ASYLUM AND IMMIGRATION TRIBUNAL

KA (draft-related risk categories updated) Eritrea CG [2005] UKAIT 00165

THE IMMIGRATION ACTS

Heard at: Field House
On 21 October 2005

Determination Promulgated
25 November 2005
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Before

Dr H H Storey (Senior Immigration Judge)
Mr H J E Latter (Senior Immigration Judge)
Mr A A Lloyd

Between

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the appellant: Mr C Yeo, Counsel, IAS (Tribunal Unit)
For the respondent: Mr J Gulvin, Home Office Presenting Officer

*This case, which updates the analysis of risk categories undertaken in **IN (Draft evaders – evidence of risk) Eritrea CG [2005] UKIAT 00106**, gives guidance on several issues. It confirms the previous Tribunal view that returnees are not generally at risk. It reaffirms the view that those who would be perceived as draft evaders or deserters would be at risk. As regards persons of eligible draft age, this decision explains why it is thought that the Eritrean authorities, despite regarding such persons with suspicion, would only treat adversely those who were unable to explain their absence abroad by reference to their past history. Reasons are given for slight modification to certain parts of the guidance given in **IN**. A summary of conclusions is given at paragraph 113. The decision is also reported for what it says at paragraphs 7-15 about country guidance treatment of issues which go wider than the particular factual matrix of an appellant's appeal.*

DETERMINATION AND REASONS

1. The appellant is a national of Eritrea born on 19 August 1985. She appeals against a determination of the Adjudicator, Mrs Susan Turquet, notified on 27 April 2004 dismissing her appeal against a decision refusing to grant further leave to remain and to give directions under s.10 of the Asylum and Immigration Act 1999 for removal from the United Kingdom. (There had been an appeal against an earlier decision refusing to grant asylum. This had been dismissed by the Adjudicator, Mr B. Watkins CMG, on 4 July 2002).

2. Following the grant of permission to appeal made on 2 September 2004, her appeal came for hearing on 27 May 2005 before a panel chaired by Senior Immigration Judge Mr C.P. Mather. By virtue of the Asylum and Immigration (Treatment of Claimants etc.) Act 2004 that took effect as a reconsideration hearing. At this hearing it was decided that the Adjudicator had materially erred in law "by not considering the risk on return to a young female of draft age who had never (effectively) been to Eritrea". It was noted at the hearing that this was an issue that needed clarifying using the Tribunal Country Guideline case of ***IN (Draft evaders – evidence of risk) Eritrea CG [2005] UKIAT 00106*** as a start-point. Subsequent to the hearing the Tribunal issued a Notice of Directions to the parties which in its relevant parts stated:

> 'Issues for Reconsideration [as directed]
>
> No necessity for oral evidence as grounds have not contested the Adjudicator's findings on credibility.
>
> This case is being set down as a Country Guidance case in which the issues on which the parties are invited to make particular submissions are:
>
> 1) Whether the CG case of ***IN*** continues to adequately reflect current risk categories
>
> 2) Whether someone of eligible draft age but who has not been to Eritrea would fall into a current risk category
>
> The case will not be joined with another.'

3. The last sentence was intended to clarify that it had been decided not to go ahead with the suggestion raised at the hearing before Mr Mather of joining this case with another.

4. At the hearing before us Mr Gulvin said he had only learnt of these directions when Mr Yeo had contacted him two days earlier. He was prepared, nevertheless, to accept that they had been sent to the parties and he was ready to proceed with the case and assist the Tribunal as far as he was able to in these circumstances. Mr Yeo had responded to the

directions by adducing a comprehensive bundle containing inter alia, reports from four country experts and several items of background evidence post-dating those examined by the Tribunal in ***IN*** (***IN*** was heard on 2 February 2005).

5. Nevertheless, Mr Yeo's skeleton argument repeated an earlier application made to the Tribunal in a 28 September 2005 letter asking that the directions be amended and the first direction be struck out. Since it raises a point of some importance, we shall set out what he said in both places. The main paragraphs of his letter were as follows:

> 'Given that the facts of this case do not match the directions that have been given, I ask that the directions are amended and the first direction is struck out. In a report written by the IAS on Country Guideline cases, IAS was critical of the use of inappropriate cases to determine wider issues. The appellant in this case has no interest in arguing wider issues or presenting country information outside her own case and as the appellant's representative I have no duty to do so. Indeed, I feel that to do so would compromise my overriding duty to my client by allowing the Tribunal to be distracted from the key issues in this particular case and confusing matters by introducing arguments that are irrelevant to my client. If the Tribunal does want to consider wider facts, it would need to link this case with other suitable cases in which those facts do arise.
>
> Should the directions not be amended, I will need to ask that it is clearly recorded in the final determination that the appellant did not present arguments or evidence relating to facts that did not arise in her own case.'

6. The way the application was put in the skeleton argument was as follows:

> '2.6. It is submitted that this case is not appropriate for designation as a Country Guideline case on issue (1) as identified in the AIT's directions. The facts of ***IN [2005] UKIAT 00106*** are very different to those of the appellant's case and the appellant therefore has no legal standing to advance arguments or evidence relating to those wider issues. Had the AIT wanted to designate this case as a Country Guideline case on issue (1) it would have been appropriate to link it with other cases that raise the issue the AIT has outlined in issues direction (1). Without having taken that step it will hear no argument on those issues nor will evidence be presented to the AIT specifically relating to those

> issues that fall outside the appellant's case. Issues direction (1) is *ultra vires* as the AIT cannot direct the appellant to prepare arguments or submit evidence that are not immediately relevant to her case. Rule 45(1) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 explicitly limits the power to make directions to the conduct of the instant appeal or application.
>
> 2.7. In addition, the jurisdiction of the AIT to review ***IN*** is questionable. No evidence appears to have come to light to cast doubt on the correctness of the guidance in ***IN*** and the respondent has presented no fresh evidence in this case or, as far as the appellant's representatives are aware, in any other case, to dispute those findings (nor any evidence at all in this case). Indeed, the evidence gathered by the appellant relating to her own individual facts which indirectly relate to ***IN*** suggests that the situation has deteriorated.'

7. We refused this request for several reasons. Firstly, it is quite clear that the appellant`s case, as put by Mr Yeo, relies in part on general propositions about risk to persons affected by the draft in Eritrea. She does not rely solely on evidence relating to herself, but also on evidence relating to persons affected by the draft generally. Secondly, her grounds of appeal relied heavily on a January 2004 UNHCR position paper entitled 'UNHCR Position on Return of Rejected Asylum Seekers to Eritrea' which highlighted evidence concerning the fate of persons returned by Malta to Eritrea in 2002 and posited in the light of this evidence an extremely wide risk category – all Eritrean rejected asylum seekers. Thirdly, Mr Yeo did not object to the directions relating to issue 2 ('whether someone of eligible draft age but who has not been to Eritrea would fall into a current risk category') and, even had directions been confined to this issue, its asessment necessarily required linkage being made to an overall set of current risk categories.

We also reject Mr Yeo`s submission that we have no jurisdiction to review ***IN.*** This is a second-stage reconsideration hearing in which the relevant date for the assessment of risk is the date of hearing before us: see ***R (Iran) [2005] EWCA Civ 982***. Accordingly, we must have regard to any evidence placed before us concerning relevant changes or developments which have taken place in country conditions in Eritrea since the Country Guideline case of ***IN*** (as well as to more recent evidence affecting the appellant's individual circumstances). It is only by having regard to such evidence that we can decide whether the appeal before us "depends upon the same or similar evidence" (see April 2005 AIT Practice Directions para 18.2). Only if we were to decide that the country guidance issues in this case do depend upon the same or similar evidence, would we then be required by para 18.2 to continue

to treat ***IN*** as authoritative in any subsequent appeal so far as it relates to the country guidance issues in question.

8. In this regard, it is noteworthy that Mr Yeo himself expressly sought to rely on a number of post-***IN*** items of background evidence, as well as five expert reports, three of them written since ***IN*** - one from Michael Ellman dated 14 October 2005, one from Dr David Pool, also dated 14 October 2005, one from Dr June Rock dated 13 October 2005. Even the two reports from Dr John Campbell dated 24 January and 31 January 2005 respectively, were submitted by reference to an "updating" letter of 10 October 2005, which also authorised their use for this appeal. Although each of the four country experts places focus on the situation of the individual appellant, in order to analyse this each of their reports addresses a range of general issues of risk on return to Eritrea. Mr Yeo`s impressive bundle of materials, therefore, addressed a range of general issues including the most general of all – that of risk on return to failed asylum seekers.

9. In such circumstances it seems to us wholly disingenuous of Mr Yeo to suggest that he was in fact confining himself to evidence specific to this appellant. His stance that he would not be adducing evidence or making submissions based on issue of risk in Eritrea at a general level and would confine himself to non-fresh evidence is belied by other parts of his submissions which do precisely that. In our view it was prudent of Mr Yeo to address general issues affecting this appellant and to do so by reference to fresh evidence. For him to have failed to address such issues and in this way would have meant doing his client a disservice. Paragraph 196 of the 1979 UNHCR Handbook reminds us that the duty to ascertain and evaluate all the relevant facts is shared between the applicant and examiner. A representative has a duty to co-operate with and assist the Tribunal in seeking to convene cases notified as raising important country issues.

10. We also discern a misconception on the part of Mr Yeo about the purpose, logical basis and status of the Tribunal's country guidance system. Its fundamental purpose is to ensure that like cases are treated alike and that generally recurring factors relating to country conditions are the subject of careful and authoritative assessment periodically: see once again, ***R (Iran) [2005] EWCA Civ 982.*** Its logical basis consists in the need to consider each refugee appeal in the context of the evidence as a whole: what was stated in the 1979 UNHCR Handbook at paragraph 42 as the requirement that:

> "…The applicant's statements cannot, however, be considered in the abstract, and must be viewed in the context of the relevant background situation. A knowledge of conditions in the applicant's country of origin – while not a primary objective- is an important element in assessing the applicant's credibility".

