front - United Organisation (ELF-UO) lead by Mohammed Said Nawud, was another splinter group of ELF. It was reportedly dissolved and the membership returned to the country in 1992. Many of the ELF-UO members who returned to Eritrea joined the EPLF / PFDJ and some were appointed to important positions within the government (to the constitutional commission, local administration etc.).

Another splinter group of the ELF was the **Eritrean Democratic Movement (EDM)**, formed in 1976. EDM was advocating for organisational changes within the ELF through democratisation. It was labelled as anarchists and members were executed and imprisoned by the ELF. A segment of EDM, lead by Heruy Tedla joined the EPLF in 1990. Other members exiled to Europe and the US.

The Eritrean Islamic Jihad Movement (EIJM), later **Eritrean Islamic Salvation Movement**, is another party that was formed as a breakaway group of ELF. The movement was formed after the expulsion of Omar Haj Idriss from the ELF. In 1975, Omar Haj Idriss, Adam Mojawariu and Osman Daud created a group under the name of Islamic Eritrean Front. Another group with Islamic tendencies appeared in 1981 under the leadership of Hamed Saleh Turkey and Ibrahim Mohamed Adem. A third

group, under the leadership of Arafa Ahmed appeared in 1987. All of the groups are against the secularism of the Eritrean revolution. A congress, which gathered 165 representatives of different Islamic tendencies in 1988, the Eritrean Islamic Jihad Movement was proclaimed under the leadership of Arafa Ahmed. The movement reportedly changed the name in 1998 in Khartoum to **Eritrean Islamic Salvation Movement**. The secretary-general is Sheikh Khelil Mohammed Amir. The movement has been seeking the forceful overthrow of Eritrea's government and its replacement by an Islamic government. It is based in Sudan, possibly in Ethiopia and periodically carries out armed attacks in the western parts of the country. They reportedly recruit members amongst the Moslem Eritrean population in the western lowlands, specially the Beni Amir, Tigre and Beja tribes.

The post-independence opposition, principally the ELF-RC (which stated to be non-violent) formed a coalition in Khartoum in March 1999, including the armed ELF (Abdallah Idris) and Islamic Jihad / Eritrean Islamic Salvation Movement (Khelil Mohammed Amir). This coalition became the **Alliance of Eritrean National Forces (AENF or the Alliance)** and defined as its aim to "overturn the regime in Asmara by all possible means including the use of armed force". It is now based in Ethiopia and the other members of the Alliance reportedly include:

ELF-NC (Hassen Assed)

Eritrean People's Congress (Mohammed Thahir Shengeb)

Eritrean People's Democratic Front for the Liberation of Eritrea (Sagem, Tewelde Gebressellassie)

Eritrean Revolutionary Democratic Front (Berhane Yemane)

Democratic Movement for the Liberation of Kunama Eritrea (Kerneleous Osman)

Eritrean Democratic Resistant Movement Gash Setit (Ismael Nada)

Initiative Group (Yassin Mohammed Abdella)

ELF National United Organization (Ali Mohammed Said Birhatu)

Opponents of EPLF have been allowed to return to independent Eritrea as individuals but not as organizations and there has been no reconciliation between the EPLF and its former rivals. The new EPLF dissidents are grouped as the **EPLF-Democratic Party** (in exile) or in civil society groups in the diaspora, and have not joined the Alliance, which talks of a united military force.

Some categories of persons who may be in need of international protection:

The following is an *indicative* list and descriptions of categories of persons identified so far as warranting special attention, in view of the possibility of continued need of international protection:

1. Draft evaders and deserters from National Military Service
2. Journalists and members of the private press
3. Opposition members
4. Minority religious groups
5. Student activists
6. Kunamas
7. Expellees from Ethiopia who fail to establish their Eritrean nationality
8. Persons of Ethiopian origin
9. Persons risking to be subjected to sexual or gender based violence

1. Draft Evaders and Deserters from National Military Service

It is widely accepted that a state has a right to impose a legal obligation on its citizens to perform compulsory military or national service. Accordingly, citizens have a corresponding legal duty to respond to this obligation and failure to do so may attract legal sanction. In general, imposition of such sanctions would not amount to persecution within the meaning of Article 1 A. Therefore, punishment for evasion or refusal to perform compulsory military service or national service does not, *per se*, constitute a well-founded fear of persecution within the meaning of Article 1 A of the 1951 Convention ¹. Furthermore, in most jurisdictions, regardless of whether or not there is a duty to perform national service, desertion is usually considered a criminal offence ².

