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# OPERATIONAL GUIDANCE NOTE

## ERITREA

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## 1. Introduction

- 1.1** This document summarises the general, political and human rights situation in Eritrea and provides information on the nature and handling of claims frequently received from nationals/residents of that province. It must be read in conjunction with the RDS - COI Service Eritrea Country of Origin Information Report of October 2005 at:

[http://www.homeoffice.gov.uk/rds/country\\_reports.html](http://www.homeoffice.gov.uk/rds/country_reports.html)

- 1.2** This guidance is intended to provide clear guidance on whether the main types of claim are or are not likely to justify the grant of asylum, Humanitarian Protection or Discretionary Leave. Caseworkers should refer to the following Asylum Policy Instructions for further details of the policy on these areas:

API on Assessing the Claim  
 API on Humanitarian Protection  
 API on Discretionary Leave  
 API on the European Convention on Human Rights.

- 1.3** Claims should be considered on an individual basis, but taking full account of the information set out below, in particular Part 3 on Main categories of claims.

## Source documents

- 1.4** A full list of source documents cited in footnotes is at the end of this note.

## **2. Country assessment**

- 2.1** From 1962 until its independence in 1993, Eritrea was a province of Ethiopia. A UN-supervised referendum in April 1993 resulted overwhelmingly in favour of independence. A Transitional Constitution was decreed on 19 May 1993. A formal Constitution providing for democratic freedoms was adopted on 23 May 1997, but has yet to be fully implemented.<sup>1</sup>
- 2.2** Following independence in 1993, relations between Eritrea and Ethiopia were cordial. Relations deteriorated in 1997 following the introduction of a new Eritrean currency; the Nakfa. Fighting erupted in May 1998 and the subsequent border war lasted until a cessation of hostilities agreement was signed on 18 June 2000. This was followed by a comprehensive peace agreement on 12 December 2000. The two sides were separated by a UN peace-keeping force and a buffer zone.<sup>2</sup>
- 2.3** On 13 April 2002, the International Tribunal at The Hague decided on the border dispute. The determination gave something to both sides and was initially welcomed by the two governments, though relations between the two countries continued to be strained with complaints from both sides about the operation of the Temporary Security Zone. In March 2003, the Boundary Commission determined that Badme (the town in which the conflict erupted) lay inside Eritrean territory. While Ethiopia claims to accept the Boundary Commission's decision, it has so far refused to allow the Commission's border ruling to be put into practice. As of mid-2005, the border dispute remained unresolved with access to key border points limited by high-profile military presence by both states.<sup>3</sup>
- 2.4** The Eritrean People's Liberation Front (EPLF), which led the 30-year war of independence and has controlled the country since, became the People's Front for Democracy and Justice (PFDJ) in 1994. This is the only officially recognised political party in Eritrea. The PFDJ initially outlined an ambitious plan for a transition to a multiparty democracy, however elections due in 1997 and 2001 were postponed. There is presently no indication as to when, or if, these elections will take place.<sup>4</sup>
- 2.5** A split in the PFDJ in September 2001, resulted in the arrests of 15 PFDJ members. The whereabouts of 11 of these remains unknown and they are now widely known as the G15 group of dissidents. They include Ministers and high-profile officials. They were allegedly arrested because they publicly expressed strong criticisms of the President. Of the original 15, four escaped arrest, three were out of the country and one withdrew his support for the group.<sup>5</sup>
- 2.6** The human rights situation in Eritrea is very poor. Detention without charge is common. Freedom of expression and religion in particular are severely restricted and political critics, journalists and members of religious minority groups have been held for long periods. National elections have never been held and alternative political parties are not permitted.<sup>6</sup>
- 2.7** Although the Constitution provides for freedom of speech, in practice there has been no independent media since the arrest of the G15. In September 2001, the Government closed eight privately run newspapers and arrested 10 leading journalists, who continue to be held

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<sup>1</sup> Home Office COI Service Eritrea Country of Origin Information Report October 2005 (paragraphs 4.01 – 4.12 & 5.01)

<sup>2</sup> COI Service Eritrea Country Report (paras 4.13 – 4.17)

<sup>3</sup> COI Service Eritrea Country Report (paras 4.18 – 4.25 & Annex B)

<sup>4</sup> COI Service Eritrea Country Report (paras 4.07 & 5.25 – 5.29)

<sup>5</sup> COI Service Eritrea Country Report (paras 6.70 – 6.79)

<sup>6</sup> COI Service Eritrea Country Report (paras 6.1 – 6.7)

without charge or trial. All TV and radio stations are government- owned, as is the only newspaper. The Government uses libel law to intimidate journalists, with editors and journalists being threatened, detained or forced to perform hard labour.<sup>7</sup>