11. There must always be an assessment of the particular circumstances of the individual case. But that assessment must be made in the context of the background evidence relating to conditions in the country generally. In almost every asylum or asylum-related case the Tribunal is concerned with the particular *and* the general. It is a matter for this Tribunal, not representatives, to decide when a case is suitable for the

giving of country guidance. In cases where the Tribunal decides to focus particularly on general country issues, it will often seek to alert the parties about this and invite relevant evidence and submissions. This is precisely what happened here.

12. It is for the Tribunal to decide whether to make use of the evidence before it to make findings on issues relating to the general country situation or relating to certain categories of persons in that country. Whilst it is open to the parties (as here) to make submissions about what the scope of issues relating to country guidance are or should be, it is for the Tribunal to decide how broadly or narrowly to draw them.

13. Normally the Tribunal will not seek to set wide-ranging guidance when the case before it concerns an issue affecting a small category of persons (e.g. a small tribe or a minor political party). But that is essentially a matter of judgment for the Tribunal and even here it may consider departing from normal practice if, for example, the evidence before it deals comprehensively with the position of small tribes or small political parties in the overall tribal or clan or political systems.

14. Mr Yeo's reference to a factual matrix also misunderstands the jurisdictional status or basis of country guidance. Such guidance does not depend on the issues identified being raised by the particular set of facts relating to the individual appellant. The jurisdictional basis is the need in the context of an individual appeal to make an assessment of protection needs under the Refugee Convention and the ECHR.

15. It is Mr Yeo`s contention that the Tribunal has no power to issue directions going beyond the particular facts of the appellant's case. Even if that contention were not beside the point, it involves a misreading of the 2005 Procedure Rules. He is right that rule 45 focusses on directions relating to the instant appeal or application. However this same rule accords to the Tribunal a wide power to conduct the hearing as it sees fit. Nothing that is specified in rule 45 excludes the Tribunal from identifying issues it wishes parties to address.

16. Mr Yeo's skeleton argument also included an application that we consider receiving oral evidence from the appellant. In developing this submission before us, he pointed out that the Adjudicator had not made clear or complete findings on the nature or quality of the appellant's objections to performing military service.

17. We rejected this application. The notice giving directions had stipulated that there was no necessity for oral evidence as the grounds had not contested the Adjudicator's findings on the particular circumstances of the appellant. Nor had Mr Yeo applied to call oral evidence prior to the day of the hearing. Whilst we said we would not shut our mind to calling the appellant (if necessary by reconvening) should we reach a stage where we considered that justice required it, in the event we did not consider it appropriate to hear from the appellant. We had before us her previous statements and her interview record, as well as the findings made by the Adjudicator concerning those. We also had an

up-to-date statement from the appellant. These provide us with a sufficient basis to decide on the very limited issues of fact specific to her as an individual which arise in this appeal.

18. One other preliminary comment we have concerns Mr Yeo's attempt in the grounds to rely on the very recent case of ***AA (Involuntary returns to Zimbabwe) [2005] UKIAT 00144)***. Mr Yeo's principal point appeared to be that where there is strong evidence of serious human rights abuses in a particular country, we should be slow to conclude that such abuses are not practised at the point of return. We do not consider it at all helpful to the task before us to have regard to ***AA*** in the way contended for by Mr Yeo. ***AA*** has helpful things to say about the approach to 'real risk', but it plainly did not seek to establish a general principle as to how risk should be assessed at the point of return in countries with a poor human rights record. Its decision was specific to the particular situation in Zimbabwe at the time of the decision and must be read in that light.

19. Subsequent to the hearing we became aware of two further items of evidence. One was the Home Office Country of Origin Services (COIS) Report on Eritrea for October 2005, the other was the promulgation of a reported case by a differently constituted Tribunal panel, **TA (draft evasion-citizenship-evidence required) Eritrea [2005] UKIAT 00155.** We wrote to the parties inviting them to make submissions on the significance of these items. Neither chose to respond.

The Appellant's Case

20. At paragraphs 9-15 of her determination the Adjudicator set out the appellant's case as follows:

> '9. The Appellant's claim is set out in her Asylum Statement, Witness Statement, Further Statement and her evidence.
>
> 10. The Appellant had lived with her parents in Saudi Arabia. Her mother died in 1995. Her father worked as a chauffeur for a Saudi family and, after her mother's death, the Appellant was required to undertake domestic duties. She alleges that she was ill-treated and abused. In October 2000, during [sic] her employer's son, Salim, beat her and pushed her with a metal bar. As a result the Appellant had to have a kidney removed. When her father heard what happened, he was angry with Salim. He said that his daughter was not the family's servant and that he would take her with him. They immediately had the Appellant's father deported. The family were saying that she should be deported. The Appellant was scared of this. One of her father's colleagues comforted her. He smuggled her out of the house and took her to his

relative's house. He told her that he would send her to a safer place and arranged for an agent to bring her to the United Kingdom.

11. Her father's friend told her that her father was an active member of the ELF and that it was dangerous for him being deported to Eritrea. She could not return to Saudi Arabia because she was smuggled out and left the family. She could not go to Eritrea as she does not know any family member there. She would be drafted to join military service. She could not do this because it is against her religion for men and women to mix. She does not speak the language very well, having left, when she was one.

12. In her witness statement the appellant said that she joined the ELF UK branch in September 2003. She wanted to continue her father's work. She had been told that she had to wait until she was 18 to join. She attends monthly meetings, distributes leaflets and discusses ELF's aims and policies in the community to create awareness. She contributes money. One of the other main reasons she joined was to get some help to find her father. She thought that the organisation could help her.

13. She now only has one kidney. She sometimes has pain and has to take medication. She has had to go Accident and Emergency with kidney pain. She has breathing problems. She has been depressed and on medication.

14. She has achieved ESOL levels 1,2 and 3. She started a GNVQ foundation course in Leisure and Tourism. Her 3 year course finishes in July 2004. She volunteered to work at Oxfam in February 2004. She is a volunteer with the Eritrean Muslim Community Association Supplementary Sunday School.

15. In her further statement she said that the main problem in military service is that men and women have to live together. She has heard accounts of mistreatment of Muslim female recruits by male soldiers. Living in Eritrea would be very difficult as she has not lived there since she was one year old. She only learnt a few words of Tigrinia. Her doctor has told her that she has an allergy and has been referred to the Ear Nose and Throat Department of a hospital in Whitechapel.

> She also has pain in her back and knees, probably caused by her domestic work in Saudi Arabia.'

21. The Adjudicator did not find the appellant's account credible. She said her start-point was the determination of the Adjudicator Mr Brian Watkins who heard the appellant's asylum appeal. She quoted from the latter's determination the passage: "There is no reason whatever to suppose that her father had a political opinion hostile to that of the government of Eritrea, which would then impute the same opinion to the Appellant." At paras 24-26 she then continued:

> 'The only evidence relating to her political opinion that has now been put forward, which was not before the Adjudicator [Mr Watkins], is that the Appellant now claims to have joined the ELF in London. There is no evidence from the ELF confirming this membership of her activities in the ELF. The membership card was issued on 15.2.2004. The Appellant said that she joined, when she turned 18 and that the card submitted was a renewal card. She had got rid of the previous card. She said that she attends meetings and hands out leaflets. There is no confirmation of this from the London or national branch. I accept that the Appellant may have taken out membership. I do not find it was taken out before February of this year. I do not find that she is involved at any significant level. I find that becoming a member was an attempt to boost her asylum application. I find it significant that she said one of her 2 reasons for joining the ELF was so that they could trace her father. However she has not made any effort to do so. I do not find that her membership per se at this late stage persuades me that the conditions in Paragraph 334 will be satisfied. I note the previous Adjudicator's reference to a lack of medical report relating to her injury resulting in a loss of a kidney. There is no medical evidence before me.
>
> 25. In addition to her alleged fear of persecution on account of her father's political opinions, she suggested that she had a conscientious objection to military service. The Adjudicator [Mr Watkins] found that the Appellant was not within the narrow exemptions in ***Sepet and Bulbul***. Fear of persecution or punishment for desertion or draft evasion does not constitute a well-founded fear of persecution.
>
> 26. I do not find that the claim that the Appellant has now put forward is sufficiently different from the earlier claim that there is a realistic prospect of the conditions in Paragraph 334 would be satisfied. I am not satisfied that the Appellant has discharged the burden of proof on her to show that she is entitled to the status of refugee.'

22. She then turned to consider submissions from Counsel Ms Quinn about risks to returnees generally, based on the UNHCR Position Paper on rejected asylum seekers to Eritrea. She also cited the Tribunal case of ***F (Eritrea) [2003] UKIAT 00177***. Turning back to the case in hand, she stated:

> "28. In the case before me the Appellant did not leave her country illegally. She left to live with her parents, who were working in Saudi Arabia. I do not find she has any significant political association. She is not of mixed ethnicity. She is not a draft evader or deserter. I do not find there is a real risk that she would be detained. I therefore find there is no real risk that she would suffer ill-treatment in detention. Her removal would not cause the United Kingdom to be in breach of its obligation under the 1951 Convention."

23. She made similar findings in relation to Article 3.

24. The grounds of appeal contended that the Adjudicator had erred in failing to have regard to any of the new material contained in the UNHCR report and in failing to take proper account of the fact that the appellant (unlike the claimant in ***F (Eritrea)*** who had completed his military service) had only recently become eligible for national service. On the strength of the UNHCR report it was submitted that the appellant should have been found to be someone at real risk of being detained on return to Eritrea and, whilst detained, subjected to interrogation and torture, putting the UK in breach of its obligations under Art. 3. We have already recorded that these grounds were successful to the extent that the panel chaired by Mr Mather at first-stage reconsideration found that the Adjudicator had materially erred in law by not considering risk on return to a young female of draft age who had effectively never been to Eritrea.