Prosecution for failure to perform military service could constitute grounds for recognition of refugee status where the individual can show that the performance of military service would have required participation in military action contrary to his/her genuine political, religious or moral convictions, or to valid reasons of conscience. Where the individual is able to establish such a conviction, recognition of refugee status may be accorded.³

Not every conviction, genuine though it may be, will constitute a sufficient reason for claiming refugee status after desertion or draft-evasion. It is not enough for a person to be in disagreement with his/her government regarding the political justification for a particular military action. Where, however, the type of military action, with which an individual does not wish to be associated, is condemned by the international community as contrary to basic rules of human conduct, punishment for desertion or draft evasion could, in the light of all other requirements of the definition, in itself be regarded as persecution. This is a determination that must be made on the merits of the individual claim.

Recognition of refugee status could also arise where the requirement of military service has a differential impact on a person or group of persons on account of one of the Convention grounds; or where enforcement of the law requiring military service or other consequences of the draft evasion / desertion risk to or do violate human rights on the same grounds.

In distinguishing the ordinary prosecution of offences from persecution, it is necessary to take into account and analyse at least some of the following factors:

- a. whether persons charged under the law are denied due process of law for a Convention reason;
- b. whether prosecution is discriminatory (for example where only members of certain ethnic groups are prosecuted);
- c. whether punishment under the law amounts to persecution (for example where the punishment amounts to cruel, inhuman or degrading treatment);
- d. whether punishment is meted out on a discriminatory basis (for example, the usual penalty is a six month prison term but those judged to hold a certain political opinion are routinely sentenced to a one year imprisonment).

¹ Handbook on Procedures and Criteria for Determining Refugee Status, Geneva, January 1992

² *ibid.* paragraph 167

³ There is no requirement, in this case, that the punishment prescribed for evasion of military service on the basis of these genuine convictions should differ from the punishment prescribed for those who are simply disinclined to serve.

In Eritrea, the 1995 Proclamation on National Service is the key piece of legislation regulating national service and provides that all Eritreans citizens aged 18-40 have a duty to perform 18 months "active" national service, consisting of six months military training and 12 months development service. This period can be extended during a period of national emergency or general mobilisation and, in addition, military reserve obligations apply to all demobilized citizens of the said age. In this context, it should be noted that a state of emergency or war was never formally declared during the 1998 - 2000 border conflict with Ethiopia. However, in practice, persons have been drafted into national service for periods exceeding the 18 months provided for in the proclamation.

Under the 1995 Proclamation on National Service, penalties imposed for violation of its provisions can consist in a fine, or a term of imprisonment of up to five years, or both. The maximum penalty of five years specifically applies to those who have escaped abroad in order to avoid national service.

However, notwithstanding the penalties imposed under the 1995 Proclamation on National Service, in times of emergency, general mobilisation and war, the penalties stipulated in the Eritrean Transitional Penal Code (ETPC) may apply to draft evasion and desertion. These provisions provide for rigorous imprisonment of up to 10 years for draft evasion, and "rigorous imprisonment from five years to life, or, in the gravest cases, with death" for desertion from a unit, post or military duties or for failure to return to them after an authorised period of absence.

It must be noted that the practice surrounding the application of this legislation is not known to UNHCR. Military courts established to hear such cases have not been functioning for a considerable period of time. Persons accused of such offences appear to be returned to their units for their commanding officers to decide on the appropriate punishment. It is therefore not known to what extent the harsh penalties of the ETPC may actually be applied.

In terms of general practice it appears that, in spite of the prevailing peace, extensive conscriptions continue, at times carried out by house, street and office searches. At the same time, large-scale demobilisation has been repeatedly postponed, which means that in many cases the national service has already continued for several years. Consequently, families, private and public companies, national and international organizations and government offices are increasingly facing labor shortages. There is a growing resentment and a rising number of draft evaders, some of whom are being arrested while others find their way abroad. With no access to detention facilities by any independent source, the general conditions of detention and treatment of prisoners are difficult to assess.