- 2.8** The Constitution provides for freedom of religion, however the government severely restricts this right in the case religious groups that do not have a long history in the country (this includes several Protestant denominations and Jehovah's Witnesses).<sup>8</sup> The unimplemented Constitution also provides for free assembly and association and the right for citizens to change their government peacefully, however these rights were restricted in practice as the PFDJ continues to maintain its position as the sole legitimate party.<sup>9</sup>
- 2.9** Human rights monitoring is overseen jointly by the Ministry of Foreign Affairs and the Ministry of Local Government. All non-governmental organisations (NGOs) must register with the Eritrean Relief and Refugee Commission. Most independent national NGOs that might be critical of the Government are generally prevented from operating. International NGOs have also been subject to Government restrictions on their work.<sup>10</sup>
- 2.10** The Government has introduced some initiatives to improve the situation of women. Nevertheless, Eritrean society is largely patriarchal and in practice women's status is inferior to that of men.<sup>11</sup> Homosexual activity is illegal for men and women and there have been reports that such acts have been prosecuted and punished.<sup>12</sup>

### **3. Main categories of claims**

- 3.1** This Section sets out the main types of asylum claim, human rights claim and Humanitarian Protection claim (whether explicit or implied) made by those entitled to reside in the country of Eritrea. It also contains any common claims that may raise issues covered by the API on Discretionary Leave. Where appropriate it provides guidance on whether or not an individual making a claim is likely to face a real risk of persecution, unlawful killing or torture or inhuman or degrading treatment/punishment. It also provides guidance on whether or not sufficiency of protection is available in cases where the threat comes from a non-state actor; and whether or not internal relocation is an option. The law and policies on persecution, Humanitarian Protection, sufficiency of protection and internal flight are set out in the relevant API's, but how these affect particular categories of claim are set out in the instructions below.
- 3.2** Each claim should be assessed to determine whether there are reasonable grounds for believing that the applicant would, if returned, face persecution for a Convention reason - i.e. due to their race, religion, nationality, membership of a particular social group or political opinion. The approach set out in *Karanakaran* should be followed when deciding how much weight to be given to the material provided in support of the claim (see the API on Assessing the Claim).
- 3.3** If the applicant does not qualify for asylum, consideration should be given as to whether a grant of Humanitarian Protection is appropriate. If the applicant qualifies for neither asylum nor Humanitarian Protection, consideration should be given as to whether he/she qualifies for Discretionary Leave, either on the basis of the particular categories detailed in Section 4 or on their individual circumstances.

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<sup>7</sup> COI Service Eritrea Country Report (paras 6.9 – 6.17)

<sup>8</sup> COI Service Eritrea Country Report (para 6.18) & US State International Religious Freedoms Report: Eritrea November 2005 (USIRF 2005) (Sections I - III)

<sup>9</sup> COI Service Eritrea Country Report (paras 6.57 – 6.60)

<sup>10</sup> COI Service Eritrea Country Report (paras 6.174 – 6.175)

<sup>11</sup> COI Service Eritrea Country Report (paras 6.116 – 6.122)

<sup>12</sup> COI Service Eritrea Country Report (paras 6.142 – 6.145)

- 3.4** This guidance is **not** designed to cover issues of credibility. Caseworkers will need to consider credibility issues based on all the information available to them. (For guidance on credibility see para 11 of the API on Assessing the Claim)
- 3.5** Also, this guidance does not generally provide information on whether or not a person should be excluded from the Refugee Convention or from Humanitarian Protection or Discretionary Leave. (See API on Humanitarian Protection and API on Exclusion under Article 1F or 33(2) and API on DL)

All APIs can be accessed via the IND website at:

[http://www.ind.homeoffice.gov.uk/ind/en/home/laws\\_policy/policy\\_instructions/apis.html](http://www.ind.homeoffice.gov.uk/ind/en/home/laws_policy/policy_instructions/apis.html)

### **3.6 Members of non-sanctioned religious groups**

Many Eritrean applicants claim asylum due to alleged state persecution on account of their membership of a non-sanctioned religious group.

