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Eritrea - information supplied by IGC Participating States

Introduction

The Danish Immigration Service has received information from the following IGC Participating States:

Australia; Belgium; Canada; Finland; France, Germany; Ireland; the Netherlands; New Zealand; Norway; Sweden and Switzerland.

All information provided by the IGC Participating States has been included in the compilation at hand.

The compilation is structured according to the questionnaire which was distributed by the IGC secretariat. The information provided by the IGC Participating States is presented in alphabetical order by country name.

In the IGC questionnaire all IGC Participating States were informed that the information provided would be compiled and shared with the Danish Refugee Appeals Board and that the compilation would be a public document. No IGC Participating State objected to this.

A. Statistics:

1. Number of Eritrean asylum applicants in 2012

2. Number of rejected cases in 2012

3. Number of first instance decisions (Geneva Convention) in 2012 and second instance decisions in 2010, 2011 and 2012

4. Number of first decisions (subsidiary/complementary protection status) in 2012 and second instance decisions in 2010, 2011 and 2012

Annex A contains statistics concerning 2010, 2011 and 2012. The data concerning 2010 and 2011 has been supplied by the IGC secretariat.

Data concerning 2012 is based on input from the IGC Participating States as well as the IGC secretariat (i.e. number of asylum applicants in 2012). When the data from the IGC secretariat and IGC Participating States does not correspond, data from the IGC Participating State has been included (only minor discrepancies). To avoid any inaccuracy, some data is included in Annex A in the format decided upon by the IGC Participating State.

B. Asylum policy/precedence:

Asylum policy concerning Eritrean asylum applicants in relation to exit and re-entry issues.



Australia: The caseload of Eritreans that have sought protection in Australia has been and remains small. For that reason any special circumstances would be dealt with on a case-by-case basis.

All claims for protection are assessed on an individual basis against the criteria contained in the 1951 Refugees Convention and the complementary protection criteria (which gives effect to Australia's international treaty obligations), in accordance with Australian legislation, case law and up-to-date information on conditions in the applicant's country of origin.

Canada: [Question 1-4 below] could be assessed according to the merits of the individual claim. The Immigration and Refugee Board of Canada (IRB) has no generalized assessments of country conditions nor does it specify particular issues that would result in the granting or withholding of protection.

Germany: According to the information available to the Federal Police, in the past few years returns to Eritrea were carried out – if at all – in isolated cases only.

As a rule, the individuals concerned are returned or removed to other states which are under an obligation to admit them.

When enforcing these returns, we do generally not distinguish between asylum seekers and other categories of persons.

As far as the remit of the Federal Police is concerned, we can also inform you that the fact that an individual has applied for asylum in Germany or that this application was turned down is not communicated to the authorities of the country of destination. The reason given for the return is kept in very general terms, stating that the individual concerned does not or no longer meet the requirements for a legal stay in Germany.

Ireland: Ireland do not monitor the situation of returnees. Ireland will only return a person to their own country where they have no protection need and there is no risk to the person in doing so.

Ireland did not deport anyone to Eritrea in 2011, 2012 and so far in 2013.

Ireland transferred 4 Eritreans to the United Kingdom in 2011 and 2 Eritreans to the United Kingdom in 2012 under the Dublin II Regulation.

- 1. What is your assessment of the situation upon return to Eritrea of Eritreans who have on the one hand left the country illegally and, on the other hand, those who have left the country legally? Would age, gender, issues connected with military service/national service, duration of stay abroad/in a Western country, or other issues play a role in this context**

Belgium: First, we make indeed a difference between Eritreans who left the country illegally and those who left Eritrea on a legal base;



If an applicant declares that he or she has left the country illegally (95% of the cases), we will grant subsidiary protection if Eritrean nationality is credible. Our principle is that the asylum seeker, who can make a reasonable case for her/his nationality, will be granted at least subsidiary protection. If there is also a reasonable fear for persecution (because of religion, desertion, draft evading or other reasons) by the Eritrean authorities, the refugee status will be granted. So, age and issues connected with military service or religion play a role in the final decision that we make. Gender or duration of stay abroad is less important regarding judgments of individual cases. In most of the (Eritrean) cases the claimants invoke following reasons of flight: fear of persecution because of military/national service, religion (Pentecost religion), family member who left the country illegally or deserted. If those invoked fears for persecution are judged as credible (and Eritrean nationality/illegal departure out of the country is credible as well), refugee status will be granted.

If it appears that the claimant has left the country legally (which happens rarely), the circumstances of that legal departure from Eritrea will have to be investigated. The latest years we only had one such case. In the passport of the claimant was found an exit visa - and taking into account the conditions of deliverance of such visa - we decided not to grant him refugee status, neither subsidiary protection (there were also other reasons in that specific situation). In similar cases we will have to take into consideration if the claimant maybe is belonging to the authorities/regime, but it is always up to us to prove that the claimant has left the country legally (by finding an exit visas in claimants passport for example). That is also the reason why this kind of cases appear so seldom, because most of the claimants don't submit/give an original passport and claim to have left the country illegally. So for evident reasons it is difficult to prove that an Eritrean refugee has left Eritrea legally.

Anyhow, our general policy regarding return of Eritreans to their country of origin, is that we never - in any case - will return Eritreans to Eritrea, even in case of a definitive negative answer concerning their application for international protection. Forcible return of Eritreans to Eritrea never takes place because of this general guideline.

Canada: All of the above could be assessed according to the merits of the individual claim. The Immigration and Refugee Board of Canada (IRB) has no generalized assessments of country conditions nor does it specify particular issues that would result in the granting or withholding of protection. [answer applies to question 1 - 4]



Finland: The Finnish Immigration Service's policy on Eritrean applicants is roughly similar to UK Border Agency's OGN regarding Eritrea.¹ Those who have illegally left the country may be persecuted upon returning, and these applicants are granted asylum. We have no experience on those who have left the country legally, and upon encountering such applications we would make our decision on individual examination of the case in question.

France: The French Office considers that the sole fact of leaving illegally Eritrea may be considered as a sufficient ground for recognizing well-founded fears of persecution. Because of the political climate in Eritrea, leaving the country without permission may be indeed regarded as an act of opposition or betrayal.

On the contrary, for those that have left the country legally, we consider that they have no fears in case of return, except for some specific profiles (political activists, journalists...).

- Age is a discriminatory criterion regarding desertion and insubordination issues: Eritrean citizens who have reached the age of conscription actually constitute a group at risk when leaving the country.
- Sex is not a discriminatory criterion regarding threats in the Eritrean context: women are no more at risk than men.
- National service is the main ground for persecutions invoked by Eritrean asylum seekers. The duration of stay abroad is often an aggravating factor.
- One factor may however balance the threats in case of return: the fact that the applicant had lived in the Diaspora and have regularly paid the tax levied by the Eritrean authorities against Eritreans abroad. The regular payment of this fee allows Eritreans to live abroad without being seen as potential traitors, it also helps to regularize illegal exit.

The Legal Affairs division provides the following complementary information:

In many cases, the case owner was not able to establish the Eritrean nationality of the claimant.

However, the French Court of Asylum Law (CNDA) may establish the Eritrean nationality of the claimant according to article 2 of the Proclamation 21/1992, which became law on 6 April 1992².

¹ United Kingdom: Home Office, *Operational Guidance Note: Eritrea*, August 2012, v13.0 ; <http://www.ind.homeoffice.gov.uk/sitecontent/documents/policyandlaw/countryspecificasylumpolicyogns/Eritrea.pdf?view=Binary>

² **Eritrean Nationality Proclamation 21/1992**/Article 2 relates to birth in Eritrea and states that: "1 Any person born to a father or a mother of Eritrean origin in Eritrea or abroad is an Eritrean national by birth. "2 A person



On this basis, careful consideration should be given to Eritrean in age to accomplish the compulsory military service. Most of Eritrean applicants allege a draft-evasion from a military camp or to have escaped from a round-up targeting people over the age of conscription. Therefore, illegal exit is a consequence of the draft evasion. As soon as the desertion is established³ - according to the age, the sex, the circumstances of the applicant's call for the military service and the year of departure⁴ - the Court considers that the applicant has left illegally the country.

A person, who is reasonably likely to have left illegally Eritrea, will in general be at real risk in case of return. So, the French court will consider that he/she is in need of protection because he/she is reasonably likely to be regarded by the authorities of Eritrea as a deserter.

Illegal departure from Eritrea: the case of family of draft evaders

Some applicants (mainly spouse of draft evaders) partly base their asylum claim on the ground that they have left illegally Eritrea.

If they were exempted to accomplish the military service, they fear to be prosecuted because of the desertion of their husband and because of their illegal departure. In those cases, the French Court considers that these women will face threat in case of return because their illegal exit will be perceived as treason and the Eritrean authorities will perceive them as accomplice of the spouse's draft evasion. Even if the burden of proof lies on the applicant, the French Court has considered that because of her age and background, the claimant has left the country illegally⁵.

The Netherlands: Each asylum application of Eritrean asylum seekers is assessed individually. The Dutch policy takes into account that issues connected with military service/national service, ethnic Ethiopians or people of mixed ethnicity, women, homosexuals, followers of 'new religions', political opponents, can run the risk of persecution/art 3 ECHR. If so, they are granted asylum protection. People who fled the country illegally in principle are considered to run the risks described in art. 3 ECHR. Only if in individual case it is clear that the person who

who has 'Eritrean origin' is any person who was resident in Eritrea in 1933. "3. A person born in Eritrea of unknown parents shall be considered an Eritrean national by birth until proven otherwise. "4. Any person who is an Eritrean by origin or by birth shall, upon application, be given a certificate of nationality by the Department of Internal Affairs. "5. Any person who is Eritrean by birth, resides abroad and possesses foreign nationality shall apply to the Department of Internal Affairs if he wishes to officially renounce his foreign nationality and acquire Eritrean nationality or wishes, after providing adequate justification, to have his Eritrean nationality accepted while maintaining his foreign nationality."

³ The burden of proof is on the applicant to show that he/she an escapee.

⁴ Before or after 1998.

⁵ CNDA, 14 mars 2012, n°11002027 « *que l'intéressée, eu égard à son jeune âge et à son profil et ne bénéficiant pas des facilités accordées aux proches du régime Érythréen, il peut être tenu pour établi qu'elle n'a pas pu quitter son pays de façon clandestine, les autorités érythréennes étant particulièrement restrictives sur les conditions de sortie sur le territoire et sévères à l'égard des contrevenants ainsi qu'il ressort du rapport du Home Office* »



fled the country illegally does not run such risk, he will not be granted (secondary) protection.

New Zealand: New Zealand has had no asylum applications from Eritrea in the last two years so does not have any up to date information on these matters

Norway: The Directorate of Immigration (UDI) handles all asylum applications in Norway. In Norway we generally presume that Eritreans who were of (or approaching) the age of national service, and who have left Eritrea illegally may risk reactions and sanctions that amount to persecution upon return. The applicant must substantiate illegal departure. Age and gender are relevant aspects in determining the applicant's national-service status. All cases are assessed individually, and we always consider whether there are individual aspects that might create risk upon return, also in cases of legal departure.

Sweden: Draft evasion/desertion from National Service or risk being called up for National Service, along with the illegal exit, is expected to serve as a basis for protection needs. This practice was established already in 2005 in a number of judgments and is still valid.

All persons in the age for National Service which left the country illegally are considered to have protection needs.

Illegal exit for other than those involved in National Service or long absence from Eritrea is assessed on the individual merits of the claim.

Switzerland: Persons who have left Eritrea legally are generally considered to have no founded fear from persecution. Therefore, an expulsion order is given. The execution of this, however, is possibly only if voluntary. In the case of asylum seekers who have left the country illegally, the above mentioned criteria play an important role for the asylum decision.

2. How do you assess cases where applicants are in possession of a valid exit visa?

Belgium: As mentioned above, the individual case shall be examined properly; we will investigate the specific circumstances of that legal departure. If an exit visa is found in claimant's passport, we will take into consideration if the claimant is maybe belonging to the regime or the authorities. Because of the strict conditions of deliverance of exit visa by the Eritrean authorities, it is not likely that the claimant has known problems with those same authorities or that he or she runs the risk of persecution by the Eritrean authorities. Subsequently we will have to decide if subsidiary protection will be granted or not. The latest years we only had one case where an exit visa was found, and we decided not to grant refugee status, neither subsidiary protection. Subsidiary protection was not granted because there were no reasons to assume that the claimant ran a risk of serious harm in his country of origin. But it's not a general rule that in case of a found exit visa both forms



of protection will not be granted. Each individual case will be investigated separately, and it is always up to us to prove that the claimant has left the country legally, as it is up to us to demonstrate that there is no risk of serious harm in case of return to Eritrea. We are very cautious in such cases.

Finland: The Finnish Immigration Service does not have experience with this type of cases due to our very low numbers of Eritrean applicants. Any other grounds and their credibility would be carefully examined when making a decision.

France: This issue was never raised because Eritrean asylum seekers always claim to be devoid of any official documentation. If this happens, we would assess their situation and their fears in case of return the same way than for Eritrean citizens that have left legally the country.

The Netherlands: People who fled the country legally, are in principle considered not in the need of asylum protection (Geneva Convention/ art 3ECHR), but their asylum applications also are assessed individually. Whether the visa is still valid or not, does not make a big difference.

New Zealand: New Zealand has had no asylum applications from Eritrea in the last two years so does not have any up to date information on these matters

Norway: Generally, we do not consider applicants in possession of legal exit-visa to be in need of protection. Applicants in possession of legal exit-visa must substantiate their claim for risk upon return in terms of specific individual danger. An example might be of a person of high position who substantiates that he will be regarded as traitor due to the fact that he has defected etc.

Sweden: The legal departure may be relevant for the assessment of the applicant's credibility. However, all cases are examined on the basis of an individual assessment.

Switzerland: A person in possession of a valid exit visa is issued an expulsion order. Such cases are, however, extremely rare.

3. How do you consider the situation upon return of Eritreans who have never lived in Eritrea?

Belgium: The principle is that we will grant subsidiary protection if Eritrean nationality is credible (and if there is no indication that the claimant has left the country legally, which is not the case if claimant has never lived in Eritrea of course). But, the claimant has to be able to demonstrate that he or she is Eritrean and how he or she obtained the Eritrean nationality, through documents or through convincing declarations. If that's not the case, Eritrean nationality will be judged as not credible and subsidiary protection will not be granted. For example, we have had some cases where applicants claimed to have the Eritrean nationality, and added that they never had lived in Eritrea, and always had lived in Ethiopia. If



Eritrean nationality is not credible in such cases, the invoked problems will be judged towards Ethiopia, the common place of stay (if problems are situated in the country of common stay).

Finland: Again, the Finnish Immigration Service has no experience of such cases due to the low number of applicants from Eritrea. Each case would be assessed individually and possible other grounds and their credibility would be taken into account.

France: We do assess their situation and their fears in case of return the same way than for Eritrean citizens that have left legally the country. The question of the tax on the Diaspora mentioned here above should also be raised during the assessment phase.

The Legal Affairs division adds the following:

Many applicants consider themselves as Eritrean even if they were born in Ethiopia and/or have lived most of their life there. They explain to have been arbitrarily denied of their Ethiopian citizenship because of their Eritrean origins. If the majority of the applicants claim to have been forcibly deported to Eritrea by the Ethiopian authorities, some of them affirm that they left Ethiopia but did not return to Eritrea.

The position of the French Court is not constant regarding those cases. It considers indeed that their Eritrean origins make them eligible to the Eritrean nationality according to the Eritrean national proclamation. Therefore, by establishing their Eritrean origins, Eritrea becomes the country toward which the fears of the applicant will be examined. So, because they fear the compulsory military service in Eritrea and because they might be considered as spy because of their stay in Ethiopia⁶, the CNDA considers that these applicants are in need of protection according to the Geneva Convention.

In conclusion, if the claimant never lived in Eritrea and he/she is eligible to the Eritrean nationality, his/her fear of persecutions will be evaluated the same way as for as an applicant who lived in Eritrea.

The Netherlands: These cases are assessed individually.

New Zealand: New Zealand has had no asylum applications from Eritrea in the last two years so does not have any up to date information on these matters

⁶ CNDA, 14 mars 2012, n°11002027 « que l'intéressée, eu égard à son jeune âge et à son profil et ne bénéficiant pas des facilités accordées aux proches du régime Érythréen, il peut être tenu pour établi qu'elle n'a pas pu quitter son pays de façon clandestine, les autorités érythréennes étant particulièrement restrictives sur les conditions de sortie sur le territoire et sévères à l'égard des contrevenants ainsi qu'il ressort du rapport du Home Office »



Norway: We consider it safe for Eritreans who have never lived in Eritrea to return to the country. There might, however, be other particular individual aspects in such cases that may create risk.

Sweden: Such cases occur. The applicant could, for example, have been born and bred in nearby countries such as Saudi Arabia. In such cases there is not any illegal exit from Eritrea. Although no illegal departure occurred from Eritrea, it is a risk that such a person may be particularly vulnerable during military service in National Service. An individual assessment must be made in all these cases of the applicant's need for protection.

Switzerland: Given the person is really an Eritrean citizen, an expulsion order is issued, but not executed because of the lack of a social network in the country of origin.

4. What is your assessment of the situation upon return of Eritreans who have applied for asylum abroad/in a Western country?

Belgium: When an Eritrean has applied for asylum in a country within the European Union and the 'Dublin Regulation' is applicable, the claimant will be sent to the country that is supposed to be responsible to examine the asylum request of claimant (apart from Greece). If Eritreans have already applied for asylum in a country outside the European Union - for example Sudan - the asylum application will be taken in to consideration by our services.