25. No challenge was made to any of the Adjudicator's adverse credibility findings or other findings specific to the appellant's history.

26. For the purposes of this hearing the appellant has produced a supplementary witness statement dated 14 October 2005. This reaffirms her previous statement but seeks to bring her history up to date. In it she gives further details of her involvement with the ELF in the UK. She said she had joined in September 2003 for two main reasons: because she wanted to follow in her father's footsteps and continue what he had been doing and because she hoped and still hopes to get information about him and also keep herself informed about events in Eritrea. She said she went to ELF meetings every two to three months. She had also attended a demonstration outside the Eritrean Embassy in December 2004. She recalled spotting a big film camera inside the building on the first floor and people inside the embassy as

well. She also mentioned recently joining a group called EHDR-UK (Eritreans for Human and Democratic Rights).

27. At paragraph 7 she states:-

> '7. I have previously said that I would not undertake military service in Eritrea. I am strongly opposed to the idea of mixed military service. It conflicts with my religious beliefs. I feel very strongly that the government is making war for no reason other than to make war – it is absolutely senseless and pointless and it achieves nothing. It is as if they enjoy the blood, killing and violence and that is why they do it. I am also extremely concerned about the reports of rapes and abuse in the military. If I had a choice I would certainly not undertake military service. I am not opposed to defending my country, but I cannot agree with the conditions of service and the reasons for fighting. I have thought about this a lot and I do not know how I would react if they force me to do military service. I really strongly object to it and I would like to think that I would refuse but I really do not know what would happen. I know what happens to people who do refuse to do military service.'

Risk Factors

28. Mr Yeo has submitted that the appellant would be at risk by virtue of a combination of "general factors" and more specific risk factors. It seems to us that by "general factors" Mr Yeo must mean general risk factors; otherwise they do not advance his argument. Perhaps he chose not to call them that in order to maintain his stance of objecting to the Tribunal considering issue 1. Be that as it may, we shall set out his arguments remaining as faithful as we can to his own wording.

29. The 'general factors' he identified were: (1) that there is currently a real risk of severe ill-treatment to persons perceived as draft evaders (as found in ***IN*** at paragraph 37), a risk which has increased as a result of the worsening of the situation in Eritrea since May 2005. He made reference to a recent incident in which families of draft evaders were rounded up and ill-treated; (2) that there is a current real risk of ill-treatment on return "irrespective of any perception as a draft evader". This contention was supported, he said, by the expert evidence that all returnees face a detailed questioning regime on return, and likely ill treatment in the course of this questioning; and (3) a risk of ill-treatment through performing military service.

30. In relation to each of these general categories, Mr Yeo argued that the appellant's personal characteristics give rise to additional risk factors. Those he identified under the first general factor were that:

(i) the appellant would be returned involuntarily with no Eritrean identity or travel documents;

(ii) she would have no way of proving that she did not leave to avoid military service and her questioners or interrogators may not believe her explanation, for which she has no evidence;

(iii) her failure to return to Eritrea earlier and voluntarily would be interpreted as disloyalty: the skeleton argument stated: '[T]he appellant would have severe difficulty explaining her actions without reference to her actual reasons, which are her concern about her father's political affiliation and her objections to military service on religious and ethical grounds';

(iv) she objects to serving in the military on religious and ethical grounds relating to Eritrean government policy – these may come out under interrogation or intense questioning.

31. In relation to what he called risk irrespective of any perception as a draft evader, Mr Yeo argued that the personal characteristics of the appellant which put her at additional risk were:

(i) return without full travel documents;

(ii) no identity documents, with no way of proving her Eritrean nationality;

(iii) limited grasp of Tigrinya, one of the main languages;

(iv) problematic cultural attitudes she has picked up in the UK, a free democracy, e.g. lack of deference, believing in freedom of expression;

(v) being an unmarried young woman without any male or other relatives to support her or to complain on her behalf: 'Sexual abuse of conscripts is widespread and the appellant would be at additional risk because of the perception of their impunity her isolation would give to potential persecutors";

(vi) in the course of interrogation the appellant's attendance at ELF meetings and at the December 2004 demonstration may also come to light.

32. The third general factor, which concerned risk of ill-treatment through performing military service, was said to lead to increased risk for this appellant, by virtue of the following personal factors: she is a young unmarried woman without family; she will stand out from other conscripts by virtue of her time in the UK and the knowledge, education and cultural values she has acquired here; she is someone who is opposed to military service and is a Muslim who is also opposed to the Eritrean government and police: 'if anyone is likely to be singled out for ill-treatment, it is her'.

The expert reports

33. Before turning to examine and assess the general situation in Eritrea, we need to make some comments about the evidence of the four country experts placed before us. It will become clear in what follows that we draw heavily on these reports as sources of *information* without fully accepting their own *evaluation* of that information. As the Tribunal has said on many occasions, we have to make our assessment by reference to the tests contained in the Refugee and Human Rights Convention, which our jurisprudence has summarised as being one of real risk. In our view these reports do not make their assessment by reference to the same tests. Furthermore, we note that on several key issues the evidence on which they base their opinions is much the same as that which has been placed before us; and their opinions rely on inferences, not on any direct evidence.

34. The first report in the bundle is from Michael P D Ellman, an international human rights consultant and Officer of the Board of the Federation Internationale des Ligues des Droits de l'Homme. Dated 14 October 2005, his report is written on the basis that the appellant's account is true, which reduces its value to us since there was no challenge in the grounds of appeal to the Adjudicator's (largely adverse) findings. There are several findings made in his report for which no explanation or reasoning is given. His report also lapses at a key point into exaggeration: his final sentence reads: "It is difficult to think of a case of anyone who would have more reason to fear persecution by reason of her race, her religion or her sex (as an unmarried Muslim woman) were she to be returned to Eritrea and admitted to the country". With respect, the background materials indicate that even taking the appellant's case at its highest there are many Eritrean asylum seekers in more difficult circumstances than this appellant.

35. The next report is from Dr David Pool from the Department of Government, University of Manchester. His research and political interest in Eritrea have taken him to that country on several occasions. He has published a variety of academic articles on the Middle East and Africa. His succinct report of 14 October 2005 covers similar ground to the one he produced for the appeal in ***IN***: see paras 24-25 of that determination. However, as regards the position of women we note that his view is at odds with the other country experts: the first line of his report appears to suggest that married women (along with the medically unfit) have been exempted from military service since 1994 until the present. (This feature of his evidence as given in an earlier report of his was the subject of comment in the reported Tribunal case of ***HF (married women – exempt from draft) Eritrea [2005] UKIAT 00140)***.

36. The third report in the bundle is by Dr June Rock who is a freelance consultant in development economics, specialising in conflict, environmental, food and livelihood security with some 20 years applied

research and policy experience in the Horn of Africa. She too has visited the Horn of Africa region numerous times. She is presently under contract to the Swiss Peace Foundation as a country expert providing regular reports on conflict indicators for Ethiopia and Eritrea. In a report dated 13 October 2005 she states that she has no personal knowledge of the facts of any specific individual cases involving an Eritrean returnee of conscription age who fled the country in early childhood; nevertheless she considers that indiscriminate treatment of returnees as evidenced by the fate of the Maltese and Libyan returnees indicates that all returnees of eligible age will be perceived as draft evaders irrespective of age, gender and personal history.

37. Finally there are the reports and accompanying update letter from Dr John Campbell of the School of Oriental and African Studies. They include a lengthy report of 24 January 2005 which we understand was before the Tribunal in ***IN***: it relates to a different appellant but was produced in ***IN*** and now before us with his permission. This report addresses a range of issues concerning the nature of military service in Eritrea and the Government's treatment of draft evaders as well as matters relating to citizenship. A second report from Dr Campbell dated 31 January 2005 addresses issues relating to the punishment experienced by draft evaders and deserters and whether it is possible to draw a meaningful distinction between different classes of evaders/deserters. Paragraph 11 appears to endorse the surprising proposition that the Eritrean Government views its entire population within the eligible age range as draft evaders. We find this endorsement reduces the weight we can attach to his judgment, since it would entail acceptance that a very high proportion of the population of Eritrea is at real risk of serious harm, a much wider proposition than he argues for elsewhere in his reports. So far as his assessment of return issues is concerned, his reports illustrate, we think, that even experts with great knowledge of Eritrean history and politics find it very difficult to ascertain precisely what happens to persons who return individually and are driven as a result to rely very much on indirect inference.

38. As regards Dr Campbell's update letter of 10 October 2005, we quote almost all of it in the body of this determination.

The general situation in Eritrea

39. The Tribunal heard the case of ***IN*** in early February 2005. We have now to consider the significance of the evidence placed before us at a hearing in late October 2005 regarding recent developments in Eritrea insofar as it impacts on issues of risk on return. We are grateful to Mr Yeo in particular for adducing recent materials which we list in the Appendix.

40. Mr Yeo has argued that the overall effect of these materials is to show that things are getting worse: 'The key reason for deterioration appears to be heightening tension with Ethiopia and the government's desire to exercise greater control over the population'.