#### **3.6.1 Jehovah's Witnesses (draft evaders)**

- 3.6.1.1** Some of those alleging persecution on the basis of their affiliation to a non-sanctioned group are Jehovah's Witnesses who have encountered ill treatment amounting to persecution by the authorities, or fear future ill treatment by the authorities, on account of their objection to military service.
- 3.6.1.2 Treatment.** The as yet unimplemented constitution provides for freedom of religion, however in practice the Government severely restricts this right for all but the four sanctioned religious groups – Orthodox Christians, Muslims, Catholics and the Evangelical Church of Eritrea (affiliated with the Lutheran World Federation). The Government closely monitors the activities of non-sanctioned groups and individual members, including non-religious social functions.<sup>13</sup>
- 3.6.1.3** The small community of fewer than 1,600 Jehovah's Witnesses has experienced discrimination at the hands of the authorities, including the breaking-up of meetings and random detentions without trial. While the authorities have not allowed Kingdom Halls to be set up and worship 'underground' is illegal also, meetings are permitted to take place providing they do not involve more than 5 persons. The Ethiopian Government operates a policy of not deporting Jehovah's Witnesses of Eritrean origin on grounds of religious repression.<sup>14</sup>
- 3.6.1.4** Jehovah's Witnesses have refused on religious grounds to participate in national service or to vote, which has led to widespread criticism that Jehovah's Witnesses collectively were shirking their civic duty. The Government has singled out Jehovah's Witnesses who were conscientious objectors for harsher treatment than that received by followers of other faiths for similar actions. Jehovah's Witnesses who did not participate in national service have been subject to dismissal from the civil service, revocation of their trading licenses, eviction from government-owned housing, and denial of passports, identity cards, and exit visas.<sup>15</sup>
- 3.6.1.5** In January 2004, it was reported that approximately 40 Jehovah's Witnesses were arrested while praying in a private home in Asmara and detained. About 15 of these reportedly remained in detention at the end of 2004. A further 6 Jehovah's Witnesses were allegedly detained without charge or trial during 2004 for failing to participate in national service. According to the Office of General Counsel for Jehovah's Witnesses Society, 20 Jehovah's

<sup>13</sup> COI Service Eritrea Country Report (paras 6.27 – 6.33)

<sup>14</sup> COI Service Eritrea Country Report (paras 6.42 – 6.50)

<sup>15</sup> COI Service Eritrea Country Report (paras 6.46 – 6.49 & 6.52) & USIRF 2005 (Section II & III)

Witnesses remain imprisoned without charge, these individuals have been detained for varying periods, some for more than ten years.<sup>16</sup> Numerous incidents of restricted practice, arrest and detention of Jehovah's Witnesses were reported in 2005.<sup>17</sup>

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

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

**3.6.1.8 Caselaw.**

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

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

### **3.6.2 Other non-sanctioned religious groups**

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

**3.6.2.2 Treatment.** The as yet unimplemented constitution provides for freedom of religion, however in practice the Government severely restricts this right for all but the four sanctioned religious groups – Orthodox Christians, Muslims, Catholics and the Evangelical Church of Eritrea (affiliated with the Lutheran World Federation). The Government closely monitors the activities of non-sanctioned groups and individual members, including non-religious social functions.<sup>18</sup>

**3.6.2.3** In mid-2005, members of non-sanctioned groups made up less than 3% of the total population.<sup>19</sup> In 2001, the government began closing "Pente" facilities ("Pentes" include Born Again Christians, Pentecostals, Full Gospel, and other smaller Protestant groups). Following a May 2002 government decree stipulating that all religious groups must register or cease all religious activities, all religious facilities not belonging to the Orthodox Christian, Muslim, Catholic, or Evangelical Christian faiths were closed. The authorities also informed unregistered groups that a standing law would be used to stop political meetings or other gatherings of more than five persons in private homes.<sup>20</sup>

**3.6.2.4** The government required these churches to register and receive authorisation to reopen.

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<sup>16</sup> COI Service Eritrea Country Report (para 6.48) & USIRF 2005 (Section III)

<sup>17</sup> USIRF 2005 (Section III)

<sup>18</sup> COI Service Eritrea Country Report (paras 6.27 – 6.33)

<sup>19</sup> USIRF 2005 (Section I – II)

<sup>20</sup> COI Service Eritrea Country Report (paras 6.27 – 6.33) & USIRF 2005 (Section II - III)

The churches were informed that partial registrations would not be accepted. By the end of 2004, no churches had been authorised to reopen.<sup>21</sup> Between mid-2003 and 2004, there were numerous credible reports that police arbitrarily detained over 400 members of non-sanctioned groups, including: the Protestant churches (Rhema, Full Gospel, Kalehiwot, and Mesert Cristos churches), the Philadelphia church, and the Bethel church and other minority Christian groups. On occasions police tortured those detained for their religious beliefs. By mid-2004, there were estimated to be more than 200 religious prisoners still in detention. There also were credible reports that some of the detainees were required to sign statements repudiating their faith or agreeing not to practice it as a condition for release. In some cases where detainees refused to sign, relatives were asked to do so on their behalf.<sup>22</sup>

**3.6.2.5** Extensive reports of similar such disrupted services and meetings, restricted practice and arrest and detention of members of non-sanctioned religious groups continued in the first half of 2005.<sup>23</sup>

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

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

### **3.6.2.8 Caselaw.**

**IAT Determinations:** YT (Eritrea) [2004] UKIAT 00218 promulgated 9 August 2004. The appellant converted from being an Orthodox Christian to the Pentecostal Church. From an early age he was an activist in the Kale Hiwot ["Word of Life"] Church in Asmara, Eritrea. The Tribunal allowed this appeal stating that there is evidence of continued arrests on the basis of religion in 2003 and 2004, including a KHCE Pastor. There has not been a general relaxation in the Eritrean authorities' attitude towards minority churches.

