Asylum and Immigration Tribunal

MA (Draft evaders – illegal departures – risk) Eritrea CG [2007] UKAIT 00059

THE IMMIGRATION ACTS

Heard at Field House
On 7 November 2006, 4 January 2007 and
2 March 2007

Before

SENIOR IMMIGRATION JUDGE GOLDSTEIN
SENIOR IMMIGRATION JUDGE JARVIS
MR R BAINES JP

Between

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms V Quinn, Counsel
For the Respondent: Mr J Parkinson (for the hearings on 7/11/06 and 4/01/07)
Mr Y Oguntolu (for hearing on 2/03/07)

1. *A person who is reasonably likely to have left Eritrea illegally will in general be at real risk on return if he or she is of draft age, even if the evidence shows that he or she has completed Active National Service, (consisting of 6 months in a training centre and 12 months military service). By leaving illegally while still subject to National Service, (which liability in general continues until the person ceases to be of draft age), that person is reasonably likely to be regarded by the authorities of Eritrea as a deserter and subjected to punishment which is persecutory and amounts to serious harm and ill-treatment.*

2. *Illegal exit continues to be a key factor in assessing risk on return. A person who fails to show that he or she left Eritrea illegally will not in general be at real risk, even if of draft age and whether or not the*

authorities are aware that he or she has unsuccessfully claimed asylum in the United Kingdom.

3. This Country Guidance supplements and amends to the above extent the Country Guidance in IN (Draft evaders – evidence of risk) Eritrea CG [2005] UKIAT 00106, KA (draft-related risk categories updated) Eritrea CG UKAIT 00165, AH (Failed asylum seekers – involuntary returns) Eritrea CG [2006] UKAIT 00078 and WA (Draft-related risks updated – Muslim Women) Eritrea CG [2006] UKAIT 00079.

DETERMINATION AND REASONS

1. The Appellant, born on 1 November 1976, is a citizen of Eritrea. He appeals against the decisions of the Respondent respectively dated 15 and 23 July 2005, refusing to him the grant of asylum under paragraph 336 of HC395 (as amended) and directing his removal as an illegal entrant from the United Kingdom.

2. The brief immigration history of the Appellant is that he claims to have entered the United Kingdom clandestinely (via a lorry) on 24 January 2005. He claimed asylum and illegal entry papers were served upon him, on the same day.

3. The Appellant's appeal against those decisions came before Immigration Judge Reid, who on 13 September 2005 dismissed the appeal on asylum and human rights grounds.

4. The Appellant obtained an order for the reconsideration of the determination of Immigration Judge Reid, the first stage hearing of which, was heard before a panel comprising Senior Immigration Judges Gleeson and Pinkerton on 14 August 2006, when the Tribunal found that the Immigration Judge had made a material error of law and directed that the appeal be set down for a full second stage reconsideration hearing. The Panel's reasons were as follows:

> "1. The Appellant has been granted review of the determination of Immigration Judge Reid, who dismissed his appeal against the Secretary of State's decision to refuse to grant him asylum and to set removal directions to Eritrea, his country of origin. Reconsideration was granted because Senior Immigration Judge Jarvis considered it arguable that the Immigration Judge fell into material errors of law including failure to make findings or clear findings as to relevant facts, alternatively that she reached findings which were not based on the evidence. Further, it was arguable that the Immigration Judge's finding of lack of real risk of persecution or other serious harm as a deserter from military service was predicated on a fundamental misreading of and misapplication of the background evidence and the guidance in *IN (Draft Evaders – Evidence of Risk) Eritrea CG [2005] UKAIT 00106.* Additionally, there was no consideration of or findings in relation to the risk on return to the Appellant as a failed asylum seeker *per se*.

2. At the error of law hearing, Ms V Quinn of Counsel (instructed by White Ryland Solicitors) appeared for the Appellant. Mr J Gulvin represented the Secretary of State. An allegation in the grounds for review upon which leave was given in relation to alleged interpreter difficulties is not pursued.

3. The Appellant is still a relatively young man and although he has performed his primary [National] service, remains eligible. The Immigration Judge found that he had probably been demobilised, but the objective evidence on demobilisation does not support that finding.

4. The Immigration Judge's determination is based exclusively on the CIPU Country Report evidence but does not examine the other materials in the Appellant's bundle. After examination of the background evidence (particularly pages 80, 20, 117, 137, 165 and 201) of the Appellant's bundle, together with the record of proceedings in which the Immigration Judge was plainly referred to a number of areas of background evidence (including some of those pages) which are not referred to in her determination, Mr Gulvin conceded, and the Tribunal agreed, that there were significant omissions in the fact-finding in relation to the military service evasion element of the Appellant's account. This appeal therefore proceeds to second stage reconsideration by consent.

5. The appeal was therefore set down for full reconsideration by any Immigration Judge other than Mrs Reid."

The Claim

5. The Appellant's claim, at its most extensive as revealed in his various accounts, can be summarised as follows. He was born in Ethiopia of Eritrean parentage and moved with his family to Eritrea in 1977. The Appellant's mother and brothers joined the EPLF.

6. On 20 October 1997 the Appellant was ordered to do his military service and was taken to Sawa Military Training Camp. He completed his training on 3 March 1998.

7. As the Appellant had grown up in a Revolutionary School and spent 2 years teaching '*fighters*' in the Barka region, he was exempted from doing one year's national service as he had already served his country. He simply returned home.

8. In April 1998 the Appellant received emergency call-up papers and was informed he would be sent abroad to study. Initially, the Appellant was sent to Hashferai.

9. The border war broke out between Ethiopia and Eritrea and in July 1998 the Appellant was sent to a naval base to train para-commandos.

10. In October 1998 the Appellant joined the Naval Training Centre in Dongolo.

11. In August 2003 the Appellant graduated as a Naval Officer from the Electrician Department with the rank of sub-lieutenant. The Appellant was working as an engineer on a ship.

12. Following graduation the Appellant was sent to Massawa to work at the Naval Base as an electrician. He was assigned to work in Gedem (near Massawa) at a new building.

13. The Appellant produced photographs of himself in military uniform as an addendum to his statement of 4 May 2005.

14. At interview on 13 May 2005 the Appellant gave his last address in his country of origin as "Navy address: Eritrean Navy, Massawa, Eritrea". He confirmed that he had undergone military service from 20 October 1997 to 3 March 1998. He had received emergency call up papers in April 1998.

15. In that latter regard, the Appellant explained that he did not join the Navy upon call up but three months later. The Navy was not his choice.

16. In the Appellant's statement of 26 August 2005, he was clear that he had never been discharged from the military.

17. In the Appellant's subsequent statement of 7 September 2006 the Appellant explained that he was initially called up for national service in October 1997 and was only required to complete six months military training because he obtained an exemption on the grounds that he had spent two years teaching after independence in 1992. The Appellant had been recalled for national service in April 1998 just before the war broke out in May 1998.

18. At paragraph 4 of his September 2006 statement, the Appellant maintained that no one was discharged from national service unless they were invalided and that he had never heard of anyone being discharged or demobilised nor had he heard of any demobilisation programmes. The Appellant attached a copy of his Naval Diploma to his statement.

19. It was the Appellant's account, that whilst at the Naval base in Massawa, he became a member of the EPLD-DP (now EDP). He passed information about the conditions of the failed asylum seekers who had been returned to Eritrea from Malta and who were said to have been detained on return. Indeed, he passed information on to the EDP about the treatment of prisoners continually, until he left Eritrea.

20. The Appellant claimed that his problems began whilst on a months leave in January 2004. He had become engaged in that month to his girlfriend who was a member of the EPLD-DP. In that same month, the Appellant claimed to have been arrested following his fiancée's arrest; she had apparently given the authorities the Appellant's name. The Appellant was arrested on suspicion of being involved with the

opposition although the authorities did not apparently know the specific party with which the Appellant was involved.

21. The Appellant was detained in Gedem where he claimed to have been ill treated. The Appellant's account was that he became very ill in November 2004 and as a consequence was taken for treatment to the Gerar Hospital in Massawa.

22. The Appellant claimed that on 26 November 2004 whilst in hospital, three people came in gowns and helped him escape. The guard outside the Appellant's hospital room apparently did not see him escaping.

23. The Appellant was taken to Amatere where he remained until 3 December 2004.

24. In the Appellant's statement of 4 May 2005, he described how an agent took him from his home to the Sudanese border. They travelled into the Sudan by foot and camel. On arriving at Agetai on 12 December 2004 they were caught by the Sudanese military. They were accused of being Christians and spies and escorted back to the Eritrean border.

25. The Appellant stated that he then paid another agent who took him across the border. This time they went to the village of Merafit in Sudan, arriving there on 16 December 2004. The Appellant claimed that he left Sudan on 21 January 2005 and went to an unknown country by aeroplane. On 23 January 2005 he travelled to the United Kingdom in a lorry, arriving on 24 January 2005, and claiming asylum on the same day.

26. The Appellant further claimed that since arriving in the United Kingdom, he had been to a meeting of the EDP and was now informing refugees in his area to go to meetings held in London. The Appellant maintained that if returned to Eritrea, he feared he would be imprisoned or killed because he ran away from the hospital and had left the Navy.

27. In his Letter of Refusal dated 15 July 2005, the Secretary of State considered that the Appellant had never been involved with the EDP, was never arrested and detained and that the authorities in Eritrea had no adverse interest in him. It was thus not accepted that the Appellant left Eritrea for the reasons that he claimed and it was considered that the Appellant had no reason to fear returning to the country. As to the Appellant's claim that he would be arrested or killed because he was in the Navy when he left the country, the Secretary of State had noted that an Amnesty International Report dated 19 May 2004 recorded as follows:

> "In November 1991 the new EPLF Government issued regulations to make national service compulsory for all citizens. The first intake of national service was in 1994 and it continued in staged phases since then. Under the revised National Service Regulations of 23 October 1995, national service is compulsory for all citizens aged between eighteen and

> forty years, male and female. It consists of six months of military training (performed at Sawa Military Training Centre near Tessenei in Western Eritrea) and twelve months of '*active military service and development tasks in military forces*' under Ministry of Defence authority. It extends to military reserve duties up to the age of 50. It may be continued under '*mobilisation or emergency situation directives given by the government*' (Eritrea Country Report 5.59)."

The Secretary of State taking this information into consideration, believed that the Appellant had completed his compulsory military service considering that he was called up in October 1997.

28. Moreover, the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status stated that fear of prosecution or punishment for desertion or draft evasion did not in itself constitute a well-founded fear of persecution. In addition the Appellant had not provided any evidence to suggest that he would suffer a disproportionate punishment for desertion or draft evasion for one of the reasons stated in the Refugee Convention. Consequently the Secretary of State did not accept that the Appellant, having been in the Navy when he left the country, had provided a reason for the grant of leave in this country or for granting him international protection.

29. The Secretary of State noted that since the Appellant's arrival in the United Kingdom he had claimed to have been involved with the EDP and attended one meeting and that he was currently encouraging people to attend another meeting in London. Considering the Appellant had been in the United Kingdom since January 2005, the Secretary of State did not accept that the Appellant had become highly involved with the EDP, as he attended only one meeting. It was not accepted that he was ever involved with the EDP in Eritrea and therefore it had been concluded that if the Appellant was indeed involved with the EDP in the United Kingdom, that he had become involved as a calculated measure intended to create or substantially enhance his claim to asylum in the United Kingdom. Further in that regard, the documents the Appellant submitted alleged to be from the EDP, UK Branch, had been considered. The document did not confirm in any way that the Appellant was involved with the EDP in Eritrea or that he was of any interest to the authorities in Eritrea. Therefore the document had not been accepted as independent corroboration of his claim.

The Proceedings

30. At the outset of the hearing before us on 7 November 2006 Ms Quinn most helpfully informed us:

> "The issue is a narrow one. It deals only with National Service (NS) aspects of the appeal. It is the Appellant's evidence that he was re-called up for NS in 1998 and that he remained in NS until his departure – that he left Eritrea illegally and that applying the Country Guidance decision in KA (Draft Related Risk Categories Updated) CG UKAIT 00165, he is at

risk as a deserter or as someone of National Service age who has left Eritrea illegally.

It is clear from the objective evidence that Military Service (MS) and National Service (NS) are interchangeable but in light of Dr Kibreab's evidence (his expert report of 30 October 2006 refers), we say the proper term is probably National Service (NS)".

Mr Parkinson indicated that he understood the overall issue in this appeal to be limited to whether demobilisation was taking place in Eritrea.

31. For the avoidance of any doubt, Ms Quinn at the outset of the subsequent hearing before us on 4 January 2007 further confirmed her acceptance that the basis of the Tribunal's decision at first stage did not provide permission to revisit the Immigration Judge's adverse credibility findings as summarised in particular at paragraph 31 of her determination.

32. Ms Quinn continued that the Appellant's original grounds of appeal, namely those in support of the application for an order for reconsideration, were largely predicated on alleged interpretation difficulties on which the Appellant's representatives had not proceeded before the Tribunal at the first stage reconsideration hearing.

33. It would be as well therefore for the sake of completeness, to set out the positive and adverse credibility findings of Immigration Judge Reid.

34. The Immigration Judge had noted that much of the Appellant's bundle before her was focused on the risk to Christians in Eritrea which she considered to be unhelpful in this case.

35. The Immigration Judge continued as follows:

"30. I have no reason to doubt the family history given by the Appellant. I have no reason to doubt that he did spend time in the military, as is usual in Eritrea, whether in a voluntary capacity or as a conscript. I accept that he was in the naval branch of the military. I have no reason to doubt that he was trained by the military as an electrician. I formed the view the Appellant worked for some time as an electrician in a so-called '*development task*' after his military service. I note that an individual is liable to be called up for military service duties until the age of fifty and that after military service many people of conscription age are sent to development tasks. The Appellant had spent many years in the military or in Revolution School and it may well be that the Appellant was one of those identified for demobilisation and referred to in the BBC News Report on 2 March 2004 mentioned in the CIPU at 5.52.

31. However, I reject the remainder of the Appellant's story. I do not believe he came to the adverse attention of the authorities. I do not believe that he was detained or ill-treated as he claimed. I do not believe he escaped from detention in hospital. I do not believe that he was or is active for the

EDP. I formed the view that the Appellant left Eritrea for reasons other than being in need of international protection.

32. It is a possibility that the Appellant would come to the attention of the authorities on return to Eritrea but given his service record and the history of his family I do not believe the Appellant would be seen as a draft evader or as a deserter on return to Eritrea. I have already given my reasons for not accepting the Appellant has any political affiliations and in particular to the EDP.

33. If detained the Appellant is likely to be kept in unpleasant conditions but I do not believe that he is likely to be detained for any lengthy period. He has no health problems at present. I do not believe there is a real possibility or real risk that this Appellant's Article 3 rights would be breached on return or that he would face persecutory treatment".

36. The Immigration Judge had earlier noted in her determination that the Appellant appeared to have made little or no effort to ascertain the whereabouts of his fiancée and was vague about her activities for the EDP. The Immigration Judge noted with interest, the Appellant's claim in oral evidence that he passed communications from some detainees to their families. She found this to be inconsistent with the objective evidence that the remaining Malta detainees were being held incommunicado. Moreover the Appellant in the interview had said that he passed information about the treatment of detainees to EDP members and had made no mention until oral evidence of passing information to the families of the detainees. He had said that relatives contacted him because they did not know about their children and were desperate for information. The Appellant failed however to explain how the relatives knew to contact him.

37. The Immigration Judge noted background material which indicated that the EPLF-DP (EDP) operated only outside Eritrea. She did not find it credible that the Appellant was involved with the EDP in Eritrea as he claimed or that he had demonstrated that he had any active or continuing contact with the EDP in the United Kingdom.

38. The Immigration Judge did not find it credible that having been at Gedem where the Appellant claimed to have been in contact with the Maltese prisoners and which led him into trouble with the authorities, that he would have been sent back there by the authorities.

39. The Immigration Judge did not find it credible that a prisoner in Eritrea would be admitted to hospital for a relatively minor condition such as haemorrhoids when one considered the background material of conditions in prisons in that country and the lack of medical treatment. Moreover, she found it very surprising that someone who had allegedly been suffering so badly from haemorrhoids as to have been admitted to hospital from prison would have been able to make his escape from the hospital in Eritrea to Sudan over a period of nine days travelling on foot and by camel. The Immigration Judge placed weight on the Appellant failing to disclose at an earlier stage the very important detail that one of

the men that helped him escape from the hospital was his superior in the EPLF-DP cell. Moreover it was not until the hearing that the Appellant also claimed that the man was a superior colleague in the Navy. The Immigration Judge did not find it credible that if those were the facts, that in such circumstances, the cell leader would have put himself at risk by personally assisting the Appellant to escape. The Immigration Judge thus found lacking in credibility that the Appellant managed to walk out of his single hospital room past his guard without the latter noticing.

40. The Immigration Judge noted that the Appellant failed to produce any medical evidence to support his claim that he was beaten or tortured during his claimed detention and no medical evidence to show what he had been treated for in the United Kingdom. The Immigration Judge had noted with interest Amnesty International's view that the families of dissidents and army deserters were reported to have been '*harassed, pressurised, threatened and interrogated*', yet the Appellant mentioned only that his mother was detained for three days at a police station but freed when the Appellant's brothers requested it of higher officials and told of the family's history of fighting to free Eritrea. The Immigration Judge found this surprising given the reasons for the Appellant's claimed detention.

41. The Immigration Judge noted that the Appellant had been in contact with his parents in Eritrea and set that against the article in Gedem News dated 17 July 2005 and filed by the Appellant within his bundle, that stated that the Eritrean Government had launched a sweeping round up of parents whose children were said to have fled the country and were considered draft evaders or deserters. The Appellant had also filed a report dated 29 July 2005 from VOA News that reiterated the Gedem information. The inference drawn by the Immigration Judge from that evidence was that the Appellant was actually not identified or wanted as a deserter.

42. On 7 November 2006 the Tribunal heard the oral evidence of the Appellant and that of Dr David Pool who described himself as being attached to the Department of Politics at the School of Social Sciences at University of Manchester, and we began to hear the evidence of Dr Gaim Kibreab, a Reader in Sociology (Associate Professor) and Director of Refugee Studies, currently working at London South Bank University.

43. The hearing resumed on 4 January 2007, when we were advised by Mr Parkinson that he was not challenging any aspect of the Appellant's military history as indeed such history was accepted by the Immigration Judge. The oral evidence of Dr Kibreab was completed.

44. Due to a lack of remaining time that day the Tribunal directed that each of the parties serve upon each other and upon the Tribunal their respective written submissions but each be at liberty to amplify them before us at the resumed hearing on 2 March 2007. As before, we prepared a further contemporaneous record of the proceedings that we

ensured was read by each of us so as to refresh our memories before the resumption of the concluding hearing on 2 March 2007.

The Appellant's Oral Evidence

45. At the outset of the hearing on 7 November 2006, we ascertained that the Appellant and the interpreter understood one another and we are satisfied that no difficulties in interpretation arose throughout the course of the hearing.

46. The Appellant adopted his statement of 7 September 2006 as part of his evidence in chief confirming that the content was true and further that he relied on his earlier statements and evidence given at interview. The Appellant further described the circumstances of his exit from Eritrea.

47. When cross-examined, the Appellant explained that he was in the Eritrean Navy from 1998 to 2004 when he left Eritrea. The Appellant was not aware of any of his colleagues having been released from their military service.