41. It is clear that there has certainly been no general improvement in the general country situation in Eritrea and that in certain respects the situation has deteriorated. The ruling People's Front for Democracy Government continues to operate a one-party state. No opposition activity or criticism is tolerated and no independent non-governmental organisation or 'civil society' is allowed. A Special Court continues to convict defendants in secret trials without defence representation or the right to appeal. There are ongoing tensions with its neighbours, Ethiopia and Sudan: the government continues to support Ethiopian armed opposition groups fighting in Ethiopia as well as Sudanese armed opposition groups. There is a continuing border dispute with Ethiopia which the UN Security Council fears could result in a new war. In an update letter of 10 October 2005 Dr John Campbell states that since January 2005 "the situation has deteriorated". He then summarises matters as follows:

"1. The human rights situation has worsened with increasing numbers of people being arrested at the university, in churches, or on the street. These individuals have been detained without charge and are kept in secret locations.

2. Since August, the Government has attempted to bring influence to bear on the international community:

(a) In August the Government told the US that it could no longer operate its aid program in the country, despite the fact that there is a major food shortage and the US is the country's largest food aid donor. The order is related directly [to] the US criticism of the political situation.

(b) In August the authorities ordered the UN Peace Keeping force which monitors the border between Eritrea and Ethiopia to cease the flights of helicopters. The Government apparently believes that the international community has not put sufficient pressure on Ethiopia to resolve the dispute.

(c) The above move prompted the UN Security Council to warn both Eritrea and Ethiopia against reigniting the border war, unfortunately the UN`s warning seems to have prompted a statement to the UN by Eritrea that it would defend its territorial integrity.

I am forced to conclude that the authorities in Eritrea continue to pursue narrow political interests, namely staying in power, at the expense of its own citizens and in breach of its own draft constitution. The situation remains tense in the country, individuals suspected of evading conscription and indeed their families – members of whom will have previously served in the armed forces – are being arrested without warrants, and held incommunicado in secret places of detention. Furthermore, it is clear that the unresolved border war with Ethiopia, which the Government is partly responsible for, is being used as an excuse to maintain conscription and to continue in power."

Military service

42. So far as developments affecting military service go, we would also agree that the position has worsened somewhat from what it was at the time of ***IN***.

43. According to Amnesty International in a July 2005 Urgent Action report, there was a prison break-out in early June 2005 in which 161 conscripts detained 'for military offences' at Wia army camp were killed by armed guards. Amnesty International has reported that also in June 2005 there was an arrest of 250 wedding guests attending a Protestant Christian wedding. 129 of them were imprisoned under severe conditions. Of these 121 had been identified as having not completed their military service and had been transferred to Wia military training centre. Amnesty International, Voice of America and exile websites also highlight a mass round-up commencing in July 2005 of 800 people in the southern Debub region. These are thought to have targeted the families of those of military service age who had left Eritrea in the past few years without exit visa or who had failed to report for national service since 1994 or who had not attended the compulsory final school year located at Sawa military training camp or who had absconded from the army. Those arrested are said to be detained in harsh conditions and at risk of torture or ill-treatment. A Reuters News article of 23 July 2005 headed 'Eritrea rejects claims of mass arrests' juxtaposes reference to a government official denying that round-ups had taken place and an unnamed diplomatic source from Asmara confirming the round-up had taken place. The same article states that 1 in 10 Eritreans are conscripted or serving in the army.

44. A further Reuter News article of 13 August 2005 describes the effect of an estimated 300,000 Eritreans in national service being to reduce the workforce available for food production. A Missionary Service News Agency (MSNA) (Italy) item of 14 September 2005 states that at least 2,000 Eritreans have abandoned their nation since the start of 2005, fleeing to neighbouring Ethiopia claiming to be victims of persecution. A local World Food Programme representative is quoted as saying that some 200-300 arrived each month in Ethiopia, being for the most part young people between the ages of 18 to 30 that refuse to do their military service or flee claiming to have been the subject of political repressions. For the moment they are sheltered in a refugee camp and 60km from the border between the two Horn of Africa nations.

45. Further light is shed on the current situation by the reports from the four country experts. Michael P.D. Ellman, an international human rights consultant, confirms in his 14 October 2005 report that conscription was introduced for men and women between the ages of 18 and 40 initially for a period of eighteen months, later extended to two years, and finally 'indefinitely'. Everyone is expected to enlist at 18; schools are required to supply lists of their pupils for this purpose – and the last year of school is meant to be spent at a military training camp. Anyone who does not enlist is considered as a draft evader and faces ill-treatment:

> ‘Children from the age of 14 (or according to some reports from the age of 10) are refused exit visas to leave the country in case they do not return.’
>
> ‘Draft evaders’ includes anyone who has evaded conscription, whether by failing to register, deserting, or (having previously served) failed to answer a further call...’

46. Drs Pool, Rock and Campbell make similar comments. As regards the June 2005 prison breakout, Dr Rock states that there are unconfirmed reports that as many as 161 conscripts detained at Wia army camp were killed. Dr Rock also draws attention to the Amnesty International reference in its report of March 2004 to a ‘pattern of sexual violence’ affecting female conscripts, including rape and the fact that ‘female recruits were selected by commanders for sex under duress, through being threatened with heavy military duties or being sent to the battle front during the war, or to a remote or harsh posting, or being denied home leave.’ Dr Campbell states that:

> ‘Estimates vary as to what percentage of the national population has served in the armed forces ranging from 6% to 35%. The latter estimate probably reflects the extent of military call up from 1998’.

47. Three other passages from Dr Campbell`s 24 January 2005 report are pertinent here:

> ‘While initially denying that it conscripted children below the age of 18, [the] government admitted that this may have occurred as a result of the absence of systematic birth registrations. Given the scale of recruitment and the creation [of] ‘military schooling’ for youth, it is not clear whether [they] are or are not conscripting school-age children. Thus in addition to using police sweeps, roadblocks and house to house searches for deserters and draft evaders, the government also refuses to issue exit visas to adolescents and children as young as ten years of age apparently on the grounds that they were approaching the age of eligibility for national service [US State Department Report 2003].
>
> What categories of person are subject to conscription and who is exempt? The age for conscription has remained unchanged at 18-40 years, as has the penalty for attempting to evade conscription, i.e. 3 years imprisonment. However in 2002 the terms of national service were extended indefinitely and individuals who had already served and been discharged were required to re-enlist. The effect of the requirement on ex-soldiers to re-enlist would

> significantly raise the age of conscription (perhaps beyond the age of 50 which is final year for serving in the reserves), however no statistics are available.
>
> Among these who were initially exempt from national service were 'mothers', certain categories of workers, EPLF veterans, the disabled, those with registered medical certificates and students. However, in 2001 marriage no longer exempted young women from military service, a situation which is said to have pushed some into having children in order to be exempted. I have been unable to find specific information concerning which 'workers' are exempt though this may apply to civil servants, teachers or health workers (if conscripted these individuals work under that authority of the military and for low military wages). There is no information concerning how the disabled and those with medical problems are assessed, nor what conditions are recognised as the basis for claiming exemption. Final year (11th grade) high school students and university students are required to do summer work service (often in harsh conditions, several students died from heat prostration in 2001 while others were beaten). In 2003 an 'extra final year' was added to the school curriculum which requires all students to attend military-style training at Sawa military base; at the end a small number are selected for higher education (where they have a temporary reprieve from military service until they graduate) while the rest go to national service.

48. Dr Campbell's report also sets out information on the treatment of female conscripts which he says is limited but tends to reflect the view of Amnesty International that there is a pattern of female conscripts are subject to sexual abuse. He notes that the May 2004 Amnesty International report ('You have no right to ask') says that due to 'violent confrontations by Muslims, young Muslim women are no longer forcibly conscripted'. In fact the Amnesty International report in question is slightly more qualified. It states:

> 'Women played an important part in the EPLF's liberation struggle in both military and civilian roles and there was an official commitment to gender quality in the EPLF and its social policies. This was reflected in the terms of the national service after independence, which was established for men and women equally, although there was considerable resistance to female recruitment from Muslim communities, especially among the Afar of Dankalia region on the Red Sea coast. Resistance on the grounds of religious belief, cultural traditions and family honour, or protecting women from sexual

harassment and violence in the army sometimes led to violent confrontations during conscription round-ups. The government appears to have subsequently stopped forcible recruitment of young Muslim women in these areas.

There was an official statement at the end of 2003 that women were to be demobilised but this has reportedly not been implemented.'

49. One further item of relevance to the situation as regards exit visas and military service-related matters, including the position of women of draft age is the US State Department Report of February 2005 (covering 2004). Section 2 d on Freedom of Movement states:

> "Citizens and foreign nationals were required to obtain an exit visa to depart the country. There were numerous cases where foreign nationals were delayed departure for up to 2 months, or initially denied permission to leave, when they applied for an exit visa. During the year, the Government announced that citizens who had left the country without exit visa would be allowed to return to the country without legal consequences; however, at year`s end, it was unclear if this provision had been implemented.
>
> Citizens of national service age (men 18 to 45 years of age, and women 18 to 27 years of age), Jehovah's Witnesses ... and others who were out of favour with or seen as critical of the Government were routinely denied exit visas. Students who wished to study abroad often were unable to obtain exit visas. In addition, the Government frequently refused to issue exit visas to adolescents and children as young as 5 years of age, either on the grounds that they were approaching the age of eligibility for national service or because their diasporal parents had not paid the 2 percent income tax required of all citizens residing abroad. Some citizens were granted exit visas only after posting bonds of approximately $7,400 (10,000 nafka).
>
> In general, citizens had the right to return; however citizens had to show proof that they paid the 2 percent tax on their income to the Government while living abroad to be eligible for some government services on their return to the country. Applications to return from citizens living abroad who had broken the law, contracted a serious contagious disease or had been declared ineligible for political asylum by other governments, were considered on a case by case basis".

50. As regards women, this same 2005 report states:

> "The law requires that women between the ages of 18 and 27 participate in national service (see Section 6c). During the year efforts to detain women draft evaders and deserters generally decreased compared to previous years. According to reports,

some women drafted for national service were subjected to sexual harassment and abuse.