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

## **3.7 Military service**

**3.7.1** Many Eritrean applicants will claim asylum on the basis that they will be at risk of ill treatment by the authorities for refusing to undertake military service or deserting from military service. Claimants may cite their religious beliefs, usually as Jehovah's Witnesses, as the reason why their objection has resulted in, or is likely to lead to, persecution.

**3.7.2 Treatment.** In November 1991 the EPLF government issued regulations to make national service compulsory for all citizens. The first intake of national service was in 1994 and it continued in staged phases since then. Under the revised national service regulations of 23 October 1995 (19), national service is compulsory for all citizens aged between 18 and 40 years, male and female. It consists of six months of military training (performed at Sawa military training centre near Tessenei in western Eritrea) and 12 months of 'active military service and development tasks in military forces' under Ministry of Defence authority. It

<sup>21</sup> US State Department Country Report on Human Rights Practices in 2004: Eritrea (USSD) February 2005 (Section 1)

<sup>22</sup> COI Service Eritrea Country Report (paras 6.27 – 6.33)

<sup>23</sup> COI Service Eritrea Country Report (paras 6.35 – 6.41) & USIRF 2005 (Section II & III)

extends to military reserve duties up to the age of 50. It may be continued under 'mobilisation or emergency situation directives given by the government'.<sup>24</sup>

- 3.7.3** The Government does not excuse those individuals who object to military service for reasons of religion or conscience, nor does the Government allow alternative service. Members of the Jehovah's Witnesses religious group have experienced harassment and restrictions because of their refusal to undertake military service. Some Muslims have objected to universal military service with regard to the requirement that women perform military duty.<sup>25</sup>
- 3.7.4** In November 2004, the Eritrea security forces in Asmara indiscriminately arrested thousands of people suspected of evading military conscription. People were arrested at places of work, in the street, at roadblocks and at home. Prisoners were taken to Adi Abeto army prison near Asmara. That night, a prison wall was apparently pushed over by some prisoners, killing four guards. Soldiers opened fire and shot dead at least a dozen prisoners and wounded many more.<sup>26</sup>
- 3.7.5** **Sufficiency of protection.** As this category of claimants' fear is of ill treatment/persecution by the state authorities, they cannot apply to these authorities for protection.
- 3.7.6** **Internal relocation.** As this category of claimants' fear is of ill treatment/persecution by the state authorities, relocation to a different area of the country to escape this threat is not feasible.
- 3.7.7** **Caselaw.**

**IAT Determinations:** MA (Eritrea) [2004] UKIAT 00098 CG notified 4 May 2004. IAT consider the case of a female draft evader. If the appellant is returned and treated as a draft evader she is likely to have her Article 3 rights breached. Appeal granted on human rights only. HAILE UKIAT06696 [2003] promulgated 20 February 2003: (Army deserter granted leave on Article 3 grounds) Relying on US State Dept report which cited harsh extra-judicial punishment and a UNHCR letter of 8 August 2002 which recommended against the return to Eritrea of draft evaders and deserters from military service.

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

NM (Eritrea) [2005] UKIAT 00073 promulgated 19 January 2005. Draft evaders – evidence of risk. The Tribunal found that those who are suspected of draft evading and refusing conscription are at risk of ill treatment and torture and that the situation is not normal in Eritrea so far as the Government's attitude towards military service. Being perceived as a draft evader does carry political connotations in the eyes of the authorities to the extent that the appellant would be at risk of serious harm for a Convention reason: her perceived opposition to the government.

IN (Eritrea) CG [2005] 00106 promulgated 25 May 2005. Draft evaders - evidence of risk, summary at para 44: There is no material distinction to be drawn between deserters and draft evaders. The issue is simply whether the Eritrean authorities will regard a returnee as someone who has sought to evade military service or as a deserter. The fact that a returnee is of draft age is not determinative. The issue is whether on the facts a returnee of draft age would be perceived as having sought to evade the draft by his or her departure from Eritrea. If someone falls within an exemption from the draft there would be no perception of draft evasion. If a person has yet to reach the age for military service, he would not be regarded as a draft evader: If someone has been eligible for call-up over a

<sup>24</sup> COI Service Eritrea Country Report (para 5.61)

<sup>25</sup> COI Service Eritrea Country Report (paras 6.48 – 6.50)

<sup>26</sup> COI Service Eritrea Country Report (para 5.66)

significant period but has not been called up, then again there will normally be no basis for a finding that he or she would be regarded as a draft evader. Those at risk on the present evidence are those suspected of having left to avoid the draft. Those who received call up papers or who were approaching or had recently passed draft age at the time they left Eritrea may, depending on their own particular circumstances, on the present evidence be regarded by the authorities as draft evaders.

This determination is not to be treated as authority for the proposition that all returnees of draft age are at risk on return. In that case the Tribunal found on the facts that the appellant would be regarded as a draft evader and also took into account the fact that there was an additional element in the appellant's background, the fact that her father had been a member of the ELF, which might put her at risk on return.