48. The Appellant agreed that the draft/conscription happened every year and that people were rounded up and conscripted into the Navy and also the Air Force. Fewer people were allocated in comparison with other forces. The Appellant was unable to provide a satisfactory answer to the question as to whether the number in the Navy increased every year because people were rounded up, regardless of the numbers allocated, explaining:

> "Where I was posted – it was to work in a ship and there were people who were clearly experienced – so there weren't many new people coming in. I would only know of the place I worked. There were coastguard and infantry of the military who were conscripted in greater numbers when I was working on the ship".

49. The Appellant maintained that in the six years he was in the Navy, no one was demobilised to his knowledge. The Appellant maintained that so far as he was aware no soldier had been released from the army.

The Evidence of Dr Pool

50. Dr Pool began his evidence by referring to his report dated 31 October 2006.

51. It was noteworthy that at the outset of his evidence, Dr Pool was referred to an extract from the United Nations Development Programme (UNDP) Eritrea Project Report Fact Sheet of April 2006 that referred to 104,400 people being demobilised.

52. Dr Pool told us:

> "Since preparing my Report I have been looking into statistics. Frankly I have come across a major problem in that if you speak to Eritreans, they all say there has been no demobilisation.
>
> However, if you look at the Eritrean Press which I read on-line and the government website – which I have referred to in bold on page 2 of my report [the official Government website www.shaebiya.org and www.awate.com] it is that there has been no reporting of demobilisation – which again surprised me as you would think that if demobilisation was effectively underway it would be something the government would be quite proud of.
>
> As regards the 104,000 in the UNDP Project Fact Sheet – I have also discovered a similar figure in the document [copy World Bank Status of Projects in Execution for financial years 2006 and 2005].
>
> This makes me even more curious with the figures for demobilisation. 2005 says 104,400 soldiers demobilised. After finding that, I looked at 2006 for the same project status which stretches from 2002 to 2005. A year later – you would think the figure would have been increased or might be the same – but the figure is 65,000 that had been demobilised for the entire project.
>
> It is not an additional figure but a figure for the entire project and goes on to state that the World Bank has financed it because the target figure of 5,000 for payment has largely achieved its target on demobilisation. This is a World Bank Report. It is therefore difficult to reconcile these two reports when you also compare that with the Eritreans I speak to, who say, like this Appellant, there has been no demobilisation. I am therefore increasingly mystified when you speak to Eritreans who all say no demobilisation has taken place."

53. Dr Pool continued that Eritreans he had spoken to in the United Kingdom were generally educated middle class academic researchers. He had also spoken to former EPLF fighters. He continued:

> "For example, yesterday, I spoke with a woman who has just come back to England from Eritrea – she joined the EPLF as a fighter as a teenager – worked in various areas – trained as a nurse – she is currently a local administrator in the Northern Province of Eritrea – so she has long experience. I asked her as a local authority government official, what her view was of the demobilisation process and she told me there has been no demobilisation. I showed her the World Bank figures and she just could not understand them".

54. Dr Pool had also taken account of the affidavits of Dr Amanuel Gebremedhin who was the head of Mitias Demobilisation and Reintegration Programme (MDRP) – which was the first demobilisation programme after independence 1991-1993 and 1994. This was the demobilisation of the EDF fighters after the independence struggle. Dr Pool continued:

”Reading his affidavit he mentions 5,000 demobilised as a pilot project of the World Bank – but then he goes on to say there was no proper demobilisation indeed – he mentions 65,000 supposed to be demobilised but in reality those demobilised only came from the reserve militia in the exercise 1993-1996 after the border wars so he has got the same number – as mentioned in the 2006 World Bank Report.”

55. Dr Pool was not sure whether in terms of demobilisation and risk there was a distinction that could be drawn between those called up post-border war and those called up pre-border war. He continued:

> ”When one speaks of the ‘*demobilised*’ prior to the war, we are talking about 48,000 to 54,000 people between 1992 and 1994 who were demobilised, given grants for setting up businesses generally to return to civilian society (those who you can say, are demobilised – classically defined – part of the project for demobilisation).
>
> In 1998, these were the first called up – as they were the old EPLF fighters – some I know went to the front line – some were recalled as officers – some as trainers for the new recruits.
>
> So these people were demobilised in all senses of the term but were not demobilised when the war started – they were called back – so that suggested distinction seems a bit blurred to me.
>
> Dr Gebremhedin who was also a consultant to the World Bank subsequent to going to the United States argues, as it seems likely to me, that if we are talking about anybody being demobilised after the Ethiopian/Eritrean war – they are the batch of people who were demobilised but in the early 1990s. That makes some sense.
>
> Hard evidence is difficult, but quite a few spent it in bars-frivolously-rather than applied it for the purpose given. I conclude that these figures are difficult to discuss.
>
> There is no attempt in the 2006 Report, to explain why the figure comes down from the report of 2005. The obvious source of the figures are the World Bank, whose major desire in these Reports is not demobilisation per se but to reduce the size of the army to promote economic growth. The other curious thing about the 2005/2006 Reports – apart from the number of soldiers claimed to be demobilised, is that the reports do not show much difference in the amount of money actually dispensed.
>
> My understanding from the World Bank Report of 2005 is that US$42 million were dispensed for the 104,400 demobilised. In 2006 when 65,000 were shown to be demobilised, the figure is bigger.”

56. It was notable that Dr Pool continued:

> “I am mystified by these statistics. I have looked a long time to find some statistics on demobilisation and this is the only evidence that I have come up with”.

57. Dr. Pool continued that the UNDP Project Report was based on the World Bank 2005 Report whereas the post-dated 2006 Report showed a much reduced figure. He noted that Dr Amanuel Gebremedhin in his affidavit explained what he described as:

> "... the 65,000 in rather devious terms, i.e. that the Eritrean Government had been devious in taking two tranches of money from the World Bank for demobilisation".

58. Dr Pool continued:

> "It cannot be said that these groups have been demobilised. I take it that they may
> have been given a civil registration card, but they are not demobilised.
>
> I therefore conclude that little reliance can be placed upon the UNDP Report.
>
> I say the same proportion of the 48,000 post-border war demobilised soldiers, were brought back – I would not know how many. It would make sense, as the regular army was comprised of new recruits after 1991 and the core of the officers and soldiers of the EPLF were then taken into the regular army.
>
> My guess is that a high proportion of EPLF fighters pre-war were recalled into the army.
>
> It seems to me to be the case that the demobilisation project simply has not got underway".

59. Dr Pool told us that he was sceptical of the World Bank Report's final figures. He continued:

> "I think there has been some demobilisation – definitely the first phase 5,000 pilot project ... I really just do not know what has been going on and any figures about demobilisation should be treated with a terrific pinch of salt".

60. Dr Pool was referred to the September 2006 COI Report with the heading "*Demobilisation*". Dr Pool noted at paragraph 11.18 there was quoted an extract from a War Resisters International Report of 2004 that made reference to former combatants already incorporated into the government armed forces who were issued with demobilisation cards and asked to continue National Service until January 2005.

61. The relevant extract included the following:

> "The World Bank, principal funder, recognised the need for a special programme for combatants under the age of twenty five. The UN Security Council called for Ethiopia and Eritrea to facilitate the sustainable reintegration of demobilised soldiers".

62. Dr Pool explained that former combatants had thus already been incorporated into the government armed forces notwithstanding that they were issued with demobilisation cards and were in fact asked to continue in national service. He continued:

> "The Eritrean Government does not '*ask*' there is no sense in which they '*inquire*' – so here a group of people, who were issued with demobilisation cards, have not been demobilised – that is the clear indication from the War Resisters International Global Report 2004."

63. Dr Pool was then referred to paragraph 11.19 of the CIO Report quoting from a US State Department Report of 2006 that:

> 'The government has been slow to demobilise its military after the most recent conflict (although it recently formulated an ambitious demobilisation plan with the participation of the World Bank). A Pilot Demobilisation Programme involving five thousand soldiers began in November 2001 and was to be followed immediately thereafter by a first phase in which some sixty five thousand soldiers were to be demobilised. This was delayed repeatedly. In 2003 the government began to demobilise some of those slated for the first phase. The demobilisation programme has not yet been approved by the World Bank and funding from other donors is uncertain'.

64. Dr Pool told us that the above extract created more confusion as one would think that the US State Department would be "*singing from the same hymn sheet as the UNDP*". He was of the opinion that greater weight should be placed on the evidence from the US State Department Report as USAID was very close in practical terms to the UNDP.

65. Dr Pool considered it interesting that the State Department should use the past tense '*was*' followed by 65,000 '*were to be*' demobilised, bearing in mind that this was written in June 2006 in a way that suggested that demobilisation had not happened. Dr Pool did not think there was much of a distinction to be drawn in terms of risk on return between those pre-border war and those post-border war. Those pre-border were in practice demobilised between 1992 to 1994 but Dr Pool maintained that:

> "... In reality many of them were recalled in 1998. Many were queuing up to join – they had been fighting Ethiopia for many years – so when the war started again, there was the chance to re-engage with the old enemy. Many would therefore have volunteered."

66. In this regard Dr Pool referred to paragraph 11.21 of the Home Office OGN on Eritrea issued in October 2006. There was reference to Awate.com reporting on 24 February 2006 as follows:

> ".. All demobilised soldiers and members of the National Service to get ready for reporting to Sawa... Those called for '*National Service*' include athletes and other youngsters active in various sports who are being given permits to pursue their sporting activities. Demobilised soldiers and National Service Corps who had been discharged for medical reasons ('Medical Board Cases') were also ordered to reregister".

67. Dr Pool explained that Awate.com was a site independent of opposition political parties but was an opposition website that he found:

> "...to be one of the most reliable because it is rare to see a website that corrects itself if subsequently proven to be wrong on factual errors and it is a website upon which the Home Office often relies, indeed it is exemplified by the fact that it is quoted in this COI".

68. Dr Pool believed that the UNDP drew its figures from the World Bank.

69. When asked whether on the statistics that he had looked at, that Dr Pool was aware of any reports of statistical information about demobilisation he responded:

> "The target figure is 200,000. In terms of who has been demobilised – there are no other statistics available to my knowledge. I went through UN UNDP, World Bank etc".

70. Dr Pool's attention was drawn to his report (B11) where he quoted from the World Bank Mid-Term Review Mission Report (MTR) of July 2005. It was a passage that he described as using the diplomatic language typical of World Bank reports on domestic politics and tensions between donors and governments generally. Dr Pool had noted that the MTR Report stated clearly in paragraph 9 that the Government of Eritrea, "*in the medium to long term remains strongly committed to further demobilising its armed forces, but that in the short term, the pace and scope of immediate demobilisation cannot be defined*".

71. Dr Pool repeated that he found it odd that the 2005 World Bank Report would state that 104,000 were demobilised whilst the later 2006 Report stated that it was 65,000. As for the evidential basis of the World Bank's information, Dr Pool considered that it was the Eritrean Government's figures:

> "... because the World Bank hands out money but the government hands out any ID demobilisation card necessary to get that money".

72. Dr Pool was referred to the third paragraph of his report (B12) under the sub-heading "*Those Demobilised*" in referring to the World Bank he stated as follows:

> "Paragraph 7 of Dr Amanuel's analysis is revelatory of the tactics of the government of Eritrea and its academic background and administration record is supportive of the accuracy of his analysis. The World Bank's MTR also provides support of his analysis with its comment in paragraph 8ii on '*limited transparency surrounding the size of the army*'. Given the problems with transparency and the confused and murky nature of demobilisation statistics, it would seem nigh on impossible to assert that the Appellant was demobilised in 2004, as the Immigration Judge did in paragraph 30 of the determination"

73. Dr Pool continued that one of the problems the World Bank had was in defining the distinction between being in the military and/or having a civilian role and this was a given fact that the whole thrust of the World Bank MTR was about demobilisation and the reintegration of soldiers. He continued:

> "It is pretty damning for them to comment on the '*limited transparency surrounding the size of the army*' ".

74. In the light of his comments as to the information available from the World Bank Dr Pool was asked as to the conclusion that he drew. Dr Pool responded:

> "it is difficult to grasp – I mean to believe. If we take the 65,000 – have they been given some kind of card and in 2007 will they be demobilised? – It does not appear from the phrasing of the World Bank Reports that there has already been the demobilisation of 65,000 – if you take the account of the World Bank Reports and particularly of the 2006 US Report, in addition to what Eritreans have said to me – there has been no demobilisation. These are Eritreans with no axe to grind and will not grasp the general significance of why these figures are important".

75. Further referring to Dr Amanuel Gebremedhin's affidavit, Dr Pool considered that it was the lack of desire for genuine demobilisation on the part of the Eritrean Government that according to Dr Gebremedhin caused him to resign. Dr Pool continued:

> I do not know what their desire is but there are quite strong factors in not demobilising because maintaining soldiers in government jobs on a soldier's pocket money is a massive subsidy for the government so a teacher who stays in the army is seconded to the teaching profession and still only gets the conscripts pay...".

76. Dr Pool continued:

> "When you think the State is the major employer, you can see the way in which the pay is in terms of thousands of people still under the aegis of the Ministry of Defence.
>
> The major employer is the state. I do not think that was the reason to start mobilisation – that was the war. But the devastation of the war, economically has produced an economic motive to maintain mobilised soldiers".

77. Dr Pool described this pattern as:

> "... happening across the board with government jobs on a conscript's pay".

78. Dr Pool told us that apart from the economic motive of the government not to demobilise, the National Service Project was itself very political in the sense that after the war of independence from Ethiopia in 1991:

> "... the Eritrean Government wanted to mould Eritreans like the EPLF fighters namely; value of valour, self-sacrifice, courage that was needed to rebuild the economy. There were other nationalist organisations that the EPLF defeated based in the Sudan – this had a particular ideology and they were quite strong in passing their ideology onto the younger generation.
>
> So when the young people go to National Service they are given (less the Marxist aspect) the history of the EPLF and their victories. There is a kind of social control involved in the ethical direction that is being used in a military sense in Eritrea".

79. Dr Pool continued that the border between Eritrea and Ethiopia had been demarcated:

> "That is the government's major explanation of the continued mobilisation and makes the best sense. Many Eritreans still think Ethiopia wants to get its coastline that was ceded in the peace negotiations between 1991 and 1993 and the Ethiopians are critical of their government for ceding the port to Eritrea. There is always the sense this war could start again. Just over the last two months we have seen Ethiopians and Eritreans backing two competing sides in Somalia".

80. Dr Pool was referred to a report within the Respondent's bundle of Awate.com sub-headed "*Government Rounds-up Underage Youth*" dated 23 February 2006 that stated as follows:

> "... Round-ups started as students were in class which gave them no chance to say goodbye to their families or prepare themselves. They were taken straight from their desks to the waiting buses. The sudden and harsh manner in which the round-up was conducted has stunned and angered the entire population of Keren. One source says URC who was contacted by Awate said similar sentiments were reported in other towns".

81. Reference was also made to a further extract from the report, namely:

> "Demobilised soldiers and National Service Corps who had been discharged for medical reasons ('*Medical Board Cases*'), were also ordered to re-register. It is expected that this sweeping round-up of young students, which has already started in the Northern Red Sea and Anceba regions, will be continued in all regions of the country. One alarming aspect of this new wage of round-ups, is that it has affected young students under eighteen years of age".

82. Dr Pool told us that it would appear from that report that soldiers already demobilised for medical reasons unfit for Military Service were also ordered to re-register. He continued:

> "We have been looking today as to whether demobilisation is happening and if so to what extent if circumstances where they re-register includes people to be medically unfit.

> Awate is generally reliable – people given exemptions from the military, (for example to work for the US Embassy or the UN), are demobilised and you see reports they have been ordered to go for several weeks' military training. These kind of things can often be very obscure political messages to us but less obscure to Eritreans".

83. On the question of exit visas, Dr Pool told us that one could not obtain an exit visa without the appropriate documents although they were difficult to obtain in any event. He did not wish to be definitive as to the difficulties in obtaining exit visas. We were referred to a previous report of his (B10) in which he had stated:

> "Exit visas are very difficult to acquire and any Eritrean leaving Eritrea illegally (that is without an exit visa) would be suspected of draft evasion, deserting their military unit or of suspicious political behaviour".

84. Dr Pool told us, with reference to the Proclamation of National Service No.82/1995 stated at Article A37, the penalties for those violating the provisions of National Service Proclamation (NSP) did not discriminate between the National Service and Reserve Army with regard to penalties particularly since the post-1998 circumstances had resulted in so many remaining on what was defined as active National Service.

85. Dr Pool continued that there were reports from Amnesty International, that youths as young as 10 or 11 had not been given exit visas. Human Rights Watch also made reference to difficulties.

86. When asked to classify those who were more likely to obtain an exit visa, Dr Pool told us:

> "The Eritrean business women who work in textiles. People involved in business who are quite well in with the government circles.
>
> Asmara is a very small society and the top business people know the government and know the way to get visas, senior military officers, government spokespeople. Someone of 50 plus would be more likely than not to get an exit visa depending on his or her profile". For ordinary people it is very difficult.

87. Dr Pool was referred to the US State Department Report of March 2006 and the following extract:

> "Men under the age of fifty, regardless of whether they had completed National Service; women aged eighteen to twenty seven; members of Jehovah's Witnesses; and others who are out of favour with or seen as critical of the government, were routinely denied exit visas. In addition the government often refused to issue exit visas to adolescents and children as young as five years of age, either on the grounds that they were approaching the age of eligibility for National Service or because their diasporal parent had not paid the two per cent income tax required of all citizens residing abroad. Some citizens were given exit visas only after posting bonds of approximately $7,300 (100,000 Nakfa)".

88. Dr Pool told us that the above referred passage reflected the situation as he understood it, although he was surprised there was a denial of exit visas to even those aged five but that it underlined the difficulty to obtain exit visas.

89. Dr Pool continued that Eritrea was a closed society and it was difficult to know the extent that corruption took place. It was not endemic in Eritrea, but given the general position in Eritrea, there was a context in which corruption could flourish in the area of exit visas. The border between Eritrea and Ethiopia was very porous and UNHCR said that many crossed the border to avoid national service.

90. In cross examination, Dr Pool was referred to his report under the sub-heading "*Developments Since 1998*" where he had stated (B8):

> "Although the war ended with Eritrea's defeat and ... peace in 2000, the disputed border between Ethiopia and Eritrea remains unresolved and only limited demobilisation has taken place. ..... practices consistent with Articles 21 of the NSP *Special Obligations* which refer to military obligations under '*Mobilisation and Emergent Situation Directives given by the government*' such directives have been in force since the 1998 war with Ethiopia. It should be noted that such obligations extend the upper age limit of the draft from forty to fifty and also include categories exempt from National Service, like former fighters of the EPLF and those who were members of the Peasant Militias (the reserve military force of the EPLF) during the liberation struggle".

91. Dr Pool continued there did seem to be clear evidence that the first (pilot) phase of the demobilisation project in which the 5,000 were mentioned had taken place, that was why he had used the word '*limited*' in his report.

92. It was Dr Pool's understanding with particular regard to the 2006 World Bank Report that they had dispensed something in the order of $46 million. When asked if he had any idea as to whether the World Bank considered it had got value for money for this amount, Dr Pool responded:

> "If you take their Medium-Term Report – their comment of limited transparency – the size of the army – it is hard to distinguish between a military or a civilian programme – therefore the World Bank people are a bit confused as to what on earth is going on.
>
> As far as I know they come in on missions – I do not think there is a permanent World Bank team in Eritrea but I could be corrected on this. By '*missions*' I mean meetings with those involved in a demobilisation project. As far as I can tell, the main people on the ground are US Embassy personnel and personnel from the Royal Netherlands Embassy in Asmara."