During the year hundreds of women were demobilised from national service due to age, infirmity, motherhood, marriage, or needs of their families. Once demobilised women were not required to serve in a government ministry".

Amnesty International's risk categories

51. It is in order that we set out something more about the Amnesty International materials since these are the most detailed to hand and because its May 2004 report includes a summary of its view of current risk categories. This report was before the Tribunal in ***IN***, but we need to examine it more closely in order to address certain matters raised by Mr Yeo. In a section headed 'Eritrean asylum seekers at risk', it states:

> "Amnesty International considers the following categories of people would be particularly at risk of arbitrary detention (some as prisoners of conscience who have not used or advocated violence), torture and ill-treatment or possible extra-judicial execution:
>
> * members and supporters or suspected supporters (at all levels, not just those holding official positions) of the left or other groups in the armed Eritrean National Alliance;
>
> * members and supporters of new political opposition groups such as the EPLF-DP (now the EDP) or the 'democratic reform' movement in general;
>
> * journalists who have criticised the government;
>
> * national service conscripts and members of the armed forces deserting from the army;
>
> * people evading and refusing conscription on account of their opinions or beliefs;
>
> * members of persecuted minority Christian religions (especially Jehovah's Witnesses);
>
> * Muslims suspected of links with armed Islamism or ELF opposition groups – even without substantive evidence of such involvement;
>
> * people who had previously been imprisoned for political reasons and ignored threats to desist from opposing the government;

* anyone known or suspected to have criticised the government or the President;

*anyone suspected of disloyalty to the government – even the act of applying for asylum abroad would be regarded as evidence of disloyalty and reasons to detain and torture a person returned to Eritrea after rejection of asylum.

In addition, two categories of Eritrean affected by the war and continued tensions between Eritrea and Ethiopia would be at risk of human rights violations if forced to return to Eritrea:

* those who wished to remain in or return to Ethiopia as Ethiopian citizens (after living there for all or most of there lives and having no ties to Eritrea) but [who] were *en masse* denied this by Ethiopia and stripped of their Ethiopian citizenship;

* those of mixed Ethiopian-Eritrean families (of which there are many): families were broken up by the expulsions from Ethiopia during the war, where the Ethiopian spouse/parent stayed in Ethiopia in fear of the risk of moving to Eritrea, or where marriage to an Ethiopian or someone of part-Ethiopian descent might lead to their being refused entry to Eritrea, discriminated against in Eritrea or suspected of having Ethiopian government links; some had no ties with Eritrea and did not wish to become Eritrean citizens.

In early 2004 the Ethiopian government issued new regulations for the tens of thousands of Eritreans still remaining in Ethiopia. These regulations would allow them Ethiopian citizenship if they were not Eritrean citizens, or would grant them permanent non-citizen residence status in Ethiopia as well as travel documents and business permits, except for those who were outside Ethiopia for over a year. The latter would be treated as non-citizens for the purpose of government employment but otherwise with the same access to education and health facilities as Ethiopian citizens. It remains to be seen how these regulations will be implemented.'

Our Conclusions

52. In reaching our conclusions we have had regard to a number of items of evidence that were not before the Tribunal in ***IN***, including the October 2005 expert reports and the February 2005 US State Department. In the light of the background evidence, we shall first of all address the three general risk factors identified by Mr Yeo in this case -

factors, we note, which are raised in more or less similar form in many appeals lodged by asylum-seekers of Eritrean nationality.

Risk to Returnees perceived as draft evaders

53. It was a central finding of the Tribunal in ***IN*** that persons who are perceived as draft evaders or deserters would be at risk of persecution or treatment contrary to Art. 3 on return: see para 44(i). We reaffirm that finding. From the evidence which has been submitted to us concerning the apparent killing of 161 conscripts who attempted a prison break-out from Wia Army Camp in June 2005 and concerning the imprisonment also in June 2005 of 121 wedding guests identified as not having completed their military service, it is clear that the current regime remains committed to enforcing its compulsory national service system in a highly punitive way. The targeting of families in the southern Debub region appears to indicate an extension of repressive measures designed to deter families from facilitating efforts by their draft-age children to avoid national service. The draft plainly continues to be used as an instrument for enforcing obedience to the institutions and ideology of the ruling People's Front for Democracy. An extraordinary high percentage of the population – around 10% – remain in national service. This is in contrast to the situation prior to 1998 when only 3% of the population was in national service. The official age band of 18-40 appears in practice to extend sometimes to 50, possibly even beyond. The ruling party seems committed to the continuance of its current policy on national service, on a scale well beyond that which appears necessary in view of the continuing tense border dispute with Ethiopia and that which appears warranted in terms of the level of food production required to avoid shortages.

Risks to Returnees

54. Mr Yeo's second general category was returnees "irrespective of whether they would be perceived as draft evaders". It seems to us that he can only mean here to refer to the issue of risk to returnees generally. In any event the issue of risk to returnees generally is one we need to address, since it is raised in one shape or form by the analyses contained in several of the country reports before us and is relied upon in a great many asylum appeals brought by nationals of Eritrea. Given two high profile return-related incidents that have occurred in Eritrea in recent years and the country's generally poor human rights record, it is quite understandable that this has been and continues to be raised.

55. The appellant's case in ***IN*** was not argued on the basis that there is a real risk for all returnees: see para 34. However, in order to reach conclusions on current risk categories, the panel in that case did find it necessary to advert to the issue and eventually to conclude at para 44 (vii) that the evidence did not establish a risk for returnees generally. That it eventually found it appropriate to make a finding on this issue though not one specifically argued before it makes perfect sense, since, potentially, if a risk were found to exist for returnees generally, all persons who were nationals of Eritrea and who had asylum claims would be entitled to succeed in their appeals and there would be no point in going on to attempt identifying narrower risk categories.

56. In ***IN*** the Tribunal had before it considerable evidence relating to the fate of the 223 persons whom Malta had returned en masse to Eritrea in 2002 (see paras 19-20), and the fate of the 111 persons returned from Libya in July 2004 (see paras 21-22) and the case of several individuals returned from Djibouti (see para 23).

57. The background evidence before us also covers these incidents in great detail. The Amnesty International report of 25 May 2004 notes that some of the 232 Eritreans who were forcibly returned to Eritrea from Malta in 2002 continued to be detained incommunicado without charge on the main Daklak Island in the Red Sea or at other military detention centres. There is no mention in the evidence before us of any further incidents of mass return.

58. We can see no reason to take a different view on this issue than the Tribunal did in ***IN***. Essentially the Tribunal's view continues to be that although the Maltese and Libyan mass return incidents are particularly serious, we do not consider they are sufficient to establish that there is a real risk of serious harm to returnees generally. Most returns to Eritrea continue, as far as we are aware, to take place on an individual or family basis, not on a mass basis. Given the extent to which human rights bodies have been able to obtain information about what is happening inside Eritrea, despite the regime`s efforts to suppress dissent and reportage of abuses, we consider that if individual returnees were routinely encountering serious harm or ill treatment, that fact would have been identified and documented to a greater or lesser extent.

It is right that we take note here that in its May 2004 report Amnesty International did list amongst its sub-categories of "Eritrean asylum seekers at risk":

> "Anyone suspected of disloyalty to the government – even the act of applying for asylum abroad would be regarded as evidence of disloyalty and reasons to detain and torture a person returned to Eritrea after rejection of asylum".

60. It is also right to note that a similar view is expressed in the country report from Michael Ellman when he states that: "The fact that she has claimed asylum in the UK, and does not want to return to Eritrea, will put her under considerable suspicion, and almost certainly result in her being regarded as a draft evader". Dr June Rock also seems to suggest it may be a relevant factor when she writes:

> "Certainly the fact that she has claimed asylum in the UK and clearly does not want to return to Eritrea will only increase the level of suspicion to which she would be subjected if returned there and is thus one reasons why she would now almost certainly be viewed by the Eritrean authorities as a draft evader".

61. However, neither the Amnesty International report nor Michael Ellman nor Dr Rock cite any specific evidence in support of this view and we do not think that there is sufficient substantiation for it in the background

materials read as a whole. (Nor is it clear to us why, if Amnesty International believed there was such a broad risk category, they placed it in a list of categories which plainly only affect relatively limited numbers of persons.) We note too that the latest US State Department report indicates that the Eritrean authorities would treat persons who have been declared ineligible for political asylum by other governments on a case by case basis.

Risk to Returnees of Eligible Draft Age

62. It seems to us that the category Mr Yeo principally wished to identify as a risk category is less widely drawn than all returnees or returnees generally. It is those of eligible draft age.

63. Before deciding whether we accept there is such a risk category, we need to clarify (more than was done in ***IN)*** its ambit. What we set out immediately below is subject to qualification when it comes to female returnees of eligible draft age.

64. We are prepared to accept on the basis of the background evidence before us that in the current Eritrean context those who would be perceived as of eligible draft age cover a large section of the population. So far as the control systems used for Eritreans *in Eritrea* are concerned, it would seem that the category of those of eligible draft age currently covers nationals aged from 18-50 and that, in the case of those seeking to exit the country, this can be extended to cover persons aged 5-50. Whilst outside the exit context there is some reference to persons under 18 (child soldiers) and persons over 50 being required to serve, it is not suggested that this is a common occurrence.

64. We also think that when it comes to considering how the authorities will regard returnees, they are likely to place significant focus on whether such persons *left* Eritrea when they were *approaching* the age of 18 or had recently passed that age. We say this because the background evidence indicates that there is considerable attention to the need to ensure that persons below the age of 18 are not able to avoid their future national service obligation by exiting the country. We remind ourselves here of what was said by Michael Ellman in his report (it is echoed by the other country experts):

> "Children from the age of 14 (or according to some reports from the age of 10) are refused exit visas to leave the country in case they do not return".