Nevertheless, it has been reported that "those who refuse national service are forcibly conscripted, detained, beaten and ill-treated as punishment. Conscripts are subject to military law but no information is available [...] on any judicial processes against conscript offenders where the penalty for refusing national service is reported to be three years imprisonment."⁴ "Desertion is harshly punished for. Those liable to conscription caught fleeing the country or forcibly returned to Eritrea after seeking to avoid conscription would be detained and punished for refusing conscription and leaving the country illegally without a visa."⁵ "[In 2001], the police was reported to have severely mistreated and beaten army deserters and draft evaders, although less frequently than [in 2000], and the army subjected deserters and draft evaders to

⁴ Amnesty International: Arbitrary detention of government critics and journalists (AFR/64/008/2002)

⁵ Ibid.

various military disciplinary actions that included prolonged sun exposure in temperatures of up to 113 degrees Fahrenheit or the tying of the hands and feet for extended periods of time."⁶

Conscientious Objectors: Eritrea does not exempt conscientious objectors from military service, nor is any alternative to active military service provided for. Therefore, in principle, persons falling under this category would be liable to the penalties stipulated in the National Service Proclamation and the ETPC and would, *de facto*, face the same treatment as any other draft evaders or deserters. Furthermore, as the government does not allow exemption from military service or provide alternative service for genuine conscientious objectors, the prosecution of persons who have valid reasons of conscience not to perform military service may be persecutory. Prominent amongst those refusing conscription on religious grounds are Jehova's Witnesses (see below).

In light of the limited information available on the consequences of the draft evasion and desertion, it is not possible to draw exhaustive conclusions on the caseload as a whole. It would appear that the treatment could significantly vary depending on the circumstances; for instance, whether the person actually deserted or evaded the draft, the profile of the person concerned, whether it happened during the time of war, whether it had come to the knowledge of the authorities etc. (e.g. a specific wartime deserter could face much harsher punishment than a person who happened to evade draft merely because of being in exile – in which case the latter would just be likely to be drafted after return or a few years later and undergo the national service as anyone else.) Therefore, each case should be determined on its own merits, based on a thorough credibility assessment, taking into account all the available information and applying the benefit of the doubt as appropriate.

2. Journalists and members of the private press

In September 2001, the Government banned all independent publications including Meqaleh, Setit, Tiganay, Zemen, Keste Debena, Wintana, and Admas. On 23 September 2001, 10 journalists and editors working for the private press were immediately arrested and have been detained without charge ever since. At least three more journalists working on state-controlled publications have been arrested in 2002, and a number of others have fled the country. The crackdown came after some prominent officials began speaking out against the government and the independent press began to extensively report on this growing dissent.

The Government claims that their intention is not to permanently close down the independent press but to institute a registration process, whereby all independent press agencies will be vetted by a government commission and those found to be compatible with Eritrean culture will be issued with licenses and allowed to operate freely. It should also be noted that very little information apart from the government-controlled press is available to the majority of Eritreans. Foreign newspapers are rarely sold in Eritrea, even in Asmara, and internet connections are limited and poor.

In April 2002, it was widely reported that the detained journalists had begun a hunger strike to protest their detention and lack of formal charges. Following this disclosure, they were allegedly transferred from the central jail to an unknown location. There is no further information on their incarceration.

⁶ U.S. Department of State Country Report on Human Rights Practices 2001 – Eritrea – March 2002

Given these events, it is likely that journalists, broadcasters and editors holding opposition views, or merely reporting on the presence of a government opposition, would be at risk of arbitrary arrest and detention in Eritrea.

3. Members of the opposition

Eritrea is a one-party state, which gained independence from Ethiopia in 1991, and is headed by President Isaias Afwerki, a leading figure in the Eritrean People's Liberation Front (EPLF) which led the armed struggle against Ethiopia.

The only permitted political party in Eritrea is the former EPLF, which changed its name in 1994 to the People's Front for Democracy and Justice (PFDJ). A law allowing the formation of political parties, which was expected during 2001, was not enacted, and elections tentatively scheduled for December 2001 were postponed *sine die*.

There has been no reconciliation between EPLF/PFDJ and its former rivals, of which the main one has been ELF. Given the earlier close interaction and rivalry between the two, former ELF fighters and cadres at all levels are likely to be known to their EPLF counterparts, who are now in the government and in the security apparatus, and therefore it would not be possible for them to return anonymously. ELF members have been encouraged by the government to return to Eritrea and have reportedly not faced repercussions for their past activities. However, most of those returnees have allegedly "renewed their links with the EPLF" (or PFDJ as it is now called), and have renounced further opposition activities. While there may still be active members of ELF in Eritrea, they do not conduct open opposition activities.

In May 2001, a group of high ranking government officials, known as the Group of 15, wrote an open letter to the president calling for democratic reforms. In September 2001, a number of these persons were arrested and to date remain in incommunicado detention in secret place(s) without charge. At the same time, a number of high-ranking government officials who tried to intervene and mediate between the two sides, were also arrested and remain similarly detained without charge. Others fled the country or failed to return. Furthermore, in recent months, a number of Eritrean ambassadors overseas have seen their diplomatic passports revoked by the Government of Eritrea or have resigned from their positions in sympathy with the "Group of 15". Most recently, the Eritrean Ambassador in Sudan was called to Asmara by the foreign ministry, but instead left his post and fled to Europe in early September 2002.