Anyhow, as already mentioned, our general policy regarding return of Eritreans to their country of origin, is that we never – in any case – will return Eritreans to Eritrea, even in case of a definitive negative answer concerning their application for international protection.

Finland: No experience.

France: The Office has never had to rule on this point: Eritrean asylum seekers in France do not invoke this ground to justify their fears upon return, either at first or second instance.

At the appeal stage, the French Court however takes into account the failed claim of asylum⁷ in Europe. It considers that it is an element strengthening the fear of being perceived by the Eritrean authorities as a traitor to the nation that shall face detention and torture in case of return. This argument is always assessed in relation to others topics (illegal departure, draft evasion).

The Netherlands: According to Dutch policy, voluntary return of rejected Eritrean asylum seekers is possible and obliged according to Dutch Alien Law. Nor-

⁷ CNDA, n°11-08-03269 et 10-09-02489 : « *Le refus prolongé de revenir dans son pays* » ainsi que « *le dépôt d'une demande d'asile en France* » a été pris en compte pour une requérante arrêtée par les autorités éthiopiennes et menacée d'une expulsion vers l'Erythrée.



mally, if people do not return voluntarily, the Dutch government is allowed to forced return. In the specific case of Eritrea, forced return is not taking place because according to COI information, all Eritreans (including those who fled the country legally) run a risk as described in art 3 ECHR.

New Zealand: New Zealand has had no asylum applications from Eritrea in the last two years so does not have any up to date information on these matters

Norway: We do not assess the fact of having applied for asylum alone as a sufficient ground for establishing individual risk, but this might be one aspect in an assessment of the individual risk. We do not mark expulsion in the passport, in order to avoid negative attention to the person from Eritrean authorities.

Sweden: We do not consider this as a sufficient reason for protection. An individual assessment must be made based on whether the applicant may have reasons “sur place”.

Switzerland: An asylum application abroad alone is no reason hindering the return of persons to Eritrea. There have been cases of voluntary returns of asylum seekers. However, there are usually many other reasons against returns.

C. Country of Origin Information (COI)

Most important and recent country of origin information in relation to legal/illegal exit and re-entry issues.

Australia has provided a list of COI products covering 2009 – 2013. Reference is made to Annex B.

Canada: Decision makers of the Refugee Protection Division (RPD) of the IRB enjoy adjudicative independence and make decisions on the merits of individual cases based on a thorough assessment of the evidence before them and application of the relevant law. The RPD does not make asylum policy in Canada nor does it take an institutional stand or position on country conditions or the merits of any claim for refugee protection. Although members are independent, as an administrative tribunal, the RPD promotes consistency in decision-making by providing them with a number of resources and tools. Among those tools are National Documentation Packages (NDP) on refugee-producing countries. These packages form a common evidentiary base for members across the country to use when hearing refugee claims.

A NDP is a selection of documents that, although not an exhaustive source of information, aims to accurately and objectively report on human rights and country conditions in the countries from which refugee claimants originate. The packages are standard in format, are nationally issued and provide the best available current country of origin information to decision makers involved in the refugee determination process. This information is equally available to all other parties involved



in the process and does not limit, restrict or preclude the submission of additional information to the Board by such parties, particularly the claimant.

The NDP compiled for Eritrea was last updated in September 2012 and is available at: http://www.irb-cisr.gc.ca:8080/Publications/PubNDP_CDN.aspx?id=5535

The package contains documents that touch on some of the topics for which the IGC member is seeking information.

Finland: Nothing special. What is available from public databases (UNHCR Refworld; Ecol.net; Factiva)

France: The sources used by our COI researcher on these questions are the following:

In the context of lectures at OFPRA and ODM (our Swiss counterparts), several speakers raised the issue of the departure of the Eritrean territory and the return of Eritreans to their country of origin:

- Hélène THIOLLET, Doctor in Political Science.
- David BOZZINI, author of a doctoral thesis entitled: "Under a state of siege: ethnography of national mobilization and monitoring in Eritrea."

The information collected through these conferences is contained in the minutes as follows:

- Julien MASSIP "Eritrean exiles: summary of the lecture given by Helen Thiollet March 23, 2011 at OFPRA", OFPRA DIDR, 3/31/11.
- Julien MASSIP, "National and state structures in Eritrea: summary of the lecture given by David Bozzini, February 16, 2012 at ODM", OFPRA DIDR, 2/20/12.
- Julien MASSIP, "Proceedings of the lecture given by David Bozzini, October 11, 2012 at OFPRA", OFPRA DIDR, 10/22/12.

Information on these issues was also sent to OFPRA by our diplomatic service in Asmara.

In addition, an internal summary report produced in 2010 described the situation of Eritreans returned to their countries of origin after having been expelled from Malta and Libya:

- Julien MASSIP, "Situation of Eritreans back to Eritrea after being expelled from Malta and Libya," OFPRA DIDR, 14/04/10.

Germany:



a) English

www.ecoi.net

<http://www.unhcr.org/cgi-bin/texis/vtx/home>

<https://www.cia.gov/library/publications/the-world-factbook/geos/er.html>

<http://www.eritrea.be/>

<http://amnesty-international.org>

Reporter without borders (<http://www.rsf.org>)

open doors (<http://www.opendoors.org>)

PFDJ homepage (<http://www.shaebia.org>)

UK – Home Office

U.S. Department of State – Country Reports

Reports by various news agencies: BBC, NZZ, AFP, etc.

Various opposition websites (e.g.):

<http://www.gedabnews.com/>

<http://www.meskerem.net/>

b) German

Information provided by the German Foreign Office

Data base of the Federal Office for Migration and Refugees (BAMF) (MILO)

Expert opinions (e. g. by Dr. Schröder, GIGA, UNHCR, ai)

Schweizer Flüchtlingshilfe (<http://www.fluechtlingshilfe.ch/>)

Amnesty International, Pro Asyl, et. al.

Ireland:

Eritrea: Researched and compiled by the Refugee Documentation Centre of Ireland on 7 February 2013.

How are Eritreans who lack exit visa treated on return?

Is an exit visa obtained through bribery considered a legal or illegal exit by Eritrean authorities?

How are failed asylum seekers treated upon return to Eritrea?



Do you have information about what role age, gender, issues connected with military service/national service, duration of stay abroad/in a Western country or other issues play in this context? Does it make a difference whether the person in question has returned voluntarily or forcefully been returned from a Western country?

How are Eritreans who have never lived in Eritrea treated upon return to Eritrea?

Information on the treatment of returned Eritrean asylum seekers in general was found among sources available to the Research and Information Unit, although not on details specific to individual returnees.

A 2009 UN High Commissioner for Refugees eligibility guidelines document, in a section titled “Forcible return to Eritrea”, states:

“Eritreans who are forcibly returned may, according to several reports, face arrest without charge, detention, ill-treatment, torture or sometimes death at the hands of the authorities. They are reportedly held incommunicado, in over-crowded and unhygienic conditions, with little access to medical care, sometimes for extended periods of time. According to credible sources, 1,200 persons were forcibly returned from Egypt to Eritrea in June 2008, where the majority was detained in military facilities. UNHCR is aware of at least two Eritrean asylum-seekers who have arrived in Sudan having escaped from detention following deportation from Egypt in June 2008. Eritreans forcibly returned from Malta in 2002 and Libya in 2004 were arrested on arrival in Eritrea and tortured. The returnees were sent to two prisons on Dahlak Island and on the Red Sea coast, where most are still believed to be held incommunicado. There are also unconfirmed reports that some of those returned from Malta were killed. In another case, a rejected asylum-seeker was detained by the Eritrean authorities upon her forcible return from the United Kingdom. On 14 May 2008, German immigration authorities forcibly returned two rejected asylum-seekers to Eritrea. They were reportedly detained at Asmara airport upon arrival and are being held incommunicado, and believed to be at risk of torture or other ill-treatment.” (UN High Commissioner for Refugees (April 2009) *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Eritrea*, pp.33-34)

The same report also states;

“For some Eritreans, being outside the country may be sufficient cause on return to be subjected to scrutiny, reprisals and harsh treatment. Individuals may be suspected of having sought asylum, participating in diaspora-based opposition meetings or otherwise posing a (real or perceived) threat to the Government,¹⁹³ particularly where they have exited the country illegally.¹⁹⁴ It has been reported that, as of September 2008, a blanket restriction on passport and exit visa requests has been imposed by the Gov-



ernment.¹⁹⁵ Given the efficiency and reach of the State intelligence apparatus, there is a reasonable possibility that those in possession of exit visas obtained through bribery would be identified as having illegally left the country.” (Ibid)

A report by Human Rights Watch;

“Eritrea is currently among the top refugee-producing nations in the world. Fleeing the country is truly a last resort because the conditions facing refugees abroad are appalling and the punishments inflicted on asylum seekers who are forcibly returned are terrible, including torture and death. The Eritrean government considers leaving the country without a valid exit visa a crime, and absconding from national service is viewed as tantamount to treason.” (Human Rights Watch (April 2009) *Service for Life State Repression and Indefinite Conscription in Eritrea*)

A report by the Switzerland Federal Office for Migration states;

“At least between 2004 and 2007, authentic passports and exit visas could be obtained through illegal procedures in Eritrea at a high price (40'000/70'000 Nakfa).” (Switzerland Federal Office for Migration (28 June 2012) *National Service and State Structures in Eritrea*)

A report by *Freedom House* states;

“ventures and then exact payment or a percentage of profits for government cooperation. Meanwhile, strict controls on travel by Eritrean citizens have generated a lucrative business in exit visas. Graft and corruption among state bureaucrats has also grown, particularly at middle and lower levels where pay rates have stagnated as inflation rates have soared. The militarization of much of the country, with zonal commanders outranking civilian administrators, has also fostered widespread corruption in the allocation of housing, management of local businesses, and control of trade” (Freedom House (4 November 2011) *COUNTRIES AT THE CROSSROADS 2011: ERITREA*)

According to the US Department of State;

“In general citizens had the right to return. However, citizens residing abroad had to show proof that they paid the 2 percent tax on foreign earned income to be eligible for some government services, including exit visas for future departures from the country. If the applicant had broken a law abroad, contracted a serious contagious disease, or was declared ineligible for political asylum by other governments, his or her application to return to the country was considered on a case-by-case basis.” (US Department of State (24 May 2012) *Country Report on Human Rights Practices 2011 – Eritrea*)



The most recent UK Home Office Border Agency report on Eritrea quotes a letter from the British embassy in Asmara which, in response to a question on the treatment of failed asylum seekers returned to Eritrea, states:

“This is a grey area as there is little experience of failed asylum seekers returning to Eritrea. However, the Eritrean authorities tell us that if they return and have not committed a criminal offence, no action would be taken. But we have to put this into context. It is an offence to leave the country illegally, so returnees would be liable to detention and questioning. Some have been released without further action but those who have not undertaken military service could be sent to a military training camp.” (UK Home Office Border Agency (17 August 2012) *Country of Origin Information Report – Eritrea*, p.142)

A 2009 Immigration and Refugee Board of Canada response to a request for information on the situation of returning asylum seekers states:

“In 7 April 2009 correspondence, the Assistant Editor of the World Refugee Survey, the annual report of the U.S. Committee for Refugees and Immigrants (USCRI), an organization that assists in the resettlement of refugees and the provision of services to immigrants in the United States (US), stated that Eritreans who requested asylum abroad after 1993 are ‘at risk of long-term imprisonment, torture, and other punishment’ if involuntarily returned to Eritrea.” (Immigration and Refugee Board of Canada (15 April 2009) *Eritrea: Situation of people returning after spending time abroad or seeking asylum or refugee status*)

Paragraph 445 of a 2007 UK Asylum and Immigration Tribunal judgment states:

“It is clear that a person of military service age or who is approaching military service age who leaves Eritrea illegally before undertaking or completing Active National Service (as defined in Article 8 of the 1995 Proclamation) (see paragraph 283 above), is reasonably likely to be regarded by the Eritrean authorities as a deserter and punished accordingly. The evidence of a ‘shoot to kill’ policy in respect of deserters, the imprisoning of parents and the process known as ‘the giffa’, together with the more general objective evidence regarding the oppressive nature of the Eritrean regime, confirms that any such punishment is likely to be both extra-judicial and of such a severity as to amount to persecution, serious harm and ill-treatment.” (UK Asylum and Immigration Tribunal / Immigration Appellate Authority (26 June 2007) *MA (Draft Evaders - Illegal Departures - Risk) Eritrea v. Secretary of State for the Home Department*)

See also introductory section of a 2011 UK Upper Tribunal (Immigration and Asylum Chamber) judgement which, in paragraph (iii), states:



“The general position adopted in MA, that a person of or approaching draft age (i.e. aged 8 or over and still not above the upper age limits for military service, being under 54 for men and under 47 for women) and not medically unfit who is accepted as having left Eritrea illegally is reasonably likely to be regarded with serious hostility on return, is reconfirmed, subject to limited exceptions. (UK Upper Tribunal (Immigration and Asylum Chamber) (27 May 2011) *MO (illegal exit - risk on return) Eritrea v. Secretary of State for the Home Department*)

Paragraph (v) of this section states:

“Whilst it also remains the position that failed asylum seekers as such are not generally at real risk of persecution or serious harm on return, on present evidence the great majority of such persons are likely to be perceived as having left illegally and this fact, save for very limited exceptions, will mean that on return they face a real risk of persecution or serious harm.” (ibid)

Paragraph 38 of the section headed “Determination and Reasons” refers to the evidence of expert witness Professor Kibreab, Professor and Director of Refugee Studies at the London South Bank University, as follows:

“Professor Kibreab said he considered that the attitude of the Eritrean authorities to Eritreans who had claimed asylum abroad would be hostile. If they had exited illegally they would have severe problems; if they had exited legally they would still have serious problems unless they were people who had been sent abroad by the regime and/or they were seen to have done service for them. The attitude of the authorities was that such persons had been given a huge favour and so were expected to be ardent supporters of the regime. The government suspected expatriates of betrayal and disloyalty. He did not know of any such persons having returned except for the few cases he recorded in his report and such cases strongly suggested that persecution was the norm.” (ibid)

Paragraph 46 quotes an e-mail from the Horn of Africa team leader for Human Rights Watch dated 23 February 2011 which states:

“There is much anecdotal evidence of people being detained and tortured or mistreated upon return to Eritrea but such cases are extremely hard to document because of the impossibility of doing research inside Eritrea, the extremely secretive nature of the prison network in Eritrea, the paranoia of the citizens remaining there and the surveillance by the state of most communication with the outside world. A lack of public record of violations of persons who have been returned should in no way be taken to mean that persons returned to Eritrea are not at risk. The presumption



should be very much the other way around: anyone returned to Eritrea is at a very high risk of mistreatment and torture in our view.” (ibid)

For further information on the two individuals referred to above see 2011 Amnesty International annual report for Eritrea which states:

“Yonas Mehari and Petros Mulugeta returned to Germany and were granted asylum in 2010. The two men were asylum-seekers forcibly deported by the German authorities to Eritrea in 2008. They were detained after their return, Yonas Mehari in an overcrowded underground cell and Petros Mulugeta in a shipping container. Both men recounted inhumane conditions, including disease, insanity and death among fellow detainees.” (Amnesty International (13 May 2011) *Annual Report 2011 – Eritrea*)

A report published by the Refugee Council (UK) states:

“The Eritrean government views refused asylum seekers who return to the country as enemies of the state and is responsible for the mistreatment and persecution of people who have returned, whether voluntarily or involuntarily. According to Amnesty International and Human Rights Watch, refused asylum seekers who are forcibly returned to Eritrea face arrest without charge, detention, ill-treatment, torture, and death at the hands of the authorities. The US government's Country Report for Eritrea (2011) states that refugees and asylum seekers repatriated from other countries during 2010 had disappeared. Eritrean authorities detained the majority of the 1,200 asylum seekers forcefully returned from Egypt in June 2008, in military facilities. Similarly, asylum seekers who were forcibly returned from Malta in 2002, Libya in 2004, and the UK and Germany were either killed, arrested on arrival, tortured, and sent to prisons where most are still believed to be held with no access to the outside world.” (Refugee Council (UK) (10 December 2012) *Between a rock and a hard place: the dilemma facing refused asylum seekers (Eritrea excerpt)*)

See also public statement from Amnesty International which states:

“Seeking asylum abroad is considered by the Eritrean government to be an act of treason. Asylum seekers should not be returned to Eritrea, because they will be at grave risk of serious human rights violations. Eritreans forcibly returned to Eritrea face a real risk of being subjected to violations, including incommunicado detention, torture and other forms of serious ill-treatment. In addition, detention conditions in Eritrea are appalling, and in themselves amount to cruel, inhuman or degrading treatment.” (Amnesty International (15 August 2012) *Sudan must end forced returns of asylum seekers to Eritrea*)

The most recent UN High Commissioner for Refugees eligibility guidelines document, in a section titled “Potential Risk Profiles” (sub-section headed “Mili-



tary/National Service”), refers to the situation for Eritrean citizens who have never actually lived in Eritrea as follows:

“Since the obligation to undertake military service applies to all citizens, Eritreans living abroad since childhood and those born in exile are not exempt from military service. Hence, Eritreans who are forcibly returned, or who return voluntarily, will be subject to conscription in the military service if they satisfy the age criteria and are medically fit.” (UN High Commissioner for Refugees (20 April 2011) *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Eritrea*, p.10)