The latest US State Department report even suggests that children as young as five can be refused exit visas.

However, what we have to focus is how the Eritrean authorities will perceive persons *returning to Eritrea*.

66. However, it seems common sense to us that in relation to nationals returning to Eritrea, the authorities would not routinely perceive persons below the age of 18 as being draft evaders, since they would be

presenting themselves as nationals back in the country in advance of the formal requirement to register. Since it is not suggested that persons over 50 are commonly required to do national service, we think that the effective age-range which is likely to be in the minds of the authorities who deal with persons returning to Eritrea is, therefore, 18-50.

67. Given the relatively low life expectancy of Eritreans, which we understand to be 60 or lower, the category we are looking at appears to comprise more than half of the entire male population as well as a significant percentage of the female population.

68. Mr Yeo submitted that persons who are perceived as of eligible draft age would face interrogation or intense questioning on return. That is attested to by all of the expert reports. Despite the lack of any direct or specific evidence on this issue, we accept this submission. In our view it fits with everything we know about the current Government`s obsession about ensuring that those of eligible draft age perform their military service as and when required.

69. Mr Yeo submitted further that the interrogation procedure adopted for returnees of eligible draft age is likely to be accompanied generally by detention and ill-treatment. This submission is supported by the country expert reports. However, it is clear that the latter rely heavily (as did the January 2004 UNHCR Position paper, which has been considered by the Tribunal in several country guidance cases) on what is known to have happened to the Maltese and Libyan returnees. Given that these were both incidents of *mass returns*, in which the authorities were plainly intent on demonstrating a clamp-down on persons perceived as having fled Eritrea to avoid the draft, we do not consider it justified to infer from them that the same approach is taken to the potentially very large category of persons *returning individually* who are simply of eligible draft age. It makes sense, as we have said, to accept that such persons would face interrogation. But it does not make sense, on our view, to infer that the authorities would seek to detain or ill-treat persons at this stage. Given the great importance the Eritrean authorities attach to their *exit visa system* as a means of screening in order to detect potential draft evaders, we consider it reasonably likely that their *on entry control system* would reflect similar objectives. Hence we do not think they would take steps to detain or ill treat returnees until *after* they had established such matters as whether the individual concerned had left with an exit visa, whether he or she had already done national service or whether he or she had obtained an exemption. In our view it defies common sense to suggest otherwise since we are told that those granted exit visas include EPLF veterans and persons closely connected with the leadership. A system which meant that returnees of draft age were routinely subject to ill treatment would entail – improbably- mistreatment even of persons highly favoured by the current Government.

70. We consider that in such circumstances the background evidence viewed as a whole calls for a more contextual approach, similar to that adopted by the Tribunal in ***IN*** at para 44 (ii), when it summarised matters as follows:

"(ii) 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: see paragraph 14 of AT. If someone has been eligible for call-up over a significant period but has not been called up, then again that 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. (emphasis added)"

71. But in the light of the further evidence and submissions and our own further reflection on these, we consider there is a need for three modifications to the guidance given in ***IN*.**

72. Firstly, for reasons already adumbrated, we consider that in the context of return, the age range for those considered to be of eligible draft age will be 18- 50 (but see below on the position of female returnees). Within that age-band there is a real risk that persons will be perceived as draft evaders *unless*:

(i) they can be considered to have left Eritrea legally. Regarding this subcategory, it must be borne in mind that an appellant's assertion that he left illegally will raise an issue that will need to be established to the required standard. A person who generally lacks credibility will not be assumed to have left illegally. We think those falling into the "left legally" subcategory will often include persons who are considered to have already done national service or to have got an exemption and persons who have been eligible for call-up over a significant period but have not been called up. Conversely those falling outside this subcategory will often include persons who left Eritrea when they were approaching draft age or had recently passed that age; or

(ii) they have not been in Eritrea since the start of the war with Ethiopia in 1998 (that being the year when the authorities increased dramatically the numbers required for call up and took the national service system in a much more authoritarian direction) and are able to show that there was no draft-evasion motive behind their absence. This subcategory reflects our view that the authorities would know that persons who left Eritrea

before the start of the war would not have had draft evasion as a possible motive: we will return to this point when assessing the appellant`s particular circumstances; or

(iii) they have never been to Eritrea and are able to show that there was no draft-evasion motive behind any absence of theirs since 1998 when the war with Ethiopia began. In relation to this subcategory, we bear in mind that only nationals of Eritrea are required to do national service and that if someone has not yet obtained travel documents based on his (her) being accepted as an Eritrean national, there is no reason to think that the Eritrean authorities would see him (her) as having evaded military service at a time when he (she) had not formally acquired or been recognised as having Eritrean nationality. To this extent, we agree with the conclusions set out in **TA (draft evasion-citizenship-evidence required) Eritrea [2005] UKIAT 00155.**

73. In general, therefore, a person aged between 18-50 (but see below on female returnees) is likely to be able to show he will be perceived as a draft evader unless his situation falls into one or more of the above three subcategories.

74. However, in our view it remains the case that in relation to each of the risk categories we have identified that assessment must depend on the particular circumstances. We cannot emphasise enough the need for specific findings on a person`s particular history and circumstances. It may be, for example, that a person who is of eligible draft age will not need to establish very much more, at least if her or she is still relatively young: it seems to us that the focus of the repressive efforts of the authorities has principally been on persons round draft age or still in their 20s. In the specific case dealt with in ***IN*****,** for example, the Tribunal made a specific finding that in the particular circumstances of the appellant's case he was not someone who could be said to fall into a category which would mean the authorities would not perceive him as a draft evader. However, we think something more must always be shown. It would be quite wrong, for example, for someone who in fact has obtained an exemption from military service, to succeed simply on the basis that he has shown he was of eligible draft age.

Risks to females of eligible draft age

75. In ***IN*** the Tribunal found at para 44 (iv) that: "There is no justification on the latest evidence before the Tribunal for a distinction being made between male and female draft evaders or deserters. The risk applies equally to both".

We do not think there is any justification in departing from the guidance in ***IN*** arising from the risk to women of eligible draft age of sexual abuse. The furthest that any of the descriptions in the background materials go is what is set out in the May 2004 Amnesty International report, which refers to there being a pattern of such abuse. In none of these materials, however, is it suggested that such a pattern is

consistently or frequently occurring. The only quantitative term used is "some". Because the background materials fall short of identifying a consistent pattern of gross, mass or frequent sexual abuse of female conscripts we remain of the view, therefore, that that they do not establish a real risk of such abuse facing women conscripts generally.

76. Nor (subject to one caveat) do we think there is a need to modify the guidance in respect of the age requirements. As the Tribunal has noted on previous occasions (e.g. I the previous country guidance case, **MA (Female draft evader) Eritrea [2004] UKIAT 00098**) the background materials have not been wholly consistent on the question of female age bands and that continues to be the case. On the one hand, the US State Department Reports of February 2003 and February 2004 state that the age band for women is 18-27. That is reiterated in the latest report of February 2005. On the other hand, UNHCR reports and the Home Office CIPU (now COI) reports on Eritrea continue to state the age-range as 18-40 by reference to Art 8 of the Eritrean Proclamation on National Service No.82/1995: see for example the Home Office COIS report, October 2005 para 6.90. However, there is nothing to indicate that the extension of the eligible age to 50 (and sometimes beyond) has had any significant application to women.

77. We see a need to clarify more than was done in ***IN*** that women aged 18-40 are not as likely to have to perform military service as men. From the expert evidence we have before us it would seem that there are important differentials. First of all, estimates such as they are suggest that the ratio of women to men in national service is 35% - 65%: that at least is the most recent ratio given by Dr Campbell. Secondly, there have been policy fluctuations regarding married women. Prior to 2001 marriage exempted young women from military service. That then stopped. However, the government is reported in 2003-4 to have stopped forcible recruitment of young Muslims from Muslim communities, especially among the Afar of Dankalia region on the Red Sea Coast (May 2004 Amnesty International report) and according to the US State Department report for February 2005 during 2004 "hundreds of women were demobilised from national service due to age, infirmity, motherhood, marriage or needs of their families. Once demobilised women were not required to serve in a government ministry".

We think, therefore, that women who would potentially be at real risk of being perceived as draft evaders will be confined to those who are non-Muslim females aged between 18-40 who are not married or who are not mothers or carers. Furthermore such women will only be actually at real risk of being perceived as draft evaders if their circumstances do not bring them within one of the three subcategories identified in para 72 above.

Risk to those with conscientious objections to military service

78. Thirdly, we consider that there is a real risk of persecution or treatment contrary to Art 3 for those with conscientious objections to military service. The point we make here is not that conscientious objection in

itself gives rise to a real risk; that it does not was settled by the Court of Appeal and the House of Lords in ***Sepet and Bulbul [2001] Imm AR 452(CA); [2003] 1 WLR 856***. But as Lord Bingham clarified in para 8 of the judgment of the House of Lords in this case, it remains that there is compelling support for the view that refugee status should be accorded "...where refusal to serve would earn grossly excessive or disproportionate punishment...". In the present Eritrean context the nature and extent of a person`s objections to military service are still relevant because of the established fact that the authorities react oppressively to any refusal to perform military service. A judgment has to be made in every case, therefore, as to whether a person`s objections to performing military service are likely to be so entrenched or visceral as to lead them to refuse to do it, even knowing that the likely consequence will be ill treatment. This is a purely factual question. Dr Campbell in his January 2005 report notes that among those who have been consistently harassed and detained for refusing conscription on grounds of conscientious objection are Jehovah Witnesses and members of the so called 'Pentes' (Pentecostal) churches. These examples indicate that for someone to succeed on this basis he or she will usually have to show that non-performance of military service is fundamental to their religious faith or that they hold unusually strong reasons of conscience.