As mentioned, political parties, other than the PFDJ, are not permitted in Eritrea. Government critics have been held in detention without being taken to court or charged with any offence. Therefore, persons who voice their opposition to the PFDJ leadership and/or voice support for opposition groups such as the "Group 15" (or are perceived to do so) could be at risk of persecution in Eritrea.

4. Minority religious groups

Jehovah's Witnesses

A Jehovah witness is an adherent of a sect that began in the United States in the 19th century and has since spread over much of the world. The name Jehovah's witness was adopted in 1931 by Joseph Franklin Rutherford who sought to reaffirm Jehovah

as the true God and to identify those who witness in this name as God's specially accredited followers. The Witnesses have little or no association with other denominations and maintain complete separation from all secular governments. They regard world powers and political parties as the unwitting allies of Satan. For this reason they refuse to salute the flag of any nation or to perform military services and rarely take part in public elections. Theologically, they hold that Jesus Christ is God's agent in establishing the Theocracy, God's Kingdom, and that through Christ sinful man may be reconciled to God. The concept of a literal hell is rejected, as is the inevitability of eternal life. The Witnesses meet in churches called Kingdom Halls, baptise by immersion, insist upon a high moral code in personal conduct, disapprove of divorce except on grounds of adultery and oppose blood transfusions on a scriptural basis. Most members of a local congregation, or 'company', are kingdom publishers, who are expected to spend five hours a week at meetings in the Kingdom Hall and spend as much time as circumstances permit in doorstep preaching⁷.

Reports indicate that there are some 1,000 - 1,500 Jehovah's Witnesses in Eritrea. There is evidence to suggest that, because of their religious beliefs which preclude them from participation in many public affairs activities, including military service, some members of this religious group have been ostracised and discriminated against. As conscientious objectors, they are not exempt from the military service and "the army resorted to various forms of extreme physical punishments to force objectors, including some members of Jehovah's Witnesses, to do their military service."⁸ (see further item 1 on draft evaders and deserters above). A 1994/95 Proclamation was issued to regulate the situation of Jehovah's Witnesses, however, it has been impossible to date to obtain a copy. Since the issuance of this proclamation, the authorities have reportedly denied government services, such as ID cards, government employment, business licenses etc. to members of the Jehovah's Witness faith, therefore severely limiting their civil rights and liberties.⁹

"In the past, several members of Jehova's witnesses were arrested for failure to comply with the national service law and some have been tried, although there is no information available regarding the verdicts or sentences in these cases. [At the end of 2001], approximately four Jehova's witnesses remained in detention without charge and without being tried for failing to participate in national service. These individuals have been detained for varying periods of time, some for more than 5 years without charge. Ministry of Justice officials denied that any members of Jehovah's Witnesses were being held without charge; however, they acknowledged that some members of Jehovah's witnesses, as well as a number of Muslims, were serving sentences for convictions on charges of evading national service."¹⁰ Cases such as these may have a well-founded fear of persecution as conscientious objectors or on cumulative grounds.

Other groups

In the first half of 2002, there were numerous reports on the closure of a number of churches of the so-called "pentec" group which are mainly evangelical in nature. In particular, the Gospel church was shut down as well as a number of smaller churches who are less well-established.

⁷ Britannica Encyclopedia

⁸ U.S. Department of State Country Report on Human Rights Practices 2001 - Eritrea - March 2002

⁹ *ibid.*

¹⁰ *ibid.*

According to the Ministry of Information, these churches have been closed down pending registration. Those considered to be in line with Eritrean culture and customs will be allowed by a government commission to register and pursue their activities.

According to other sources, these developments mirror those actions taken with regard to the private press and are of serious concern given their potential to limit the right of citizens to practise their religion. However, to date no arrests of religious leaders or activists on the basis of their religious activities have come to the attention of UNHCR.