This section also states:

“Those who fled abroad specifically to avoid military service and who did not return to undertake military service before the age of 40 are subject to five years’ imprisonment. Rights to own land, to obtain an exit visa, to work and other ‘privileges’ can also be suspended. In addition to the penalties imposed under the Proclamation on National Service, the penalties stipulated in the Eritrean Transitional Penal Code also cover military violations, including failure to enlist, or re-enlist, seeking fraudulent exemptions, desertion, absence without leave, refusal to perform military service and infliction of unfitness (injury to avoid service). The punishment ranges from six months’ to 10 years’ imprisonment depending on the gravity of the act. During emergencies or mobilizations, the penalties are significantly more severe.” (ibid, pp.10-11)

In a sub-section headed “Draft Evaders and Deserters” this document states:

“Individuals of draft age, who left Eritrea illegally, may be perceived as draft evader upon return, irrespective of whether they have completed active national service or have been demobilized.” (ibid, p.16)

A Human Rights Watch on the return of asylum seekers from Sudan states:

“Eritrea, ruled by an extremely repressive government, requires all citizens under 50 to serve in the military for years. Anyone of draft age leaving the country without permission is branded a deserter, risking five years in prison, often in inhumane conditions, as well as forced labor and torture. UNHCR considers that in practice the punishment for desertion or evasion is so severe and disproportionate, it constitutes persecution.” (Human Rights Watch (25 October 2011) *Sudan: End Mass Summary Deportations of Eritreans*)

References:

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<http://amnesty.org/en/region/eritrea/report-2011>; (Accessed 6 February 2013)

Freedom House (4 November 2011) *COUNTRIES AT THE CROSSROADS 2011: ERITREA*;
http://www.freedomhouse.org/sites/default/files/inline_images/ERITREAFINAL.pdf; (Accessed 6 February 2013)

Human Rights Watch (25 October 2011) *Sudan: End Mass Summary Deportations of Eritreans*; <http://www.hrw.org/print/news/2011/10/25/sudan-end-mass-summary-deportations-eritreans>; (Accessed 6 February 2013)

Human Rights Watch (16 April 2009) *Service for Life: State Repression and Indefinite Conscription in Eritrea*;
http://www.hrw.org/sites/default/files/reports/eritrea0409web_0.pdf; (Accessed 7 February 2013)

Immigration and Refugee Board of Canada (15 April 2009) *Eritrea: Situation of people returning after spending time abroad or seeking asylum or refugee status*;
<http://www.unhcr.org/refworld/docid/4b20f02dc.html>; (Accessed 8 February 2013)

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Switzerland Federal Office for Migration (28 June 2012) *National Service and State Structures in Eritrea*;
<http://www.ejpd.admin.ch/content/dam/data/migration/laenderinformationen/herkunfts-laenderinformationen/afrika/eri/ERI-agreed-minutes-bozzini-e.pdf>; (Accessed 6 February 2013)

UK Asylum and Immigration Tribunal / Immigration Appellate Authority (26 June 2007) *MA (Draft Evaders - Illegal Departures - Risk) Eritrea v. Secretary of State for the Home Department*;
<http://www.unhcr.org/refworld/docid/46822c3f2.html>; (Accessed 7 February 2013)

UK Home Office Border Agency (17 August 2012) *Country of Origin Information Report – Eritrea*; <http://www.unhcr.org/refworld/pdfid/50374efd2.pdf>; (Accessed 7 February 2013)



UK Upper Tribunal (Immigration and Asylum Chamber) (27 May 2011) *MO (illegal exit - risk on return) Eritrea v. Secretary of State for the Home Department*; <http://www.unhcr.org/refworld/pdfid/4e0214652.pdf>; (Accessed 7 February 2013)

UN High Commissioner for Refugees (20 April 2011) *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Eritrea*; <http://www.unhcr.org/refworld/docid/4d4fe0ec2.html>; (Accessed 6 February 2013)

UN High Commissioner for Refugees (April 2009) *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Eritrea*; <http://www.unhcr.org/refworld/docid/49de06122.html>; (Accessed 6 February 2013)

US Department of State (24 May 2012) *Country Report on Human Rights Practices 2011 – Eritrea*; <http://www.state.gov/j/drl/rls/hrrpt/2011/af/186194.htm>; (Accessed February 2013)

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Human Rights Watch

International Crisis Group

Lexis Nexis

Refugee Documentation Centre Query Database

Refugee Review Tribunal of Australia

UK Home Office

UNHCR Refworld

US Department of State

Norway: Our main sources of information are the reports created by Landinfo – The Norwegian Country of Origins Information Centre (<http://landinfo.no/>). The reports that are most important for our current practice are “Eritrea: utstedelse av utreisetilattelse og ulovlig utreise” and “Eritrea: nasjonaltjeneste”.



Our current practice is heavily based on decision (stornemndvedtak) from UNE - The Norwegian Immigrations Appeals Board 12/2011. This decision gives a detailed survey of our main COI. (<http://www.une.no/upload/n1194701223.html>)

[The decision from UNE is attached as Annex C (in Norwegian)]

Sweden:

Eritrea: Utstedelse av utreisetilattelse og ulovlig utreise, Landinfo, 2012-12-20, http://www.landinfo.no/asset/1939/1/1939_1.pdf; Only in Norwegian.

Eritreanska flyktingar och asylsökande i Sudan, Migrationsverket, 2012-12-17, available at Lifos (Lifos number 29168); Report based on FFM to eastern Sudan and Khartoum in May 2012. Only in Swedish, but includes an English summary. The report focuses on the illegal border crossing from Eritrea to eastern Sudan and the situation of Eritrean refugees and asylum seekers in the Sudan.

Country of Origin Information Report, UK Home Office, 2012-08-17

2011 Country Reports on Human Rights Practices-Eritrea, US Department of State, 2012-05-24

1. How are Eritreans who lack exit visa or whose exit visa has expired treated upon return to Eritrea?

Belgium: Due to the possibility of persecution upon their return, they risk severe punishment.

Australia: We do not have specific knowledge on this. You may already be aware of the following; however, we note that the 2011 US State Department Human Rights Practices report for Eritrea states:

“In general citizens had the right to return. However, citizens residing abroad had to show proof that they paid the 2 percent tax on foreign earned income to be eligible for some government services, including exit visas for future departures from the country.”⁸

The report also states:

“The government continued summary executions and shooting of individuals on sight near mining camps and border regions for allegedly attempting to flee military service, interfering with mining activities, or attempting to leave the country without an exit visa.”⁹

⁸ 2011 Human Rights Report: Eritrea, US Department of State, 24 May 2012
<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>

⁹ 2011 Human Rights Report: Eritrea, US Department of State, 24 May 2012
<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>



On 25 October 2011, Human Rights Watch reported on mass deportations of Eritreans from Sudan to Eritrea and stated:

“No international agencies in Eritrea, including UNCHR, are able to monitor the treatment of Eritreans deported back to Eritrea. However, Eritrean refugees in various countries have told credible sources that Eritreans forcibly returned to their country are routinely detained and mistreated in detention.

UNHCR’s official Guidelines to States on the protection needs of Eritrean asylum seekers state that “individuals of draft age who left Eritrea illegally may be perceived as draft evaders upon return, irrespective of whether they have completed active national service or have been demobilized” and that “the punishment for desertion or evasion is so severe and disproportionate such as to amount to persecution.”¹⁰

Canada: Pages 30-33: United Kingdom. August 2012. Home Office. Operational Guidance Note: Eritrea;

<http://www.ind.homeoffice.gov.uk/sitecontent/documents/policyandlaw/countryspecificasylumpolicyogns/Eritrea.pdf?view=Binary>

Pages 34-35: United Nations. April 2009. Office of the UN High Commissioner for Refugees. UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Eritrea;

<http://www.unhcr.org/refworld/docid/49de06122.html>

Finland: Unfortunately we don’t have any special information on these issues 1 – 4.

France: According to a diplomatic source:

If returned to their home country, Eritrean nationals that left illegally may fear reprisals. Retaliation may also be exercised against the families of fugitives. Theoretically, families must pay a fine equal to the amount paid by the fugitive to leave the country. It seems that some families have been arrested after failing to pay the fine.

In Khartoum, the Eritrean Embassy easily delivers passports to Eritreans fleeing the country illegally. They simply have to pay a sum of money corresponding to about 300 euros, and complete a “self-criticism” declaration.

According to Hélène THIOLLET:

¹⁰ Sudan: End Mass Summary Deportations of Eritreans, Human Rights Watch, 25 October 2011 <http://www.hrw.org/news/2011/10/25/sudan-end-mass-summary-deportations-eritreans> See also UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Eritrea <http://www.unhcr.org/refworld/docid/4d4fe0ec2.html>



According to the Eritrean government, between 1991 and 1998, nearly 200,000 Eritreans were returned voluntarily and without assistance in their country.

At the time of independence, the country bathed in a pluralistic and enthusiastic atmosphere. Issayas Afewerki then encouraged the return of political leaders and combatants from armed groups who violently fought against the Eritrean People's Liberation Front (EPLF) during the war of independence, said that infighting had no place to be, and stressed the national reconciliation in the context of the creation of the State of Eritrea.

Fearing reprisals, some soldiers who faced the EPLF were reluctant to return home, but others were convinced by the promise of reconciliation and decided to return to Eritrea. These were quickly disappointed. Some were imprisoned. Consequently, the voluntary return of political leaders quickly stopped. Some leaders (based in Khartoum, Jeddah, Riyadh, Cairo or Sanaa) were then turned into real opposition in exile to Isaias Afewerki. Since then, the former guerrilla fighters are the spearhead of the opposition.

According to David BOZZINI:

Regarding the risks faced by the family of a deserter who fled the country: deserters are considered traitors to the nation. Since 2006, measures of retaliation against their families are possible, on a "case by case" assessment. Eritrea is a "huge state of lawlessness" where "system induces blackmail and betrayal."

In 2006, the authorities tried to establish a monitoring system to prevent desertion of the conscripts: those assigned to civil service must fill out a form and appoint a responsible person ("Sponsor") for them in Eritrea. Implemented by the Ministry of Information, this measure was to systematize the reprisals against the families of deserters. Through this form, conscripts appointed themselves the future victim of desertion. However, several jurisdictions have refused to participate in this procedure.

Germany: According to the assessment of the Federal Office for Migration and Refugees (BAMF) there is no risk of persecution for individuals who left Eritrea legally, i.e. with a valid exit visa, but who have overstayed their exit visa. In cases where individuals leave Eritrea without a visa, persecution measures cannot completely be ruled out, depending on the country of destination.

The Netherlands: According to the latest COI report of the Minister of Foreign Affairs (November 2011, see <http://www.rijksoverheid.nl/documenten-en-publicaties/ambtsberichten/2011/12/05/eritrea-2011-11-30.html>), according to different sources, Eritreans who fled the country illegally, run a risk of arrest, detention and punishment. The persons mentioned in B1. (political opponents etc) even run more risk according to the COI report. According to the COI report, persons whose visa is expired, do not run a real risk. Probably the authorities will



start an investigation, probably he will be interrogated and probably he has to pay a fine.

New Zealand: New Zealand has had no asylum applications from Eritrea in the last two years so does not have any up to date information on these matters

Norway: The National Police Immigration Service (NPIS) of Norway handles all forced returns in Norway and they do not have any experience-based information on this. However, the Norwegian Country of origin information service, Landinfo, published a report that touches this issue in December 2011: *Eritrea: Issuance of permit to leave and illegal departure* (see

http://www.landinfo.no/asset/1939/1/1939_1.pdf. The report is in Norwegian).

According to the report, the Eritrean departure law from 1992 stipulates that illegal departure may be punished with up to five years prison penalty and/ or a fine. Some persons think that those who leave illegally will not get any punishment, while others think that those who have left illegally after 1994 all will be charged for attempted evasion from military service. According to the report, the majority of Eritreans leave the country without required permission/ exit visa. According to the report from Landinfo (in Norwegian): *Eritrea: Issuance of passports and permit to leave* from 2010 (see http://www.landinfo.no/asset/1281/1/1281_1.pdf), Eritreans may get Eritrean passports from the country's embassies abroad although they have left the country illegally.

Sweden: People, who leave Eritrea illegally, i.e. without exit visa, risk being subject to harsh punishments amounting to serious ill treatment on return. (See e.g. Country of Origin Information Report, UK Home Office, 2012-08-17.). The SMB does not have any specific COI on how Eritreans who possess expired visas are treated on return.

Switzerland: This depends very much on their behaviour while abroad; furthermore the treatment is to a certain amount arbitrary. If a person left Eritrea illegally (or stays away longer than the visa permits), he has broken Eritrean law and will be punished (i.e. detained) in case of return. Due to the arbitrariness of the Eritrean state and lack of information, the exact punishment can't be determined, but there's a risk of incommunicado detention and exaggerated punishment. In some cases, Eritreans abroad who signed a "form of repentance" (for their illegal departure) and paid the 2%-tax were given a clearance paper allowing them to re-enter Eritrea (usually, however, only for holiday purposes).

2. Is an exit visa obtained through bribery considered a legal or illegal exit by the Eritrea authorities?

Australia: We cannot respond based on first hand information, but you may be aware of the reference at Annex E of the August 2012, Eritrean COI report by the UK Home Office – "Obtaining a Passport and Exit from Eritrea" which states:



“Exit visas used to be issued in sticker form but following a 2009 alleged visa scam are now stamps. They are produced in a standard format, in English only.

[...]

Exit visas are issued by the Department of Immigration which has regional offices. All these regional offices have the authority to issue exit visas. Applicants must apply in person only. Without expert knowledge, we can only assume that the stamp/signature can be forged, and that the demand for false exit visas will increase.”

The 2011 US State Department Human Rights Practices report for Eritrea has also observed:

“While not consistently implemented, some relaxation of exit visa requirements took place during the year, allowing an unknown number of persons below the described age cutoffs to leave the country without imposing additional bribes or favors to officials.”¹¹

Belgium: No information available

Canada: Pages 35: United Nations. April 2009. Office of the UN High Commissioner for Refugees, UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Eritrea:
<http://www.unhcr.org/refworld/docid/49de06122.html>

France: According to David BOZZINI:

There are many tricks to get an exit visa and a passport. Corruption is present in the delivery process.

Obtaining a passport and an exit visa is very difficult. In rare cases, demobilized women can benefit from it. In some cases, an exit visa may be issued after a deposit for training abroad, particularly in China and Uganda. Athletes, singers and musicians can also benefit from this system, as some students studying in China.

Germany: The BAMF does not hold specific information on this matter. Ultimately it is probably immaterial for the Eritrean authorities whether an individual has left the country legally or illegally. This assessment is corroborated by the fact that the government is obviously dependent on payments from the Diaspora. It is only the remittances from Eritreans living abroad that keep the system in Eritrea going. For this reason, Eritrean identity documents are issued even to individuals who have applied for asylum abroad so that they may visit Eritrea. The only pre-

¹¹ 2011 Human Rights Report: Eritrea, US Department of State, 24 May 2012
<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>



condition is that they sign a declaration of repentance and pay the so-called „re-construction tax“ of 2 %.

The Netherlands: This is not clear from the COI report. It is known that bribery can take place to obtain visa, and Eritrea scores high on the scale of bribery.

New Zealand: New Zealand has had no asylum applications from Eritrea in the last two years so does not have any up to date information on these matters

Norway: The NPIS does not have any concrete information about this, but according to the report from Landinfo mentioned above, Eritrean authorities do likely have registers containing information about those who have left the country legally.

Sweden: The SMB is not aware of any specific COI on this. However, it has been reported that it is possible to obtain passport and exit visa through bribery. (See e.g. 2011 Country Reports on Human Rights Practices-Eritrea, US Department of State, 2012-05-24.)

Switzerland: We have no information about that.

3. How are failed asylum seekers treated upon return to Eritrea? Do you have information about what role age, gender, issues connected with military service/national service, duration of stay abroad/in a Western country or other issues play in this context? And does it make a difference whether the person in question has returned voluntarily or forcefully been returned from a Western country?

Australia:

Failed asylum seekers

According to Amnesty International's Annual Report for 2012:

“Eritrean asylum-seekers forcibly returned to the country faced a serious risk of arbitrary detention and torture. Despite this, large numbers were forcibly returned by a number of countries.”¹²

In 2009 Amnesty International produced the report “Eritrea: Sent home to detention and torture” which covers forcible returns and treatment of returnees.

The report states:

“All individuals who are forcibly returned to Eritrea are at risk of arbitrary detention, torture and ill-treatment. Nevertheless, there are individuals within

¹² Annual Report 2012 – Eritrea, Amnesty International, 24 May 2012, <http://www.amnesty.org/en/region/eritrea/report-2012>



particular categories who, if returned, would be at great risk of arbitrary detention, torture and other ill-treatment.”

Duration of stay abroad/in a Western country

Annex H of the August 2012, UK Home Office COI Report for Eritrea provides further detail on the issue of exit visas in particular, those who are foreign national - long-term residents.

The latest UNHCR Eligibility Guidelines for Eritrea, (April 2011) state:

“Since the obligation to undertake military service applies to all citizens, Eritreans living abroad since childhood and those born in exile are not exempt from military service. Hence, Eritreans who are forcibly returned, or who return voluntarily, will be subject to conscription in the military service if they satisfy the age criteria and are medically fit.”