Risk to Persons who undertake Military Service

79. We come to Mr Yeo's third and final general category: risk to persons who undertake military service.

80. As the Tribunal noted in ***IN***, there is a sizeable body of evidence to show that draft evaders and deserters are severely punished and that such punishments are disproportionate to the offence and so constitute serious harm and/or treatment contrary to Art 3: see para 29 with reference to paras 16-28 of that decision. We think that finding remains justified. The further evidence, particularly that set out by Dr Campbell in his 24 January 2005 report, highlights this state of affairs.

81. The Tribunal in ***IN*** did not however, find that mere performance of national service in Eritrea gives rise to serious harm or treatment contrary to Art 3. We are of the same view. Whilst there is evidence indicating that conscripts often face adverse conditions of service, it falls short of suggesting that there is a consistent pattern of gross, mass or frequent violations of the basic human rights of conscripts.

Our findings on the Appellant's particular circumstances

82. We set out the appellant's case in some detail earlier so as to make clear the basis for the conclusions we now go on to make concerning it. The Adjudicator made a number of adverse credibility findings and these were not challenged in the grounds of appeal. However, in addition to more recent country background evidence and reports, we now have before us further evidence from the appellant intended to update her activities in the UK and her current beliefs. We have to consider this evidence in the context of her previous evidence and in the light of the

earlier assessments made of it by Adjudicators Mr Watkins and Mrs Turquet. We have to bear in mind that the appellant is only required to prove her account to a reasonable degree of likelihood or by showing there are substantial grounds for believing it.

83. We are not persuaded that the appellant's latest statement casts any significantly different light on her overall circumstances. Mrs Turquet was prepared to accept that the appellant had taken out membership of ELF in February 2004, but not at the earlier date she claimed (September 2003). Mrs Turquet found that the appellant was not involved at any significant level and that becoming a member was an attempt to boost her asylum application. In reaching these findings she emphasised the fact that the appellant had obtained no evidence from ELF confirming her membership or her activities in the ELF and that, despite one or her two stated reasons for joining the ELF being so they could help trace her father, she had not made any effort to do so. When we turn to look at the appellant's recent statement we note that, notwithstanding these observations of the Adjudicator, the appellant still has not furnished any confirmation from the ELF in the UK as to her membership or her activities. Although she now gives a name of the assistant organiser who is said to effectively run the London branch, there is not even an accompanying statement from him confirming his role or confirming the appellant's claims as to her involvement. In our view the appellant has had ample opportunity before now either to produce corroborative evidence to support her claims about her UK ELF activity or to explain why she has not been able to do so.

84. As for her further remarks about the importance to her of being a member of ELF in the UK, we note that she essentially repeats what she said previously and she does not seek to disagree with Mrs Turquet's finding that she has not sought to make inquiries or have inquiries made about her father. We consider that these remarks take matters no further.

85. The recent statement claims that she attended a demonstration outside the Eritrean embassy in December 2004. Even assuming that is true, we note that on her own account she was not a political activist and did not play any particular role at this demonstration; she simply attended. Whether or not she was amongst those possibly filmed by Embassy staff, we see no basis for considering that such activity on her part would place her at any kind of risk. It is apparent that the current Ethiopian regime keeps a close watch on political dissidents and it is reasonable to infer that such watch is maintained abroad as well as at home. However, we consider that it would make little sense for the Eritrean authorities to take a blanket adverse interest even in persons with no significant level of involvement in opposition groups and no history of political activism.

86. So far as the appellant's mention of joining a group called EHDR-UK (and her inclusion of some background materials relating to this group's aims and activities), we see no reason to think that this should be seen in a different light from her involvement with ELF and in our

view similar considerations will apply to her activity (if any) in relation to this organisation.

87. We are aware that Amnesty International in its May 2004 report specifies among its risk categories "members and supporters or suspected supporters (at all levels, not just those holding official positions) of the left or other groups in the armed Eritrean National Alliance", "members and supporters of new political opposition groups such as the EPLF-DP (now the EDP) or the 'democratic reform' movement in general". However, at least insofar as they relate to the issue of real risk under the Refugee and Human Rights Conventions, we think these categories are more widely drawn than the background evidence justifies. As the Tribunal has noted in ***AN (ELF-RC-low level members-risk) Eritrea CG [2004] UKIAT 00300***, although there is evidence to show the authorities have ill-treated oppositionists of all kinds and at all levels, the main objects of their adverse attention have been prominent members or persons who are active.

88. The appellant's recent statement also seeks to elaborate on her views concerning military service. She points out that whilst she is not opposed to defending her country she cannot agree with the conditions of service and the reasons for fighting. In addition she is strongly opposed to the idea of mixed military service, saying it conflicts with her religious beliefs. She is extremely concerned about the reports of rapes and abuse in the military.

89. As regards this statement we note that it largely reiterates points the appellant made in her SEF statement and points which were before Mrs Turquet.

90. Mrs Turquet dealt very briefly with this aspect of the appellant`s claim, noting at para 25 that in addition to her alleged fear of persecution on account of her father's political opinions, the appellant suggested she had a conscientious objection to military service. Mrs Turquet noted that the previous Adjudicator, Mr Watkins, had found that the appellant was not within the narrow exemptions in ***Sepet and Bulbul*** (then at the Court of Appeal stage)

91. It may be that Mrs Turquet should have said more about this aspect of the appellant's claim but on the evidence before her, she was quite entitled to conclude as she did. The grounds of appeal did not raise any point concerning the significance of the appellant's views about military service. Furthermore, and in any event, we do not consider the appellant has shown she has had or has any conscientious objections to doing military service. She has consistently said she is not opposed to military service as such. Whilst she has consistently said she has concerns about mixed military service, she has not suggested anywhere that she holds fundamentalist beliefs about segregation of the sexes and the description she has given of her activities as a student at Hackney Community College and her involvement with Oxfam and with the Eritrean Muslim Community Association, shows she has been able to cope with mixed sex environments in the context of community and

public life. It is properly not suggested on her behalf that women being involved in military activities is contrary to the Qu'ran. It seems to us that her views essentially amount to a – very understandable - dislike of the idea of having to do military service in the context of the current system of national service operated in Eritrea. In this regard we consider her views are in all likelihood shared by many young Eritrean women – Muslim and non-Muslim - faced with the prospect of having to do military service. In view of our finding that she has no conscientious objections to military service, we are not persuaded that on return, when she finds herself required to perform national service, she would refuse to do.

Our Assessment of whether this appellant is at risk

92. In the light of these findings, we now turn to Mr Yeo's submissions as to risks, based on a combination of general factors and the appellant's particular circumstances.

93. As noted earlier, we remain of the view that persons perceived as draft evaders or deserters would be at risk on return to Eritrea. As noted earlier, Mr Yeo advanced a number of reasons why he considered the appellant in this case would be perceived as a draft evader. We shall consider each in turn and then their cumulative effect.

> "(i) The Appellant is of draft age and [is] being involuntarily returned from abroad with no Eritrean identity or travel documents."

94. We do not consider this is a correct description of the basis on which the appellant will be returned. As the Tribunal found in the Country Guideline case of ***FA (Eritrea-nationality) Eritrea CG [2005] UKIAT 00047***, a national of Eritrea will not be returned to Eritrea unless he or she has been issued with travel documents by the Eritrean Embassy.

> "(ii) She has no way of proving that she did not leave to avoid military service and her questioners or interrogators may not believe her explanation, for which she has no evidence".

95. In submissions on this Mr Yeo highlighted the authoritarian steps taken by the current regime in Eritrea to enforce the system of compulsory military service, even in the face of growing evidence that it is unpopular, and is leading to significant numbers of young people fleeing the country, especially to Ethiopia and Sudan and to Western countries. In such circumstances, he argued, the Eritrean authorities would be highly likely to impute evasive motives to this appellant and to consider that she had stayed out (or her family had kept her out) of the country in order to avoid the draft. However, on the facts of this case, it is first of all clear that the authorities would not think that the appellant's family *left* Eritrea with a view to evading her future national service obligations. The appellant was born on 19 August 1985 and she and her family left when she was one year old. At that time Eritrea did

not exist as an independent state (that did not happen until 1993). According to the May 2004 Amnesty International report, the new EPLF government only issued regulations to make national service compulsory for all citizens in November 1991 and the first intake of national service was not until 1994. Furthermore, it was only with the start of the war with Ethiopia in 1998 that the approach taken by the authorities appears to have become heavy-handed.

96. Mr Yeo suggested at one point that the length of time since the appellant actually left would not help her, since she would have no way of proving it, as she had not travelled to the UK on her own passport and she had not retained any identity documents. However, this overlooks that it is reasonably foreseeable that she would receive a travel document from the Eritrean Embassy and that in order to obtain this she will in all likelihood have to give particulars about where she was born, when she was last in Eritrea and where she has been since. We see no good reason to think that the appellant would not be able to satisfy the Eritrean authorities as to the date on which she left and where she had been since. Her time in Saudi Arabia could be proven if necessary by inquiries of the Saudi authorities. There is nothing in the appellant's evidence to suggest that her parents` stay in Saudi Arabia was deliberately prolonged in order to protect her from having to return to Eritrea or that they (her father after her mother's death) had remained there in defiance of any Eritrean regulations. The appellant's account of her father's ELF involvement was not believed.

97. The same basic particulars as to her history would be available or could be explained to the Eritrean authorities in Eritrea. It is true that she would now be returning as someone who had only recently become of eligible draft age. But given the fact that the appellant left a long time before any current concerns about draft evasion and desertion existed, it is not reasonably likely they would see her as a draft evader.