5. Student activists

Following the letter from the "Group of 15", the student support for this initiative and protest against some aspects of the compulsory student work program¹¹, the leader of the Asmara University Student Union, Semere Kesete, was arrested in July 2001. He remained detained incommunicado in an undisclosed location without charge until early August 2002, when he managed to escape to Ethiopia. In an interview with the Voice of America radio station on 8 August 2002, he said that he had been held in a maximum-security unit of the 6th Police Station in Asmara. For the first two weeks his hands had been chained behind his back. He said that for most of the time he had been held in a small dark cell in solitary confinement with no-one speaking to him. After some months he was allowed to sit outside in the open air for short periods. He had no contact with the outside world. He reported that other prisoners had been held there for several years in the same conditions.¹²

Following Mr. Kesete's arrest, demands for his release led to 400 students being rounded up on 10 August. They were forcibly taken to Wia military camp, where temperatures can reach well over 40 degrees Celsius. On the following day, hundreds of other students were ordered to participate in the compulsory summer work programme. Approximately 2'000 students complied with the Government's order. Two students died of heat stroke while in detention in Wia. The students completed the work program in late September and early October and were permitted to return to classes. The last five to be released in November 2001 were student union officials and leaders of the protest.

Student activists who publicly criticise the PFDJ government and/or act in support of dissident groups such as the "Group 15" (or are perceived to do so) could therefore be at risk of persecution.

6. Kunamas

Brief historical overview

The Kunama ethnic group form approximately 2% of the Eritrean population, and are mostly concentrated in the lowland areas of Western Eritrea along the border with Ethiopia. They are an essentially pastoral tribe. The majority of the Kunamas live in Eritrea but there are also small Kunama communities in Ethiopia and Sudan, along

¹¹ In 2001, the Government announced that University students were required to participate in a paid summer work program for 1 month or would be ineligible to continue their studies. This requirement was first imposed on university students in 1999 but suspended in 2000 because of the war. The students objected, among other things, that the Government's payment was insufficient.

¹² Amnesty International: Arbitrary detention of government critics and journalists (AFR/64/008/2002)

the border areas. Although many Kunamas hold either Christian or Muslim religious beliefs, the majority adhere to traditional beliefs, including worship of a Supreme God "Anna". Mothers play an important role in lineages. The concept of a paramount tribal chief is not known in Kunama culture.

Historically, sources indicate that the Kunamas were frequently involved in tribal wars, at different times with Beni Amers and with the Tigrinia speaking highlanders. Although a number of Kunamas did support independence from Ethiopia as early as the 1960s, because the backbone of the ELF was composed of Beni Amers and Tigres, and fighting in Kunama villages degenerated during the 1960s with many civilians killed and displaced, the independence struggle was perceived by many Kunamas as a revival of the old tribal wars. As a result, the Kunamas requested "protection" from the Ethiopian army, and arms were widely distributed to them. This led to the formation of a Kunama militia who protected their territory from ELF occupation.

During the regime of Mengistu Haile Mariam, while the majority of the Eritrean population strongly supported Eritrean independence, the Kunamas still maintained their support for the Ethiopian army. However, this support was not uniform as a number of Kunamas also fought on the side of the ELF, and it is reported that political affiliations very much varied from village to village. The Kunama people were not unified under any leading political figure.

During the last decade of the war for independence, the EPLF, which succeeded the ELF, tried to build a closer relationship with the Kunamas, and partially managed to do so. After independence, the first governor of Gash-Barka region was a Kunama and he held this position until 1995.

The latest border conflict saw renewed tensions between the Kunama people and the Eritrean authorities since many Kunama villagers took no notice of Eritrean orders to relocate to IDP camps when their villages were occupied by Ethiopian troops, but remained in the villages under Ethiopian occupation. This aroused the authorities' suspicions since they considered that the Kunamas were prepared to "befriend" the enemy. "In June [2000] approximately 200 members of the Kunama ethnic group were detained without charges on suspicion of collaborating with Ethiopian forces. Most were released within a few months; however, at years' end, several Kunamas remained in detention."¹³ "There was no further information available on the several members of the Kunama ethnic group who were detained without charges on suspicion of collaborating with Ethiopian forces in 2000".¹⁴

At the same time, small Eritrean opposition groups surfaced seeking to mobilise support against the Eritrean Government, and a large rally was held with participation of some Kunamas, especially a high-ranking leader of the Eritrean Kunama Democratic Movement (see below).

In order to address some of these renewed tensions and feelings of distrust, the Eritrean Government held a meeting, in December 2000, with representatives of the Kunamas, including intellectuals, teachers, religious leaders and others, regardless of their political views. A commission was subsequently created to look more closely at the claimed grievances of the Kunamas. The report of this commission never commanded the consensus of all parties and the commission was dissolved in April 2000.