HF (Eritrea) [2005] UKAIT00140 promulgated 6 October 2005. Married women – exempt from draft. The Tribunal found on the basis of expert evidence that married women are exempt from call-up for compulsory military service that the appellant did not have a compelling claim for asylum on either Convention or ECHR grounds. The Tribunal found that the Adjudicator had not made a material error of law and that the determination of the original appeal would stand.

- 3.7.8 Conclusion.** If it is accepted that the claimant is of military service age, has previously received call-up papers and left the country having refused to undertake military service or has undertaken military service or training but has escaped, then it is likely that they will be of due interest to the authorities. As the Government effectively views those who evade service or desert from the military as political opponents, the treatment by the authorities of individuals known to have deserted or evaded military service is likely to amount to persecution under the terms of the Convention. The grant of asylum in such cases is therefore likely to be appropriate.
- 3.7.9** Nevertheless, an individual of military service age is not automatically viewed as an evader or deserter simply because they fall within the age range. If the claimant is of military service age but has not received call-up papers, has not previously received any other direction to undertake military service, has completed their military service or has not previously come to the adverse attention of the authorities, then it is unlikely that they will be of undue interest to those authorities. Similarly, if someone falls within an exemption from the draft, is outside the age for military service or has been eligible for call-up over a significant period but has not been called up there would be no perception by the authorities of draft evasion. Such claimants are unlikely to encounter ill treatment amounting to persecution within the terms of the Convention. The grant of asylum in these cases is therefore not likely to be appropriate.
- 3.7.10** Claimants who present an objection to military service on religious grounds (see 3.6 above), would be subjected to ill-treatment amounting to persecution within the terms of the 1951 Convention as a result of these beliefs and should be granted refugee status.

### **3.8 Members of opposition political groups**

Some applicants claim asylum based on threats or harassment by the authorities on account of their membership of, or association with, opposition political groups such as the Eritrean Liberation Front – Revolutionary Council (ELF-RC), the Eritrean Democratic Party (EDP) (formerly the Eritrean People's Liberation Front Democratic Party EPLF-DP) or as activists in support of the 11 detained members of the G15 group of dissidents.

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

- 3.8.1.1 Treatment.** In 1987, the EPLF, uniting with an Eritrean Liberation Front (ELF) faction, agreed a policy objective of creating a multi-party democratic system in a future independent state. At independence in 1991 when the victorious EPLF formed the Provisional Government of Eritrea, there was no reconciliation between the

ruling EPLF and the ELF. However, ELF members were allowed to return to Eritrea as individuals on condition that they renounced opposition. Some ELF members complied, such as the ELF-Unified Organisation, whose leaders were given government and military posts. Others, such as the ELF-Revolutionary Council [ELF-RC], remained in opposition – some launching a new armed struggle from bases in Sudan, others engaging solely in political opposition in exile.<sup>27</sup>

**3.8.1.2** On 10 August 2003 it was reported that ELF-RC withdrew from the Eritrean National Alliance (ENA), an opposition umbrella group, formerly the AENF, in October 2002 to protest the ENA's alleged willingness to allow foreign forces to exert pressure on its operations including on matters dealing with the election of its leadership.<sup>28</sup>

**3.8.1.3** Founded in 2001 as breakaway group from the PFDJ, the EPLF-DP gained credibility in not being connected to Sudan or Ethiopia as most opposition groups are. Led by the former Defence Minister Mesfin Hagos,<sup>29</sup> it was renamed the Eritrean Democratic Party (EDP) in February 2004.<sup>30</sup> While applicants claiming to be members of this group will allege their involvement in party meetings or as activists in underground 'cells', these have only been reported as operating outside Eritrea. There are no reports therefore that the government harasses or discriminates against members of either the present EDP or its previous incarnation as the EPLF-DP in Eritrea.

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

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

**3.8.1.6 Caselaw.**

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

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

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

**3.8.1.7 Conclusion.** Applicants who express a fear of being targeted by the authorities on the basis that they are, or were, low or medium-level members of the ELF-RC or the EDP (or previous members of the EPLF-DP) are unlikely to be able to adduce a well-founded fear of persecution within the terms of the 1951 Convention or a need for Humanitarian Protection on ECHR grounds. For claimants who are able to demonstrate that they are a high-level former EPLF-DP, current EDP or ELF-RC activist, the grant of asylum is likely to be appropriate.