93. Dr Pool was reminded that within the World Bank 2006 Report it was stated that there had been wider progress towards demobilisation and

that the project had largely achieved its target. It was noted that he had expressed confusion that the 2005 Report mentioned a figure close to 104,000 and in a later report 65,000. It was put to him the answer might lie in the fact that the 2006 World Bank Report referred to '*the remaining 135,000 soldiers*' that would arguably tie in with the 65,000 referred to in the 2006 Report, bearing in mind that the objective was for the demobilisation of 200,000 soldiers.

94. Dr Pool responded, that reading the two reports, the figures remained to him as inconsistent on demobilisation. He continued:

> "It also raises the question of what does demobilisation mean when the World Bank says '*we do not know the distinction between the civil and the military*", i.e, what on earth is going on here?"

95. Dr Pool referred to the payment of a reinsertion benefit, ("It's putting "*reintegration*" into something, but whether it actually happens is another matter"), that he understood gave the meaning to the Reports' reference to the "*Transition Safety Net*". He posed the rhetorical question:

> "To what extent are there also people who have not really been demobilised but have been given money and continue working for the government and maybe this is just topping up?
>
> I find it hard to state in any definitive fashion that <u>we</u> would understand, of handing back a uniform and operating solely in civil society".

96. Dr Pool referred to the COI Report at paragraph 5.64 that:

> "There are at least two categories of release from the military component of active National Service:
>
> i. those transferred from Active National Service to civilian duties but who remain on active National Service in the sense they do not return to civilian life; and
>
> ii. those demobilised".

97. Dr Pool continued:

> "The problem for the World Bank is differentiating between what is '*military*' and what is '*civilian*' in Eritrea.
>
> If you do not know the difference between the two, it must be very hard to say someone had stopped being a '*military*' person and become a '*civilian*' person...
>
> Added to which because so many are sent back to work for the state on military salary – how many of these are there – they cannot be described as demobilised because their employment is subject to Military Defence Rules and Regulations and the government, so I can understand the World Bank confusion as to how you define a distinction.

It is a very odd situation in Eritrea as compared to what we in the western world will understand as 'demobilised'."

98. Dr Pool told us it was difficult to estimate how many people had been transferred from the army to the civilian sector and how many remained in the Eritrean armed forces. The Eritrean Government did not release figures. What could be gleaned from the World Bank was a target demobilisation of two hundred thousand but he did not know the basis for that figure.

99. It was Dr Pool's understanding that more than 2,000 people were conscripted every year. He based this figure on an Eritrean Government statistic of those who graduated from secondary school. When they finished secondary school in Sawa they went straight in to the army.

100. Dr Pool was referred to the World Bank's view that although there had been plans and projects for the demobilisation of the target of 200,000 from an army estimated between 250,000 to 300,000 between the Government of Eritrea, the World Bank, the UNDP and donor agencies, they had "*so far not been implemented*". Dr Pool had stated in his report (B11) that:

> "The World Bank Mid-Term Review Mission (MTR) Report makes clear that there has been little progress on demobilisation and that the Eritrean Government is largely responsible. There has been disagreement between donors and the Eritrean Government on statistical detail. In MTR 8ii and footnote the '*Development Partners are of the opinion that EDRP does not reduce the number of soldiers in the country but rather facilitates change of personnel. According to the GoE and NCDRP these perceptions are wrong*'. According to the footnote to this sentence, the Eritrean Government requested the removal of this statement reflecting the opinion of the Development Departments. The latter are the EU, UNDP, USAID and the Netherlands represented by their embassy in Asmara".

101. In that regard, Dr Pool was asked whether this meant that some soldiers clearly ceased to be soldiers if they were replaced. He responded:

> "The question is how you define '*soldiers*', not carrying a gun in trenches across from Ethiopian troops – but transferred to civilian/military jobs. The World Bank objective is of reducing the size of the army and it is different from the authorities' objective in reality. How do you count the number of soldiers, when people are doing ostensibly civilian jobs, but in the employ of the Ministry of Defence and on military pay."

102. Dr Pool was referred to the MTR Report that appeared to make it clear that demobilisation has taken place and the government of Eritrea:

> " .. in the medium to long term remains strongly committed to further demobilising its armed forces, but that in the short term, the pace and scope of immediate demobilisation cannot be defined".

103. Mr Parkinson put it to Dr Pool this meant that demobilisation had taken place and that the government of Eritrea in the medium to long term was committed to 'further' demobilisation of its armed forces.

104. Dr Pool agreed insofar as the 5,000 who were demobilised in the pilot project were concerned. He continued that it was "*a difficult thing to get to grips with in the Eritrean context*". Notably Dr Pool continued:

> "It is a fair summary but I have no way of telling whether demobilisation is underway or not, particularly, because of the grey area in drawing a distinction between those who are obviously undertaking military roles in the armed forces and those who are undertaking civilian roles who are still in the employ of the military – reinforced by the impressive comment from Eritreans that there has been no demobilisation. All that I am relatively sure about is that the first phase pilot project involving 5,000 was successfully undertaken – otherwise – I have the same difficulty as expressed by the World Bank on this matter.
>
> My concerns are reinforced by my conversation with Eritreans who say there is no demobilisation – what does that mean?
>
> *I cannot say there is demobilisation or that there is not***".** (Our emphasis)

105. Since Dr Pool here appeared to have stated that he could not say whether or not there was demobilisation in Eritrea, we read back our note of his evidence to him. He confirmed, for the avoidance of doubt, that it was a correct record of what he had just said.

106. Dr Pool was asked whether he knew the percentage of the population called for conscription. He responded:

> "To start off with, we do not know the size of the population. There has never been a population survey – figures we have found, are based on the 1993 referendum and included in that were tens of thousands in Ethiopia, in Sudan, in South Africa, even Eritreans who were in London and voted in the referendum. As it is problematic as to the size of the population, how does one calculate the percentage who are conscripted?"

107. Dr Pool was referred to his report (B12) in which he had stated as follows:

> "If one accepts the figure of 65,000, the further question remained as to what categories were demobilised. On the previous practice of the Eritrean Government, it is very unlikely that there was randomness in the character of those demobilised. It would seem the categories were three:
>
> - '*severely*' and '*less severely disabled*' (MTR p14 gives a figure of fifteen thousand to the less severely);
> - women;

- veteran fighters from the pre-1991 Liberation Struggle who had been demobilised in the 1990s and recalled in 1998, an undefined proportion of the forty eight thousand demobilised between 1993 and 1995;

- soldiers in the higher age grade listed in the NSP (thirty six – forty five and forty six – fifty).'

All three of those interviewed in a pilot project demobilisation queue by a reporter from the UN Office of the Co-ordination of Humanitarian Affairs and published by the UN news agency IRIN in April 2002 fall into these latter two categories."

108. Dr Pool continued:

> "*This paragraph is, I admit, a bit speculative* but it is based upon what Dr Gebremedhin said about the pilot batch and the Eritrean Government in the first round in the early nineties where it was systematic in the categories it demobilised from the EPLF after independence. *I therefore made an assumption* that to the extent that there was demobilisation, it was on something of a speculative basis, i.e. disabled would be in the first category.
>
> *I am in a quandary* in that we had Eritreans telling me there is no demobilisation and the other reports albeit contradictory that there is demobilisation whether 64,000 or 104,000 *and I spent a lot of time trying to find an answer*". (Our emphasis).

109. Dr Pool continued that Eritrea was:

> "... like contemporary China, after 1991 the government separated assets built up during the Liberation struggle – military assets went to the armed forces and civilian assets went to the party, the PFDJ. The civilian assets (insurance, building construction, etc.) are the crucial part of the economy. There is a relatively limited private sector".

110. Dr Pool continued that, eighty percent of Eritreans lived in rural areas and a large proportion of those people were involved in subsistence farming but that a lot of those were in the army. It was mainly the women doing the farming. The 12 month development work could be digging wells and bringing in the harvest.

111. Dr Pool continued that most young people over the age of eighteen were conscripted into the army. At the other end of the scale Dr Pool reminded us that in his report he had referred to "*soldiers in the higher grade listed in the NSP*".

112. Dr Pool was asked whether he considered it possible that if the Eritreans were demobilising 65,000 people over four years, they might for political reasons not make the public aware of it as it would suggest that it was weakening their country. Dr Pool believed that the Eritrean Government would be quite pleased to say they had achieved this project. Mr Parkinson's cross-examination concluded as follows:

"Q. I ask you this, 65,000 of an army of say 300,000 is a very significant percentage?

A. It is about the army, but the Eritrean Government's concern as to the economic burden on the state is a worry for all these people to go back to civilian jobs on civilian pay.

Q. Bearing in mind that Eritrea is one of the poorest countries in the world, would it not actually benefit those having to feed all the households of these soldiers?

A. The government is seen by people in the army as a benefit and not just for economic reasons so that what happens to restless youth if it goes back to the villages? Are they going to reintegrate in the countryside, a big problem in the 1990s. Economic consequences of the war with Ethiopia have had a negative effect. Can the civilian section absorb all these people who are demobilised? These are factors other than rationality. Look at Zimbabwe"

113. There was no re-examination.

114. We asked Dr Pool if Dr Amanuel Gebremedhin was known to him. Dr Pool told us that Dr Gebremedhin was not personally known to him but that Dr Pool knew of him and that he had met people from the University of Leeds, Department of African Studies, where Dr Amanuel had undertaken his PhD.

115. We asked Dr Pool in relation to the question of exit visas what conclusion he would draw as to how those who left Eritrea by plane from Asmara Airport have been able to leave the country. He responded:

"I guess I think they would have to show some official document or documents. They would have to show a current passport and an exit visa. I would think so. Security is tight at the airport".

The Evidence of Dr Kibreab

116. Dr Kibreab is an academic specialising in the problems of population movements with particular emphasis on forced migration and post-conflict reconstruction. He has been conducting research on Eritrean refugees for over two decades. He tells us in his report of 30 October 2006 that during the last ten years he has been studying the post-independence Eritrean situation looking at issues relating to civil society associations, governance, human rights, forced migration and repatriation.

117. Dr Kibreab is currently working at the London South Bank University as an Associate Professor and Director of MSc Refugee Studies.

118. Dr Kibreab was referred to his report of 13 October 2006 and to his quotation from the War Resisters International Global Report of 2004 as quoted in the COI Report of April 2006 that:

> "In March 2004, former combatants already incorporated in the government armed forces were issued with demobilisation cards and asked to continue National Service until January 2005...".

119. Dr Kibreab told us that there were two factual errors in this quotation. Firstly, those who were issued with ID cards were not '*former combatants that were incorporated into the government armed forces*', but rather members of the National Service who were assigned to work in the Ministries, Departments, Regional Administrations, Businesses of the ruling party, because of their possession of scarce technical skills or professions. Those who received ID cards also included some women who were over twenty-seven years old. Those who were incorporated into the army were not issued with demobilisation ID cards.

120. Dr Kibreab continued that for the Eritrean Government National Service (NS) was not Military Service (MS) and even though NS operated under the Ministry of Defence it was de-linked in their perception from military service and this was confirmed by the MTR (Mid-Term Review Mission) '*NS needs to be de-linked from the size of the army issue*'.

121. Dr Kibreab understood that when the government issued the demobilisation cards they were usually given to people who possessed professional or technical skills who were assigned to work in the ministries and the enterprise securities forces, the Peoples Party for Democracy and Justice, (PFDJ) and that from January 2000 some were also hired out in the private sector.

122. He continued:

> "If you wish for example to have an economist and you have a small enterprise of your own or a truck for which a driver is needed – most people are in National Service and the civilian labour market suffers from a shortage of such skills.
>
> So if you look for a skilled person, a business person makes a written application to the Ministry of Defence stating the types of skills sought, and if the MD accepts your application then they send someone who is in the NS. I have seen several letters in which a woman who owned a truck applied for a truck driver by letter dated 18 May 2000.
>
> The MD has a salary scale of all types of qualifications ranging from PhD holders to unskilled labourers and in that letter I saw the MD telling the woman to pay the salary of the truck driver into the bank account of the Ministry of Defence. That is one example of many".

123. Dr Kibreab continued:

> "The interesting thing here is that after completion of six months military training all participants participate in different forms of development activities – some are assigned to work with the ministries within their departments, regional governments and those who are uneducated are usually assigned to the army but participate in unskilled activities, for example labourers in road improvements. Some are also sent to the private sector. The letter says it is not a normal job but a temporary one to overcome a labour shortage and the person concerned remains subject to military discipline as a draftee".

124. At the resumed hearing on 4 January 2007 we were provided with copies of the letter concerned and a certified translation. The first document dated 18 May 2000 is headed "*Payment of Salaries and Additional Payments to those Members of National Service who are employed in Private Business*". It continues:

> "For those vehicle owners who need drivers because their drivers were taken to National Service and now need to employ drivers in National Service, they should know the following rate of salaries and that they are allowed to select and employ any person from the Ministry of Defence Logistics Department, ensuring periodic check-ups of the payment system.
>
> General
>
> 1. This assignment of the National Service Member is not a permanent position: its nature is temporary and will be considered only to cover the shortfall caused by the lack of experienced workers.
>
> Therefore the person assigned, owing to their nature, is always a member of the National Service even though they are under the immediate instruction of their employer".

125. There follows a table relating to the basis on which salary is calculated and other related matters.

126. The second document produced was a copy letter and translation dated 17 February but with the year illegible. It is not addressed to any named person but purports to have been issued from the Ministry of Defence, it is headed "*Subject – Information concerning those already in receipt of National Service salaries re the National Service workers salary payments*".

127. The document then describes the basis upon which a worker's salary should be paid to the Ministry of Finance in which the employer should show the deduction of the income tax and surtax and transfer it monthly.

128. As regards the letter dated 18 May 2000 to which Dr Kibreab's report referred, he maintained that the recipient had given him a copy and that he had obtained the letter as a researcher as part of his research activities. Dr Kibreab continued:

> "I got it from one of my informants in England. I did not ask how he obtained it. When these people are assigned to civil activities, the Eritrean Government does not consider, even though they are under military discipline, that they are subject to NS, although they are under the Ministry of Defence. For example they have to go to their units every month. They continue to serve their National Service so they have not been demobilised".

129. Dr Kibreab was referred to the World Bank MTR and paragraph 12 sub-headed "*National Service*" and the following extract:

> "Concerns remain that DS (demobilised soldiers) are subject to National Service as well as potentially being returned to the military".

130. Dr Kibreab continued that it thus might be said that one was demobilised from the army but remained in NS and members of the NS were most likely eligible to be returned to the army and as such it explained the confusion in the statistics (see the World Bank Reports).

131. Dr Kibreab insisted that individuals in Eritrea who were under NS but then after six months assigned to developmental work remained subject to military discipline. If somebody for example in NS was building a dam as part of their development work and they absconded they would be considered to be deserters.

132. When we asked Dr Kibreab whether he had any background material to support that view he could only respond that he was researching the matter and:

> "... internally speaking to people in this regard, for example I was in field work in the summer in Italy with Eritrean asylum seekers".

133. We informed Dr Kibreab, that although we appreciated that he was involved in research, we wished to know whether he was able to refer to any background material to support the view that he had expressed.

134. He responded:

> "Looked at objectively, they were supposed to be in MS eighteen months but in May 2002 there was introduced *the Warsi-Yakaaol Campaign (WYC Programme)* for all the fighters that was contrary to the terms of the NS (MS) Proclamation that limited service to eighteen months." (Our emphasis).

135. In this regard he referred us to his report (B21) that stated:

> "On 12 December 2000, the Eritrean and Ethiopian Governments signed a peace agreement in Algiers under the auspices of the African Union and to some extent the United Nations, the Government of the United States and the European Union**.** *In the immediate post-Algiers Peace Agreement, the Eritrean Government established a National Commission for the Demobilisation and Re-integration Programme*

(NCDRP) and a phased demobilisation programme of some 200,000 combatants was formulated. The first phase, some seventy thousand soldiers comprising of old combatants (Yakaaol) and draftees of the National Service and the Warsi-Yakaaol Campaign referred to by the government as WARSAI, were expected to be demobilised by the end of January 2003. These were going to be mostly women, people with scarce skills, family needs and sicknesses. In the second phase sixty thousand combatants were expected to be demobilised by the end of July 2003. Due to uncertainties concerning the funding, the government did not specify the exact time when the remaining seventy thousand combatants would be demobilised. The main funder of the planned disarmament demobilisation and reintegration (DDR) was the World Bank.

However, none of these phased demobilisation programmes were implemented. The only exception was the pilot scheme under which about five thousand soldiers, a large majority of whom were disabled during the border war and few members of the YIKAALO (individuals who fought in the war of independence) who were old and individuals with long-term illnesses – diabetics, asthmatics etc.

It was under desperate circumstances that the government re-enlisted these individuals and when the peace agreement was signed, consequently some funds were made available, the government wanted on the one hand, to appear to be doing something about demobilisation, on the other, to get rid of the individuals who were, *de facto* redundant due to injuries, old age and poor health. Although theoretically the pilot scheme was implemented to provide lessons of good practice for the large-scale programme of demobilisation, *hitherto not only has no such demobilisation taken place, but the government while appearing to be demobilising, seized the opportunity to gain access to a limited amount of external funds.*

Not only did the Eritrean Government fail to demobilise the two hundred thousand soldiers agreed with the international donors, but as seen before, it also extended the obligation to perform national service indefinitely under the new label known as YDC in May 2002. This was contrary to the terms of the National Service Proclamation of 11/1991 and its Amendment Proclamation 82/1995 which limits the requirements of the service to eighteen months. However, the Proclamation on National Service was overridden by the events that unfolded by the border war and by the President's decision to introduce the WYC (Warsi-Yakaaol Campaign) in May 2002….

As noted earlier, the WYC compels those who complete the eighteen months requirement to remain enlisted indefinitely and to work for the state and the firms of the ruling party, PFDJ, and other development works without remuneration, save a pittance of pocket money". (Our emphasis).

136. Dr Kibreab explained that this was an extension in effect to perform National Service indefinitely. He could not refer us to any objective independent report to support his contention save that the introduction of the WYC supported it "*and other evidence*".

137. When we asked Dr Kibreab what he meant by "*other evidence*" he referred to the deportees from Malta and Libya some of whom he claimed had completed their eighteen months military service and no exceptions were made in that they were treated in the same way as those who had evaded military service.

138. Notably Dr Kibreab continued in this regard:

> "*Even though I have no written documents, a relative of mine serving in the Eritrean Army for the last ten years was caught crossing the Sudanese border and we do not know his whereabouts. That happened seven months ago*".

139. Dr Kibreab was referred to the Proclamation 82/1995 and Article 21 under the sub-heading "*Special Obligations*" that stated as follows:

> "i. During the mobilisation of war period anyone in **Active National Service** is under the obligation of remaining even beyond the prescribed period unless the concerned authority allows them to leave officially. (Our emphasis).
>
> ii. The citizen registered to perform Active National Service upon changing his address upon entering into service, has the duty to inform the Regional Administration in his area about his address presenting his Registration Card".

140. Dr Kibreab explained that the Article was:

> "... promulgated before war broke out and even then the government had the prerogative to extend the length of NS. This was overridden by the border war and the WYC Campaign, - but anyway, it reinforced the government authority to extend beyond the NS."