The UNHCR guidelines cite both the Proclamation on National Service No. 82/1995 and the Eritrean Nationality Proclamation No. 21/1992). Specifically:

Eritrean Nationality Proclamation No.21/1992, Article 2 (1):

“2. Nationality by Birth

1) Any person born to a father or a mother of Eritrea origin in Eritrea or abroad is an Eritrean national by birth.”

Proclamation No. 82/1995 - Proclamation of National Service, Article 6:

“6. Obligation of National Service

Under this Proclamation any Eritrean citizen from 18 to 50 years of age has the obligation of carrying out national service.”

Military/national service

Human Rights Watch reported in 2013:

“National service keeps most young Eritreans in perpetual bondage. Although a decree mandating compulsory national service limits service to 18 months, in practice the government prolongs service indefinitely. National service conscripts are poorly fed and receive inadequate medical care.”¹³

In July 2012, the UN Human Rights Council adopted a resolution in which it strongly condemned (among other items):

¹³ Human Rights Watch: World Report 2013: Eritrea, 2013
<http://www.hrw.org/world-report/2013>



“(c) The forced conscription of citizens for indefinite periods of national service, which could amount to forced labour, the alleged coercion of minors into the military and the mining industry, as well as the intimidation and detention of family members of those suspected of evading national service in Eritrea;

(d) The shoot-to-kill practice employed on the borders of Eritrea to stop Eritrean citizens seeking to flee their country;”¹⁴

A Special Rapporteur was also appointed for Eritrea.

Belgium: No relevant information available.

Canada: Page 3-4: Amnesty International. 2012 "Eritrea." Amnesty International Report 2012: The State of the World's Human Rights;
<http://amnesty.org/en/region/eritrea/report-2012>

Last Paragraph: Freedom House. 2012. "Eritrea." Worst of the Worst 2012: The World's Most Repressive Societies, p. 15;
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http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/country_specificasylumpolicyogns/Eritrea.pdf?view=Binary

ERI103142.E. 15 April 2009. Situation of people returning after spending time abroad or seeking asylum or refugee status; http://www.irb-cisr.gc.ca:8080/RIR_RDI/RIR_RDI.aspx?id=452303&l=e

France: In September 2002, 232 Eritreans were repatriated from Malta. One of them said that some of his fellow prisoners died of hunger, thirst, or lack of care in the training camp of Wi'a (Wea)¹⁵.

According to Human Rights Watch, some Eritreans deported from Malta in 2002 were held in a high security prison on the island of Dahlak Kebir, in zinc cells.

¹⁴ Situation of human rights in Eritrea, Human Rights Council resolution, 17 July 2012
<http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/G12/154/18/PDF/G1215418.pdf?OpenElement>

¹⁵ Website: fortresseurope.blogspot.com, « Forced labour and tortures for Eritreans deported from Libya », 18/07/09.



There, according to the aforementioned source, they were faced with overcrowding, heat and famine¹⁶.

The prison also housed Eritreans expelled from Libya and Egypt. With a capacity of 800 prisoners, it has eight large buildings made of metal plates. According to Amnesty International, 95 civilians and 85 deserters deported from Malta were imprisoned there in December 2002¹⁷.

In July 2004, 109 Eritreans expelled from Libya have been taken to a forced labor camp located in Gelaelo, on the shores of the Red Sea. Escorted at all times by soldiers, nearly 500 prisoners participated in the construction of a hotel. A hundred people deported from Libya and nearly 200 people deported from Malta in 2002 were among the prisoners. According to an article published in July 2009, they were underfed and often beaten by the soldiers monitoring them¹⁸.

The same source also mentions the situation of three Eritreans who worked in Gelaelo for ten months until May 2005, before being sent to the military training camp of Wi'a, under conscription. During this time, their families have never been in contact with them¹⁹.

According to the website Fortresseurope.blogspot.com, 810 Eritreans were expelled from Egypt in June 2008. Some were imprisoned in the camp of Wi'a, near Gelaelo. Those who had deserted were escorted back in army units. Those who had not started their military service before leaving Eritrea were taken to the military camp of Klima, located near Assab²⁰.

In addition, an article published July 18, 2009 said that 76 Eritreans were expelled from Libya in July 2009, and that 700 Eritreans were still held at the date of this article, in Misratah (Libya) since 2006²¹.

Germany: We do not have specific information on this. Germany hardly returns any rejected asylum seekers to Eritrea. We kindly refer you to the answers that we have provided on the other questions. Basically, the attitude of the Eritrean government to Eritrean nationals who have stayed abroad seems to be ambivalent. On the one hand, the government tries to prevent Eritreans by draconic measures from evading compulsory national service. On the other hand, the government does its best to benefit from the exodus, to the extent that it cannot be prevented anyway, in order to get rid of potential opponents, to reduce rampant unemployment and to generate hard currency receipts.

¹⁶ *Ibid.*

¹⁷ Website awate.com, « Eritrea : the network of prisons », 21/09/09.

¹⁸ « Forced labour and tortures for Eritreans deported from Libya », *op.cit.*

¹⁹ *Ibid.*

²⁰ Website fortresseurope.blogspot.com,, « In Egypt, on the route of the Eritrean diaspora toward Israel », 01/05/09.

²¹ « Forced labour and tortures for Eritreans deported from Libya », *op.cit.*



The Netherlands: See answer B4; Dutch policy is based upon COI of the Minister of Foreign Affairs. The people mentioned in answer B1, are supposed to run more risks than other people when returning to Eritrea. In case of rejection of the asylum application, people are supposed to be able to return to Eritrea voluntarily without running the risk of treatment as described in art 3 ECHR.

Norway: Neither the UDI nor the NPIS do not have any information about this.

Sweden: The following COI indicate that the mere fact that someone has sought asylum is enough to risk serious ill-treatment on return.

- Eritreans who apply for asylum in another country are considered traitors and may be subject to life imprisonment or the death penalty. It is therefore impossible for many to return.⁶ (s. 2)

UNHCR, Refugees and the Rashaida: Human smuggling and trafficking from Eritrea to Sudan and Egypt, 2012-11-01;

http://www.ecoi.net/file_upload/1226_1352201452_508f9a019.pdf

- Seeking asylum abroad is considered by the Eritrean government to be an act of treason.
- Asylum seekers should not be returned to Eritrea, because they will be at grave risk of serious human rights violations.
- Eritreans forcibly returned to Eritrea face a real risk of being subjected to violations, including incommunicado detention, torture and other forms of serious ill-treatment. In addition, detention conditions in Eritrea are appalling, and in themselves amount to cruel, inhuman or degrading treatment.

Amnesty International, Sudan must end forced returns of asylum seekers to Eritrea Sudan, 2012-08-15;

<http://www.amnesty.org/en/library/asset/AFR54/039/2012/en/ad11d911-8915-488b-b5c9-3831f4694b9e/afr540392012en.pdf>

- Individuals returned to Eritrea against their will are routinely subjected to human rights violations, including incommunicado detention, torture and other forms of ill-treatment. In past cases of failed asylum seekers deported to Eritrea, individuals were immediately subjected to interrogation on the reasons for, and contents of, their asylum applications; and were subsequently arbitrarily detained. According to accounts given by escaped detainees, Eritrean security officials are particularly interested in what failed asylum seekers have said about Eritrea during their asylum application process. Under torture, or threat of torture, returnees have been forced to state that they have committed treason by falsely claiming persecution in asylum applications.



- Claiming asylum abroad is considered as an act of treason by the Eritrean authorities.(s. 2)

Amnesty International, ASYLUM-SEEKERS DETAINED AND ILL-TREATED, 2012-01-31;

<http://www.amnesty.se/upload/apps/webactions/urgentaction/2012/02/01/45000112.pdf>

- Refugees and asylum-seekers returned to Eritrea have been detained incommunicado and tortured. Thousands of people are detained incommunicado in Eritrea, in secret and indefinitely, without charge or trial. They have been arrested for suspected opposition to the government, practising their religious beliefs as members of banned evangelical or other churches, evading military conscription or trying to flee the country. The act of seeking asylum itself is considered as an act of treason by the Eritrean authorities, opening all returned asylum-seekers to the risk of arbitrary arrest and detention on this basis alone.(s. 2)

Amnesty International, ERITREANS IN EGYPT AT RISK OF FORCIBLE RETURN, 2011-11-02;

<http://www.amnesty.org/en/library/asset/MDE12/055/2011/en/cec4b066-efdd-4df1-be69-61ca5f866445/mde120552011en.pdf>

- Eritrean refugees and asylum seekers who are repatriated from other countries are also detained; a number of repatriated Eritreans disappeared while in custody in 2011.

Freedom House, Freedom in the World 2012 – Eritrea; <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=printdoc&docid=4fb6139da>

Other sources known to the SMB are not as clear and it is unclear whether it is seeking asylum alone or other circumstances (e.g. draft evasion, desertion or illegal entry) or possible a combination of the two that might put the person at risk on return.

Switzerland: Given the fact that returns of asylum seekers are extremely rare events, there's not much information about that. Treatment of returnees is generally arbitrary. Conscripts who have left national service without authorisation are punished (in an exaggerated way) for their desertion. Persons who left Eritrea illegally are likely to be punished as well (see above). There are no reports about forcible returns to Eritrea, and the Eritrean government is reluctant to accept forcible returns of asylum seekers.



4. How are Eritreans who have never lived in Eritrea treated upon return to Eritrea?

Australia: In 2012, Amnesty International reported on returns from Sudan to Eritrea stating:

“Seeking asylum abroad is considered by the Eritrean government to be an act of treason. Asylum seekers should not be returned to Eritrea, because they will be at grave risk of serious human rights violations.

Eritreans forcibly returned to Eritrea face a real risk of being subjected to violations, including incommunicado detention, torture and other forms of serious ill-treatment. In addition, detention conditions in Eritrea are appalling, and in themselves amount to cruel, inhuman or degrading treatment.

The government of Sudan also violated international law by deporting to Eritrea, citizens of Ethiopia who had claimed asylum in Sudan.”²²

The 2009 Amnesty International report “Eritrea: Sent home to detention and torture” details two accounts of forced returns to Eritrea for Eritreans who have never lived there including Miskir Semerab Goitom and Jamil Mohammad Burhan.

Amnesty International reporting on Miskir Semerab Goitom a month after her return stated:

“The United Kingdom (UK) authorities forcibly returned Miskir Semerab Goitom to Eritrea on 21 October. She was sent via Saudi Arabia to the airport in the capital, Asmara. She was ordered to report to airport security the following day where she was detained. Miskir Semerab Goitom has not been seen since. She is reportedly held in Adi Abeto military prison, near Asmara and Amnesty International believes that she is at risk of torture”.²³

The last information available from Amnesty International on Jamil Mohammad Burhan since his return in 2008 was:

“Amnesty International is trying to establish what happened to Jamil Burhan on his arrival in Eritrea, and will continue to monitor his case as far as possible.”²⁴

²² Sudan must end forced returns of asylum seekers to Eritrea, Amnesty International, 16 August 2012.

<http://www.amnesty.org.au/news/comments/29505/>

²³ Eritrea: Fear of torture/incommunicado detention/forcible return: Miskir Semerab Goitom (f), Amnesty International, 29 November 2007.

<http://www.amnesty.org/en/library/asset/AFR64/010/2007/en/3e34f9c7-a2bd-11dc-8d74-6f45f39984e5/af640102007en.html>

²⁴ Sweden/Eritrea: Further Information on Deportation / Torture: Jamil Mohammad Burhan (m), Amnesty International, 22 April 2008



Belgium: No relevant information available.

Canada: No information found in the NDP.

France: No information is available on that topic.

Germany: According to the view held by the Federal Office for Migration and Refugees (BAMF) Eritreans who enter Eritrea for the first time (e. g. because they were born abroad), are only obligated to subsequently serve their time in the compulsory national service. They are not likely to be subject to persecution measures, because they have not violated any criminal law provisions (e. g. evading national service, desertion).

The Netherlands: This is not clear from the COI report.

Norway: Neither the UDI nor the NPIS do not have any information about this.

Sweden: The SMB is not aware of any specific COI on this.

Switzerland: We have no information about that.

D. Return

Please provide a description of your experiences concerning return of failed asylum seekers from Eritrea, including forced returns.

- 1. Do you inform the Eritrean authorities in advance that a returnee is a failed asylum seeker? If yes, what are the implications in terms of how the Eritrean authorities treat the returnee upon entry into Eritrea?**

Australia: Australia has not removed any Eritreans. We did voluntarily remove a dual Eritrean/Italian citizen to Italy last October however no contact was made with the Eritrean authorities during this removal.

Belgium: In the last 5 years we have had no cases of forced returns to Eritrea, as we have a no-return policy to Eritrea.

Canada: When applying for travel documents, Canada does not inform a foreign mission if the client is a failed asylum; doing so would be contrary to the principle of non-refoulement and could create a refugee sur place situation for the unsuccessful refugee claimant. The mission is simply advised that the client is unable to comply with the Immigration Act and that a travel document is required in order to facilitate that person's return.

Claims for asylum are adjudicated on a case-by-case basis in which the specific merits of the claim are evaluated. Clients are given access to both a refugee de-



termination process as well as a pre-removal risk assessment, which is done prior to removing a person from Canada. Persons found to be at risk if returned to their country are not removed. Everyone ordered removed from Canada is entitled to due process before the law and all removal orders are subject to various levels of review. When individuals have exhausted all avenues of due process, they are expected to obey our laws and leave Canada.

France: As OFPRA is solely competent on refugee status determination issues, no information can be provided on that topic.

Germany: For reference, you will find attached some information previously shared by your country on the IGC website, at the following link:

Return to Selected Countries Matrix 2012;

https://secure.igc.ch/web/jcms/e_270571/compilation-return-to-selected-countries-matrix-2012?details=true

[The matrix is included as Annex D]

Ireland: Please see reply to Part B. above.

The Netherlands: The answer on the question under D is short: “No, we don’t”.

New Zealand: New Zealand has not returned any failed asylum claimants to Eritrea within the last couple of years. New Zealand would not inform the Eritrean authorities in advance that a returnee is a failed asylum claimant.

Norway: Norway is currently not returning failed asylum seekers from Eritrea to their home country by force. This practice is according to a decision made by the Norwegian Immigration Appeals Board (see <http://www.une.no/Praksis2/Returstopp/> : *Eritrean citizens may not be deported all the way to Eritrea from Norway. It is the opinion of the Norwegian Immigration Appeals Board, based on available country of origin information, that it is uncertain whether or not the returnee will face persecution from Eritrean authorities, if they understand that the person has been deported by force to Eritrea*). The National Police Immigration Service (NPIS) of Norway do presently only assist Eritreans who want assistance to return to Eritrea. In these instances Eritrean authorities are - as a main rule - not informed about the return.

Sweden: The Swedish Migration Board sends a request to Embassy of Eritrea for issuance of a temporary travel document. Voluntary return is only possible with the Embassy’s assistance or a valid travel document. Regarding forced return, the Swedish police are not able to enforcement in case of Eritrean citizens.

As in all return cases, the Swedish Migration Board informs the authorities in the request of travel document that the person has applied for residence permits in Sweden, but their application were rejected and they are obliged by Swedish Law to return to their country of residence. We do not inform on what ground the per-



son has applied residence permit for. We have not received any negative feedback on mistreatment by Eritrean authorities upon return of voluntary returnees.

Switzerland: No. Our authorities generally never contact Eritrean authorities, neither the embassy nor in Eritrea itself.



Annex A – Statistics

Statistics supplied by the IGC secretariat concerning 2010 and 2011.