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<sup>27</sup> COI Service Eritrea Country Report (para 6.81)

<sup>28</sup> COI Service Eritrea Country Report (para 6.82)

<sup>29</sup> COI Service Eritrea Country Report (Annex B)

<sup>30</sup> Amnesty International (Eritrea) 'You have no right to ask' – Government resists scrutiny on human rights AFR 64/003/2004, 19 May 2004

### 3.8.2 *G15 activists*

**3.8.2.1 *Treatment.*** The G15 group comprises members of the Central Committee of the PFDJ, many of whom had been senior EPLF military or political leaders during the liberation struggle. Following the arrest and detention of 11 of the group on 18 September 2001 on account of their suspected conspiracy to block Government reforms, there were reports in 2002 that dozens of other people were detained by the security police for supporting views expressed in the G15 open letter and in some cases for criticising the G15 detentions. Some elders were reported to have been detained after trying to mediate between the Government and its critics. Arrests also have in many cases been difficult to confirm because of the secrecy and pervasive intimidation.<sup>31</sup>

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

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

**3.8.2.4 *Conclusion.*** There is no evidence of a reform movement based on the beliefs and policies of the G15. Though there were many reports of politically motivated detentions in 2004, and while those detained in 2002 on account of their association with the G15 group remained in detention without charge, there were no further confirmed arrests or detentions of G15-associated activists in 2004.<sup>32</sup> Applicants claiming to fear arrest or detention on account of their low to medium-level activism in support of the detained members of the G15 group will not usually qualify for asylum, however those who can confirm that they are high profile activists and have previously come to the attention of the authorities may qualify for asylum.

### 3.9 *Persons of mixed Ethiopian/Eritrean origin*

**3.9.1** A significant proportion of claims will raise the issue of whether the applicant considers him/herself to be Eritrean or Ethiopian, and the state authorities' treatment of those with some element of mixed ethnicity. Though this will not usually be a main or sole basis for a claim, it will be crucial to establish the applicant's parentage, length of time spent in a particular country and location of alleged persecution to substantively assess the wider claim.

**3.9.2 *Treatment of Eritreans of Ethiopian origin in Eritrea.*** Unlike in 2002, there were no reports during 2003 that the Eritrean authorities harassed and detained deportees of Eritrean origin from Ethiopia while their status was checked. Expellees were asked to fill out a detailed registration form and were issued the same type of registration card that Eritrean refugees returning from exile received. Once registered, the deportees were entitled to the standard government assistance for returning refugees: including short-term housing, food, and settlement aid; medical coverage; and job placement assistance.<sup>33</sup> In 2004, the integration of some 75,000 Ethiopians of Eritrean origin deported from Ethiopia continued.<sup>34</sup>

**3.9.3 *Treatment of Ethiopians of Eritrean origin in Ethiopia.*** During the border war the Ethiopian Government detained and deported Eritreans and Ethiopians of Eritrean origin without due process. Deportations ceased following the signing of the cessation of

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<sup>31</sup> COI Service Eritrea Country Report (paras 6.70 – 6.79)

<sup>32</sup> COI Service Eritrea Country Report (paras 6.77 – 6.79) & USSD 2004 (Section 1)

<sup>33</sup> COI Service Eritrea Country Report (paras 6.104 – 6.106)

<sup>34</sup> USSD 2004 (Introduction & Section 1)

hostilities agreement in June 2000. In June 2001 this agreement was broken but this has been the only breach and all returns are now voluntary and administered by the ICRC.<sup>35</sup>

**3.9.4** As regards entitlements to Eritrean nationality, caseworkers should note that following discussions with the Eritrean Embassy in London the Home Office has had certain points clarified: (i) Any person born in Eritrea or with an Eritrean parent would be eligible for Eritrean nationality. (ii) The political views of the three witnesses required to prove Eritrean heritage are not relevant to the establishing of nationality. (iii) The political views of the applicant for nationality are not relevant to establishing eligibility for nationality and obtaining an Eritrean passport. (iv) Voting in the 1993 Referendum is not a necessary precondition to establishing nationality. (v) Paying a 2% tax on nationals overseas does not preclude eligibility for Eritrean nationality or obtaining an Eritrean passport. (vi) Claiming refugee status overseas does not preclude eligibility for Eritrean nationality or obtaining an Eritrean passport.<sup>36</sup>

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

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

**3.9.7 *Caselaw.***

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

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

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

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

Entitlement to dual nationality The Tribunal then considered the issue of whether if the claimants that are at risk of persecution in Ethiopia, they do not qualify as refugees because they can look to Eritrea for protection. Starting point is Article 1(A)(2) of the Convention

<sup>35</sup> COI Service Eritrea Country Report (paras 6.107 – 6.115)

<sup>36</sup> COI Service Eritrea Country Report (para 5.7)

which provides that in the case of a person who has more than one nationality, shall not be deemed to be lacking the protection of the country of his nationality if, without any valid reason based on well founded fear, he has not availed himself of the protection of one of the countries of which he is a national. In the present appeals the claimants assert that they have been effectively been deprived of their Ethiopian citizenship. The reason for this is their Eritrean background. If they qualify for Eritrean citizenship and there are no serious obstacles to their being able to apply for and obtain such citizenship, there is no reason in principle why they should not look to the Eritrean authorities for protection. It is not open to a claimant by doing nothing and by failing to make an application for citizenship to defeat the provisions of the Refugee Convention. The Tribunal is satisfied that if the evidence shows that a claimant is entitled to nationality of a country, the provisions of Article 1(A)(2) apply. He shall not be deemed to be lacking the protection of the country of his nationality if without any valid reason based on a well-founded fear he has not availed himself of the protection of that country. In most cases this will involve making an application for his/her nationality to be recognised. A claimant cannot decline to take up a nationality properly open to him without a good reason, which must be a valid reason based on a well founded fear. The protection offered by a state of second nationality must be "effective". It will be a question of fact in each case whether the claimant has a nationality, which will provide him with effective protection.