141. Dr Kibreab thus maintained that the ability to extend NS was found in Article 21 and the subsequent WYC Campaign.

142. Reference was made to an article, a copy of which appeared in the Appellant's bundle, from the Middle East Times dated 23 February 2006 under the sub-heading "*Eritrea Frees Nearly All Detained Local UN Staff*". Within that report the following was stated:

> "Information Minister Ali Abdu said that no-one was exempted from the National Service, pointing out that it is a continuous programme for the service of the nation.
>
> '*Every Eritrean*' means that those Eritreans who work for example in embassies, in international organisations, in the UN, are not immune from National Service. Ali said '*You never finish your national service, meaning you cannot say there is a full-stop to serving your country*'."

143. Dr Kibreab told us that that was exactly his understanding as to how the Eritrean Government saw its citizens' obligations to serve their country.

144. Dr Kibreab was referred to his report (B16) at paragraph 2.1 under the sub-heading "*General Misperception of the National Service*" the following was stated:

> "Many people wrongly assume that the first six months draftees spent in Sawa receiving military training represents a military service. The remaining twelve months draftees spend taking part in development activities is also wrongly seen as constituting a separate national obligation. This confusion does not emanate from the particular experience of Eritrea but rather from the experiences of other countries that had a policy of military service.
>
> What people do not realise is that in Eritrea, there is no military service. There is only Hagerawi Agelglot (National Service) which is much more ambitious and broader than common Military Service. The Eritrean authorities never refer to the National Service as '*Wotehaderawi Agelglot*' (Military Service). This concept is totally absent in the government's discourse on a National Service, including in the terminologies of the two pieces of legislation on the National Service. Wotehaderawi Teealim (Military Training) in the Eritrean context is completely different from Wotehaderawi Agelglot (Military Service).
>
> *National Service consists of six months military training (it is important not to confuse this with Military Service) and twelve months development work. The two aspects of the National Service – namely, the military training and the simultaneously ideological indoctrination at Sawa Military Camp and the twelve months development work represent a continuum rather than a dichotomy. They are indivisible. They are two sides of the same coin – the coin being National Service".* (Our emphasis).

145. Dr Kibreab reaffirmed that NS comprised six months military training and twelve months development work and continued that the goals of NS were much broader than MS and the goals were:

> "... to inculcate the EPLF values on the younger generation.
>
> The President said this at the Youth Festival held at Sawa in July 2006 (B16) that '*nationalism and patriotism did not develop naturally. They had to be fostered and nurtured*' and he said that the NS and its concomitants, the WYC, were indispensable mechanisms in the process of promoting and nurturing discipline, patriotism and commitment to the project of national unity. ...
>
> During the six months military training, the kind of training and indoctrination received by the participants is identical. They are subject to the same regime largely in training, political education and history of the EPLF etc.
>
> At the end of six months, they are allocated in different development activities dependent upon their qualifications but whilst so allocated they still remained under military discipline and the Ministry of defence organises where they go.

Once they are allocated at different ministries or even the private sector – they do not get paid – the Ministry of Defence get the payment, i.e. NS service pay is given to them".

146. When cross-examined, Dr Kibreab confirmed that he was saying that NS continued without end *"so far"*. He maintained that this started in May 1998 when the border war broke out, in that before the war all would be demobilised after eighteen months. He continued:

> "The law requires a citizen to stay in National Service for eighteen months and at the end of that some of them get reintegration assistance, not all of them, most of them return to their families. That was the position between May 1994 and 6 May 1998, the law on NS was followed but, when the border war broke out on 6 May 1998, they were re-enlisted, i.e. those who were discharged and completed their obligation were re-enlisted and that also included those who were former field fighters demobilised between 1992 to 1994.
>
> There is therefore no distinction between those who have completed their NS pre-border war or post-border war. All are subject to further NS.
>
> Some, who have suffered injuries or who are unwell were probably discharged as part of the pilot scheme. Otherwise those up to the age of fifty have not effectively been demobilised, including those not present in the army. They remain in NS and therefore under military discipline.
>
> Eritrea, in spite of the government's ambition, is a very weak state and the enforcement ability of the government is limited – so people escape their villages, flee to Ethiopia – so it cannot be said they are otherwise actually servicing. Whether or not they choose to hide or escape they have not been demobilised. On return they will be regarded as deserters – even if they fled the country before being called up they will be regarded as draft evaders.
>
> When you arrive at Asmara Airport – there is a rigorous security check. If my mother returned she would face it. If someone is within the age range of NS, eighteen – fifty, they would be subjected to questioning and depending on the questions, such a person could either be sent to Ad-Abeto – a detention centre, or asked to go home and report in three or four days and in the meantime they would check up on you. Most government departments are now computerised. I cannot say the extent of any database, if any, at the airport. The check is the age of men and women. The authorities tend to be more lenient to women over thirty but they still run a check but it is less rigorous. I know through my informants and what I have seen myself."

147. Dr Kibreab told us that he was last in Eritrea in 2002.

148. Dr Kibreab did not know how many people were re-conscripted after the war broke out in 1998. He continued:

"They require secondary school students and relocate them to Sawa and ensure they complete their education in a military camp since 2003 – the reason they do that is that most students would otherwise disappear".

149. Dr Kibreab explained the number of students relocated to Sawa varied and in particular the number of girls had reduced dramatically because of rumours of sexual abuse and Muslims take their daughters to the Sudan

150. Dr Kibreab maintained that NS was so unpopular, that many Eritreans tried to avoid it. Accordingly the government in 2005 had issued directions that if a son or daughter escaped, the parents would be under an obligation to pay a fine. Parents were required to account for their children's whereabouts. Parents were detained and only released on payment of a fine.

151. He referred to the Appellant's bundle and an article issued by News.com sub-headed "*Eritrea Reportedly Detains Relatives of Military Service Evaders*" dated 29 July 2005. The article detailed the author's (Joe De Capua's), summary of interviews with Amnesty International. In that regard, Dr Kibreab further referred to Dr Pool's report (B9) under the sub-heading "*The Transfer of Fines to Parents*". This report stated:

> "A further index of the definition of draft evaders is the transfer of punishment and penalties for draft evasion to the parents of those who do not fulfil the provisions of the NSP. Over the last the two years the penalties listed under Article 37 of the NSP have been imposed on parents in some parts of Eritrea. There have been reports by Eritrean Human and Democratic Rights – United Kingdom (EHDR-UK) of arrests of parents in October 2005 in the Southern Province of Eritrea (Decamhare and its surrounding areas have been mentioned specifically) of those whose children left the country without exit visas. EHDR-UK has given the figure of over two hundred detained on October 24 2005. EHDR-UK is a London-based human rights monitoring group and has a tendency to be cautious rather than inflammatory in reporting human rights abuses in Eritrea.
>
> Gedab News (an independent opposition website) I have found to be usually accurate with a record of correcting previous errors or mis-reporting (reported on July 21 2005 a large scale round-up in Debub (southern region/province) of parents of:
>
> - any person summoned since the 1995 NSP but did not report
> - any student who had completed eleventh grade between 2002 and 2005 but had failed to report to Sawa for twelfth grade
> - any person who had left their National Service Unit and whose whereabouts was not known
> - any person who had left the country without an exit visa

> Gedab News reported "*bail*" of ten thousand Naqfa if the absent person was found in Eritrea and fifty thousand if found outside. Personal information from the Anceba region in Northern Eritrea is consistent with the Gedab figures for bails/fines of parents and with a similar scale of parental imprisonment in the villages around Keren, the provincial capital of Anceba. Although the figure attributed as bail and fines is higher than in Article 37, the imprisonment of parents is consistent with the punishment laid out for draft evasion.
>
> Article 37 would list penalties for those violating provisions of the NSP does not discriminate between National Service and reserve army with regard to penalties, particularly since the post-1998 circumstances have resulted in so many remaining on what is defined as active National Service. Exit visas are very difficult to acquire and any Eritrean leaving Eritrea illegally (that is, without an exit visa) would be suspected of draft evasion, deserting their military unit or of suspicious political behaviour".

152. Dr Kibreab told us that the government was *"extremely reluctant"* to provide data as to how many students were relocated to Sawa. As regards people in secondary school in Eritrea he did not have the latest figures. He explained however:

> "Year one to six is primary school, then there is junior then there is secondary school. It is not a requirement of law to attend school but those who are in cities attend school. National Service interrupted the education system as many ran away to avoid being conscripted.
>
> "It followed from May 1998 people conscripted remained on National Service unless they had run away."

153. Dr Kibreab had no means of knowing how many people in the year were called to National Service, but knew the number was going down, "*people leave no stone unturned to evade it*".

154. Dr Kibreab was reminded that the World Bank understood that 65,000 people were demobilised and reintegrated by 2005. When asked if he thought that information was correct, he told us that at the end of 2004 the government promised to demobilise 65,000 soldiers and subsequent to that, had begun issuing demobilisation cards. According to information, most of those issued with demobilisation cards were either professionals or possessed technical skills and were assigned in the civil sector of the country while remaining in NS even though removed from the army. Dr Kibreab continued:

> "This is what the Eritrean Government refers to as '*demobilised*' and I think these are the figures given to the World Bank."

155. Dr Kibreab continued his evidence at the resumed hearing on 4 January 2007. Mr Parkinson referred him to his report (B20) and what appeared under paragraph 2.3.1 and the sub-heading "*What of Students?*" Within that segment Dr Kibreab was reminded of the following extracts:

> "Any student who absconds before or after being transferred to Mai Nefhi Institute is regarded as a draft evader. This is not only because the Mai Nefhi Institute is regarded as part of the realm of the army but also because the students are in waiting to be drafted into the National Service immediately after they complete their studies. Students at the Institute are also required to participate in development work during the summer holidays. In fact although I cannot say this with an acceptable degree of certainty, I have been told by some people in government that the students who attend the Mai Nefhi Institute are considered as being members of the National Service. This may explain the rigorous control imposed on their freedom of movement and residence. They also receive military training. The Mai Nefhi Institute join the National Service and whoever runs away or absconds during the six months military training or after, is considered as a deserter.
>
> Any student who hides inside the country or departs from the country when approaching draft age is regarded as a draft evader. *Although the so-called approaching draft age is arbitrarily used, it can go down to ten years.* (Our emphasis). The government does not issue exit visas to children who are ten and over ten years old."

156. Dr Kibreab was challenged as to what evidence he had to support his contention that the government did not issue exit visas to children who are ten and over ten years old. He thought that it was in the State Department Report.

157. Dr Kibreab claimed to have also met Eritrean parents who had tried to take out their children before approaching draft eligibility age. He also thought the matter was mentioned in KA.

158. At this stage of his evidence, Ms Quinn intervened to refer us to the State Department Report of 8 March 2006 under the sub-heading (d) "*Freedom of Movement within the Country of Foreign Travel, Emigration and Repatriation*" where the following was stated:

> "Citizens and foreign nationals were required to obtain an exit visa to depart the country. There were numerous cases where foreign nationals were delayed in leaving for up to two months or initially denied permission to leave when they applied for an exit visa. Men under the age of fifty regardless of whether they had completed National Service; women aged eighteen to twenty seven; members of Jehovah's Witness and others who are out of favour with or seen as critical of the Government were routinely denied exit visas. *In addition, the Government often refused to issue exit visas to adolescents and children as young as five 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 two per cent income tax required of all citizens residing abroad.* Some citizens were given exit visas only after posting bonds of approximately $7,300 (100,000 Nakfa)".

159. We were also referred to paragraph 49 of KA:

> "49. One further item of relevance to the situation as regards exit visas, military service-related matters, including the position of women of draft

age, is a US State Department Report of February 2005 (covering 2004) Section 2d on Freedom of Movement states: [there is then repeated a similar passage from the 2005 US Report as above stated from the 2006 Report)."

160. Dr Kibreab continued to maintain that everyone called up for National Service remained on National Service indefinitely "*with very few exceptions*". *In different forms – it is very complex*".

161. He was referred to his report (B22) and the following:

> "Thus, with the exception of the veteran former combatants, i.e. those who joined the struggle before 1998 and the mentally and physically infirm who are not required to participate in the National Service and in the WYC *the large majority of all citizens between eighteen and fifty years are in the National Service"*. (Our emphasis).

162. Mr Kibreab had no idea how many citizens there were in Eritrea aged between eighteen to fifty. He maintained that a large majority of Eritreans tended to be young because of the war effect, mainly under eighteen. When asked as to what this large majority between eighteen to fifty on NS were actually doing, Dr Kibreab responded:

> "They are doing everything we do here. Teachers, policemen, drivers, night watchmen, agriculture labourers engineers – they are everything, but unlike others where people wished to earn a living – these people are under National Service and are working for the Government even where it is in the private sector, i.e. their salaries go to the Ministry of defence. This is as indicated in the letters. (Dr Kibreab was referring to the letters and translations of 18 May 2000 and 17 February (year unknown))."

163. Dr Kibreab maintained that a friend of his visiting the United Kingdom ran a company that had several employees. They were economists, engineers and clerks and most of them were of eligibility age where the salary was paid by his friend to the Ministry of Defence. He also referred to being in touch with an English lady who had a similar account to give.

164. Dr Kibreab was reminded that in his report (B23), there was a reference to a quotation from the CIO Report of April 2006 that in turn quoted from the US State Department January 2006 Report that the government's demobilisation programme had been repeatedly delayed and which further stated:

> "In 2003, the government began to demobilise some of those slated for the first phase".

165. Dr Kibreab maintained that as far as he knew, no demobilisation took place in 2003. Indeed the US State Department Report stated:

> "The programme has not yet been approved by the World Bank and funding for it from other donors is uncertain".

166. Dr Kibreab maintained that given the fact that the Eritrean national economy was on the brink of collapse, the government was unable to implement its programme of demobilisation without funding from the World Bank and other donors.

167. When challenged as to how these matters were within his own knowledge, Dr Kibreab maintained that it was because he was a researcher and constantly receiving information. He continued:

> "I write about those things. I have my own way of checking the reliability of this information and therefore I have no doubt about the veracity of this information. It is corroborated by many other documents including the World Bank MTR July 05. Even though the World Bank is a non-political organisation and very sensitive and therefore very reluctant to be critical about other governments' positions – in this respect you can very easily see how much they are despairing."

168. In this regard, Dr Kibreab referred to the MTR Report of July 2005 at paragraph 8 under the sub-heading *"Validity of Assumptions Today"* and the following passage:

> "Has the EDRP process, [Emergency Demobilisation and Reintegration Project], led to an actual reduction in the armed forces? *There are perceptions among Development Partners that the continued mobilisation into the armed forces in Eritrea, including through the National Service (NS), is to such an extent that the combined armed forces are as large now as at the start of EDRP. This view unfortunately is fed by limited transparency surrounding the size of the army and the number of NS that are currently mobilised into the army. Based on this, the Development Partners are of the opinion that EDRP does not actually help reduce the number of soldiers in the country, but rather facilitates change of personnel."* (Our emphasis).

169. Dr Kibreab maintained that "*change of personnel*" meant in his view the 65,000 said to be demobilised that he maintained were not demobilised but instead were issued with demobilisation ID cards in that they were then assigned in different places – various jobs such as government departments - and told to work for the government until further notice. In this regard he referred to the MTR and the continuation of paragraph 8 of their report:

> *"The IDA mission requested but has so far not received, more current information with regard to the size of the army and the number of NS that are currently mobilised into the armed forces. As such, the IDA mission is not able to verify whether the EDRP process has indeed led to an actual reduction of the armed forces"*. (Our emphasis).

170. Dr Kibreab continued:

> "It is quite clear that for the World Bank to speak in such scathing terms is unheard of."

171. Dr Kibreab referred further to the MTR under the heading "*National Service*" at paragraph12 and the following extract:

> *"Concerns remain that DS, [demobilised servicemen], are subject to National Service as well as potentially being returned to the military".* (Our emphasis).

172. Dr Kibreab considered this to be:

> "A surprising comment for a World Bank to voice such concerns against a member state. It shows their frustration that nothing (i.e. actual demobilisation) is happening".

173. Dr Kibreab continued, that it followed that when the World Bank stated that they believed that 104,000 soldiers had been demobilised, he agreed with Dr Pool that 48,000 were demobilised in 1993/1994 but these were people who fought in the War of Independence over thirty years, namely those seriously injured and advanced in age who joined in the struggle during the last eighteen months between 1989 and 1990 and parts of 1991. Eritrea became independent in May 1991 and they were all demobilised . This comprised approximately 48,000 people.

174. Dr Kibreab continued that when one talked about the 65,000, these were those who had been issued with ID (Demobilisation) cards but had not actually been demobilised and who had continued their NS arrangements. Dr Kibreab told us:

> "I presume these are the people who are presented to the World Bank as being demobilised and that includes the five thousand who were also effectively demobilised in the pilot project as mentioned by Dr Pool.
>
> Remember this is a Third World Country where figures can be deflated or inflated."

175. When challenged by Mr Parkinson as to the basis of his evidence that at least 60,000 of the 65,000 were not demobilised, Dr Kibreab maintained that:

> "The evidence is in different places and one needs to piece them together to make sense of it....The World Bank does not even believe in this. It is clear from the MTR report that there has not been credible demobilisation – no meaningful demobilisation"

176. We asked Dr Kibreab if there was any other background material that supported what he said. He responded:

> "No I cannot. The reason is, the Government of Eritrea is reluctant to release evidence to the World Bank which funds the whole project. No one else would be in a position to obtain such information from the government."

177. When asked if he was indicating that the World Bank were aware that the information that they were given was wrong, Dr Kibreab repeated that the World Bank had found that demobilisation was not transparent. They had stopped payments.

178. In this regard, Dr Kibreab referred us to the 2006 World Bank Financial Year Project Status Report under the sub-heading, "*Progress Towards Achieving Development Objectives*" and the following passage:

> "Following the project restructuring *the IDA credit has ceased to finance the demobilisation and reinsertion components, since the project has largely achieved its targets on demobilisation and reinsertion, by demobilising sixty five thousand soldiers and paying each demobilised solder a reinsertion benefit equivalent to US$330*. The focus of the project's implementation has since been entirely on the reintegration component and over the last twelve months, the project has also achieved good progress towards achieving the targets here. The improved implementation performance should shortly start to yield the expected impact – assuming the border situation does not further deteriorate". (Our emphasis).

179. It was suggested to Dr Kibreab, that the World Bank had not "*stopped*" payments but were satisfied that the development objectives for demobilisation had been achieved.

180. Dr Kibreab responded, that one could look at it "*in different ways*". He acknowledged that demobilisation cards had been issued to 65,000 soldiers and payments made to them but maintained that:

> "For the World Bank that is demobilisation – but effectively these people have been held in a state of limbo".

181. When asked if apart from the MTR report he could direct the Tribunal to any other materials that supported that view, Dr Kibreab responded:

> "If by objective you mean any other written material I do not have such evidence this is common knowledge. I have collected data from different sources including individuals issued with demob card while still not demobilised but transferred to civilian work whilst still in NS".

182. Dr Kibreab maintained that he had interviewed about 20 people in high government positions and that he had spoken to a Director General in a Government Department. He had interviewed about 35 Eritrean asylum seekers in the United Kingdom and 50 in Italy.

183. Dr Kibreab said that he had seen Dr Gebremedhin's report "*though I don't remember it properly*".

184. When asked if Dr Gebremedhin could be regarded as an expert on Eritrea, his response was equivocal:

> "You could say so even though he has not been in Eritrea for a while".