First Instance Asylum Decisions Eritrea						
<u>2010</u>						
PS	Asylum applications	Total Decisions	Geneva Convention Status	Subsidiary Protection and Humanitarian Status	Rejections	Closed, Withdrawn, Abandoned
Australia	24	9	9	0	0	0
Austria	12	22	15	0	6	1
Belgium	110	50	25	5	15	0
Canada	90	162	144	0	7	11
Denmark	27	23	5	9	9	0
Finland	14	16	1	1	11	3
France	729	513	281	7	225	0
Germany	642	400	274	60	10	56
Greece	59	8	0	0	8	0
Ireland	15	22	1	0	21	0
Netherlands	392	574	36	262	276	0
New Zealand	1					
Norway	1711	2424	1100	503	768	53
Spain	8	12	0	0	12	0
Sweden	1443	1347	153	747	377	70
Switzerland	1799	3466	2160	0	832	474
United Kingdom	772	1004	565	34	405	0
United States	214	246	159	0	84	3



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<u>2011</u>					
PS	Total Decisions	Geneva Convention Status	Subsidiary Protection and Humanitarian Status	Rejections	Closed, Withdrawn, Abandoned
Australia	27	27	0	0	0
Austria	21	12	0	5	4
Belgium	65	40	0	25	0
Canada	271	249	0	8	14
Denmark	15	3	4	8	0
Finland	7	1	4	2	0
France	920	362	3	555	0
Germany	407	265	37	16	89
Greece	14	1	1	12	0
Ireland	9	1	0	8	0
Netherlands	612	27	404	181	0
New Zealand	1	1	0	0	0
Norway	1663	1045	98	460	60
Spain	6	0	0	6	0
Sweden	1593	174	1021	320	78
Switzerland	3451	2577	0	388	486
United Kingdom	914	643	34	237	0
 ited States	197	159	0	33	5



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First Instance Asylum Decisions Eritrea						
2011						
PS	Asylum applications	Total Decisions	Geneva Convention Status	Subsidiary Protection and Humanitarian Status	Rejections	Closed, Withdrawn, Abandoned
Australia		27	27	0	0	0
Austria		21	12	0	5	4
Belgium		65	40	0	25	0
Canada		271	249	0	8	14
Denmark		15	3	4	8	0
Finland		7	1	4	2	0
France		920	362	3	555	0
Germany		407	265	37	16	89
Greece		14	1	1	12	0
Ireland		9	1	0	8	0
Netherlands		612	27	404	181	0
New Zealand		1	1	0	0	0
Norway		1663	1045	98	460	60
Spain		6	0	0	6	0
Sweden		1593	174	1021	320	78
Switzerland		3451	2577	0	388	486
United Kingdom		914	643	34	237	0
United States		197	159	0	33	5

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First and second Instance Asylum Decisions Eritrea						
2012						
	Asylum applications	Geneva Convention Status		Subsidiary Protection and Humanitarian Status		Rejections
		1. instance	2. instance	1. instance	2. instance	
Australia	14	0	1	0	0	0
Belgium	79	12	0	1	0	13
Canada	see separate statistics below		Netherlands			
Denmark	54					
Finland	5	4	0	0	0	3
France	487	93	132	1	5	558
Germany	See separate statistics below					
Greece	122					
Ireland	see separate statistics below					
Netherlands	No data concerning 2012 due to transition to a new registration system					
New Zealand	0	0	0	0	0	0
Norway	1183	1224		4 Incl. "other protection"		135
Spain	20	No data	No data	No data	No data	No data
Sweden	2356	198	3	1063	27	89
Switzerland	4407	1332	No data	211	No data	Rejected without temporary stay permit: 24 Rejected with temporary stay permit: 211
United Kingdom	640	No data	No data	No data	No data	No data
United States	81	No data	No data	No data	No data	No data



Canada:

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<i>Claims Referred</i>	<i>209</i>
<i>Negative Decisions*</i>	<i>17</i>

<i>Total Finalized Decisions</i>	<i>175</i>
<i>CONVENTION REFUGEE</i>	<i>131</i>
<i>PROTECTED PERSON</i>	<i>4</i>
<i>PROTECTED & CONVENTION</i>	<i>5</i>
<i>REJECTED</i>	<i>9</i>
<i>(Blank)</i>	<i>26</i>

**Claims finalized in a given year may have been referred in a previous year.*

Germany:

Asylum applications Eritrea				Decisions by the Fed. Office for Migration and Refugees (BAMF) on asylum applications					
	To- tal	Out of which first- time applica- tions	Out of which follow- up ap- plica- tions	To- tal	Recog- nized as entitled to asy- lum (art. 16a and family asylum)	Granted refugee protection purs. to section 60 I Resid. Act	Deporta- tion ban purs. to section 60 II, III, V, VII Resid. Act	Application rejected as being un- founded/ma- nifestly unfounded	Case other- wise disposed of
2010	662	642	20	400	27	247	60	10	56
2011	649	632	17	407	46	219	37	16	89
2012	669	650	19	375	18	195	38	39	85

Country-related statistics on decisions of the second instance (court decisions) are not available for Eritrea.

Ireland:



Eritrean asylum applications & asylum and Subsidiary Protection (SP) recommendations and decisions

	2010	2011	2012	Total
Applications for refugee status	15	8	7	30
First instance recommendations to grant refugee status	1	1	-	2
First instance recommendations to refuse refugee status	16	3	7	26
Second instance recommendations to refuse refugee status	20	3	2	25
Second instance recommendations to grant refugee status	3	0	0	3
SP refused	1	2	2	5
SP granted	1	1	0	2

* Please note the year in which the recommendation was made may not necessarily be the same as year of application.



Annex B – List of COI provided by Australia

Country of Origin Information - Eritrea (<u>Added</u> between 2009 - 2013)		
Short news reports/articles		
Title	Published by	Date Published
Eritrean opposition urges action to stop refugee kidnappings	Sudan Tribune	02-feb-13
A glimpse into a mysterious African dictatorship: Is Eritrea on the verge?	Time Magazine	27-jan-13
What really happened at Asmara's ministry of (dis)information?	Reporters sans Frontieres also Reporters Without Borders	24-jan-13
Eritrea officials arrest 10 church leaders; Christians fear increase in persecution	Christian Post	24-jan-13
Eritrean troops besiege mutineers in Asmara	Agence France Presse - France	22-jan-13
Eritrea unrest reported; soldiers flood information ministry	The Associated Press	21-jan-13
Eritrea: Mining Investors Risk Use of Forced Labour	Human Rights Watch	15-jan-13
CIA The World Factbook: Eritrea	US Central Intelligence Agency - World Fact Book	08-jan-13
Eritrea must cooperate in human rights dialogue, urges UN independent expert	United Nations News Centre	21-dec-12
New media cracks Eritrea's iron curtain	New Statesman	15-dec-12
Eritrea's forced military service drains Church manpower	Central News Agency -Taiwan	04-dec-12
Annual Prison Census 2012 - Eritrea	Committee to Protect Journalists	01-dec-12
Freedom of the Press 2012 - Eritrea	Freedom House	02-nov-12
Sudan must end forced returns of asylum seekers to Eritrea	Amnesty International	16-aug-12



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Trafficking in Persons Report 2012 - Eritrea	US Department of State also State Department	19-jun-12
Eritrea reportedly refuses to renew passports for Bedouins in Kuwait	Awate.com website	11-jun-12
Amnesty International Annual Report 2012 - Eritrea	Amnesty International	24-maj-12
Freedom in the World 2012 - Eritrea	Freedom House	18-maj-12
Jordan: Don't deport Eritrean refugees to Yemen	Human Rights Watch	15-maj-12
Don't Deport Eritrean Refugees to Yemen	Human Rights Watch	15-maj-12
Detained Eritrean journalist admitted to hospital in serious condition	Reporters sans Frontieres also Reporters Without Borders	06-apr-12
USCIRF Annual Report 2012 - Countries of Particular Concern: Eritrea	US Commission on International Religious Freedom	20-mar-12
Fear of compulsory recruitment drives Eritrean teen to flee home	United Nations High Commission for Refugees	19-mar-12
2012 Surveillance: Eritrea	Reporters sans Frontieres also Reporters Without Borders	12-mar-12
Tel Aviv is no haven for asylum seekers	Aljazeera	23-feb-12
Human Rights Watch World Report 2012 Eritrea	Human Rights Watch	22-jan-12
Background Note: Eritrea	US Department of State also State Department	20-jan-12
Countries at the Crossroads 2011 - Eritrea	Freedom House	10-nov-11
Eritrean dissident in Cairo slams human trafficking through Sinai	Daily News Egypt	03-nov-11
Eritreans in Egypt at risk of forcible return	Amnesty International	02-nov-11
Sudan: End Mass Summary Deportations of Eritreans	Human Rights Watch	25-okt-11
Eritreans face forcible return from Egypt	Amnesty International	19-okt-11
UNHCR dismay at new deportation of Eritreans by Sudan	United Nations High Commission for Refugees	18-okt-11
"Silent crisis" as more Eritreans flee	Integrated Regional Information Network - UN	05-aug-11



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Asylum-Seekers Risk Deportation, Torture	Amnesty International	20-jul-11
Refugees battling for a better life	Integrated Regional Information Network - UN	01-jul-11
Eritrean Christians facing 'unimaginable suffering' in Egypt	Christian Today	10-jun-11
Eritreans 'being tortured in Egypt's Sinai for ransom'	British Broadcasting Corporation	13-maj-11
Amnesty International Annual Report Eritrea 2011	Amnesty International	13-maj-11
Predators of Press Freedom: Eritrea - Issaias Afeworki	Reporters sans Frontieres also Reporters Without Borders	03-maj-11
USCIRF Annual Report 2011 - Countries of Particular Concern: Eritrea	US Commission on International Religious Freedom	28-apr-11
The 2010 Foreign & Commonwealth Office Report - Eritrea	UK: Foreign and Commonwealth Office	31-mar-11
Bedouin smugglers abuse Africans held for ransom, Israel group says	The New York Times	15-feb-11
Eritrean authorities reportedly ban satellite TVs in public places	Awate.com website	04-feb-11
Egypt arrests some 100 Eritrean, Ethiopian refugees	Awate.com website	01-feb-11
Human Rights Watch World Report Eritrea 2011	Human Rights Watch	24-jan-11
Abuse of asylum-seekers in Sinai must stop, say activists	Integrated Regional Information Network - UN	06-jan-11
There's No Place Like Home	In Custodia Legis: Law Librarians of Congress	04-jan-11
Egypt: End Traffickers Abuse of Migrants	Human Rights Watch	09-dec-10
Donor aid supports repression	Human Rights Watch	19-okt-10
Arbitrary detention of government critics and journalists	Amnesty International	30-sep-10
Oppressive silence surrounds imprisoned journalists	International Freedom of Expression Exchange Clearing House [IFEX] Toronto	22-sep-10
Third Christian this year dies in military prison	Compass Direct	27-jul-10
Amnesty International Report 2010 - Eritrea	Amnesty International	28-maj-10



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Human Rights Watch World Report Eritrea 2010	Human Rights Watch	20-jan-10
43,000 people call for religious freedom in Eritrea	Christian Today	17-jan-10
Freedom in the World Country Report Eritrea 2010	Freedom House	01-jan-10
Eritrea arrests 30 praying women, relatives say	British Broadcasting Corporation	11-dec-09
Annual Prison Census 2009: Eritrea	Committee to Protect Journalists (CPJ), New York	08-dec-09
A forgotten refugee problem	Integrated Regional Information Network - UN	03-dec-09
World's biggest prison for journalists eight years after September 2001 round-ups	Reporters sans Frontieres also Reporters Without Borders (RSF) -France	17-sep-09
Third Christian this year dies in military prison	Compass Direct	27-jul-09
Freedom in the World Country Report Eritrea 2009	Freedom House	16-jul-09
Eritrea famine devastates half its population	The Media Line	16-jul-09
Aid official describes starving Eritrean children too weak to walk	Catholic News Service	14-jul-09
Amnesty International Annual Report Eritrea 2009	Amnesty International	28-maj-09
Christians to show solidarity with Eritrea's prisoners of conscience	Christian Today	21-maj-09
Slender land, giant prison	Human Rights Watch	06-maj-09
Reporters Without Borders Annual Report Eritrea 2009	Reporters sans Frontieres also Reporters Without Borders (RSF) -France	01-maj-09
Repression creating human rights crisis	Human Rights Watch	16-apr-09
Background Note: Eritrea	US Department of State	apr-09
Church group assists as crisis deepens in Eritrea	Christian Today	27-mar-09
Three elderly Christians released in Eritrea	Christian Today	23-mar-09



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Desperate lives of Calais migrants	British Broadcasting Corporation	13-mar-09
Eritrea arrests dozens of journalists in crackdown: RSF	Reporters sans Frontieres also Reporters Without Borders (RSF) -France	06-mar-09
No one breathes easy as dictator's grip remains tight	Catholic Information Service for Africa	04-mar-09
Religious persecution on the Horn of Africa	The American Spectator	03-mar-09
Eritrean soldiers deserted to Ethiopia tops 5000	Sudan Tribune	01-mar-09
Over 500 Eritreans fled to Sudan in one week - opposition	Sudan Tribune	13-feb-09
Long held in secret Eritrean jail, Isaac reported in hospital	Committee to Protect Journalists (CPJ), New York	05-feb-09
Eritrean army members defecting to Ethiopia en masse	Walta Information Centre website	05-feb-09
IFJ Calls for Urgent Action as Fears Grow over Ordeal of Journalist in Eritrea	International Federation Of Journalists (IFJ)	04-feb-09
Two more tortured Christians die in Eritrea	Mission Network News	30-jan-09
Forcible return/ Torture and other forms of ill-treatment: Eritreans detained in Egypt forcibly returned to Eritrea	Amnesty International	26-jan-09
Eritrean opposition groups agree to form full alliance	Sudan Tribune	23-jan-09
Christian deaths mount in prisons	Compass Direct	21-jan-09
Christian Deaths Mount in Eritrean Prisons	Compass Direct	21-jan-09
Egyptian helicopters reportedly kill 38 Eritrean refugees	Nharnet	19-jan-09
PFDJ Prisons & Interrogation Centers In & Around Asmara	Awate.com web site	17-jan-09
Human Rights Watch World Report Eritrea 2009	Human Rights Watch	14-jan-09
Multiple Citizenship	Multiple Citizenship website	2007
New unity in Eritrean opposition	British Broadcasting Corporation	15-aug-04



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Decision to send deminers away causes concern	Integrated Regional Information Network - UN	05-jun-03
An Interview With Semere Kesete	Awate.com web site	15-aug-02
End to use of child soldiers urged	Integrated Regional Information Network - UN	11-jul-00
Human rights issues in a year of armed conflict	Amnesty International	20-maj-99
1995 Annual Report for Eritrea	Amnesty International	01-jan-95
Large reports/analysis		
Title	Published by	Date Published
Ministry of Information website: contact page	Eritrean Government: Ministry of Information website	as at 17 January 2013
Hear No Evil: Forced Labour and Corporate Responsibility in Eritrea's Mining Sector	Human Rights Watch	01-jan-13
Refugees and the Rashaida: human smuggling and trafficking from Eritrea to Sudan and Egypt	United Nations High Commissioner for Refugees	nov-12
Situation of human rights in Eritrea (A/HRC/RES/20/20)	Human Rights Council	17-jul-12
National Service and State Structures in Eritrea	Dr. David Bozzini, Switzerland: Federal Office for Migration	28-jun-12
Chiefs of State and Cabinet Members of Foreign Governments: Eritrea	US Central Intelligence Agency	18-apr-12
Ten Long Years: A Briefing on Eritrea's Missing Political Prisoners	Human Rights Watch	22-sep-11
Eritrea: Journalists in prison	Reporters without Borders	sep-11



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UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Eritrea	United Nations High Commissioner for Refugees	20-apr-11
Eritrea: The siege state - Africa Report N°163	International Crisis Group	21-sep-10
Information on Sawa military camp in Eritrea where students are trained and attend classes as part of their 12th year in school.	Refugee Documentation Centre (Ireland)	19-maj-10
"Dreams Don't Come True in Eritrea": Anomie and family disintegration due to the structural militarization of society	Nicole Hirt, GIGA German Institute of Global and Area Studies	jan-10
Eritrea's role and foreign policy in the Horn of Africa: past and present perspectives [Book Chapter]	Eritrea's External Relations: Understanding its Regional Role and Foreign Policy, Chat-ham House	dec-09
Service for Life: State Repression and Indefinite Conscription in Eritrea	Human Rights Watch	16-apr-09
Eritrea: IDPs returned or resettled but border tensions remain	The Internal Displacement Monitoring Centre	16-feb-09
The Lasting Struggle for Freedom in Eritrea - Human Rights and Political Development, 1991-2009	Kjetil Tronvoll, The Oslo Center For Peace and Human Rights	2009
Eritrea: Sent Home to Detention and Torture	Amnesty International	2009
Progress report of the Secretary-General on Ethiopia and Eritrea	UN Security Council	23-jun-03
Ethiopia and Eritrea: Human Rights Issues in a Year of Armed Conflict	Amnesty International	20-maj-99
Proclamation No. 82/1995 - Proclamation of National Service	Eritrean Gazette (via Refworld)	23-okt-95
Global Reports		
Title	Published by	Date Published



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World Press Freedom Index 2013	Reporters without Borders	2013
Human Rights Watch World Report 2013	Human Rights Watch	2013
Freedom in the World 2013	Freedom House	2013
Report of the working group on enforced or involuntary disappearances	United Nations Human Rights Council	02-mar-12
UNHCR Global Trends 2011: a year of crises	United Nations High Commissioner for Refugees	18-jun-12
International Committee of the Red Cross Annual Report 2011	International Committee of the Red Cross	25-jun-12
Freedom of Thought 2012	International Humanist and Ethical Union	10-dec-12
Freedom of Thought 2012: A Global Report on Discrimination Against Humanists, Atheists and the Nonreligious	International Humanist and Ethical Union	10-dec-12
State-sponsored Homophobia: A World Survey of Laws Prohibiting Same Sex Activity Between Consenting Adults	International Lesbian, Gay, Bisexual, Trans and Intersex Association	2009 to 2011
Citizenship Law in Africa: A Comparative Study	Bronwen Manby, Open Society Institute	2009
UNHCR Eligibility Guidelines		
Title	Published by	Date Published
UNHCR Eligibility Guidelines for assessing the International Protection Needs of Asylum-Seekers from Eritrea	United Nations High Commissioner for Refugees	apr-11



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Annual Reports - Other Government		
Title	Published by	Date Published
Human Rights Reports: Eritrea	US Department of State	1993 - 2011
International Religious Freedom Reports	US Department of State	2006 to 2012
UK Home Office		
Title	Published by	Date Published
Eritrea: Country of Origin Information (COI) Report - August 2012	Home Office: UK Border Agency	aug-12
Eritrea: Country of Origin Information (COI) Report - August 2011	Home Office: UK Border Agency	aug-11
Eritrea: Country of Origin Information (COI) Report - April 2011	Home Office: UK Border Agency	apr-11
Eritrea: Country of Origin Information (COI) Report - June 2010	Home Office: UK Border Agency	jun-10
Eritrea: Country of Origin Information (COI) Report - October 2009	Home Office: UK Border Agency	okt-09
Eritrea: Country of Origin Information (COI) Report - April 2009	Home Office: UK Border Agency	apr-09