¹³ U.S Department of State Country Report on Human Rights Practices 2000 – Eritrea – February 2001

¹⁴ U.S Department of State Country Report on Human Rights Practices 2001 – Eritrea – March 2002

There are two known armed Kunama opposition groups: the "Eritrean Democratic Resistance Movement - Gash Setit" and the "Eritrean Kunama Democratic Movement". The Eritrean Democratic Resistance Movement - Gash Setit (EDRM), was led until recently by Ismail Natti, a former ELF fighter, and is reportedly close to the current ELF. The Eritrean Kunama Democratic Movement (EKDM) was formed in 1995 in Ethiopia as a forum for Kunama exiles to oppose the current Eritrean Government. Its activities in Eritrea have been limited. However, recent reports suggest that this party has gained support amongst radical elements of the 4,000 Eritrean Kunama refugees in Wala'a Nhibi camp in Ethiopia. Certain recent offences, notably the laying of new mines, are attributed to elements within this party, even though EKDM has not claimed responsibility for such acts.

Current state of affairs

Allegations have been made that Kunama land has been confiscated and given to settlers from the highlands and to Eritrean returnees from the Sudan. However, UNHCR's protection monitoring activities have not been able to substantiate such allegations. In particular, where returnees from Sudan have opted to go to areas traditionally inhabited by the Kunamas, consultations by the local administration have been held with the local Kunama populations to obtain their views on this. For the most part, the reaction has been positive as the arrival of returnees is also seen to bring other basic services to these traditionally poor areas.

The 1994 Land Proclamation (Law No. 58/1994) is the principal piece of legislation regulating land ownership, and stipulates that all land is the property of the state, but that all Eritreans over the age of 18 have a right to usufruct land for housing and/or agricultural purposes in a given location (usually the person's place of origin). The proclamation is not fully implemented at the time of writing. However, the proclamation contains a specific reference to citizens who cannot survive without grazing their cattle on land which may be located in distant places. This would therefore seem to protect the right of Kunamas to practise a pastoral lifestyle. It should be noted, however, that this piece of legislation has not been well accepted by the Kunama community, who see it as a way to confiscate their land.

Other rumours are currently circulating about members of the Kunama ethnic group facing persecution in Eritrea. However, these allegations are difficult for UNHCR, and other international organisations with a presence in Eritrea, to corroborate. Monitoring of returning refugees conducted by UNHCR has not to date detected patterns of discriminatory treatment of this ethnic group as such. It would seem that, although some discrimination may exist in society against the Kunama people, there is no evidence of systematic discrimination or persecution of the Kunamas as an ethnic group by government authorities.

UNHCR has therefore reached the conclusion that in general Kunamas would not face a well-founded fear of persecution in Eritrea. However, there may be exceptions to this: in particular those Kunama who are actively involved in opposition activities or who fled to Ethiopia with the retreating Ethiopian army. As these persons may be presumed by the Eritrean authorities to have colluded with the Ethiopian army, they may be at risk of persecution in Eritrea.

7. Expellees from Ethiopia who fail to establish their Eritrean nationality

At the outbreak of the border conflict between Ethiopia and Eritrea, in 1998, there were an estimated 600,000 Eritreans, or persons of Eritrean origin, living in Ethiopia, including approximately 200,000 persons living in the Tigray border region¹⁵.

As a result of the conflict, from 1998 to 2000, over 70,000 persons considered by the Ethiopian authorities as being of Eritrean origin were expelled from Ethiopia to Eritrea. The first round of expulsions occurred in June 1998, with the largest numbers of expulsions taking place from then until February 1999. During 2000, expulsions considerably decreased, with less than one thousand persons being expelled in that year. Subsequently, repatriations have taken place under the auspices of ICRC.

"On 25 June 2001, a group of 704 persons of Eritrean Descent, mostly long-term residents of the Tigray region in Ethiopia, were sent to Eritrea without the assistance of the ICRC. The latter withdrew from the process when it became clear that the manner in which these repatriations were carried out was not in accordance with the humanitarian law."¹⁶ "The Government of Ethiopia maintained that the persons were repatriated to Eritrea of their own free will, after the competent authorities 'ascertained that the individuals did surrender their Ethiopian nationalities in favour of an Eritrean one in accordance with the Ethiopian law'".¹⁷ No further such deportations have been reported and the ICRC continued its repatriation activities as from November 2002.¹⁸

"As part of its monitoring of the treatment of Ethiopians in Eritrea and Eritreans in Ethiopia, UNMEE conducted interviews with individuals repatriated by the both countries. Several serious human rights concern emerged from information gathered during these interviews, including the issue of long-term detention, without due process and often under poor conditions; allegations of ill-treatment; discrimination in access to social services and employment; and harassment by civilians and officials. In many cases the repatriations have resulted in family separations, as families were not able to leave together or, in the cases of mixed parentage, were not able to remain together in the same country. In some cases, repatriated individuals of mixed parentage were left stateless, as the country to which they were repatriated did not grant them its nationality."¹⁹