**3.9.8 Conclusion.** Applicants of mixed parentage who claim to be Ethiopian, have lived in Ethiopia all their life and fear persecution in Ethiopia should be considered as Ethiopian and their wider claim assessed accordingly. In the absence of a risk of forced deportation of those of mixed ethnicity from Ethiopia to Eritrea, applicants who fall into this category will not have a compelling claim for asylum.

**3.9.9** Applicants of mixed parentage who have lived in Ethiopia all their life and fear persecution in Ethiopia, such individuals should be considered as Ethiopians and their wider claim assessed accordingly. If these individuals claim to be Eritrean however, they would have right to Eritrean nationality and should therefore seek the protection of their Eritrean nationality before applying for international protection in accordance with paragraphs 106 and 107 of the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status. Caseworkers should make clear reference to the applicant's entitlement to, and protection of, Eritrean nationality when considering such cases.

**3.9.10** Applicants of mixed parentage who have lived in Ethiopia for most of their lives, but consider themselves Eritrean – usually by virtue of them having been deported to Eritrea relatively recently – and claim to fear persecution in Eritrea, should be considered as Eritrean and their wider claim assessed accordingly.

### **3.10 Prison conditions**

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

**3.10.2 Treatment.** Conditions in Eritrean prisons are spartan. In 2004, the Government generally permitted three visits per week by family members, except for detainees arrested for national security reasons. There were no confirmed reports in 2004 that any prisoners died due to lack of adequate medical care. There were substantial reports that prison conditions for persons temporarily held for evading military service were poor....At a detention facility outside Asmara, detainees reportedly were held in an underground hall with no access to light or ventilation, and in sometimes very crowded conditions.<sup>37</sup>

**3.10.3** Prison visits by local and international human rights organisations are generally not allowed, however this has improved in recent years and the Red Cross is now allowed

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<sup>37</sup> COI Service Eritrea Country Report (para 5.49)

access to some prisoners. There are no juvenile detention centres so children are often imprisoned with adults. Many observers believe that the police occasionally resort to torture and physical beatings, particularly during interrogations.<sup>38</sup>

#### **3.10.4 Caselaw.**

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

MA Eritrea CG [2004] UKIAT 00098 promulgated 4 May 2004. Detention conditions on return for draft evaders. The IAT allowed the appeal finding that, based on the experience of failed asylum seekers of draft age who were detained on return after having been deported from Malta in 2002, prison conditions including forced labour, beatings, torture and a lack of medical care, food and sanitation leading to disease and in some cases death are quite likely to be in breach of Article 3. SE Eritrea CG [2004] UKIAT 00295 promulgated 29 October 2004. Deportation – Malta 2002 – General Risk. The IAT found that the relevance of the MA decision extended only to the detention conditions for female draft evaders, and did not denote a general risk to all failed asylum seekers returned to Eritrea.

**3.10.5 Conclusion.** Whilst prison conditions in Eritrea are poor with forced labour, beatings, torture and a lack of medical care, food and sanitation leading to disease all being reported, these conditions are unlikely to reach the Article 3 threshold. Therefore even where claimants can demonstrate a real risk of imprisonment on return to Eritrea a grant of Humanitarian Protection will not generally be appropriate. However, the individual factors of each case should be considered to determine whether detention will cause a particular individual in his particular circumstances to suffer treatment contrary to Article 3, relevant factors being the likely length of detention the likely type of detention facility and the individual's age and state of health.

## **4. Discretionary Leave**

- 4.1** Where an application for asylum and Humanitarian Protection falls to be refused there may be compelling reasons for granting Discretionary Leave (DL) to the individual concerned. (See API on Discretionary Leave)
- 4.2** With particular reference to Eritrea the types of claim which may raise the issue of whether or not it will be appropriate to grant DL are likely to fall within the following categories. Each case must be considered on its individual merits and membership of one of these groups should *not* imply an automatic grant of DL. There may be other specific circumstances not covered by the categories below which warrant a grant of DL - see the API on Discretionary Leave.
- 4.3 Minors claiming in their own right**
  - 4.3.1** Minors claiming in their own right who have not been granted asylum or HP can only be returned where they have family to return to or there are adequate care and support arrangements. At the moment we do not have sufficient information to be satisfied that there are adequate care and support arrangements in place.
  - 4.3.2** Minors claiming in their own right without a family to return to, or where there are no adequate care and support arrangements, should if they do not qualify for leave on any more favourable grounds be granted Discretionary Leave for a period of three years or until their 18<sup>th</sup> birthday, whichever is the shorter period.