185. Dr Kibreab was referred to Dr Gebremedhin's affidavit at (B3) and the following passage:

> "Regarding the National Service it started in 1994 and so far it has undergone a nineteenth round recently. The new entrants for a round comprises on average twelve-fifteen thousand recruits. The main aim was to bridge the generation gap of skilled labour in Eritrea. Six months military training and twelve months work with different line ministries. As a programme it is good but now it is slavery. How can you keep more than twelve years as an individual without proper remuneration? The irony is that in the army there is regular army (elite army) who gets full salary and are remobilised ex-combatant and National Service who get one hundred and fifty – four hundred Nakfa (one dollar is fourteen Nakfa). Eritrea had more than three hundred and fifty thousand armed soldiers and the regular army is estimated to be forty thousand – fifty five thousand. A total working force is estimated to be around seven hundred thousand and it is very hard to believe fifty per cent of the working force to be contained in the army.
>
> The Government of Eritrea demobilised only the ones who are not medically fit and pregnant women. The ones who were working in the line ministries were told officially they are demobilised in March 2004, but they were told that for two years they have to work for the institutions they are working for. They will get their certificate after two years. Members of National Service are absconding in hundreds and are going to neighbouring countries (mainly Sudan and Ethiopia) and then to different countries. The Libyan Government has deported Eritreans and most of them were members of the National Service.
>
> As a veteran combatant, I can understand the limited National Service can be replaced by new entrants and if there is a need you can remobilise them. My understanding is they are kept hostage in the army (because there is a difference of payment and the ones who are highly paid have a stake in keeping the ones who are not properly paid, in this case members of National Service). In Eritrea it is slavery not National Service and it is misnomer to quote National Service. For me it is a violation of the basic human rights principle."

186. When asked if he would agree with Dr Gebremedhin that mobilisation, (NS call-up), had undergone the nineteenth round recently and that new entrants for a round comprised on average 12,000 to 15,000 recruits, Dr Kibreab said that he knew nothing of figures.

187. When asked whether his response meant that he recognised that Dr Gebremedhin would be likely to know the correct figures bearing in mind his expertise, Dr Kibreab disagreed. He said it was a state secret and only the people managing Sawa Camp would know.

188. Dr Kibreab pointed out the government would not even release these figures to the World Bank so it was very unlikely that an Eritrean would have access to such information.

189. Dr Kibreab told us that he was not saying that Dr Gebremedhin did not have access to this information, but he thought it unlikely.

190. When asked if he was expressing those doubts, despite the fact that Dr Gebremedhin was appointed by the Head of State and therefore at quite a high level, Dr Kibreab responded that he understood that Dr Gebremedhin had left Eritrea to study in Leeds in 1994/1995. Dr Kibreab continued:

> "He was therefore not involved in demobilisation matters after 1994. He was involved in the demobilisation of ex-combatants in the War of Independence in 1993/1994. Demobilisation we are talking about started in 2001."

191. Upon being reminded that Dr Gebremedhin was working for the government in 2001, Dr Kibreab responded:

> "No he was not. He was working as a consultant. He personally told me – I even visited him in his office in Asmara in 2001 and he told me that and that he had lots of problems with the government and was no longer working for them."

192. When asked if Dr Kibreab was maintaining that Dr Gebremedhin was a liar, he responded:

> "I am not saying that. I want to leave some room for doubt. Maybe he was working for the government.... as he says or a consultant".

193. Dr Kibreab continued:

> "I feel very uncomfortable about this.
>
> When I went to Asmara in the summer of 2001 to carry out my research, I met him in the city by chance and he asked me to come to his office and then we talked about the situation. He told me he was unhappy about the way he was being treated. I did not get the impression he was working for the government. It was an office in a shabby building.
>
> I based my impression on what he told me and I met him briefly twice in town and in his office.
>
> I have only had one subsequent contact with him in 2005 when he was in the US. He was a Director of Demobilisation in the early 1990s. In 1994 some disabled people were killed and as part of my study I wanted to interview him. I wrote to him with my request and he never responded to me and I have had no further contact.
>
> He was Director of the Demobilisation Office for the ex-combatants in 1993/94 and in that sense I regard him as an expert for that period."

194. When asked if his response meant that he did not think that Dr Gebremhedin was an expert on the 2003/4/5 demobilisation exercise, his response was somewhat equivocal. He told us:

> "What am I supposed to say? I am an academic. I feel very uncomfortable about passing judgment on someone's expertise. I have seen nothing published by him on the most recent demobilisation".

195. There was no re-examination.

196. We referred Dr Kibreab to his report, (sub-paragraph 2.2 *"Duration of the National Service")* that before May 1988 when the border war broke out, the duration of NS was limited to 18 months after which those who completed it were invariably demobilised, but that after May 1998, such people were re-enlisted as well as former combatants demobilised in 1993 and 1994. Further, that after the border war broke out, "*those who complete their eighteen months are no longer demobilised*".

197. We asked Dr Kibreab as to whom in his opinion since May 1998 fell into the category of being demobilised.

198. Dr Kibreab responded that there was no dispute that 5,000 were demobilised in the pilot scheme comprising those of advanced years and/or those who sustained serious injuries in the border wars and the 65,000 who were issued demobilisation ID cards were still "in a state of limbo", namely still in NS and therefore not demobilised.

199. Dr Kibreab maintained no one else had effectively been demobilised. He continued:

> "Eritrea says it is in a state of war and anybody even demobilised falls into the category of those on reserve. So if a war broke out undoubtedly they would be called back.
>
> Forty eight thousand were demobilised over the period 93/94 – when the war broke out – those physically capable of carrying guns were remobilised and it is possible some of these were demobilised in the category of five thousand and they were likely to be older than the rest."

200. When asked if there was a cut-off point to NS, Dr Kibreab explained that the law said it was eighteen months (the 1995 Proclamation) but the reality was different. The proviso in the Proclamation was overwritten by an interview of the Head of State in May 2002 (by which we understood Dr Kibreab to be referring to the Middle East Times article) and subsequently approved by the Cabinet. Dr Kibreab maintained that at the present time the categories of demobilisation were:

- Former combatants, namely those who fought in the thirty year war before 1991 and excluding those remobilised in 1998 or assigned to various positions in the Ministry of Defence) and those who had assigned employment outside of the Ministry of Defence. Even those when the border war broke out were temporarily called back until the Peace Agreement was signed.

- Five thousand demobilised in the pilot project in 2001.

- Women over thirty five – forty with children, although Dr Kibreab explained the latter was an assumption for which he had no particular basis to support it.

- All those aged forty or over when National Service was launched in May 1994 would be immune unless the country was in a state of war.

- People who were certified by the Military Tribunal as medically unfit. This category was the one referred to within Dr Pool's report that he subsequently informed us in the course of his oral evidence was '*speculative*'.

201. Dr Kibreab told us that illegal departure was considered a serious offence. So many people had left Eritrea or intended to, because conditions were so bad not least because of the open-ended obligations to National Service. As a consequence the President of Eritrea had issued an instruction to shoot on sight anyone fleeing the country.

202. At this point Dr Kibreab produced an extract from a news report of Awate.com dated 26 November 2006 under the sub-heading "*PFDJ Rounds-up Eritreans in Sudan*". He referred us to a passage sub-headed "*Restrict Outflow of Eritrean Youth*" which stated as follows:

> "*By special order of President Isaias Afwerki, the Eritrean military was given permission to 'shoot-on-sight' any Eritrean caught attempting to flee or helping anyone who is fleeing.*
>
> There are three escape routes from Eritrea: via Senafe, to Ethiopia; via Tessenei to Sudan and via official visits in the Middle East to Europe.
>
> There has been no change in the volume of the flow towards Ethiopia (about two hundred and fifty per month); and until about a week ago, with about forty five people daily escaping to the Sudan. However, *there has been a qualitative change with the escapees now not just limited to the youth but a broad spectrum of Eritreans including four doctors who escaped in early October. The regime has responded to this not only with a* "shoot-on-sight" *order but by frequent round-ups.* On Saturday November 25 at dawn, the regime raided Segeneitti and Dekemhare and rounded up all youth, including students with ID cards". (Our emphasis).

203. Dr Kibreab referred us to a further passage from the same report as follows:

> "*The regime has tried to limit the air-bound flights by severely restricting the approval of exit visas to those considered trustworthy…*
>
> Of the three routes, the one that seems to occupy the minds of the PFDJ is the Tessenei route to Sudan, primarily due to its proximity to the military

camp of Sawa. According to a report provided by the Eritrean National Salvation Front, in August of this year, the Eritrean regime shot to death eight Eritrean youths on the claim that they were trying to escape to Sudan and left their bodies for display and warning in the streets of Tessenei. The report identified three individuals: Mr Amanuel Sulus Ogbagabiel from Agbela; Mr Adem Ajssen from Haikota; and Mr Abdella Mahmoud from Gonge.

In late October, a substantial number of Sawa conscripts escaped to Sudan leading the Eritrean regime to conclude this was highly organised with the knowledge and co-operation of middle-rank officers. Consequently it concluded that one more demonstration was needed as a warning. This time ten "troublemakers" were rounded up from Sawa, taken to Tessenei, lined against a wall and shot in the back by an execution squad. People were told these too had tried to escape in the Sudan.

The tactic of shooting prisoners in the back, to make it look they were shot while escaping from the law, was developed by scared commanders who worried that some day they might be held responsible for the lives of people they are shooting. Military Commanders worry that they might be incriminated in the future when human remains might be exhumed for forensic tests as had happened in Bosnia and other places.

With the opening of the Sudanese border, the Eritrea regime expects more escape attempts and has taken some measures to reduce this. The first order has been to demand a bail bond on all civil servants in the amount of one hundred thousand Nakfa (i.e. ten years worth of salary for a typical public servant). The civil servants now have an obligation to report not just one who has escaped, but who is even thinking of escaping. Another move that the regime has already instituted is to decentralise Sawa military camp by creating 'mini Sawas' throughout the country, primarily in the more remote Sahei area. This move (modelled after its approach of dismantling the University of Asmara and creating several colleges throughout Eritrea) is also meant to eliminate concentration of a large group of youths in the country. The third approach is to continuously rotate and free senior officials." (Our emphasis).

204. Dr Kibreab continued that it was clear from this report that everyone had to produce a bail bond of one hundred thousand Nakfa, that was all adults working for the government, civilian NGOs in the private sector and family members were required to surrender 100,000 Nakfa if a person departed.

205. Dr Kibreab further explained that those not affected by National Service and who were considered as trustworthy by the government comprised :

- Ministers
- Ex-ministers
- Party activists

- Eritrean expatriates, namely those who could be British citizens working in Eritrea but of Eritrean origin.

- Elderly people over fifty who were forty or over in 1994 who wanted to go on Haj or visit relatives abroad

- Government officials

- Scholarship students (the government now restricted their movements as many did not return)

- Government employees who attended conferences (although Dr Kibreab maintained this had recently stopped.

- Relatives of those in power might arguably obtain exit visas as a result.

206. Otherwise, no one under fifty for whatever reason could lawfully obtain an exit visa and would have to walk to Ethiopia or the Sudan which was risky and try to cross the border.

207. Dr Kibreab referred us to the Amnesty International Report of 21 December 2006 that under the sub-heading "*Eritrea: Over five Hundred Parents of Conscripts Arrested*" stated inter alia:

> "*Resorting to collective punishment, the Eritrean Government has arrested over five hundred relatives, mostly parents of young men and women who have either deserted the army or avoided conscription. Amnesty International strongly condemns these arbitrary detentions. The organisation calls upon the Eritrean authorities to either immediately release the individuals or charge them with recognisable criminal offences and try them within a reasonable time in full accordance with international standards of a fair trial.*
>
> *The arrests have taken place in the region of Asmara, the capital city in a sweep that started on 6 December. None of those arrested have been charged with a criminal offence or taken to court within the forty eight hours stipulated by the Constitution and the laws of Eritrea. The authorities have stated that detainees must either produce the missing conscripts or pay a fine of fifty thousand Nakfa (approximate US$3125). Relatives who fail to do so will be forced to serve six months in the army in place of their missing family members.*
>
> The principle of individual penal responsibilities, that no one may be penalised for an act for which they are not personally liable, is a fundamental principle of law which is reflected throughout international human rights law. These arrests violate this principle and specifically the right to liberty and security of the person and the right not to be subjected to arbitrary arrest or detention contained in the International Covenant on Civil and Political Rights (ICCPR) and the African Charter on Human and Peoples Rights, to which Eritrea is a party.

The arrests reflect an upsurge in the Eritrean Government's use of arbitrary and punitive sanctions against civil society, religious groups and human rights defenders". (Our emphasis)

208. Later under the sub-heading "*Background*" the following is stated:

> "*Thousands of young men and women have fled Eritrea and sought asylum in the Sudan and other countries since Eritrea's war with Ethiopia between 1998 and 2000, in an effort to avoid conscription or after deserting the army. National Service, compulsory for all men and women aged between eighteen and forty has been extended indefinitely from the original eighteen month term instituted in 1994.* It consists of military service and labour on army-related construction projects. The right to conscientious objection to military service is not recognised by the Eritrean authorities. There are frequent round-ups to catch evaders and deserters. *Indefinite arbitrary detention and torture or other ill-treatment are regularly used as punishments for evasion, desertion and other military offences.*
>
> International humanitarian non-Governmental Organisations (NGOs) have faced increasing difficulties in carrying out their activities as a result of measures taken by the authorities. In 2006 alone eleven organisations have been expelled from Eritrea and forced to seek their work there." (Our emphasis).

209. Dr Kibreab continued that in such circumstances and insofar as the Appellant in the instant appeal was concerned:

> "The political outcome is that he is likely to disappear, it may be death but one does not know. People detained in 2001 have disappeared".

210. Dr Kibreab continued that a person whose characteristics were simply of mobilisation age and who left illegally would face the same risk. He continued:

> "This would apply to all aged 18 to 50 who left Eritrea illegally and are returned. There would be the following consequences:
>
> - If over forty at the time of their departure, they would not be regarded as evaders – provided that their departure was before 1994 – but they would be accused of having left the country illegally which is a criminal offence.
>
> - If they had sought asylum in another country – that is also considered a serious offence because they had been disloyal and have exposed the weakness of the country to strangers. It is a criminal offence called "*disloyalty*". Washing "*dirty linen in public*" in Eritrea is recognised as a very serious matter.
>
> - Those not demobilised can be regarded in such cases as deserters in the full military sense. No charges are proffered in Eritrea outside of normal civil affairs. They would be detained in an unknown place indefinitely and disappear".

211. As regards the penalties in law for illegal exit and disloyalty, Dr Kibreab referred to the first law on NS promulgated in 1991. He pointed out there were different levels according to their law. For example, deserting to live in another country carried the penalty of five years imprisonment. If one left the country whilst it was in a state of war as at present, then such a person would be subject to Penal Law although in Eritrea Dr Kibreab maintained one was never taken to court rather it was a local Commander who dealt with the matter and such a person would "*inevitably end up in a metal container*".

212. Dr Kibreab told us that he had last been in Eritrea in 2002. It was possible he would go back but he would want to consider the present situation and he was mindful that "*telling the truth about the Government is not tolerated. I do not think I would risk it but in an emergency, for example the death of a relative, I might do so*".

213. We referred Dr Kibreab to the Awate.com article he had produced that referred to the demand of a bail bond on all civil servants in the amount of one hundred thousand Nakfa. We had noted in Dr Kibreab's evidence, that this sum would amount to the sum of a typical public servant or represent ten years equivalent actual salary. We asked if he was aware of the percentage of the population who were likely to have such facilities to provide such a bond. Dr Kibreab in response told us that people who had more than one offspring abroad might qualify. Payment was likely to be achieved by remittances.

214. Dr Kibreab was unable to refer us to any document to identify those who he maintained were eligible for exit visas but he claimed that such a document existed because he had "*seen it in Eritrea newspaper*". However, Dr Kibreab was of the view:

> "... No one in their right mind would apply for an exit visa because they are supposed to serve their country and not leave it."

215. Dr Kibreab did not agree with the reference in the Amnesty International Report (above referred), that NS consisted of Military Service "*and labour on army-related construction projects*". He felt it should be broader than that. Dr Kibreab continued:

> "People work on all other forms of projects including in the private sector in return for payment by the employers to the Ministry of Defence. It has a military training component but it is much broader than military service. There is a six month military component which is military training. The goal is completely different – the goal is to turn citizens to commitment to the national cause – to unify the country".

216. Dr Kibreab told us that anyone who left the country illegally even if that included those of the 5,000 whom he accepted to have been demobilised, would still be considered to have violated the principles of legal departure although the kind of punishment meted out would vary, but they would be likely to be detained and held incommunicado unlawfully

as that was a common practice. He continued that there were always exceptions. In general anyone who fled the country to seek asylum or to work abroad would be at risk.

217. At the close of Dr Kibreab's evidence, we adjourned, having first made the directions to which we have above referred.

218. Prior to the adjourned hearing, we received and considered the written submissions of the parties and the subsequent supplementary submissions of the Respondent in response to those raised by the Appellant. We also heard the parties' further amplification of those written submissions. We reserved our determination.

The Legal Framework

219. The provisions of SI [2006] No.2525 "The Refugee or Person in Need of International Protection (Qualification) Regulations 2006" now bring into United Kingdom domestic law the Council of the European Union Directive 2004/83/EC of 29 April 2004 on 'minimum standards' for the qualification and status of third country nationals or stateless persons as refugees or as person who otherwise need protection and the content of the protection granted, normally referred to in the United Kingdom as the Qualification Directive. Commensurate changes were made in the Immigration Rules by means of Statement of Changes in the Immigration Rules also taking effect on 9 October 2006.

220. The determination we have made has approached the issues in this appeal from the perspective of the 2006 Regulations and in particular has applied the definitions contained there, in deciding whether the Appellant is a refugee under the 1951 Geneva Convention. We have also applied the amended Immigration Rules. These have permitted us to consider whether the Appellant is in need of Humanitarian Protection as being at risk of serious harm, as defined in paragraph 339C of the Rules. Finally, we have gone on to consider whether the Appellant is at risk of a violation of his human rights under the provisions of the ECHR.

221. The burden of proof is upon the Appellant. The standard of proof has been defined as a '*reasonable degree of likelihood*', sometimes expressed as 'a reasonable chance' or a '*serious possibility*'. The question is answered by looking at the evidence in the round and assessed at the time of hearing the appeal. We regard the same standard as applying in essence in human rights appeals although sometimes expressed as '*substantial grounds for believing*'. Although the 2006 Regulations make no express reference to the standard of proof in asylum appeals, there is no suggestion that the Regulations or the Directions were intended to introduce a change in either the burden or standard of proof. The amended Rules, however, deal expressly with the standard of proof in deciding whether the Appellant is in need of Humanitarian Protection.

222. Paragraph 339C of the Immigration Rules defines a person eligible for Humanitarian Protection, as a person who does not qualify as a refugee

but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned, would face a real risk of suffering serious harm. It seems to us that this replicates the standard of proof familiar in the former jurisprudence and, by implication, applies the same standard in asylum cases.

223. Accordingly, where below we refer to 'risk' or 'real risk' this is to be understood as an abbreviated way of identifying respectively:

i. whether on return there is a well-founded fear of being persecuted under the Geneva Convention;

ii. whether on return there are substantial grounds for believing the person would face a real risk of suffering serious harm within the meaning of paragraph 339C of the amended Immigration Rules; and

iii. whether on return there are substantial grounds for believing that the person would face a real risk of being exposed to a real risk of treatment contrary to Article 3 of the ECHR.