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Eritrea: Country of Origin Information (COI) Report - September 2008	Home Office: UK Border Agency	sep-08
Eritrea: Country of Origin Information (COI) Report - May 2008	Home Office: UK Border Agency	maj-08
Eritrea: Country of Origin Information (COI) Report - February 2008	Home Office: UK Border Agency	feb-08
Eritrea: Country of Origin Information (COI) Report - October 2007	Home Office: UK Border Agency	okt-07
Eritrea: Country of Origin Information (COI) Report - September 2007	Home Office: UK Border Agency	sep-07
Eritrea: Country of Origin Information (COI) Report - March 2007	Home Office: UK Border Agency	mar-07
Eritrea: Country of Origin Information (COI) Report - April 2006	Home Office: UK Border Agency	apr-06
Eritrea: Country of Origin Information (COI) Report - April 2005	Home Office: UK Border Agency	apr-05
Eritrea: Country of Origin Information (COI) Report - October 2004	Home Office: UK Border Agency	okt-04
Canadian IRB We have not uploaded Canadian IRB reports recently, however, decision-makers have access to them online and are not allowed to cite the report directly. Decision-makers can request for individual sources to be uploaded as a result.		
Title	Published by	Date Published
ERI103223.E: Eritrea: Procedures for obtaining Eritrean nationality for persons born outside Eritrea	Research Directorate, Immigration and Refugee Board of Canada	03-sep-09
ERI103224.E: Eritrea: Treatment of the Jeberti people by government authorities	Research Directorate, Immigration and Refugee Board of Canada	01-sep-09



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ERI102851.E: Eritrea: Procedure for applying for a national identity card, including which office issues such documents and whether an office is located on Fiat street in Asmara	Research Directorate, Immigration and Refugee Board of Canada	08-jul-08
ERI102852.E: Eritrea: Prevalence of fraudulent national identity cards	Research Directorate, Immigration and Refugee Board of Canada	08-jul-08
ERI102684.E: Eritrea: The Eritrean Army structure, including its units, ranks, functions; whether all divisions of the army are involved in military operations; military activity in Asab, Gash and Tsorona	Research Directorate, Immigration and Refugee Board of Canada	05-feb-08
ERI102728.E: Eritrea: Whether persons serving in the military are issued military identification documents; if not, procedure to confirm that persons are serving in the military when they are off their military base	Research Directorate, Immigration and Refugee Board of Canada	28-jan-08
ERI102729.E: Eritrea: Whether women serving in the military are discharged when they marry; if so, evidence required to prove marriage	Research Directorate, Immigration and Refugee Board of Canada	28-jan-08
ERI102154.E: Eritrea: Information on the protection, services and legal recourse available to women who are victims of domestic violence [2005 - 2006]	Research Directorate, Immigration and Refugee Board of Canada	28-feb-07
ERI102153.E: Eritrea: Legislation and legal protection available to homosexuals; their treatment by society and government authorities	Research Directorate, Immigration and Refugee Board of Canada	28-feb-07
ERI102026.E: Eritrea: Military service, including age of recruitment, length of service, grounds for exemption, penalties for desertion from and evasion of military service and availability of alternative service [2005 - 2006]	Research Directorate, Immigration and Refugee Board of Canada	28-feb-07
ERI102025.E: Eritrea: Information on official identity documents and the names of agencies that issue them [2005 - 2006]	Research Directorate, Immigration and Refugee Board of Canada	27-feb-07



Annex C – Decision from the Norwegian Immigration Appeals Board²⁵

Sakstype: Beskyttelse(Asyl)/ot-hum	Nasjonalitet: ERITREA	Referanse: N1194701223
Måned: 12.2011	Avgjørelsesform: Stornemnd	Resultat: Tatt til følge
Lovbestemmelse(r): Utl § 28		Forskriftsbestemmelse(r):
Stikkord: tillagt politisk oppfatning; forfølgelsesfare; årsakssammenheng med konvensjonsgrunn;		
Sammendrag: Saken er i henhold til utlendingsloven § 78 annet ledd, jf. utlendingsforskriften § 16-4 fjerde ledd behandlet og avgjort i stornemnd av tre nemndledere og fire nemndmedlemmer. Begrunnelsen for stornemndbehandling er at saken tidligere er behandlet i nemndmøte av en nemndleder og to nemndmedlemmer, der flertallet, nemndmedlemmene, kom til at klagen ikke skulle tas til følge. Mindretallet, nemndlederen, mente at klagen skulle tas til følge. Nemndlederen mente at vedtaket var lovstridig og krevde at saken ble behandlet i stornemnd. Stornemndmøte ble avholdt 28. og 29. november 2011 uten personlig fremmøte, da fremmøte ikke var nødvendig av hensyn til de spørsmål i saken som bød på tvil. Klagen tatt til følge. Dissens. Seks mot en stemme. Sakens bakgrunn Eritreisk kvinne i 30-årene kom til Norge i 2009 og søkte om asyl. Hun fremla nasjonalt identitetskort fra Eritrea. UDI avsto søknaden om asyl under henvisning til at hun ikke var å anse som flyktning etter tidligere utlendingslov § 16 første ledd og flyktningkonvensjonen. Hun var ikke vernet mot retur til hjemlandet i medhold av lovens § 15 første ledd. Klageren ble heller ikke innvilget tillatelse på humanitært grunnlag etter lovens § 8 annet ledd. Klage over UDIs vedtak ble avslått av UNE 21. juni 2011 etter behandling i nemndmøte. En samlet nemnd la til grunn at klageren har reist ulovlig ut av Eritrea mens hun var i nasjonaltjenestepliktig alder, og at det ikke foreligger holdepunkter for at hun formelt har blitt unntatt fra		

²⁵ The Norwegian Immigration Appeals Board (Stornemnd), N1194701223, December 2012, <http://www.une.no/upload/n1194701223.html>



nasjonaltjeneste. Det ble lagt til grunn at det foreligger risiko for at klageren vil bli ansett som nasjonaltjenesteunndrager ved retur til Eritrea, og at hun kan bli tillagt en politisk oppfatning som følge av dette.

Flertallet, nemndmedlemmene, mente at det ikke foreligger tilstrekkelige holdepunkter i saken for at klageren ved retur til Eritrea risikerer reaksjoner fra myndighetene som kan karakteriseres som forfølgelse. Etter flertallets vurdering var det lite sannsynlig at hun risikerer en annen reaksjon enn kortvarig fengsling ved retur. Det ble lagt vekt på at klageren var 35 år, at hun har tre barn, og at hun av den grunn ikke har vært innkalt til nasjonaltjeneste tidligere. Videre la flertallet vekt på at klagerens mann døde som martyr, og at hun derfor vil bli behandlet mildere enn mange andre som blir ansett å være nasjonal- tjenesteunndragere ved retur til Eritrea.

Mindretallet, nemndlederen, mente imidlertid at klageren har krav på beskyttelse etter utlendingsloven § 28 første ledd bokstav a. Det ble tatt utgangspunkt i at UNHCRs anbefalinger konkluderer med at personer som er i nasjonaltjenestepliktig alder og forlater Eritrea uten tillatelse, kan bli ansett som nasjonaltjenesteunndragere, uavhengig av om de har fullført nasjonaltjenesten eller har blitt demobilisert. Personer som unndrar seg tjenesten blir ansett som forrædere mot regimet og blir straffet for sin illojalitet. Videre ble det vist til at det foreligger lite landinformasjon om hvilke reaksjoner personer som har reist ulovlig ut av landet i nasjonaltjenestepliktig alder risikerer. Det er ytterst få land som tvangssender asylsøkere tilbake til Eritrea, og det foreligger lite informasjon om personer som eventuelt har reist tilbake frivillig. Det er derfor vanskelig å si med sikkerhet hvilke reaksjoner personer som har forlatt Eritrea ulovlig, uten at de er i myndighetenes søkelys på annet vis, vil risikere ved retur til Eritrea. Blant annet viser UNHCR til at det er rapportert om at personer som unndrar seg tjenesten blir arrestert og utsatt for tortur.

Videre viste mindretallet til at etter at UNCHR utga nye anbefalinger i 2009, har UNEs praksis vært at eritreiske borgere som har forlatt Eritrea ulovlig i nasjonaltjenestepliktig alder gis beskyttelse etter utlendingsloven § 28 første ledd bokstav a. Dette gjelder også kvinner som aldri har vært innkalt til nasjonaltjeneste på grunn av omsorg for barn og lignende. Mindretallet mente at flertallets syn ikke hadde tilstrekkelig holdepunkter i landinformasjonen som foreligger om hva klageren risikerer ved retur i dette tilfellet, og at et for strengt krav til graden av risiko for forfølgelse var lagt til grunn. Selv om det skulle være en rimelig mulighet for at klageren "bare" vil få en kortvarig fengslestraff, er det også en rimelig mulighet for at hun vil bli utsatt for handlinger som utgjør forfølgelse i utlendingslovens forstand. Mindretallet mente derfor at klageren har en velbegrunnet frykt for å bli utsatt for forfølgelse. Det ble vist til at når det gjaldt manglende informasjon om hvilke reaksjoner personer som har forlatt Eritrea ulovlig i nasjonaltjenestepliktig alder risikerer, må en eventuell tvil om beskyttelsesbehovet komme klageren til gode.

Stornemndas vurdering



Identitet

Klagerens identitet anses sannsynliggjort.

Faktum

Stornemnda tiltrer nemndas bevisvurdering i UNEs første vedtak og legger denne til grunn, herunder at klageren er enke og har tre barn som bor i Eritrea, at hun har forlatt Eritrea ulovlig, og at hun aldri har vært innkalt til nasjonaltjeneste.

Generelt om landinformasjon

UNE benytter Utlendingsforvaltningens fagenhet for landinformasjon (*Landinfo*) som hovedleverandør av landinformasjon om Eritrea. UNE har imidlertid et selvstendig ansvar for innhenting og vurdering av relevant landinformasjon, og står fritt til å innhente informasjon fra andre kilder eller å gå direkte til primærkildene. UNEs vurderinger i nærværende sak baserer seg i hovedsak på informasjon fra *Landinfo*, FNs Høykommissær for flyktninger (UNHCR), Human Rights Watch, Amnesty International, U.S. Department of State og UK Home Office.

Til tross for tilsynelatende mange tilgjengelige kilder, bemerkes det at landinformasjon om relevante forhold i Eritrea er svært usikker. Siden 2005 har Eritrea mer eller mindre forbudt internasjonale organisasjoner innpass i Eritrea. På grunn av den strenge overvåkingen av mulig opposisjonelle krefter i Eritrea eksisterer det ikke et uavhengig sivilt samfunn som fritt kan rapportere om menneskerettighetssituasjonen i landet. Det er følgelig få eller ingen tilgjengelige uavhengige primærkilder når det gjelder aktuelle forhold i Eritrea. De fleste uavhengige rapporter om menneskerettighetssituasjonen og overgrep er basert på intervjuer med eritreiske flyktninger enten i Sudan eller i Europa.

I temanotat av 28. juli 2011 fra *Landinfo*: Eritrea: Nasjonaltjeneste uttales følgende på side 5:

"Det er betydelige utfordringer i å innhente landkunnskap om enkelte forhold knyttet til nasjonaltjenesten inne i Eritrea. Ingen uavhengige menneskerettighetsorganisasjoner har tilgang til landet, og rapporter fra internasjonale menneskerettighetsgrupper er i all hovedsak basert på vitnesbyrd fra eritreere som nylig har reist ut av landet."

På denne bakgrunn må stornemnda nødvendigvis bygge sitt vedtak på en noe mangelfull og usikker landkunnskap. Eritrea står i en særstilling i forhold til de fleste andre land når det gjelder mangelen på sikker informasjon. I henhold til *Landinfo* er det svært krevende å få tilgang til relevant og oppdatert landinformasjon om Eritrea, og dette er mye mer utfordrende sammenliknet med andre afrikanske land, også i et globalt perspektiv.



Når det gjelder betydningen av manglende informasjon om hvilke reaksjoner personer som har forlatt Eritrea ulovlig i nasjonaltjenestepiktig alder kan bli utsatt for, viser stornemnda til Ot.prp. nr. 75 (2006-2007) side 88:

"Foreligger det tvil om bedømmelsen vil tvilen som utgangspunkt komme søkeren til gode så lenge konsekvensene ved en uriktig avgjørelse om retur kan innebære at asylsøkeren blir utsatt for forfølgelse. Norske myndigheter har bevisbyrden for at det er trygt å returnere. [...] En del saker vil måtte avgjøres på bakgrunn av de opplysninger som foreligger uten at de er optimalt opplyst og uten at det er hensiktsmessig å gjennomføre ytterligere undersøkelser. Eventuell tvil om beskyttelsesbehov vil også i slike tilfeller måtte komme søkeren til gode".

UNHCRs anbefalinger (Eligibility Guidelines) er en sentral kilde til landinformasjon, også når det gjelder Eritrea. Når det gjelder hvilken betydning disse anbefalingene har i norsk rett, vises blant annet til uttalelser i Ot.prp. nr. 75 (2006-2007) side 73, hvor det uttales følgende:

"For øvrig vil departementet understreke at UNHCRs anbefalinger skal veie tungt ved norske myndigheters tolkning av flyktningkonvensjonen. [...] Særlig når det gjelder UNHCRs anbefalinger om beskyttelse, må utgangspunktet være at utlendingsforvaltningen legger stor vekt på anbefalingene. UNHCRs anbefalinger er imidlertid ikke bindende for norske myndigheter. [...] Det er viktig å være oppmerksom på at norske utlendingsmyndigheter foretar både en individuell vurdering av den konkrete asylsak og en generell vurdering av forholdene i asylsøkerens hjemland mens UNHCR i utgangspunktet bare uttaler seg generelt om forholdene i det enkelte land."

Det bemerkes imidlertid at også UNHCRs anbefalinger vedrørende Eritrea, bygger på sekundærkilder, slik at det ikke er grunn til å legge avgjørende vekt på anbefalingene.

Utlendingsloven § 28 første ledd bokstav a

En utlending som anerkjennes som flyktning etter utlendingsloven § 28 første ledd bokstav a eller b, har på nærmere bestemte vilkår rett til oppholdstillatelse (asyl), jf. § 28 annet ledd. Det er blant annet et vilkår at klageren er i riket eller på norsk grense, at klageren ikke kan henvises til effektiv beskyttelse i andre deler av hjemlandet enn området klageren kommer fra, og at det ikke foreligger grunner til å utelukke klageren fra retten til anerkjennelse som flyktning etter lovens § 31. Vurderingen er fremtidsrettet.

Som flyktning etter utlendingsloven § 28 første ledd bokstav a, regnes utlending som har

"velbegrunnet frykt for forfølgelse på grunn av rase, religion, nasjonalitet, medlemskap i en spesiell sosial gruppe eller på grunn av politisk oppfatning, og er ute av stand til, eller på grunn av slik frykt er uvillig til, å påberope seg sitt hjemlands beskyttelse, jf. flyktningkonvensjonen 28. juli 1951 artikkel 1 A og protokoll 31. januar 1967".



Hovedspørsmålet er om klageren – som er kvinne i nasjonaltjenestepliktig alder, er enke, har tre barn, som aldri har vært innkalt til nasjonaltjeneste og har forlatt Eritrea ulovlig – av den grunn vil bli tillagt en politisk oppfatning og har en velbegrunnet frykt for forfølgelse ved retur til hjemlandet.

Velbegrunnet frykt for forfølgelse – rettslig utgangspunkt

Det finnes ingen entydig definisjon av hva som er forfølgelse, verken i flyktningkonvensjonen eller i andre internasjonale kilder. Det er heller ikke utviklet en detaljert definisjon av forfølgelsesbegrepet i norsk praksis. Praksis er basert på at det i hvert enkelt tilfelle skal foretas en konkret vurdering. I Norge og andre konvensjonsstater innfortolker man i begrepet ”forfølgelse” et vilkår om at de aktuelle reaksjoner skal være av en viss art og et visst omfang.

I henhold til utlendingsloven § 29 første ledd er ”forfølgelse” handlinger som enten:

”a) enkeltvis eller på grunn av gjentakelse [utgjør] en alvorlig krenkelse av grunnleggende menneskerettigheter, særlig slike rettigheter som ikke kan fravikes i medhold av artikkel 15 nr. 2 i den europeiske menneskerettskonvensjon av 4. november 1950, eller

b) [utgjør] flere forskjellige tiltak, herunder krenkelser av menneskerettigheter, som til sammen er så alvorlige at de berører et menneske på en måte som kan sammenlignes med situasjonen beskrevet i bokstav a.”

I henhold til bestemmelsens annet ledd kan forfølgelse blant annet ta form av a) fysisk eller psykisk vold, herunder seksualisert vold, b) lovgivning og administrative, politimessige og judicielle tiltak, enten de er diskriminerende i seg selv eller praktiseres på en diskriminerende måte, c) strafforfølgelse og straffullbyrdelse som er uforholdsmessig eller diskriminerende, d) fravær av muligheten for rettslig overprøving når dette fører til straffer som er uforholdsmessige eller diskriminerende, e) strafforfølgelse for å nekte militærtjeneste i en konflikt der slik tjeneste vil inkludere forbrytelser eller handlinger som nevnt i § 31 første ledd, eller f) handlinger som er rettet særskilt mot kjønn eller mot barn.

Det er vanskelig å fastslå hva slags fysiske krenkelser som kan sies å utgjøre forfølgelse. I Ot.prp. nr. 75 (2006-2007) på side 415 fremheves at tortur eller andre trusler mot liv, helse eller den personlige frihet kan omfattes av begrepet, mens mindre inngripende tiltak faller i utgangspunktet utenfor. Det presiseres ikke nærmere hvilke fysiske handlinger som er forfølgelse.