The 1992 Nationality Proclamation (law no. 21 of 1992) is the main piece of Eritrean legislation governing the grant of nationality and citizenship. According to this law, Eritrean nationality can be acquired by birth, by naturalisation, by adoption and by marriage. Any person whose mother or father are "of Eritrean origin" are considered to be Eritreans by birth (Article 2.1). "Of Eritrean origin" is considered to be someone who was resident in Eritrea in 1933 or their descendents (Article 2.2). The procedure for proving "Eritrean origins" is either to produce appropriate documentation attesting to that fact, or, where such documentation is not available (the majority of cases), to produce three witnesses who can attest that the person's family does come from a particular location in Eritrea.

¹⁵ Estimates given by UNMEE

¹⁶ Report of the Secretary-General on Ethiopia and Eritrea, UN Security Council, S/2001/843, 5 September 2001

¹⁷ *ibid.*

¹⁸ Progress Report of the Secretary-General on Ethiopia and Eritrea, UN Security Council, S/2001/1194, 13 December 2001

¹⁹ Report of the Secretary-General on Ethiopia and Eritrea, UN Security Council, S/2001/843, 5 September 2001

The majority of those expelled from Ethiopia have been accepted by the Eritrean authorities as nationals within the meaning of the 1992 Nationality Proclamation and have been issued with regular Eritrean identity documents (the so-called "blue card"). However, those expelled from Ethiopia due to their Eritrean ethnicity or origins but who had never previously acquired Eritrean citizenship, although issued with the same blue card as all Eritrean citizens, were initially considered to be in a "refugee-like" situation and have been registered separately by the central authorities of the Department of Immigration and Nationality. It remains to be seen whether they will face later difficulties because of this. However, to date there appears to be no difference in their treatment of any other Eritrean national.

A small number of expellees cannot demonstrate a verifiable link to Eritrea and these persons continue to be regarded as Ethiopians. Persons in this category are given a temporary residence permit "yellow card", as other foreign residents in Eritrea. The cards are issued upon the payment of a statutory fee of NKF 300. The status of such persons appears to be temporary and fragile, as they may be exposed to harassment, detention and deportation (see section on Ethiopians in Eritrea), although they would not be accepted back to Ethiopia. Their status and security in Eritrea may become more stable if they are issued with a supplementary identity document to the "yellow card" which at the moment merely identifies them as Ethiopian residents in Eritrea. To UNHCR's knowledge this happened in one case, upon UNHCR intervention.

8. Persons of Ethiopian origin

Because of the border conflict with Ethiopia, the situation of Ethiopians in Eritrea has become rather precarious. According to ICRC, there are an estimated 15,000 Ethiopians still living in Eritrea, mostly in major towns. Among them are Ethiopians married to Eritreans, and children born into these marriages.

Although the National Assembly declared in July 1998 that Ethiopians residing in Eritrea had the right to continue to live and work in peace in Eritrea, immediately after the outbreak of hostilities, hundreds were expelled to Ethiopia. Others chose to leave as they lost their jobs. In August 1998, the first ICRC monitored repatriation took place and all repatriations since August 2000 have been carried out under ICRC auspices. However, the voluntariness of these repatriations has been questioned.

According to interviews carried out by UNMEE with three successive groups that returned during the reporting period 13 December 2001 – 8 March 2002, "those repatriated included individuals and families, most of whom reported that their decision to leave, although voluntary, was induced by the discrimination Ethiopians continue to face in Eritrea. UNMEE interviews also showed that some of those repatriated were persons who had been held in prisons and other detention facilities, for periods varying from a few days to several years. More than half of the 240 persons of Ethiopian origin repatriated by Eritrea with ICRC assistance on 14 December 2001 were former prisoners. The majority had been serving sentences imposed by the special Court in proceedings that are not open to the public, and where the defendants reportedly have no legal representation. These people had been accused of offences ranging from petty theft to aircraft hijacking. The

Government of Eritrea granted the prisoners amnesty on condition that they leave the country."²⁰

Ethiopians living in Eritrea are now provided with temporary residence permits (yellow cards) valid for up to one year. The permits are issued upon payment of a standard fee. These permits do entitle their holders to work. However, there are credible reports of Ethiopians losing their jobs, including government positions, business licenses and even accommodation since the outbreak of the conflict (see section on discrimination below).