224. In reaching our conclusions as to whether the Appellant will be at real risk on return, we have been further mindful that the amended Immigration Rules (Cm 6198) contain among other provisions, paragraph 339K which deals with the approach to past persecution and paragraph 339O headed "*Internal Relocation*".

Court of Appeal Case Law and Country Guidance

225. At this point, it is convenient to summarise the relevant Tribunal country guidance on Eritrea and what the Court of Appeal has had to say on the issue.

226. In AH (Failed asylum seekers – involuntary returns) Eritrea CG [2006] UKAIT 00078, the head note states:

> "*Neither involuntary returnees nor failed asylum seekers are as such at real risk on return to Eritrea. Country guidance on the issue in IN (Draft evaders – evidence of risk) Eritrea CG [2005] UKIAT 00106 and KA (Draft related risk categories updated) Eritrea CG [2005] UKIAT 00165 is confirmed. NB: this decision should be read with WA (Draft related risk updated – Muslim Women (Eritrea) CG [2006] UKAIT 00079.*"

227. In IN (Draft evaders – evidence of risk) Eritrea CG [2005] UKIAT 00106, the Tribunal considered the treatment of military deserters and draft evaders:

> "29. There is a general consensus in the evidence those identified as deserters or draft evaders are at risk of severe ill-treatment in Eritrea. This is referred to in the US State Department Report 2004 at A121-2

which records that the government continued to authorise the use of deadly force against anyone resisting or attempting to flee during military searches for deserters and draft evaders and that there were substantial but unconfirmed reports that hundreds of draft evaders and National Service escapees were being held in makeshift prisons around the country. It confirms the continued detention of some of the Maltese deportees being held at secret locations without contact with their families without formal charges and refers to reports that some who tried to escape were killed by security forces. The UNHCR report of January 2004 refers to the punishments used against deserters, conscripts, evaders and army offenders reportedly including methods such as tying of the hands and feet for extended periods of time and prolonged sun exposure at high temperature. The CIPU Report April 2004 at paragraphs 5.6-5.72 draws on these sources, confirming the risk of severe ill-treatment for army deserters and draft evaders.

44. Bringing all these factors together, and applying the lower standard of proof, the Tribunal is satisfied that at present there is a real risk of those who have sought to avoid military service or are perceived to have done so, are at risk of treatment amounting to persecution and falling within Article 3. we summarise our conclusions as follows:

    i. On the basis of the evidence presently available, there is a real risk of persecution and treatment contrary to Article 3 for those who have sought or are regarded as having sought to avoid military service in Eritrea.

    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 is 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 there will normally be no basis for a finding that he or she will 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 receive call up papers or are approaching or have 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.

    iii. NM is not to be treated as authority for the proposition that all returnees of draft age are at risk on return. In that case the Tribunal found on the facts that the appellant would be regarded as a draft evader and also took into account the fact that there was an additional element in the appellant's

background, the fact that her father had been a member of the ELF, which might put her at risk on return.

iv. There is no justification on the latest evidence before the Tribunal for a distinction between male and female draft evaders or deserters. The risk applies equally to both.

v. The issue of military service has become politicised and actual or perceived evasion of military service is regarded by the Eritrean authorities as an expression of political opinion. The evidence also supports the contention that the Eritrean Government uses National Service as a repressive measure against those perceived as opponents of the government.

vi. The position for those who have avoided or are regarded as trying to avoid military service has worsened since the Tribunal heard NA.

vii. The evidence does not support a proposition that there is a general risk for all returnees. The determinations in SE and GY are confirmed in this respect. Insofar as they dealt with a risk arising from the evasion of military service, they had been superseded by further evidence and on this issue should be read in the light of this determination."

228. In KA (Draft-related risk categories updated) Eritrea CG [2005] UKAIT 00165, the Tribunal's determination contains a head note:

> "*This case, which updates the analysis of risk categories undertaken in IN (Draft evaders – evidence or risk) Eritrea CG [2005] UKIAT 00106, gives guidance on several issues. It confirms the previous Tribunal views 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 regard persons of eligible draft age, this decision explains why it is thought the Eritrean authorities, despite regarding such persons with suspicion, would only treat adversely those who are unable to explain their absence abroad by reference to their past history. Reasons are given for slight modifications in certain parts of the guidance given in IN. The summary of conclusions is given at paragraph 113. The decision is also reported for what it said at paragraphs 7-15 about the country guidance treatment of issues which go wider than the particular factual matrix of an appellant's appeal.*"

229. The Tribunal in KA indeed summarised their conclusions at paragraph 113 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 as a 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 be 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 while potentially at 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 of their circumstance bring them within any of the three sub-categories set out in (f).

f. Subject to the above, persons of eligible draft age (defined in the context of return as being between 18-50 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 sub-category, 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. Also *a person who generally lacks credibility will not be assumed to have left illegally. We think those falling into the 'left legally' sub-category will often include persons who are considered to have already done national service, persons who have got an exception and persons who have been eligible for call-up over a significant period but have not been called up. Conversely those falling outside this set of category and so at risk will often include persons who left Eritrea when they were approaching draft age (18) or had recently passed that age***;** [Our emphasis] 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 sub-category 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 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 will 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 that he was of eligible draft age. A person who failed to give a credible account of material particulars relating to their history and circumstances cannot easily show that they will be at risk solely because they are of eligible draft age***."** (Our emphasis).

230. For reasons to which we will later refer, we have concluded upon our consideration of the current background material that the finding of the Tribunal in KA that the "*left legally" sub-category applies to men who have already done their National Service (NS),* is now to be read in the light of the fresh evidence to which we refer contained on the US State Department Report of March 2006 and repeated in the April 2006 CIO Report for Eritrea.

231. In WA the Tribunal prefaced its determination with this head note:

> "*On the basis of evidence now available, Muslim women should not be excluded from being within the draft related at risk category. The evidence indicates that Muslim women per se are not exempt from military service. In some areas, however local protests prevent their call up and in others the draft is not so strictly implemented. This addition (amending paragraph 113 of the determination) to the draft related risk categories in KA (Draft related risk categories updated) Eritrea CG [2005] 00165 are reaffirmed. In particular it remains the case that in general someone who has lived in Eritrea for a significant period without being called up would not fall within the category of a draft evader. The evidence indicates that the administration of National Service is devolved to six regional commands and the degree to which recruitment is carried out varies from region to region. Considering*

risk on return a decision maker should pay regard to any credible evidence relating to the particular region from whence an appellant comes and the degree to which recruitment is enforced in that particular area. NB: this decision should be read with AH (Failed asylum seekers – involuntary returns) Eritrea CG [2006] UKAIT 00078."

232. N0thing the Tribunal have heard or seen in the instant appeal affects the finding of the Tribunal in WA that Afar Muslim women from the Dankalara region were not subject to forceful recruitment into NS.

233. In Ariaya and Sammy v SSHD [2006] EWCA Civ 48, the Court of Appeal identified what they described as "*a very real and growing concern about the treatment of those who, on return to Eritrea, are perceived by the authorities to be draft evaders or deserters*" who would be at real risk if they were returned to Eritrea. The Court considered relevant Tribunal decisions including Country Guidance decisions of the Tribunal in MA (Female draft evader) Eritrea CG [2004] UKIAT 00098, SE (Deportation – Malta – 2002 General Risk) Eritrea CG [2004] UKIAT 00295, and IN and KA to which we have above referred. The Court endorsed the conclusions of the Tribunal in KA. At paragraph 10, Richards LJ endorsed the risk categories identified in KA. His Lordship quoted from paragraph 113 (i) where the Tribunal held that:

"*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.*"

234. The significance of that point is worth emphasising. Persons who have been found by a judicial fact-finder not to be credible in any material respect may be hard-pressed to demonstrate that they left Eritrea illegally. If they did not exit illegally then the only alternative is that they left with the permission of the Eritrean authorities despite being of draft age. (see further paragraph 449 below).

The Expert Reports

235. We need to make some comments about our approach to the oral evidence and reports of the two country experts and the affidavit of Dr Amanuel Gebremedhin.

236. There are a number of general observations that we would wish to make. Our starting point is the Asylum and Immigration Tribunal Practice Directions where at paragraph 8A.4, it is stated that an expert should assist the Tribunal by providing objective, unbiased opinion on matters within his or her expertise and should not assume the role of an advocate.

237. Practice Direction 8A.5 reminds us that an expert should consider all material facts, including those which might detract from his or her opinion. Paragraph 9A.6 points out that an expert should make it clear:

a) when a question of issue falls outside his or her expertise; and

b) when the expert is not able to reach a definite opinion, for example because of insufficient information.

238. In appeals before the AIT, the issue relates to conditions in a specified country or region. The role of a country expert is thus to assist the Tribunal giving expert evidence in a field where specialist knowledge is required, in particular in providing comprehensive and balanced factual information relating to the issues that the Tribunal must resolve.

239. In that regard, it is important to bear in mind, that the AIT is itself a specialist Tribunal that has its own level of expertise and therefore it is for the Tribunal on the basis of the totality of the material before it, including the opinion of the country expert, to conduct its own assessment and reach its own conclusions.

240. A competent expert's report is always entitled to respect and due consideration, but from the point of view of the judicial decision-maker, such reports may sometimes (if not often) amount in the end to just one among other items of evidence which have to be weighed in the balance.

241 As held by the Tribunal in SK [2002] UKAIT 05613, the Tribunal builds up its own expertise. Naturally an expert's report can assist, but that does not mean that heavy reliance is or should necessarily be placed upon such reports. All will depend upon the nature of the report and the particular expert. The Tribunal is accustomed to being served with reports of experts, many of whom have their own points of view which their reports seek to justify. The whole point of the country reports is to bring together all relevant material. From them, the Tribunal will reach its own conclusions about the situation in the country and they will see whether the facts found in relation to the individual before it establish, to the required standard, a real risk.

The Evidence of Dr Amanuel Gebremedhin

242. We begin with the affidavit (our copies unsigned and undated) of Dr Amanuel Gebremedhin. Dr Gebremedhin is an Eritrean who was granted asylum in the United States in July 2003. He describes himself as currently working as an Emergency Programme Consultant for an American NGO and as an adviser to the MDRP (programme by the World Bank in the Great Lakes). Under the sub-heading "*Background*" he tells us, in summary, that he joined the Eritrean armed struggle in 1975 and worked in the rank and file of the EPLF, the current ruling party in Eritrea. During the armed struggle he was a member of the General Staff responsible for the Communication Department (Signal) of the Army. After the liberation of Eritrea he worked as a personal aid to the Ministry of Defence from May 1991 to December 1992.

243. Dr Gebremedhin tells us that in December 1992 he was assigned as the Head of Demobilisation and Reintegration Programme known as "*Mitias*"

that he describes as designed to *reintegrate newcomers back to society in the local language (Tigriyna).* In the process, the institution he was heading demobilised and reintegrated 54,000 former combatants out of which 13,500 were female ex-combatants.

244. Dr Gebremedhin left Eritrea for the United Kingdom to continue his higher studies and obtained an MA in Development Studies in 1997 and a PhD in Sociology from the University of Leeds.

245. In 1998 the border war with Ethiopia started and he returned to do field work in Eritrea. The title of his thesis was "*The Challenge of Reintegration and Reconstruction in Post Conflict Eritrea*". He states that his book on that subject was published in 2004.

246. Dr Gebremedhin continues, that when the border war stopped in December 2000 the Government of Eritrea asked the World Bank and UNDP to support them in designing the demobilisation and reintegration programme for 200,000 former combatants. Dr Amanuel points out:

> "In history, it is a rare opportunity to make right what you have wronged".

247. Dr Gebremedhin explains that during the first demobilisation and reintegration programme, the main focus was to help former combatants economically so that they could reintegrate smoothly into the mainstream of society. Dr Gebremedhin continues:

> "But this endeavour proved to be wrong for it did not take on board the social aspect the former combatants had passed through. As a result of participating in the long armed struggle their social way of life had changed and without addressing this issue, reintegrating former combatants back into society is futile to say the least".

248. Dr Gebremedhin explains that twenty experts designed the second demobilisation and reintegration programme for Eritrea that was funded by the World Bank and UNDP as from January 15 and ending on February 24 (he does not specify the year) and that he was one of the experts who participated in the design of the second demobilisation programme. He continues:

> "This gave me an opportunity to reflect and redress the wrongs of the first phase exercise of demobilisation and reintegration programme conducted from 1993-1997 at least conceptually."

249. Dr Gebremedhin claims to have been appointed by the Head of State to be an Executive Secretary to the National Demobilisation and Reintegration Commission on 6 May 2001. Since he had worked on both exercises of demobilisation in Eritrea he tells us:

> ".. with confidence and experience, that *there was no political will to demobilise former combatants in Eritrea. For example when I submitted a proposal for how to go about addressing the demobilisation*

and reintegration problem, it was rejected automatically without even discussing it in detail. The demobilisation proposal I submitted targets combatants who were slated to be demobilised in phases and the aim was to start training them in different skills to help them reintegrate back into the society. *The response I got from higher authorities was 'we are not going to demobilise before our border is demarcated'*. My argument was yes, we can, for if the worst come, it is easy to remobilise and that is what had been done when the border war started and ex-combatants left their work on a volunteer base to defend their country." (Our emphasis).

250. A further issue of contention that Dr Gebremhedin describes with the higher authorities was as to the conduct of the pilot programme. As Executive Secretary, Dr Gebremhedin wrote a proposal describing those who should be demobilised in the first pilot phase and that they should comprise all categories from the members of the front. His affidavit in this regard continues:

> "This can give a picture of the beneficiaries and can help in designing a reintegration programme geared towards the beneficiaries. This was also rejected and only three thousand women and some disabled combatants were demobilised in the pilot phase. This category cannot represent the beneficiary group and it is hard to design intervention programmes based on this finding."

251. Dr Gebremedhin tells us that 65,000 former combatants were supposed to be demobilised and after postponement of the dates, the government claimed that they had demobilised that number. Dr Gebremedhin states, however:

> "*In reality they had demobilised only from the reserve militia and added names of the ones who were demobilised in the first exercise, 1993-1996, to reach their target.* This is public knowledge that the ones who got their benefit in the first demobilisation were paid again". (Our emphasis).

252. Dr Gebremedhin describes a third issue that created problems for him with the higher authorities, namely that:

> ".. the President Office allocated $120 million for reinsertion out of the $200 million for reinsertion. I wrote a letter saying this would not help ex-combatants... Differing programmes must be designed that can help them develop skills so that it can help them reintegrate into the society when they are officially demobilised. What we have learned from the 1993-1997 demobilisation exercise, was that giving money to former combatants only ended up in bars (pubs) and after finishing their money they were coming back to the offices of demobilisation and reintegration stationed in differing provinces".

253. A fourth issue that Dr Gebremedhin says led to his resignation was what he described as:

> ".. the issue of psychosocial problems among former combatants. I designed a survey to see the profile of former combatants. Three thousand former combatants were selected from all units randomly and a

study was conducted from July to October 2001. The findings were alarming. Thirteen per cent of the sample responded that they were suffering from psychosocial-related problems. ..... I proposed to the higher authorities that we need to get prepared, by training peer and community counsellors and professional psychiatric nurses. The response I got was this is claimed but not verified. I tried to show the authorities what is looming but they gave me a deaf ear and after that it was too much to take it and stay in an institution in which I cannot make any difference. I wrote a resignation letter and submitted it to the President Office and to my surprise my resignation paper was accepted and I left the office on 15 November 2001."

254. Dr Gebremedhin refers to an independent evaluation having been carried out by the World Bank in July 2005 when the demobilisation programme was suspended. Dr Gebremhedin continues in his affidavit in this regard:

> "The main reason give for the public consumption was that it was progressing slowly, but the real reason behind (it) was that the ones who were demobilised were pregnant women, severely disabled combatants. In order to increase the number, former combatants who were demobilised in 1993/1997 were recalled and given new certificates and issued demobilisation money. So in a real sense, there was no demobilisation only (an) insignificant number from the core army was demobilised."

255. As regards National Service it started in 1994 and has undergone nineteen rounds. Dr Gebremedhin continues in his affidavit:

> "*The new entrant for a round comprises on average twelve-fifteen thousand recruits. The main aim was to bridge the generation gap of skilled labour in Eritrea. Six months military training and twelve months work with different line ministries. As a programme it is good but now it is slavery*. How can you keep more than twelve years an individual without proper remuneration? *The irony is, that in the army there is Regular Army (Elite Army) who gets full salary and a remobilise(d) ex-combatant and National Service who get only one hundred fifty-four hundred Nafka (one dollar is fourteen Nafka).* Eritrea had more than three hundred and fifty thousand armed soldiers and the regular army is estimated to be forty thousand-fifty five thousand. The total working force is estimated to be around seven hundred thousand and it is very hard to believe fifty per cent of the working force to be contained in the army."

256. Dr Gebremedhin concludes his affidavit by claiming that the Government of Eritrea demobilised only those who are not medically fit and pregnant women. He continues:

> "The ones who are working in the line ministries were told officially they were demobilised in March 2004 but they were told that for two years they have to work for the institutions they are working for. They will get their certificate after two years. *Members of National Service are absconding in hundreds and are going to neighbouring countries (mainly Sudan and Ethiopia) and then to different countries***.** The

Libyan Government had deported Eritreans and most of them were members of National Service. *As a veteran combatant I can understand the limited National Service and can be replaced by new entrant and if there is a need you can remobilise them. My understanding is they are kept hostage in the army (because there is difference of payment and the ones who are highly paid have a stake in keeping the ones who are not properly, in this case the members of the National Service). In Eritrea it is slavery not National Service and it is misnomer to call it National Service. For me it is a violation of the basic human rights principle."* (Our emphasis)

257. We do not doubt Dr Gebremedhin's good faith, nor do we underestimate or undervalue the expressed opinion of someone who claims to have played an important and senior role in the early phases of the demobilisation programme. We have nonetheless concluded that the value of Dr Gebremhedin's evidence must be tempered by the following factors:

1. Neither the parties nor the Tribunal had the opportunity of testing the veracity and reliability of Dr Gebremedhin's evidence by way of oral evidence.

2. It cannot be said that Dr Gebremedhin's expressed opinion can be regarded as objective and unbiased. He is someone who resigned from the Eritrean Government and was surprised his recognition was accepted.

3. Dr Gebremedhin's evidence clearly played a significant role in the evidence upon which the Appellant relied in terms of demobilisation in Eritrea. Not only was his affidavit within the Appellant's bundle, but it is apparent when one looks at Ms Quinn's detailed initial skeleton argument, that significant reliance was placed upon his evidence as reflected at paragraphs 50 to 56 of Counsel's skeleton argument. Notwithstanding that initial reliance, it was notable that within Ms Quinn's closing written submissions she cast significant doubt upon the value of his evidence. She pointed out that Dr Gebremedhin's title "*Executive Secretary*" did not convey any information regarding his seniority or importance. Further, he had never been involved in the call-up for National Service in that his role appeared to have been limited to demobilisation. He did not state the basis for his assertion that only 12,000 to 15,000 people were called-up for National Service each year. It was not clear how he would obtain this figure. His assertion was not corroborated by any expert or background evidence.