Samlet sett finnes det ingen klar grense i norsk eller internasjonal rettspraksis for hvilke fysiske krenkelser som kan utgjøre forfølgelse. Dette beror på en konkret vurdering av handlingens grovhet, blant annet art, omfang, varighet, hyppighet, formål og kontekst, samt klagerens individuelle omstendigheter, herunder kjønn, helsetilstand, kulturell tilhørighet og



personlig sårbarhet.

I *Landinfo*s temanotat: Eritrea: Nasjonaltjeneste av 28. juli 20011 uttales følgende på side 23:

"Nasjonaltjenestepliktige som forlater Eritrea ulovlig for så å vende tilbake igjen senere, vil med stor sannsynlighet bli identifisert av myndighetene før eller senere som personer som har unndratt seg nasjonaltjeneste."

Videre følger det av temanotatet at brudd på nasjonaltjenesteloven, inkludert unndragelse, straffes med bøter, fengselsstraff inntil to år eller begge deler. En person som reiser ut av landet og som ikke avtjener verneplikten før fylte 40 år vil kunne straffes med fem års fengsel til vedkommende er 50 år. *Landinfo* vurderer at øvre aldersgrense for kvinner er 47 år, og for menn er 54/57 år.

Det påpekes at straffereaksjoner i Eritrea generelt i stor grad er preget av vilkårlighet. Både *Landinfo* og Human Rights Watch gir uttrykk for at avstraffelse for brudd på nasjonaltjenesteloven i all hovedsak bestemmes av overordnede lokale kommandanter og er ikke regulert i lov. En eritreisk advokat *Landinfo* møtte i Asmara i 2011 mente at personer som forlater landet i militærpliktig alder vil bli sett på som desertører og blir straffet. Kilden hadde ikke hørt om noen slike straffesaker i det vanlige domstolssystemet. Videre hadde ingen av samtalepartnerne *Landinfo* møtte i Eritrea og Sudan i 2011 kjennskap til rettsprosesser mot eritreere for brudd på nasjonaltjenesteloven.

Human Rights Watch gir i sin rapport "Service for Life, State Repression and Indefinite Conscription in Eritrea" fra april 2009 på side 27 uttrykk for følgende:

"Deserting from the army or even expressing dissent over the indefinite military service is viewed as a political issue by the government. Therefore, most prisoners held for political reasons are detained without charge or trial for refusing or questioning national service or for offences punishable under military law. Even where detainees may have committed a potential crime under military law, numerous former detainees told Human Rights Watch that there was no system of military justice, that they were simply imprisoned on the orders of their commanders without any courts-martial or other procedure."

I ovennevnte anbefalinger bemerker UNHCR på side 11 at de som begår militære lovbrudd blir straffet utenfor lovverket:

"In practice, punishment for military offences is carried out extrajudicially, and has been reported to include "shoot to kill" orders, detention for long periods often in inhumane conditions, torture and forced labour. Draft evaders/deserters are reported to be frequently subjected to torture, while conscientious objectors can face severe physical punishment as a means of forcing them to perform military service. Furthermore, extrajudicial executions are allegedly ordered by local



commanders and carried out in front of military units for what are considered serious military offences."

International Crisis Group uttaler i Eritrea: The Siege State av 21. september 2010 på side 11 følgende:

"Eritrea can aptly be described as a prison state, without rule of law or independent judiciary and where the legal process is routinely ignored, and internal security is ever more oppressive and ubiquitous."

Professor Tronvoll beskriver i rapporten "The Lasting Struggle for Freedom in Eritrea:

Når det gjelder spørsmålet om frykten er velbegrunnet, er det ikke avgjørende for vurderingen om klageren tidligere har blitt utsatt for forfølgelse. Det er risikoen for fremtidig forfølgelse på vedtakstidspunktet som er avgjørende. Formålet med flyktningskonvensjonen er å gi beskyttelse mot fremtidige overgrep. Den skal ikke kompensere for tidligere overgrep.

Tidligere overgrep kan imidlertid være en indikasjon på at overgrep også kan skje i fremtiden. Det skal foretas en objektiv bedømmelse av om klagerens frykt er velbegrunnet, det vil si at det er en viss realitet i frykten. En forsterket subjektiv frykt hos klageren kan tillegges vekt i en samlet vurdering.

Det er videre ikke tilstrekkelig at det foreligger en svært liten eller teoretisk mulighet for forfølgelse. Samtidig foreligger det ikke krav om sannsynlighetsovervekt. Kravet til sannsynlighet for at forfølgelse faktisk vil inntre er betydelig lavere enn sannsynlighets- overvekt. Det avgjørende er om risikoen er reell.

Risikoterskelen må fastsettes etter en konkret vurdering i den enkelte sak, hvor det blant annet vil være naturlig å legge vekt på alvorlet ved den type overgrep risikoen relaterer seg til. Det vises til NOU 2004: 20 side 392:

"Det er tilstrekkelig at det foreligger en reell fare for forfølgelse. Også her vil det spille en rolle hva slags overgrep risikoen gjelder. Jo mer alvorlige overgrep, desto mindre krav kan det stilles til risiko."

Hvilke reaksjoner kan eritreere som reiser ut av landet ulovlig, og som er i nasjonal-tjenestepliktig alder, møte ved retur til Eritrea?

Det foreligger lite informasjon om hvilke reaksjoner personer som har reist ulovlig ut av Eritrea i nasjonaltjenestepliktig alder kan bli utsatt for. Det er ytterst få land som tvangssender asylsøkere tilbake til Eritrea, og det foreligger også lite informasjon om personer som eventuelt har reist tilbake frivillig. Det er derfor vanskelig å si med sikkerhet hvilke reaksjoner personer som har forlatt Eritrea ulovlig, uten at de er i myndighetenes søkelys på annet vis, vil risikere ved retur. Grunnlaget for å vurdere hvilke reaksjoner



eritreere som har returnert til landet møter, er derfor begrenset. Dette kommer blant annet frem i en pressemelding av 25. oktober 2011 fra Arabic Network for Human Rights Information (Sudan: End Mass Deportations of Eritreans, www.anhri.net/en/?=4636):

"No international agencies in Eritrea, including UNCHR, are able to monitor the treatment of Eritreans deported back to Eritrea. However, Eritrean refugees in various countries have told credible sources that Eritreans forcibly returned to their country are routinely detained and mis-treated in detention."

I følge UNHCR kan eritreere som reiser ulovlig fra Eritrea mens de er i nasjonaltjeneste- pliktig alder bli ansett av myndighetene som nasjonaltjenesteunndragere, uavhengig av om de har gjennomført nasjonaltjeneste eller har blitt demobilisert. I UNHCRs Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Eritrea av 20. april 2011 heter det på side 16 følgende:

"Individuals of draft age, who left Eritrea illegally, may be perceived as a draft evader upon return, irrespective of whether they have completed active national service or have been demobilized."

Human Rights and Political Development, 1991-2001" fra 2009 Eritrea som en stat uten lov og rett. Han uttaler følgende på side 94:

"The legal penalty for evading conscription or assisting in it is two years' imprisonment (as per the National Service Regulations of 1995). Amnesty International reports, however, that in practice offenders are being punished by their local commanding officers without any form of trial, legal recourse or opportunity to appeal or redress. The forms of punishment may vary, but usually consist of torture and arbitrary detention for an indefinite period."

Når det gjelder reaksjoner mot de som unndrar seg nasjonaltjeneste, viser kildene til at unndragere og desertører kan bli utsatt for tortur og holdt under svært vanskelige fengselsforhold. En rekke kilder, blant annet Human Rights Watch, Amnesty International og Eritrea-eksperten Gaim Kibreab beskriver fengselsforholdene i Eritrea som umenneskelige og rapporterer at tortur er utbredt ved forvaringssteder i Eritrea.

UNHCR har i ovennevnte anbefalinger på side 15 uttalt følgende:

"Following their arrest, draft evaders and deserters are often reported to be subjected to torture [...]. Once arrested, many detainees reportedly "disappear". Furthermore there are reports of death in custody as a result of ill-treatment, torture, denial of access to medical treatment and other harsh prison conditions."

Videre uttaler Human Rights Watch i rapporten "Service for Life" på side 3 følgende:



"A national network of jails and detention facilities holds those who try and avoid national service alongside political prisoners and those imprisoned solely for their religious beliefs. Torture, cruel, and degrading treatment, and forced labor are routine. Detention conditions are inhumane with detainees often held in underground cells or in shipping containers in dangerously high temperatures."

Det vises også til U.S. State Departments rapport om menneskerettighetssituasjonen i Eritrea for 2010 på side 2, der det fremgår følgende:

"Several persons detained for evading national service reportedly died after receiving harsh treatment by security forces. There were reports that individuals were severely beaten and killed during roundups of young men and women for national service. There was a pattern of mistreating and hazing conscripts, a practice that sometimes resulted in deaths. However, no official cases were available for citation. [...] There were numerous unofficial detention centers, most located in military camps and used as overflow detention centers following mass arrests and roundups. There were reports that detention center conditions for persons temporarily held for evading military service were also harsh and life threatening. During the year there were hundreds of such detainees. Draft evaders were reportedly sent to the Wi'a military camp where, typically, they were beaten. Some were held as long as two years before being reassigned to their units. At one detention facility outside Asmara, authorities continued to hold detainees in an underground hall with no access to light or ventilation and sometimes in very crowded condition."

I samme rapport, under seksjonen om tortur og umenneskelig og nedverdiggende behandling på side 5, uttales følgende:

"[...] torture and beatings are institutionalized within prison and detention centers. There were credible reports that several military conscripts died following torture and beatings. Security forces tortured and beat army deserters, draft evaders, persons living near mining camps, persons attempting to flee the country without travel documents, and members of certain religious groups. Examples of torture and mistreatment include: prolonged sun exposure in temperatures of up to 120 degrees Fahrenheit; the binding of hands, elbows, and feet for extended periods of time; forcing inmates to walk barefoot on sharp objects; overcrowded conditions; extreme temperature fluctuations caused by confinement in crowded and unventilated metal shipping containers in the desert; extreme temperatures and lack of sanitation resulting from detention in crowded cement-lined underground pits without ventilation or sanitation; suspension from trees with arms tied behind back, a technique known as "almaz" (diamond); and being placed face down with hands tied to feet outside in the desert, a technique known as the "helicopter," while pouring sugar on detainees to attract biting insects."

Stornemnda viser videre til rapporterte tilfeller der eritreere som flyktet til Malta, Sudan, Egypt og Libya er blitt tvangsreturnert og fengslet og utsatt for tortur ved retur til Eritrea.

Ifølge The Arabic Network for Human Rights Information er det rapportert om at Sudan



senest 17. oktober 2011 deporterte 300 eritreere etter å ha fengslet dem i Sudan. Den 12. september 2011 skal sudansk politi ha arrestert 317 eritreere, inkludert 65 kvinner og fire barn, som forsøkte å ta seg inn i Egypt fra Sudan. Minst 300 ble ført til fengsel i Dongola før de ble overlevert til eritreiske myndigheter i grensebyen Tessenei i Eritrea. I henhold til en kilde med kontakter i Tessenei ble de deporterte fraktet i busser til en militærbase i nærheten. Det foreligger foreløpig ikke mer informasjon om hvilken behandling disse har fått ved retur. Ifølge samme rapport skal Sudan ha deportert minst 24 eritreere som var registrert som asylsøkere mellom mai og juli 2011. UNHCR har fordømt disse deportasjonene og uttrykt bekymring da de deporterte risikerer forfølgelse.

I UNHCRs anbefalinger fra 2009 vises det til at opp til 1 200 eritreere ble uttransportert fra Egypt i juni 2008 og ført til militærfengselet Wia. Noen av de returnerte, inkludert gravide kvinner og kvinner med barn, ble løslatt etter noen uker. I desember 2008 var minst 740 fremdeles i militærfengsel. Fra anbefalingenes side 33 hitsettes:

“Eritreans who are forcibly returned may, according to several reports, face arrest without charge, detention, ill-treatment, torture or sometimes death at the hands of the authorities. They are reportedly held incommunicado, in over-crowded and unhygienic conditions, with little access to medical care, sometimes for extended periods of time. According to credible sources, 1,200 persons were forcibly returned from Egypt to Eritrea in June 2008, where the majority was detained in military facilities. UNHCR is aware of at least two Eritrean asylum-seekers who have arrived in Sudan having escaped from detention following deportation from Egypt in June 2008. Eritreans forcibly returned from Malta in 2002 and Libya in 2004 were arrested on arrival in Eritrea and tortured. The returnees were sent to two prisons on Dahlak Island and on the Red Sea coast, where most are still believed to be held incommunicado. There are also unconfirmed reports that some of those returned from Malta were killed. In another case, a rejected asylum-seeker was detained by the Eritrean authorities upon her forcible return from the United Kingdom. On 14 May 2008, German immigration authorities forcibly returned two rejected asylum-seekers to Eritrea. They were reportedly detained at Asmara airport upon arrival and are being held incommunicado, and believed to be at risk of torture or other ill-treatment.”

I ovennevnte rapport fra U.S. State Department heter det følgende på side 4 følgende:

“Eritrean refugees and asylum seekers repatriated from other countries during the year reportedly disappeared. [...] The government does not provide information on disappearances, and does not regularly notify family members or respond to information requests regarding the status of persons in detention. In February [2010], according to an opposition Web site, 12 of 67 Eritreans deported from Libya disappeared. There were unconfirmed reports that nine of the deportees were detained incommunicado in Embatkala prison before its closure. In January 2009 the government of Egypt refouled several hundred Eritrean refugees and asylum seekers, all of whom were returned to their families, according to the government. Nevertheless, there were numerous reports from family members of missing individuals, mostly young men and women who had not completed national service.”



Ifølge Human Rights Watch: Stemming the Flow av 12. september 2006 ble 109 asylsøkere som ble utvist fra Libya, hjemsendt til Eritrea i juli 2004, og også disse ble fengslet på ukjent sted. Noen uker senere, 27. august 2004, kapret 75 eritreere, som var på vei til å bli deportert fra Libya til Eritrea flyet de var ombord i og tvang besetningen til å fly til Sudan. 60 av disse søkte asyl og ble gitt flyktningstatus av UNHCR i Khartoum.

Ifølge Amnesty International, Eritrea: 'You have no right to ask' - Government resists Scrutiny on Human Rights av 18. mai 2004, ble over 200 eritreere deportert fra Malta til Eritrea i september og oktober 2002. Ved retur til Eritrea ble alle arrestert og ført til den militære fangeleiren i Adi Abeto. Etter noen uker ble noen sluppet fri, hovedsakelig kvinner og barn og de over nasjonaltjenestepiktig alder, mens de resterende ble holdt i Adi Abeto og senere sendt videre til fengselet på Dahlak øyene hvor mange ble torturert. Våren 2004 var mange av dem fortsatt fengslet og hadde ingen kontakt med omverdenen, og ifølge rapporter fra Amnesty International ble mange torturert.

I UNHCRs Postion on Return of Rejected Asylum Seekers to Eritrea fra januar 2004 er det uttalt følgende på side 6:

“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. 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.”

Ovennevnte opplysninger tilsier at returnerte kvinner med barn, gravide kvinner samt personer over 40 år (som tidligere ble vurdert som øvre aldersgrense for nasjonalpliktig alder) i minst to tilfeller kan ha blitt møtt med mildere reaksjoner enn andre returnerte.

Stornemnda bemerker også at landrådgiver Knut Holm i *Landinfo* i stornemndmøtet ga uttrykk for at myndighetenes behandling av eritreere ved retur vil være en sammensatt vurdering, der flere faktorer vil bli vurdert, herunder vedkommendes nasjonaltjenestestatus, om man har vært myndighetskritisk i eksil, om man har betalt 2 % skatt, samt nettverk i hjemlandet. *Landinfo* er ikke kjent med konkrete tilfeller der eritreere har reist ut ulovlig uten å være innkalt til nasjonaltjeneste, og så kommet tilbake. For å være nasjonaltjenesteeunndrager må man først ha vært innkalt til nasjonaltjeneste, ifølge nasjonaltjenesteloven. At vedkommende aldri har blitt innkalt til nasjonaltjeneste vil være et moment ved retur, men reaksjoner kan ikke utelukkes.

Videre ga professor Kjetil Tronvoll i nemndmøtet uttrykk for at alle som forlater Eritrea ulovlig,



og som er i nasjonaltjenestepliktig alder, vil bli ansett som landssvikere og forrædere. Dette gjelder i alle tilfeller, uavhengig av hva som er årsaken til at vedkommende forlot Eritrea. Dette gjelder også kvinner med barn som ikke har blitt innkalt til nasjonaltjeneste tidligere. Det sentrale er at man reiser ut ulovlig i nasjonaltjenestepliktig alder.

Både Holm og Tronvoll presiserte at man har begrenset kunnskap om hva som skjer med eritreere som har reist ut av landet ulovlig og returnerer. Noen kan bli fengslet og utsatt for alvorlige reaksjoner i den forbindelse, herunder tortur og i verste fall drept, mens andre ikke opplever andre reaksjoner enn å bli avhørt. Det er imidlertid stor vilkårlighet med hensyn til hvilke reaksjoner man kan møte, og rettergangsprosesser er ikke formalisert.