Detention of Ethiopians

"In 2000 the Government detained between 10,000 and 20,000 Ethiopians, many of whom were repatriated or deported to Ethiopia. In 2000 the Government established detention camps for Ethiopians scheduled for repatriation or deportation in a number of areas, including Wia, Sheib, Alla, Afabet, Megarif, Shikelti, and Weekerti. Monitors who visited the camps at Afabet, Adi Abieto, and Alla reported that conditions in the camps were spartan but generally adequate; however, there were reports that numerous detainees became sick due to camp conditions at Afabet, and that some died. There were credible reports that at least some of these detainees were forced to work outside their camps. By the end of 2000, the Government reported that most of the camps were closed; however, 1,500 detainees remained at Afabet, and 150 Ethiopians who did not want to leave the country remained at Alla. In mid-January the Government closed the Ethiopian detention centre in Afabet, leaving open only the centre at Alla, where 50 Ethiopians continued to reside. In July the Government closed the Alla camp and permitted the 50 detainees to live in Asmara, although some are believed to have left voluntarily."²¹ "An unknown but believed to be small number of Ethiopians, particularly men, are believed to be held in police stations, prisons and jails in Asmara and possibly in other areas. The Government stated that Ethiopians detained in such places were in detention because they had committed a crime or legal infraction. International monitors have access to the majority of detainees in police stations and jails."²² "Unlike in the previous year, Ethiopians generally were able to renew residence permits without difficulty; however, they were subject to detention when stopped by authorities with an expired residence permit."²³

"UNMEE has been carrying out human rights monitoring activities within the Temporary Security Zone and its adjacent areas, and has investigated a number of allegations that soldiers or militia have abducted or arrested individuals of the other nationality and held them for short periods. In some cases, the allegations have been confirmed. Those detained often state that they are questioned about the activities of the military, militia and police in the area and are sometimes ill-treated."²⁴

Round-ups and document checks of Ethiopians occurred at particularly sensitive times, for example the 2000 and 2001 independence celebrations in May. There were similar reports regarding the May 2002 celebrations, but suggesting that the numbers of those detained during May 2002 were much lower than in previous years.

²⁰ Progress Report of the Secretary-General on Ethiopia and Eritrea, UN Security Council, S/2002/245, 8 March 2002

²¹ U.S. Department of State Country Report on Human Rights Practices 2001- Eritrea- March 2002

²² *ibid.*

²³ *ibid.*

²⁴ *ibid.*

to undergo or carry out FGM. It is however unclear whether the authorities are in a position to provide effective protection for all individuals in such situations. This is due to the poor infrastructure and lack of services available in Eritrea for psycho-social care, lack of "safe" houses, limited availability of social workers or others trained to deal with similar matters. While it can be considered likely that individual cases refusing to undergo or carry out FGM, who manage to raise their case with authorities would be assisted, the chances for them to effectively reach out for help are dim, given the weak support services scarcely existing in many areas of the country. Since the procedure is normally not performed on girls over the age of seven²⁷, the issue of women or girls seeking protection from this practice for themselves is less likely to arise than, for instance, a possibility for mothers' seeking protection for their daughters. Dealing with the claim would require extensive assessment of the social circumstances surrounding the case.

Pregnancy out of wedlock

Similarly, girls who get pregnant out of wedlock may face the condemnation of their community, which in some cases may result in physical harm to them and their child or even death. Extra-marital sex is viewed in a very negative light in Eritrean society, and pregnancy is usually blamed on the woman or girl, even where it occurs as a result of rape. Abortion is legal only in very limited circumstances (serious health risk to the mother) and is in any case not performed outside main urban centres. Illegal abortions are therefore performed, but availability of accurate data on this is limited. In the absence of hard data, reports on some young women having committed suicides rather than facing the consequences of pregnancy originating from rape can give some indirect indications on the severity of the treatment feared.

Women in National Service

Little information is available on the conditions of women during the National Service. There is a perception that married women, at least mothers, are exempt from national service and therefore many girls are reported to have avoided conscription by marriage. Governmental sources have reported that the living quarters for women in the Sawa military training camp are separate from those of men, but both quarters are generally run by the male officers. Persistent rumours on sexual harassment and exploitation by military commanders of female conscripts during the national service have not to date been corroborated by any independent sources.

Assessment of Cases

General guidance on assessing cases of persons who might risk to be subjected to sexual or gender related violence can be found in Guidelines on International Protection: Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees (HCR/GIP/02/01 of 7 May 2002).

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²⁷ U.S. Department of State: Eritrea: Report on Female Genital Mutilation (FGM) or Female Genital Cutting (FGC), June 2001