4. Our observations in this regard were reinforced, when in Counsel's closing submissions before us, Ms Quinn took issue with the extent to which the Respondent in his written submissions had relied extensively on Dr Gebremhedin's evidence that 12,000 to 15,000 people were called up for National Service each year. Ms Quinn emphasised that Dr Gebremedhin left Eritrea in November 2001

and that in 1998 there were 47,000 soldiers and that it was apparent from the World Bank Report that in the summer of 2001 there were three hundred thousand soldiers. It followed, she submitted, that between 1998 and 2001 the number of soldiers increased by 253,000 over a three year period, this created an annual average of just over 84,000. Therefore, submitted Ms Quinn, Dr Gebremedhin simply could not be correct in stating call up was 12,000 to 15,000 per year. Indeed she continued:

> "His evidence must be inaccurate when viewed against statistical information upon which the Respondent relies. Dr Amanuel (Gebremedhin) has been out of the country for a very long period of time".

258. For the avoidance of doubt, we asked Ms Quinn to clarify for us her approach to Dr Gebremedhin's affidavit and the reliance upon which she would ask us to place upon it and she responded:

> "We no longer rely on Dr Amanuel (Gebremedhin's) report in respect of that figure as it is clearly inconsistent with the other evidence. As regards the rest of it I would ask you to recognise that its reliability must be tempered owing to the time that he has been out of the country."

259. Indeed not surprisingly Mr Oguntolu, at the outset of his closing submissions, sought to draw to our attention that Ms Quinn was now essentially disavowing Dr Gebremedhin's evidence. The Appellant now apparently sought to depart from it.

260. Mr Oguntolu referred us to his supplementary written submissions, pointing out that Dr Gebremedhin was a member of the Eritrean government who clearly had inside knowledge of the National Service policy and procedures. It was thus submitted that demobilisation and the draft of new recruits were inextricably linked, given the acceptance of a large standing army and additional National Service direct labour force. It was submitted that on any logical construction, a need would arise to recruit, in order to maintain the number being reduced by planned demobilisation.

261. The supplementary submissions reinforced by Mr Oguntolu before us, were that with regard to the value of Dr Gebremedhin's evidence, he was, of all the experts, "*the only one to have been a member of the Eritrean Government at any time*".

This contention does not however, sit well with the fact that it was apparent to us that whereas Ms Quinn in her written submissions had appeared to rely upon that aspect of Dr Gebremedhin's evidence that approximately 400,000 people were either in the army or national service out of a total work force of 700,000, (thus indicating that a very large percentage of the work force was either in the army or National Service), the Respondent in his submissions took issue with Dr Gebremedhin's estimate, maintaining that it was not consistent with the

population statistics previously cited, that being a population between the ages of sixteen and sixty-five.

The Evidence of Dr Gaim Kibreab

262. We now turn to the report and evidence of Dr Kibreab. We are mindful that Dr Kibreab is, himself, an Eritrean. Having regard to his CV, the core elements of his report and oral evidence which are properly sourced, enabled us to develop a favourable impression of him, for the most part, as a witness. It must however be said that Dr Kibreab was occasionally vague and speculative, also, separately prone to exaggeration on the issue of exit visas – see paragraph 354 for example, on his view that all returning failed asylum seekers were as such at real risk. Nonetheless we have concluded in considering Dr Kibreab's evidence in its totality and subject to the above qualification, that we can otherwise give considerable weight to the opinions he has expressed in his report for this case and in his evidence before us relating to the issues we have to decide.

263. We do not agree with the Respondent's closing submissions contending that Dr Kibreab's comments were un-sourced and simply represented his personal opinion. Indeed, our detailed account of Dr Kibreab's evidence before us, both oral and documentary, amply demonstrates the extent to which the core elements of the views that he expressed were supported by cross-referencing to independently sourced background material in addition to the other evidence that he produced, (e.g. his claim that those who had completed their Military Training and were subsequently assigned work in the private sector to be still under the direct employ of the Ministry of Defence on a soldier's pay, was supported in part by the letters he produced – see paragraphs 138 to 145 of our determination), to relevant country guidance case law and indeed largely dovetailed with the views expressed by Dr Pool both within his report and subsequent oral evidence before us.

The Evidence of Dr David Pool

264. Dr Pool, towards the end of his lengthy oral evidence, came up with the somewhat startling observation that he could not say whether there was "*demobilisation or that there is not*".

265. For reasons that we shall describe later, we have concluded that the term "*demobilisation*", means different things to different people in the context of Eritrea. Dr Pool's comment therefore is not as startling as it first appeared and does not mean that his detailed observations should not be given significant weight.

266. Overall, and with the exception of the report of Dr Gebremedhin, we have concluded that both the evidence and reports of Dr Pool and Dr Kibreab respectively, were generally well-sourced (notwithstanding the difficulties the experts shared not least with the World Bank, in obtaining accurate statistical information from the Ethiopian

authorities), and as far as their evidence related to both past and recent events in Eritrea, were consistent with the other reports that were before the Tribunal.

Our Assessment

267. In common parlance the word "*demobilisation*" means that a person leaves military service and becomes a free agent, but that does not always appear to be what it is understood to mean in Eritrea, where the government releases individuals from military service but requires them to undertake compulsory employment either directly under the auspices of the Eritrean Ministry of Defence or in the private sector, whilst still on military pay and with their salaries paid to the government. In light of our consideration of the evidence as a whole, we are able to appreciate Dr Pool's expressed difficulties in demonstrating, in Western terms, whether or not demobilisation is actually and effectively taking place in Eritrea. Indeed, as we have earlier recorded, Dr Pool at one stage in his evidence told us (see paragraphs 114 and 116):

> "I find it hard to state in any definitive finding about what we would call demobilisation in terms of men in jobs but not on civilian salaries.
>
> It is a very odd situation in Eritrea as compared to what we in the western world will understand as '*demobilised*'."

268. Dr Pool told us that there were at least two categories of release from what he described as "*the military component of Active National Service*", namely; those transferred from Active National Service to civilian duties but who remained on Active National Service in the sense that they did not return to civilian life and those who were demobilised. Such a view was indeed echoed by Dr Kibreab who maintained that National Service (NS) was not Military Service (MS) and that even though NS operated under the Ministry of Defence it was de-linked from the National Army as indeed the World Bank in their Mid-Term Review Mission report of July 2005 (the "MTR"), described matters when it talked about NS needing "to be de-linked from the size of the army issue".

269. In this latter regard the MTR reports could be seen in the context of the fact that as both experts opined, the World Bank's desire, as apparent in their reports, was not demobilisation per se, but a reduction in the size of the Eritrean armed forces to promote economic growth.

270. We have concluded, in light of the expert evidence and the background material, that one aspect of "*demobilisation*", (indeed not contradicted by the Respondent), is that there was a demobilisation of some 5,000 individuals mainly comprising those of advanced years and/or those who sustained serious injuries in the border war, within the pilot project between 1993 and 1994.

271. Our finding in this regard, is however tempered by the evidence, to which indeed Dr Kibreab referred, that a significant number of those individuals, (that included the disabled as a consequence of the border

war or who had fought in the war of independence, the elderly or those suffering with long term illnesses), were subsequently re-enlisted between May 1998 and just before the beginning of Ethiopia's Third Offensive in May 2000.

272. One can thus better understand what Dr Pool aptly describes as *"a conceptual distinction between military and national service"* and as to its duration. For example, Article 13(1) of the Eritrean Proclamation of 1995 refers to those unable to undertake military training, undertaking "18 months of National Service in any public or Government Organs under the directives given by the Ministry of Defence...according to their capacity of profession". Further, Article 13(2) is unequivocal that after completing 18 months service citizens will "have the compulsory duty of serving according to their capacity until the expiry of 50 years of age under mobilisation or emergency situation directives given by the Government". [see paragraph 283 below]

National Service

Legislative Basis of National Service

273. This can be found in the National Service Proclamation (Proclamation No 82/1995), ("the 1995 Proclamation").

274. All Eritrean citizens between the ages of 18 and 40 are required to perform National Service (See Article 8 – Paragraph 278 below).

275. The objectives of National Service are set out in Article 5 as follows:

> "The Objectives of National Service will include:
>
> – the establishment of a strong Defence Force based on the people to ensure a free and sovereign Eritrea.
>
> – To preserve and entrust future generations the courage, resoluteness heroic episode shown by our people in the past thirty years;
>
> – create a new generation characterised by love of work, discipline, ready to participate and serve in the reconstruction of the nation.
>
> – To develop and enforce the economy of the nation by investing in development work our people as a potential wealth.
>
> – To develop professional capacity and physical fitness by giving regular military training and continuous practice to participants in Training Centers.
>
> – To foster national unity among our people by eliminating sub-national feelings".

276. As Ms Quinn rightly contends in her written closing submissions, it is thus clear from Article 5 of the 1995 Proclamation that the objectives of National Service are considerably broader than simply the establishment of a military defence force. In this regard Dr Pool states in his report that "military service is an instrument of socialising a new generation of Eritreans into the values of the EPLF".

277. In oral evidence, Dr Pool told us that apart from the economic motive of the government not to demobilise, the National Service Project ("NSP") was itself very political in the sense that after the war of independence from Ethiopia in 1991:

> "The Eritrean Government wanted to mould Eritreans like the EPLF fighters namely the value of valour, self-sacrifice, courage that was needed to rebuild the economy. There are other nationalist organisations that the EPLF defeated based in the Sudan – this had a particular ideology and they were quite strong in passing their ideology on to the younger generation.
>
> So when the young go to National Service they are given ... the history of the EPLF and their victories. There is a kind of social control involved in the ethical direction that is being used in a military sense in Eritrea".

278. Dr Kibreab in his report had stated:

> "The aim of national service is not only to have a strong national army with a large pool of reserves but also to create a new breed of patriotic citizens who reject ethnic, religious and region-based allegiances and identities in favour of national Eritrean secular identity. Given the disparate religious and ethnic backgrounds of the Eritrean people and the obsession of the ruling party – the People's Front for Democracy and Justice – the government with the project of creating a homogenous and secular society, believe those who receive military training and political education at Sawa and later participate in the process of nation-building and reconstruction of the country's war-torn economic social and physical infrastructures would on the one hand, undergo fundamental change and transformation and on the other, develop a powerful sense of patriotism and commitment to national unity".

279. It is indeed the development of the national economy that is specifically stated within Article 5 of the proclamation to be an objective of National Service.

280. Articles 12 and 13 of the 1995 proclamation detail those who are exempt from National Service:

> "Article 12 - <u>Citizens exempted from Active National Service</u>
>
> The citizens mentioned below are exempt from Active National Service:
>
> (1) the citizens who have performed National Service before the promulgation of this proclamation;

(2) all Fighters and Armed peasants who have proved to have spent all their time in the liberation struggle;

Article 13 - Compulsion of National Service for citizens unable to undergo Military Training

(1) Those citizens who have been declared unfit for military training by the Board composed of the Ministry of Regional Administration of other Government Organs under the directives given by the Ministry of Defence will undertake 18 months of National Service in any public and Government organ according to their capacity of profession.

(2) After completing 18 months of service they will have the compulsory duty of serving according to their capacity until the expiry of 50 years of age under mobilisation or emergency situation directives given by the Government.

(3) Under sub-Art.(1) of the article mentioned, the Ministry of Regional Administration by virtue of the delegation given to it by the Ministry of Defence may assign [such] persons to various independent organs or plans connected with the Ministry of Defence. All programmes of service may (be) executed by the Ministry of Administration".

281. In this regard, we would reiterate our rejection of the Respondent's contention that Dr Kibreab's comments were un-sourced and represented his personal opinion by pointing out by way of example, that Dr Kibreab's summary of the exempt categories from national service in his report, in particular that after 1995 all Eritreans except veterans of the thirty years war of independence and the physically and mentally infirm are required to take part in national service regardless of family responsibility and gender, was indeed reflected by Articles 12 and 13 of the 1995 Proclamation.

282. The evidence demonstrates the importance that the Eritrean authorities currently attach to mobilisation, (economic or otherwise), and their ability to mobilise those not in *"Active"* National Service in the event of an *"emergency situation directive."* That is further exemplified by noting that amongst the categories of those exempt from National Service under the previous National Service Proclamation 11/1991 ("the 1991 Proclamation"), those who were the sole breadwinners in the family, had their exemption removed when the Proclamation was amended in 1995.

The Nature of National Service

283. Article 8 of the 1995 Proclamation states:

"Compulsory Active National Service

Article 8 – Compulsory Active National Service

> Under this Proclamation all Eritrean citizens between the ages of eighteen to forty years have the compulsory duty of performing Active National Service.
>
> Active National Service consists of six months of training in the National Service training Centre and twelve months active military service and development tasks in military sources for a total of 18 months. Those who are unable to undertake military training are included in those who are given eighteen months of national service".

284. As Ms Quinn has submitted, it is clear from Article 8 that the development tasks are carried out as part of National Service. Such a view is consistent both with the expert evidence of Dr Pool and Dr Kibreab and with the general objective evidence that we have considered.

285. As part of their 18 months of Active National Service, the draftees receive 6 months military training in particular at Sawa. As both experts have pointed out, the remaining 12 months are spent taking part in development activities and it is not a separate national obligation.

286. As we earlier remarked, the word "*demobilisation*" sometimes has a different meaning in Eritrea, from the commonly understood meaning and in this regard Dr Kibreab explained in his report (paragraph 2.1) that the confusion to some extent arises in a failure to appreciate that the period of 18 months military service is not divisible and:

> "... does not emanate from the particular experience of Eritrea but from the experiences of other countries that have a policy of military service."

287. Dr Kibreab further explains the confusion in this regard, by pointing out that there is inter alia, a failure to understand the distinction between "NS" and "MS", (*"hagerawi agelgolat")* and "Members of the National Service" (*"abalat hegerawi agelgot").*

> "... NS ... is more ambitious and broader than ... (MS) There is only *hagerawi agelgolat* (national service) which is more ambitious and broader than common military service. The Eritrean authorities never refer to (NS), as (MS). This concept is totally absent from the government's discourse on national service, including the terminologies of the two pieces of legislation on national service.
>
> The national service (NS), comprises of six months military training (it is important not to confuse this with military service) and twelve months development. The two aspects of national service – namely the military training and the simultaneous ideological indoctrination at Sawa Military Camp and twelve months development work represent a continuum rather than a dichotomy. They are indivisible. They are two sides of the same coin – the coin being the national service.
>
> After the six months military training recruits are assigned to different areas of national reconstruction. Recruits are regimented into different units and participate in productive activities as groups and/or individuals

such as urban housing development, construction of dams, roads, bridges, clinics, health centres, hospitals, schools etc. They also work in state and PFDJ owned banks, hired out draftees to private firms in which the latter pay the salaries of the draftees to the Ministry of Defence. Recruits whether they are assigned to the defence forces, ministries, departments, PFDJ, firms, state farms or private firms are paid uniform pocket money. Each draftee or participant of the NS collects his/her pocket money every month from their *ahadus* (units) or from those who hire them. When recruits are hired out to the private sector and the voluntary sector, the latter are required to pay draftees' salaries to the bank account of the Ministry of Defence in accordance with the government's salary scale based on the academic and professional qualifications of the recruits concerned. *Regardless of whether draftees are assigned to serve in the army or in the civil sector, they remain members of the National Service)*". (Our emphasis).

288. Dr Kibread's view which is in effect that after "*National Service*" draftees continue to be regarded as "*Members of the National Service*" until they are 50 years of age, (see Article 13(2) of the 1995 Proclamation), is indeed further supported by the background material. The Amnesty International Report of May 2004 described development tasks in similar terms and confirms that this development work is minimally paid with '*pocket money*'.

289. The US State Department Report of March 2006 further states as follows:

> "In addition some national service members were assigned to return to their civilian jobs while normally kept in the military, because their skills were deemed critical to the functioning of the government or the economy. These individuals continue to receive only their national service salary. The government require them to forfeit to the government any money they earn above and beyond that salary. *Government employees generally were unable to leave their jobs or take new employment.*" (Our emphasis).

290. In addition, Dr Pool told us in evidence that:

> "There are quite strong factors (on the part of the Eritrean Government) in not demobilising .. nearly all demobilised soldiers are in government jobs or on a soldier's pocket money and their pay is a massive subsidy for the government.
>
> When you think the State is the major employer, you can see the way in which the pay is in terms of thousands of people still under the aegis of the Ministry of Defence.
>
> The economic consequences would have been dreadful for Eritrea and has produced
> an economic motive for maintaining mobilised soldiers.
>
> *... (this is) happening across the board with government jobs on a conscript's pay.*" (Our emphasis).

291. Dr Pool continued, that one should combine the economic motives of the government not to demobilise, with the political ambitions of the National Service project (NPS) and the desire of the Eritrean authorities after the war of independence from Ethiopia in 1991, *"to mould Eritreans"* with the values of the EPLF fighters that Dr Pool described as *"a kind of social control involved in the ethical direction that is being used in a military sense in Eritrea"*.

292. Article 21 of the 1995 Proclamation states as follows:

> "**Special Obligation**
>
> (1) During a mobilisation or war period anyone in active National Service is under the obligation of remaining even beyond the prescribed period unless the concerned Authority allows him to leave officially.
>
> (2) The citizen registered to perform Active National Service upon changing his address before entering into his service has the duty to inform the Regional Administration in his area about his address presenting his registration card."

293. Thus although at first glance Article 21 provides for the indefinite extension of national service, the provision is tempered by the fact that it solely applies to those on "Active National Service" at a time of a "*mobilisation or war period*". The indefinite extension of National Service must however, also be seen in the context of the Warsai Yikaalo Campaign, (WYC), -see post.

294. However, in this regard, Dr Pool told us that the demarcation of the border between Eritrea and Ethiopia was:

> ".. the government's major explanation of the continued mobilisation and makes the best sense. Many Eritreans still think Ethiopia wants to get the coastline that was ceded in the peace negotiations between 1991 and 1993 and the Ethiopians are critical of their government for ceding the port to Eritrea. There is always the sense that this war could start again."

295. Further, in Dr Pool's report, he was clear that since 1998 and more usually since 2000, the Eritrean Government had transferred those in the army to civilian positions and as such they remained "on a kind of military active service in the sense they did not return to employment as civilians *but as if they (were)seconded from national service to civilian employment*", (Our emphasis and see also our reference to "*members of the National Service" above),* and because such individuals remained under the authority of the Ministry of Defence and continued to receive their military stipend rather than their civilian salary, it was easy to understand, the problems of the World Bank team, "in differentiating between what is '*military*' and what is '*civilian*' in Eritrea".

296. We have found to be notable, the similarity as to the distinction drawn by Dr Pool and that of Dr Kibreab in terms of the importance to be attached

to understanding the concept of "d*emobilisation*" in the Eritrean sense. Dr Kibreab described its meaning, by way of example, in terms of individuals who might be issued with demobilisation cards and who are either professionals or possess technical skills and are assigned in the civil sector of the country while remaining in National Service even though removed from the Army, in explaining:

> "This is what the Eritrean Government refers to as '*demobilized*'..."

297. There is clearly legal provision for indefinite national service and it is further supported by what has become known as the *Warsai-Yikaalo Campaign* (WYC) that was initiated by the Head of State in May 2002 and subsequently approved by the Council of Ministers. The effect of the border war and the WYC on National Service is that the latter has become, as described by Dr Kibreab in his report, "*an open-ended obligation*".

298. The WYC is referred to in the Amnesty International Report of May 2004 as well as by Dr Kibreab and it requires draftees who have completed 18 months National Service to carry on serving their country and its people until further notice. As Dr Kibreab observes in his report:

> "Since the so-called '*further notice*' has not been yet announced the national service has effectively become an open-ended national obligation."