> "iii)her failure to return to Eritrea earlier and voluntarily would be interpreted as disloyalty: '[T]he appellant would have severe difficulty explaining her actions without reference to her actual reasons, which are her concern about her father's political affiliation and her objections to military service on religious and ethical grounds'.

98. What we have said in response to (ii) largely deals with this point also. The appellant will be able to satisfy the Eritrean authorities as to why she had not returned earlier than she did. In this regard we cannot accept Mr Yeo`s submission that we should find she would be unable to explain her experiences in Saudi Arabia as regards the work done by her father, the death of her mother and her subsequent problems with the Saudi family who employed her father, leading to her decision to come to the UK in September 2001.

99. We do not consider that the failure of a person in the appellant's situation to return earlier would be interpreted as disloyalty. We note here that the appellant had not been found credible in relation to her father's claimed ELF involvement and she has failed to show she has

conscientious objections to military service. In our view what would most matter to the authorities faced with someone in the appellant's position would be that she had now returned, had been able to satisfactorily explain her absence and was not refusing to perform national service.

> "(iv) she objects to serving the military on religious and ethical grounds relating to Eritrean government policy – these may come out under interrogation or intense questioning".

100. These contentions have already been dealt with. This appellant has not been found to have any significant level of involvement in the ELF and she has not shown she has any conscientious objections to military service.

101. We turn next to Mr Yeo's submission that she would be at risk through a combination or general risks she would face as a returnee and her personal characteristics.

> "(i) return without full travel documents".

102. We have already explained that she would not be returned without full travel documents.

> "(ii) no identity documents, with no way of proving her Eritrean nationality".

Similarly, we have covered this point above.

> "(iii) limited grasp of Tigrinya, one of the main languages."

103. We can find no adequate evidence to indicate that a limited grasp of Tigrinya would significantly increase the level of risk to this appellant. Further, it would appear from her own account of her activities in the UK, that she has taken steps to involve herself with the Eritrean community in the UK, something which is likely to have involved her in having to communicate in some way with those who speak Tigrinya.

> "(iv) problematic cultural attitudes she has picked up in the UK, a free democracy, e.g. lack of deference, believing in freedom of expression."

104. The appellant says herself that she is not a political activist. Given the fact that she has involved herself with the Eritrean community in the UK, we do not consider that ideas and values she has acquired in the UK would lead to the authorities back in Eritrea taking an adverse view of her.

> "(v) being an unmarried young woman without any male or other relatives to support her or to complain on her behalf: 'Sexual abuse of conscripts is widespread and the appellant would be at

additional risk because of the perception of their impunity her isolation would give to potential persecutors".

105. It has not been suggested to us, nor is there any concrete evidence to indicate, that there would be a real risk of serious harm *at the point of return* just because she is a young woman. The point Mr Yeo presses here appears to have more force in the context of Mr Yeo's third main category of risk dealing with the conditions of service in the military, which we deal with below.

> "(vi) in the course of interrogation the appellant's attendance at ELF meetings and at the December 2004 demonstration may also come to light."

We have largely dealt with this point already. Given that the appellant's involvement has been at a very low-level, we do not consider, even if such involvement came to light, that it would lead to the authorities viewing her adversely.

106. The third main limb of Mr Yeo's submission was that the appellant would be at risk through a combination of her general position as a female conscript and her particular circumstances.

107. We have dealt earlier with the position of female conscripts generally.

108. So far as the appellant's particular circumstances are concerned, we would accept that her lack of family might slightly increase the risk of adverse treatment in the military on return, assuming it was known she did not have family members able to check up on her or complain if need be on her behalf. But we do not think it would increase it to the level of a real risk of serious harm. We have already found that the background materials fall short of identifying a consistent pattern of gross, mass or frequent sexual abuse of female conscripts. The appellant is someone who has established herself as an independent and self-aware adult, which would make her more likely than otherwise to be able to avoid potential situations of sexual abuse.

109. As we have already explained, the appellant's account of the strength of her involvement in ELF in the UK was disbelieved and it has not been accepted that she holds any conscientious objections to military service.

110. In assessing the appellant's particular circumstances with reference to our analysis of current risk categories, we have also considered their cumulative effect. But we do not think that, even considered cumulatively, they lead us to take a different view than that set out above.

112. For the above reasons we have concluded that (following the finding of a material error of law by the previous panel), the decision we should substitute for that of the Adjudicator is to dismiss the appeal on asylum and human rights grounds.

Summary of Conclusions

113. We may summarise our conclusions as follows:

(a) So far as previous Country Guideline cases on Eritrea are concerned, ***IN*** is now to be read together with the modifications and updating contained in this determination. Our guidance supersedes reported cases dealing with draft-related risk categories which have pre- and post-dated ***IN***.

(b) The Tribunal confirms the view taken in ***IN*** that persons who would be perceived as draft evaders or deserters face a real risk of persecution as well as treatment contrary to Article 3.

(c) The Tribunal continues to take the view that returnees generally are not at real risk of persecution or treatment contrary to Article 3. We do not consider it has been substantiated that failed asylum seekers would be regarded by the Eritrean authorities as traitors and ill treated in consequence.

(d) The Tribunal continues also to reject the contention that persons of eligible draft age are by that reason alone at real risk of persecution or treatment contrary to Article 3.

(e) So far as men are concerned, the eligible draft age in the context of return now appears to have extended to being 18-50 rather than 18-40. So far as women are concerned, we consider, despite some reservations, that we should continue to treat the eligible draft age category in the context of return as 18-40. We do not see evidence that for women it is extended beyond 40. We also think that the category of females within the 18-40 age range who are potentially at real risk of serious harm does not extend to Muslim women or to women who are married or who are mothers or carers. In addition women will still not fall into an actual risk category if their circumstances bring them within any of the three subcategories set out in (f).

(f) Subject to the above, persons of eligible draft age (defined in the context of return as being between 18 and 50 for men and 18-40 for women) are currently at real risk of persecution as well as treatment contrary to Article 3 unless:

(i) they can be considered to have left Eritrea legally. Regarding this subcategory, it must be borne in mind that an appellant`s assertion that he left illegally will raise an issue that will need to be established to the required standard. A person who generally lacks credibility will not be assumed to have left illegally. We think those falling into the "left legally" subcategory will often include persons who are considered to have already done national service, persons who have got an exemption and persons who have been eligible for call-up over a significant period but have not been called up. Conversely those falling outside this subcategory and so at risk will often include persons who left

Eritrea when they were approaching draft age(18) or had recently passed that age; or

(ii) they have not been in Eritrea since the start of the war with Ethiopia in 1998 (that being the year when the authorities increased dramatically the numbers required for call up and took the national service system in a much more authoritarian direction) and are able to show that there was no draft-evasion motive behind their absence. This subcategory reflects our view that the authorities would know that persons who left Eritrea before the start of the war would not have had draft evasion as a possible motive; or

(iii) they have never been to Eritrea and are able to show that there was no draft-evasion motive behind their absence. If they have not yet obtained formal nationality documents, there is no reason to think they will be perceived as draft-evaders.

(g) Nevertheless, even those of draft military age who would not be considered at real risk of serious harm (because they come within (i) or (ii) or (iii)) would still be at such a risk if they hold conscientious objections to military service. Given that the issue here is a factual one of whether a person would refuse to serve even knowing that the likely consequence of refusal is ill treatment, we think the reasons of conscience would have to be unusually strong.

(h) Otherwise, however, the Tribunal does not consider that mere performance of military service gives rise to a real risk of persecution or treatment contrary to Article 3.

(i) We reiterate the point made in ***IN*** that the guidance given here is not intended to be applied abstractly: it remains that each case must be considered and assessed in the light of the appellant's particular circumstances. It may be, for example, that a person who is of eligible draft age, at least if he or she is still relatively young, will not need to establish very much more. However, we think that in all cases something more must be shown. It would be quite wrong, for example, for someone who in fact has obtained an exemption from military service, to succeed simply on the basis that he has shown he was of eligible draft age. Persons who fail to give a credible account of material particulars relating to their history and circumstances cannot easily show that they would be at risk solely because they are of eligible draft age.

Signed:

Dr H H Storey (Senior Immigration Judge)

Approved for electronic distribution

Appendix: Background Materials

UNHCR position paper entitled 'UNHCR Position on Return of Rejected Asylum Seekers to Eritrea' a January 2004
US State Department Report Feb 2004
Amnesty International Eritrea "Thousands of people held at Adi Abeto army prison", 9 November 2004
Amnesty International report ('You have no right to ask') 19 May 2004
CIPU Eritrea Report October 2004
Home Office Country of Origin Services report on Eritrea, October 2005.
United Nations Progress report of the Secretary General on Ethiopia and Eritrea, 16 December 2004
Human Rights Watch: World Report 2005: Eritrea, 13 January 2005
US State Department Report of February 2005 (covering 2004).
UNHCR Position on return of draft evaders to Eritrea, 11 March 2005
CIPU Eritrea Country Report, 10 May 2005.
Operational Guidance Note: Eritrea, Home Office, IND CIPU, Version 3.0 June 2005
Fresh Air, Interview, Michela Wong discusses the history of Eritrea and her book, "I Didn't Do It For You", 5 July 2005 (excerpt).
Amnesty International in a 28 July 2005 Urgent Action report 197/05.
Voice of America News, "Eritrea Reportedly Detains Relatives of Military Service Evaders", 29 July 2005
Reuters News article of 23 July 2005 headed "Eritrea rejects claims of mass arrests"
Reuter News article of 13 August 2005 "Eritrean food security uncertain despite good rains"
Compass Direct (USA). "Prisoners from Eritrea Wedding Round-Up Mocked, Beaten", 23 August 2005.
A Missionary Service News Agency (MSNA) (Italy) item of 14 September 2005