## **4.4 Medical treatment**

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<sup>38</sup> COI Service Eritrea Country Report (para 5.50)

- 4.4.1** Applicants may claim they cannot return to Eritrea due to a lack of specific medical treatment. See the IDI on Medical Treatment which sets out in detail the requirements for Article 3 to be engaged.
- 4.4.2** Eritrea's health care system is relatively basic and cannot currently provide satisfactory treatment for all medical conditions. However, the range of treatments and medications available is constantly developing. The Article 3 threshold will not be breached in the great majority of medical cases and a grant of Discretionary Leave will not be appropriate. Further detailed information is set out in the current Eritrea Country of Origin Information Report.<sup>39</sup>
- 4.4.3** Where a caseworker considers that the circumstances of the individual applicant and the situation in the country reach the threshold detailed in the IDI on Medical Treatment making removal contrary to Article 3 a grant of discretionary leave to remain will be appropriate. Such cases should always be referred to a Senior Caseworker for consideration prior to a grant of Discretionary Leave.

## **5. Returns**

- 5.1** Factors that affect the practicality of return such as the difficulty or otherwise of obtaining a travel document should not be taken into account when considering the merits of an asylum or human rights claim. Failed asylum seekers are returned to Asmara.
- 5.2** The UNHCR has recommended that governments refrain from all forced returns. The UNHCR's position paper provides a broad assessment of the situation in Eritrea and we do not dispute that it presents an accurate overview of the general humanitarian situation and the serious social and security problems inherent in the country.<sup>40</sup> However, asylum and human rights claims are not decided on the basis of the general situation - they are based on the circumstances of the particular individual and the risk to that individual. We do not therefore accept UNHCR's conclusion, based on their overview of the general situation, that it is unsafe for all persons who have been found not to be in need of some form of international protection to return to Eritrea.
- 5.3 Caselaw.**
- IAT Determinations:** GY (Eritrea) [2004] UKIAT 00327 promulgated 30 December 2004. The IAT granted permission to appeal on the issue of whether the appellant would be at risk as a failed asylum seeker on return to Eritrea. The analysis of the objective evidence in SE 00295 and the conclusion that there is no general risk on return for ordinary failed asylum seekers was correct.
- SE (Eritrea) [2004] UKIAT 00295 CG promulgated 29 October. The IAT assess the risk on return to Eritrea of a mere returnee. The Tribunal reviewed the UNHCR "Position on the return of Rejected Asylum Seekers to Eritrea" dated 20 January 2004 and stated "It falls short of stating that all returnees face a well-founded fear of persecution". The IAT conclude that the mere fact of being a returnee to Eritrea does not mean that someone will face a real risk of serious harm.
- 5.4** Eritrean nationals may return voluntarily to any region of Eritrea at any time by way of the Voluntary Assisted Return and Reintegration Programme run by the International Organisation for Migration (IOM) and co-funded by the European Refugee Fund. IOM will provide advice and help with obtaining travel documents and booking flights, as well as organising reintegration assistance in Eritrea. The programme was established in 2001, and is open to those awaiting an asylum decision or the outcome of an appeal, as well as failed asylum seekers. Eritrean nationals wishing to avail themselves of this opportunity for

<sup>39</sup> COI Service Eritrea Country Report (paras 5.70 – 5.81)

<sup>40</sup> UN High Commission for Refugees (UNHCR) Position on return of rejected asylum seekers to Eritrea, January 2004.

assisted return to Eritrea should be put in contact with the IOM offices in London on 020 7233 0001 or [www.iomlondon.org](http://www.iomlondon.org).

**6. List of source documents**

- UK Home Office Eritrea Country of Origin Information Report October 2005 at [http://www.homeoffice.gov.uk/rds/country\\_reports.html](http://www.homeoffice.gov.uk/rds/country_reports.html)
- US Department of State: Bureau of Democracy, Human Rights and Labor International Religious Freedom Report 2005 on Eritrea, 8 November 2005 at <http://www.state.gov/g/drl/rls/irf/2005/51471.htm>
- US Department of State: Bureau of Democracy, Human Rights and Labor Country Report on Human Rights Practices 2004 on Eritrea, 28 February 2005 at <http://www.state.gov/g/drl/rls/hrrpt/2004/41602.htm>
- Amnesty International. Eritrea 'You have no right to ask' – Government resists scrutiny on human rights AFR 64/003/2004, 19 May 2004 at <http://web.amnesty.org/library/print/engaf640032004>
- UN High Commission for Refugees (UNHCR) Position on return of rejected asylum seekers to Eritrea, January 2004.

**Asylum and Appeals Policy Directorate  
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