På denne bakgrunn synes det rimelig klart for stornemnda at eritreere som unndrar seg nasjonaltjeneste – ved å desertere, etter innkalling unnlater å møte til nasjonaltjeneste, eller ikke returnerer til nasjonaltjenesten etter endt permisjon – vil bli ansett som forrædere av regimet, og at de ved retur i utgangspunktet risikerer å bli utsatt for reaksjoner som kan karakteriseres som forfølgelse i utlendingslovens og flyktningkonvensjonens forstand.

Har klageren en velbegrunnet frykt for forfølgelse?

Klageren har ikke unndratt seg nasjonaltjeneste i den forstand at hun har desertert, har unnlatt å møte til nasjonaltjeneste etter å ha blitt innkalt eller ikke har kommet tilbake til nasjonaltjenesten etter endt permisjon. Spørsmålet er om klageren likevel kan bli ansett som unndrager av nasjonaltjeneste fordi hun har reist ulovlig ut av landet.

Det må foretas en konkret og individuell vurdering av klagerens sak, og spørsmålet er om klageren – som er enke, har tre mindreårige barn i hjemlandet, som ikke tidligere har vært innkalt til nasjonaltjeneste og som har reist ut av landet ulovlig – vil bli ansett som nasjonal-tjenesteunndrager, og av den grunn står i fare for å bli utsatt for forfølgelse.

Stornemnda har funnet spørsmålet tvilsomt. Det vises til det sparsomme kildegrunnlaget og den vilkårlighet som i henhold til tilgjengelig landinformasjon foreligger med hensyn til hvilke reaksjoner nasjonaltjenesteunndragere kan møte.

I den videre vurderingen har stornemnda delt seg i et flertall og mindretall.

Flertallet – tre nemndledere og tre nemndmedlemmer – har kommet til at klageren ved retur til Eritrea risikerer å bli utsatt for reaksjoner som kan karakteriseres som forfølgelse i utlendingslovens og flyktningkonvensjonens forstand. Vilåårene for å anse henne som flyktning etter lovens § 28 første ledd bokstav a er til stede, og hun har rett til oppholdstillatelse (asyl), jf. § 28 annet ledd.

Mindretallet, et nemndmedlem, mener at klageren ved retur til Eritrea ikke står i fare for å bli utsatt for reaksjoner som kan karakteriseres som forfølgelse i utlendingslovens og flyktningkon-



vensjonens forstand ved retur, og at hun således ikke fyller vilkårene for å bli ansett som flyktning etter lovens § 28 første ledd bokstav a.

Flertallet mener at det i henhold til tilgjengelig landinformasjon ikke er tilstrekkelige holdepunkter for å kunne legge til grunn at klageren – som kvinne i 30-årene med barn og som aldri har vært innkalt til nasjonaltjeneste – vil bli vurdert annerledes enn desertører, de som unnlater å møte til nasjonaltjeneste etter innkalling, og de som unnlater å komme tilbake til nasjonaltjeneste etter endt permisjon.

Flertallet har merket seg at den personkrets klageren tilhører ikke er særskilt omtalt i UNHCRs anbefalinger eller andre kilder stornemnda har hatt tilgjengelig. Dette er etter flertallets syn uheldig. Det kunne med fordel vært knyttet konkrete kommentarer til hvilke reaksjoner kvinner i nasjonalpliktig alder som ikke har vært innkalt til nasjonaltjeneste kan bli møtt med ved retur etter å ha reist ut av Eritrea ulovlig. Det vises i denne sammenheng til at det ut fra tilgjengelig landinformasjon er indikasjoner på at kvinner med barn i stor grad de facto er fritatt fra nasjonaltjeneste.

Flertallet mener imidlertid at usikkerheten i landinformasjon må komme klageren til gode, og bemerker i denne sammenheng at Eritrea står i en særstilling når det gjelder mulighet for å innhente relevante opplysninger. Selv om klagerens profil ikke er spesielt fremhevet som utsatt, har hun uansett reist ut av Eritrea ulovlig, og vil derfor kunne bli ansett som unndrager av nasjonaltjeneste selv om hun ikke har blitt innkalt.

Det er høyst usikkert hvilke reaksjoner en person som blir ansett som nasjonaltjeneste-unndrager vil bli utsatt for ved retur. Reaksjoner kan innebære alt fra å bli innkalt til avhør og løslatt igjen, til å bli torturert og drept. Det er rapportert om vilkårlighet i hvilke reaksjoner nasjonaltjenesteunndragere kan bli møtt med. Etter flertallets vurdering er sannsynligheten for at en person som er i tilsvarende situasjon som klageren vil bli utsatt for de mest alvorligste overgrep, ikke synes å være stor, men faren er reell. Det vises til opplysninger om at reaksjoner er utenomjudisielle og i stor grad preget av vilkårlighet.

Flertallet finner således at klageren har en velbegrunnet frykt for forfølgelse ved retur til Eritrea.

Konvensjonsgrunn

Det er videre et vilkår at det er årsakssammenheng mellom forfølgelsen og en konvensjonsgrunn i flyktningkonvensjonen artikkel 1A, jf. utlendingsloven § 28 første ledd bokstav a. Flertallet finner at dette vilkåret er oppfylt.

UNHCR uttaler i sine anbefalinger at personer som deserterer eller unndrar seg nasjonal-tjeneste, kan bli ansett nasjonaltjenesteunndrager. I anbefalingene på side 15 og 16 heter det blant annet følgende:



"Persons who evade or desert military service may be regarded as disloyal and treasonous towards the Government, and therefore punished for their perceived disloyalty. [...] Individuals of draft age, who left Eritrea illegally, may be perceived as draft evaders upon return, irrespective of whether they have completed active national service or have been demobilized."

Flertallet har, på bakgrunn av eksisterende landinformasjon, der det må legges betydelig vekt på det mangelfulle kildegrunnlaget og den begrensede tilgangen til opplysninger, kommet til at klageren kan bli ansett som forræder av regimet og bli tillagt en politisk oppfatning ved retur fordi hun har reist ut av Eritrea ulovlig mens hun var i nasjonalpliktig alder. Det at klageren er kvinne, har tre barn og aldri tidligere har blitt innkalt til nasjonal- tjeneste, tilsier ikke en annen vurdering.

På denne bakgrunn har flertallet kommet til at det foreligger årsakssammenheng mellom de reaksjoner klageren kan bli utsatt for ved retur til hjemlandet og hennes potensielle tillagte politiske oppfatning.

Konklusjon

Flertallet har etter dette kommet til at vilkårene for å anse klageren som flyktning i medhold av utlendingsloven § 28 første ledd bokstav a er oppfylt.

Avslutningsvis bemerkes at dersom kildebildet endrer seg, og man får tilgang til bedre og sikrere landinformasjon, kan resultatet av de vurderinger flertallet har foretatt i foreliggende sak bli annerledes.

Internflukt

Retten til anerkjennelse som flyktning gjelder ikke dersom klageren kan få effektiv beskyttelse i andre deler av hjemlandet enn det området han eller hun har flyktet fra, og det ikke er urimelig å henvise klageren til å søke beskyttelse i disse delene av hjemlandet (internflukt), jf. utlendingsloven § 28 femte ledd.

Internflukt er ikke et aktuelt alternativ i foreliggende sak. Det vises til at den aktuelle forfølger er eritreiske myndigheter, som anses å ha tilstedeværelse i hele Eritrea.

Mindretallets vurdering

Kildegrunnlaget med hensyn til landinformasjon om Eritrea er noe mangelfull og usikker. I et slikt tilfelle mener mindretallet at opplysninger fra *Landinfo* må tillegges stor vekt. Videre synes tilgjengelig landinformasjon primært å fokusere på tradisjonelle nasjonaltjeneste- unndragere, som desertører, de som unnlater å møte etter å ha bli innkalt til tjeneste og de som ikke re-



turnerer til tjenesten etter endt permisjon. Situasjonen man står overfor i nærværende sak er annerledes.

Ut fra tilgjengelig landinformasjon, kan det ikke legges til grunn at enhver eritreer i nasjonal-tjenestepliktig alder og som forlater landet ulovlig, alene av den grunn risikerer reaksjoner som kan karakteriseres som forfølgelse i utlendingslovens og flyktning-konvensjonens forstand ved retur til hjemlandet.

Det må foretas en konkret og individuell vurdering av den enkeltes situasjon. Det må blant annet ses hen til vedkommendes kjønn, alder, sivilstatus, fysiske og psykiske helsetilstand, om vedkommende har barn, om hun eller han har eller ikke har gjennomført nasjonal- tjeneste, samt om hun eller han har betalt 2 % skatt til eritreiske myndigheter. Disse momentene er imidlertid ikke uttømmende.

Mindretallet finner ikke at det er holdepunkter i tilgjengelig landinformasjon for at klageren er i en utsatt posisjon ved retur, og finner ikke at hun har en velbegrunnet frykt for forfølgelse. Det utelukkes ikke at klageren vil bli identifisert av eritreiske myndigheter ved retur og vil bli konfrontert med at hun ikke har gjennomført nasjonaltjeneste, men etter mindretallets vurdering er det er svært lite sannsynlig at klageren vil møte en annen reaksjon enn kortvarig fengsling ved retur.

Mindretallet har blant annet lagt vekt på at klageren er 36 år, at hun har tre mindreårige barn, og at hun ikke har vært innkalt til nasjonaltjeneste tidligere. Videre vises det til at klagerens ektemann døde mens han avtjente sin nasjonaltjeneste, og at hun derfor kan bli behandlet mildere enn mange andre som blir ansett å være nasjonaltjenesteunndragere ved retur til Eritrea. Videre er det lagt ikke ubetydelig vekt på at klageren selv ikke har gitt uttrykk for at hun frykter å bli innkalt til nasjonaltjeneste eller at hun frykter reaksjoner fordi hun har forlatt hjemlandet uten å ha gjennomført nasjonaltjeneste.

Det kan heller ikke utelukkes at klageren ved retur blir innkalt til nasjonaltjeneste. Det at klageren må gjennomføre nasjonaltjeneste, utgjør imidlertid ikke forfølgelse i utlendings-lovens og flyktningkonvensjonens forstand.

Mindretallet finner etter dette at det ikke foreligger tilstrekkelige holdepunkter i saken for at klageren ved retur til Eritrea risikerer reaksjoner fra myndighetene eller andre som kan karakteriseres som forfølgelse i utlendingslovens og flyktningkonvensjonens forstand.

Mindretallet mener således at vilkårene for å anse klageren som flyktning etter utlendings-loven § 28 første ledd bokstav a ikke er oppfylt.

Mindretallet må videre ta stilling til om klageren fyller vilkårene for å bli ansett som flyktning etter utlendingsloven § 28 første ledd bokstav b.



Som flyktning i henhold til utlendingsloven § 28 første ledd bokstav b, regnes utlending som

"uten å falle inn under bokstav a likevel står i reell fare for å bli utsatt for dødsstraff, tortur eller annen umenneskelig eller nedverdiggende behandling eller straff ved tilbakevending til hjemlandet".

Ifølge utlendingslovens forarbeider, jf. blant annet Innst. O. nr. 42 (2007-2008) side 16 punkt 4.1.3, er bestemmelsen ment å oppfylle Norges øvrige folkerettslige forpliktelser til å gi vern mot utsendelse utover det som følger av flyktningkonvensjonen, særlig Den europeiske menneskerettighetskonvensjon (EMK) artikkel 3, torturkonvensjonen artikkel 3 og FNs konvensjon om sivile og politiske rettigheter artikkel 7.

Det er et vilkår at det foreligger reell fare for at de nevnte overgrep vil inntreffe ved retur. Kravet til påregneligheten for at overgrep vil finne sted er derfor noe strengere enn etter bokstav a.

Mindretallet finner at den generelle sikkerhetssituasjonen i Eritrea ikke tilsier at klageren ved retur til hjemlandet står i en reell fare for å bli utsatt for dødsstraff, tortur eller annen umenneskelig eller nedverdiggende behandling eller straff.

Mindretallet kan heller ikke se at det foreligger individuelle omstendigheter som tilsier at klageren ved en retur til hjemlandet står i en reell fare for å bli utsatt for dødsstraff, tortur eller umenneskelig eller nedverdiggende behandling eller straff. Det vises til vurderingen etter utlendingsloven § 28 første ledd bokstav a ovenfor. Mindretallet ønsker også å bemerke at den omstendighet at klageren kan bli innkalt til og må gjennomføre nasjonaltjeneste ved retur, ikke innebærer at klageren vil bli utsatt for reaksjoner som nevnt.

Mindretallet har etter dette kommet til at vilkårene for å anse klageren som flyktning etter utlendingsloven § 28 første ledd bokstav b ikke er oppfylt.

Konsekvenser av vedtaket

Klageren har på bakgrunn av flertallets votum rett til oppholdstillatelse (asyl), jf. utlendingsloven § 28 første ledd bokstav a, jf. annet ledd.

Tillatelse er gitt for tre år.



Annex D - Compilation - Return to Selected Countries Matrix 2012

Compilation - Return to Selected Countries Matrix 2012; IGC Admission, Control and Enforcement WG - 12-13 April 2012 Final compilation of the replies to the Return to Selected Countries Matrix, uploaded on 30. April 2012, https://secure.igc.ch/web/jcms/e_270571/compilation-return-to-selected-countries-matrix-2012?details=true

Return to Selected Countries																		
Matrix 6: Eritrea																		
	AUS	BEL	CAN	DEN	FIN	FRA	GER	GRE	IRE	NET	NZL	NOR	SPA	SWE	SWI	UK	US	
What is your experience with return to this country?																		
Overall assessment (positive/negative)	n/a	n/a	neg	¹	n/a		negative			negative	n/a	negati		positive	n/a ²		negative	
Suspension	no	yes														no ⁴	01.08.2000	
Numbers (forced/voluntary) 2011	0F / 0V	0f/0v	3		v 0		32 / 2		0			1/9		f26/v21				
AVR Numbers provided by IOM for 2011	0																	
What difficulties, if any, have you encountered?																		
Overall	n/a	n/a	yes ¹⁴		n/a		yes		n/a	yes		yes			yes	yes	yes	
Problems with obtaining documents	n/a		yes				yes			yes							yes ⁵	
criteria for undocumented	n/a		yes				yes				y	yes			yes	yes ⁵	yes	
Return depends on valid passport (ID card)	n/a		yes				yes					yes ⁵		yes			yes ⁵	
No docs when left prior to independence	n/a		yes														yes	
Problems when unwilling to return	n/a		yes				yes			yes		yes ⁵		yes	yes ⁷		yes	
nationality fraud	n/a		yes				yes									yes ⁵	yes	
generally long procedure	n/a		yes	yes			yes										yes	
What contacts, if any, have you had with the authorities of this country about returns?																		
Any contacts	no	yes	yes	yes	no				yes		no	yes		yes	yes	yes	yes	
Embassy	no	yes ²	yes				yes					rarely		yes	yes ¹¹	yes ¹²	yes	
Embassy in third country	no			yes					yes ¹⁰									
Participating State's own Embassy	no															yes ¹¹		
Are there any arrangements or agreements with this country about returns (e.g. an MOU)?																		
MOU yes/no/date/negotiations	no	no	no		no		no		no		no	no ¹²		no	no	no	no	
forced/voluntary return	no																	
Which travel documents do you use to implement the return to this country?																		
Travel documents provided by Embassy	n/a	yes	yes	yes			yes					yes		yes	yes	yes	yes	
laissez-passer	n/a	yes					yes								yes			
one way travel document	n/a			yes														
emergency travel document	n/a		yes													yes	yes ⁷	
EU laissez-passer (forced/voluntary return)	n/a												yes					
Valid passport	n/a		yes				yes						yes	yes	yes	yes	yes	



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Footnotes:															
Belgium	² only in function of voluntary return														
Canada	¹⁴ National ID is required to issue ETD. Escorts cannot stay.														
Denmark	¹ The co-operation with the Eritrean Embassy in Denmark is very limited.														
Ireland	¹⁰ Embassy prepared to travel from London to Dublin to interview persons detained.														
Norway	⁶ Forced return is a problem. The Embassy in Stockholm, Sweden, only assists Norwegian officials with verifying the identity if the asylum seekers themselves wish to return. As very few return voluntarily or have a passport, Norway has few returns.														
	¹³ Norway has informed Eritrean authorities that we are interested in a repatriation agreement.														
Switzerland	⁵ We do not have any experience as only volunteers are accepted who go on their own to the embassy.														
	⁷ The embassy in Geneva does not have the competence to issue travel documents for people who are not willing to return to Eritrea. The competent partner in such cases would be the Ministry of Foreign Affairs in Asmara.														
	¹¹ We used to have discussions with the Embassy of Eritrea in Geneva. However, due to the particular situation there was no meeting with the Embassy in 2008.														
United Kingdom	⁴ UK has no policy not to remove to Eritrea. Most success with removals under Dublin process, particularly to Italy.														
	⁸ Returns difficult if undocumented. Eritreans demand specific evidence of nationality and identity, which is not normally available. Some false claims to ERIT nationality through nationality switching by Ethiopians.														
	¹² Regular lobbying by British Embassy in Asmara, and through direct contact with Eritrean Embassy London.														
United States	³ The main difficulty encountered is in requesting the issuance of travel documents to effect the removal of Eritrean nationals.														
	⁹ The Eritrean consulate requires proof of nationality by presenting an Eritrean national ID card. If a national ID card does not exist or the detainee is not in possession of the ID card, an application to obtain one must be submitted to the Embassy. Upon receiving a national ID card, the Consulate will issue an emergency travel document.														