299. In both Dr Pool's and Dr Kibreab's reports, there was reference to the comments of the Eritrean Information Minister, Ali Abdu, in a periodical entitled "The Middle East Times" indicating that indefinite military service was a reality. The article quotes Mr Abdu as stating:

> "You never finish your national service, meaning you cannot say there is a full stop to serving your country".

300. A copy of the article appears within the Appellant's bundle and was published on 23 February 2006. Mr Abdu is further quoted as saying:

> "'Every Eritrean' means those Eritreans who work for example in Embassies, in international organisations, in the UN are not immune from national service."

301. There are obvious concerns as to the weight that may be given to an internet article from a journal about which nobody was able to offer us any information. However, the article itself appears to be a straight piece of reporting, including a quote from the Eritrean Information Minister which on the whole fits well into the overall objective evidence. We do not therefore see any reason to disbelieve that the Minister for Information said what is attributed to him and that at least on this occasion it reflects reality.

302. The open-ended nature of national service in Eritrea is reflected in the Amnesty International Report of 19 May 2004 and in the Human Rights

Watch Report of 18 January 2006. The latter report refers to the fact that "*the time for service is repeatedly prolonged*" and the former states that "*national service has been extended indefinitely by administrative decision since the war with Ethiopia... and Development Service was converted to Active Military Service*".

303. Ms Quinn in her written submissions further drew our attention to the conclusions of the European Parliament on the indefinite nature of national service. This is sourced from the Resolution of the European Parliament on 15 November 2004 on human rights violations in Eritrea where at Section C the following is stated:

> "Whereas national service for eighteen months is compulsory for men and women aged eighteen to forty years and since the war with Ethiopia in 1990-2000, national service has become full military service and it has been extended indefinitely"

304. We are mindful that Dr Pool gave evidence before the Tribunal in IN (Draft evaders – evidence of risk) Eritrea CG [2005] UKIAT 00106, a decision promulgated on 24 May 2005. The Tribunal noted his view that the government was determined to use military service for political purposes as well as national security purposes.

305. At paragraph 26 of their determination, the Tribunal also took account of a further expert report from Dr Campbell of the School of Oriental and African Studies that dealt with military conscription in Eritrea that the Tribunal regarded confirmed much that had already been covered in the background evidence.

306. It is notable that the extract from Dr Campbell's report from which the Tribunal in IN quoted reinforces much of the material to which we have earlier referred. He is quoted as having stated as follows:

> 'Following cessation of the border war in the summer of 2000, it was widely expected that the government would rapidly demobilise its armed forces to pre-war levels. However, despite the availability of international assistance for this task, *no demobilisation of troops has occurred to date. Instead the government extended the length of service for an additional two years and it has been repeatedly prolonged*". (Our emphasis).

307. We have thus concluded that there is legal provision in Eritrea for indefinite national service and that it thus represents indefinite obligation.

308. Bearing in mind our understanding of what is a dual meaning attached to the word "*demobilisation*" in the Eritrean sense, it is necessary for us to consider the Respondent's assertion that there has been extensive demobilisation based on the evidence from the World Bank and UNDP.

World Bank Mid-Term Review (July 2005) and Financial Year End Reports

309. Dr Pool, as we have earlier mentioned, told us towards the conclusion of his oral evidence that he found it difficult to reconcile the anecdotal evidence, not least from Eritreans to whom he spoke, that there had been no demobilisation and the figure of 104,000 stated to have been demobilised in the UNDP Project Sheets and a similar figure in the financial end of year reports of the World Bank 2005 and 2006. In particular, the 2005 MTR stated that 104,000 soldiers had been demobilised but the subsequent MTR 2006 report of the same project status showed a figure of 65,000 who had been demobilised for the entire project.

310. It appears that the information contained in the UNDP Report was drawn from the World Bank's Reports and the latter report gave no indication as to how the figure of 104,000 was arrived at nor the period over which these soldiers were allegedly demobilised.

311. We would stress however, that it is important to bear in mind, that the World Bank's EDRP is not as Dr Pool told us, concerned with demobilisation per se, but to reduce the size of the army to promote economic growth in Eritrea.

312. We would agree with Ms Quinn, who submitted that the World Bank had recognised within its reports, that *demobilised* soldiers remained subject to national service and were potentially returnable to the military.

313. Paragraph 8(ii) of the MTR Report of 2005 is of particular importance in this regard, in that it asks itself the question "*has the EDRP process led to an actual reduction in the armed forces?*" It continues:

> "There are perceptions among Development Departments that continued mobilisation into the armed forces in Eritrea, including through the National Service (NS), is to such an extent that *the combined armed forces are as large now as at the start of EDRP. This view, unfortunately, is fed by limited transparency surrounding the size of the army and the number of NS that are currently mobilised into the army. Based on this, the Development Departments are of the opinion that EDRP does not actually help the number of soldiers in the country but rather facilitates change of personnel*". (Our underlining).

314. It was in that context, that the report went on to suggest that "*the National Service needs to be de-linked from the size of the army issue.*" Notably the report continued by acknowledging that:

> "People are drafted into the NS in "*rounds*" and rounds 1 to 14 participated in the border conflict and are in principle eligible for EDRP benefits whereas, rounds 15 – 18 are not eligible. The IDA Mission requested, but has so far not received, more current information with regard to the size of the army and a number of NS are currently mobilised into the armed forces. *As such, the IDA Mission is not able to verify whether the EDRP process has indeed led to an actual reduction in the armed forces.*"(Our emphasis).

315. The report at paragraph 9 acknowledges that:

> *"In the short term, the pace and scope of immediate demobilisation cannot be defined"*. (Our emphasis).

316. At paragraph 12 of their report under the sub-heading "*National Service*", the report states as follows:

> "Under the 1997 Constitution, the Government continues to implement National Service – whereby able-bodied persons undertake military training as well as participate in civilian public work**.** *Concerns remain that DS [demobilised servicemen] are subject to National Service as well as potentially being returned to the military"*. (Our emphasis).

317. The report continues, with what it describes as the government's policy on National Service being "*clearly outside the bounds of EDRP*" and the Mission's conclusion is that "In a limited way it does not affect the programme's demobilisation target: the programme could still achieve its objective of demobilising two hundred thousand of those mobilised for the border conflict, even if a large number of young people are recruited into the armed forces through the NS".

318. It is of interest that the Mission talks about its objective as being demobilising 200,000 "*of those mobilised for the border conflict*", that indeed supports Ms Quinn's contention that the World Bank's EDRP is not concerned with National Service. The World Bank acknowledges that National Service is beyond the bounds of the EDRP and recognises that demobilised soldiers, (DS), remain subject to National Service and are potentially returned to the military.

319. This evidence serves to reinforce our conclusion, that the only evidence before us from NS in respect of demobilisation, in any form at all, relates to the demobilisation that took place after the War for Independence and the 2001/2002 Pilot Project where 5,000 people were demobilised, albeit that many of those were subsequently re-called.

320. In our view, the evidence of the World Bank to some significant extent, resolves Dr Pool's concerns, as to why the 2005 Report should refer to 104,000 soldiers and the report of one year later to a reduced figure of 65,000 soldiers as having been demobilised.

321. Both Dr Pool and Dr Kibreab gave evidence that in terms of demobilisation and risk, there was no distinction that could be drawn between those called up post-border war and those called up pre-war. Dr Pool explained that those "*demobilised*" prior to the war were 48,000 to 54,000 people between 1992 and 1994, who were given grants for setting up businesses generally to return to civilian society but that in 1998 these were the first to be called up as they were old EPLF fighters some of whom went to the front line, many of whom were only too pleased to return voluntarily. As Dr Pool explained (Paragraph 76):

> "These people were demobilised in all senses of the term but were not demobilised when the war started – they were called back – so that suggested distinction seems a bit blurred to me".

322. Dr Pool was giving such evidence in the context of the World Bank Reports. He pointed out that there was no attempt in the 2006 Report to explain why the figure of 65,000 came down from the report of 2005 (104,000). Dr Pool stressed that the World Bank's:

> "... major desire in these Reports is not demobilisation per se but to reduce the size of the army to promote economic growth. The other curious thing about the 2005/2006 Reports – apart from the number of soldiers claimed to be demobilised, is that the reports do not show much difference in the amount of money actually dispensed".

323. Dr Pool continued that he was "*mystified by these statistics*". For reasons that we have reflected in Dr Pool's evidence earlier in this determination, he concluded that little reliance could be placed upon the UNDP Report.

324. Dr Pool was sceptical of the World Bank Report's final figures. He believed that the UNDP drew its figures from the World Bank. Notably Dr Pool was aware that the MTR Report (at paragraph 9) stated that the Government of Eritrea was "in the medium to long term ... strongly committed to further demobilising its armed forces, but that in the short term the pace and scope of immediate demobilisation cannot be defined".

325. Dr Pool stressed the need to appreciate the distinction between the World Bank's objectives as opposed to that of the Eritrean Government. As for the evidential basis of the World Bank's information, he considered that it was the Eritrean Government's figures:

> ".... Because the World Bank hands out money but the government takes out any ID demobilisation card in order to get that money".

326. Dr Pool laid greater stress on that section of the report, under the sub-heading "*Those Demobilised*", that he considered provided support for his analysis with its comment at paragraph 8(ii) on "*limited transparencies surrounding the size of the army*". He pointed out that one of the problems the World Bank had was in defining the distinction between being in the military and/or having a civilian role and it was a given fact that the whole thrust of the World Bank MTR was about demobilisation and the reintegration of soldiers.

327. Dr Pool told us that it was:

> "pretty damning for them to comment on the '*limited transparency surrounding the size of the army*'.

328. Significantly Dr Pool continued by posing the question:

> "If we take the 65,000 – had they been given some kind of card and in 2007 will they be demobilised? - It does not appear from the phrasing of the World Bank Reports that there has already been the demobilisation of 65,000. *If you take the account of the World Bank Reports and particularly of the 2006 US Report, in addition to what Eritreans said to me – there has been no demobilisation***."** (Our emphasis)

329. We are thus persuaded, that it would not be appropriate to place reliance upon the observations of the World Bank in their report at paragraph 9 the Eritrean Government in the medium to long term remains strongly committed to further demobilising its armed forces, particularly in view of the "*limited transparency*" of the government to which the report refers, mindful that the report itself acknowledged that in the short term "*the pace and scope of immediate demobilisation*" could not be defined.

330. We are further reinforced in that view by the evidence of the experts that the World Bank have no one on the ground in Eritrea and that the Financial Year End Report, 2006 states that the World Bank has ceased to fund the demobilisation and reinsertion components notwithstanding that it states that a total of 65,000 soldiers have been demobilised. Such a figure would in any event conflict with the figure given in the 2005 Report of 104,000 soldiers being demobilised and as Ms Quinn rightly reminded us, it should be noted that the World Bank initially intended to demobilise 200,000 and thus its programme had clearly been cut short.

331. We would agree with Ms Quinn, that the World Bank's evidence addresses only the issue of demobilisation from the armed forces, but does not address the issue of demobilisation from National Service. National Service is beyond the remit of the EDRP. We would thus place little reliance on the UNDP Project Fact Sheet of April 2006 because it is apparent to us that it relies on its figure of 104,000 soldiers being demobilised, upon the World Bank Reports.

332. In turn, the efficacy of the World Bank's figures must be regarded as questionable in view of their reliance upon the information that not without some apparent difficulty, they have attempted to glean from the Eritrean authorities whom they criticise for their "*limited transparency*".

333. It is yet another example of the way in which we can now understand Dr Pool's difficulties, in reconciling the evidence within the World Bank Reports to other contrary evidence. He told us that he had been looking into the statistics but was hampered by the limited information one could obtain from the Eritrean Government websites and other government sources.

334. The Home Office Operational Guidance Note (OGN) on Eritrea issued in October 2006 refers to an Awate.com report of 24 February 2006 as follows:

> "All demobilised soldiers and members of the National Service (were ordered) to get ready for reporting to Sawa ... Those called for "National

> Service" include athletes and other youngsters active in various sports who were being given permits to pursue their sporting activities. *Demobilised soldiers and National Service Corps who have been discharged for medical reasons ('Medical Board Cases')* were also ordered to re-register".

335. What we find to be particularly striking about this report, in terms of our findings, is the reference to "*members of the National Service*" that fits into the distinctive category described by Dr Kibreab and the identification of a further grouping , namely those who were in the western sense of the word, actually demobilised, e.g. discharged on medical grounds, but were now subject to re-call.

336. Particular reports emanating from Awate. com. to which we have referred, appear to be reliable. The website was described by Dr Pool as independent of opposition political parties and although critical of the Eritrean Government, one that he found:

> "... to be one of the most reliable because it is rare to see a website that corrects itself if subsequently proven to be wrong on factual errors and it is a website on which the Home Office often relies, indeed it is exemplified by the fact that it is quoted in this COI".

337. We shall return to other reports emanating from Awati.com later in this determination.

Risk on Return

338. We have already explained that the word "*demobilisation*" as we would understand it does not always carry the same meaning in Eritrea. We have explained our reasons for concluding that the government releases individuals from NS but requires them to undertake compulsory employment either directly through the Ministry of Defence or with designated employers within the private sector but still on military pay. Such individuals are *demobilised* in Eritrean terms (for certain purposes at least) but remain in NS.

339. The question for such people, is whether their risk profile is any different on return from those who have undergone the '*demobilisation*' process from military service. Such people are, it is plain from the evidence, at real risk of being regarded as deserters, on return to Eritrea and seriously ill-treated. We are mindful in this regard and by way of example, of the evidence of Dr Kibreab that the purported 65,000 who were issued demobilisation ID cards were, as he expressed it, '*still in a state of limbo*', being still Members of the National Service [NS] and therefore not fully or truly demobilised. It must thus be considered as to whether those that we shall describe as "*on reserve*", as members of the NS, are likely to be perceived as deserters if they were returned following an illegal exit from Eritrea.

Illegal Exit

340. There are two separate (albeit related) matters to consider:

i. whether those who leave Eritrea illegally will be at risk: and

ii. whether a claimant for international protection must be regarded as having left Eritrea illegally.

341. The US State Department Report of March 2006 is clear, that all Eritrean citizens and foreign nationals are required to obtain an exit visa in order to leave the country. The report states as follows:

> "Citizens and foreign nationals were required to obtain an exit visa to depart the country. There were numerous cases where foreign nationals were delayed in leaving for up to two months or initially denied permission to leave when they applied for an exit visa. *Men under the age of fifty, regardless of whether they had completed National Service; women aged eighteen to twenty seven; members of Jehovah's Witnesses (see Section 2c); and others who were out of favour with or seen as critical of the government were routinely denied exit visas. In addition, the government often refused to issue exit visas to adolescents and children as young as five 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 given exit visas only after posting bonds of approximately $7,300 (100,000 nakfa)."* (Our emphasis).

342. Awate.com in their report of 26 November 2006 claims that the sum of 100,000 Nakfa represents ten years' worth of salary for a typical public servant.

343. Dr Pool told us that one could not obtain an exit visa without the appropriate documents, although they were difficult to obtain in any event.

344. He was of the view that those more likely to obtain an exit visa included:

> "The Eritrean border workers in textiles. People involved in business who were quite well in with the government circles.
>
> Asmara is a very small society and the top business people know the government and know the way to get visas, senior military officers, government spokespeople. Someone of 50 plus would be more likely than not to get an exit visa depending on his or her profile."

345. In referring to the passage in the US State Department Report of March 2006 to which we have above referred, Dr Pool told us that it reflected the situation as he understood it, although he was surprised there was a denial of exit visas to even those aged five, but that it simply underlined the difficulty to obtain exit visas.

346. It was noteworthy that when cross-examined, Dr Kibreab was challenged as to what evidence he had to support his contention that the government did not issue exit visas to children aged ten and over. As we recorded earlier in our determination, it was at this stage that Ms Quinn helpfully intervened to refer us to the State Department Report passage above referred.

347. We were also referred to the Country Guidance decision of the Tribunal in KA (Draft-related risk categories updated) Eritrea CG UKAIT 00165, where at paragraph 49, the Tribunal, on the subject of exit visas, referred in like terms to the 2005 State Department Report that was before them. (We would observe that it is yet another example showing that the Respondent's submission that Dr Kibreab's evidence was unsourced was wholly misconceived).

348. As noted at paragraph 205 above, Dr Kibreab told us that those not affected by National Service and considered as trustworthy by the government, and thus unlikely to have difficulty in obtaining exit visas, comprised Ministers; ex-Ministers; Party Activists; Eritrean expatriates; namely those who could be British citizens working in Eritrea but of Eritrean origin; elderly people over fifty who were forty or over in 1994, those who wanted to go on Haj or visit relatives abroad; government officials; scholarship students (although Dr Kibreab's evidence was that the government now restricted their movements as many did not return); government employees who attended conferences (although Dr Kibreab maintained this had recently stopped); and relatives of those in power who might arguably obtain exit visas as a result.

349. Dr Kibreab maintained that otherwise no one under fifty years of age for whatever reason could lawfully obtain an exit visa and would in his view have to walk to Ethiopia or the Sudan which was a risk and try to cross the border.

350. Awate.com, in their report of 26 November 2006, a copy of which was provided to us by Dr Kibreab, demonstrates that the Eritrean Government tried to limit the use of air travel to leave the country by severely restricting the approval of exit visas to those considered "*trustworthy*". The Awate.com internet report bore as its main heading "*PFDJ Rounds Up Eritreans in Sudan*".

351. It is within that article we have noted the following disturbing report:

> "By order of President Isaias Afwerki, the Eritrean military was given permission to '*shoot on sight*' any Eritrean '*caught attempting to flee or helping anyone who is fleeing*'.
>
> There are three escape routes from Eritrea: via *Senafe, to Ethiopia;* via *Tessenei* to Sudan; and via official visits in the Middle East to Europe.
>
> There has been no change in the volume of the flow towards Ethiopia (about two hundred and fifty per month); until a week ago about forty

five people daily escaped into the Sudan. However, *there has been a qualitative change with the escapees now not just limited to the youth but a broad spectrum of Eritreans including four doctors who escaped in early October. The regime has responded to this not only with a 'shoot-on-sight' order but by frequent round-ups.* On Saturday November 25 at dawn, the regime raided *Segeneitti* and *Dekemhare* and rounded up all youth including students with ID cards.

The regime has tried to limit the air-bound flights by severely restricting the approval of exit visas for those considered trustworthy. However, the recent flight of a '*trusted*' employee, ERI-TV's Mr Temesqhen Debessai, one of Isiais Afwerki's few favourite journalists, followed by the escape of a few others, as reported by Asmarino Independent, seems to have sent shockwaves in the system. Consequently *the regime has begun interviewing all employees trying to gauge who knew and who is a likely candidate to escape.*

Of these three routes, the one that seems to occupy the minds of the PFDJ is the *Tessenei* route to Sudan primarily due to its proximity to the military camp of Sawa. According to *a report provided by the Eritrean National Salvation Front* [their emphasis] *in August of this year, the Eritrean regime shot to death eight Eritrean youths on the claim they were trying to escape to Sudan and left their bodies for display and warning in the streets of Tessenei. The report identified three individuals: Mr Amanuel Soules Ogbagabrel from Habela; Mr Adem Haffen from Haikota;* and *Mr Abdulla Mahmoud, from Gonge".*

In late October a substantial number of Sawa conscripts escaped to Sudan leading the Eritrean regime to conclude that this was highly organised and done with the knowledge and co-operation of middle-rank officers. *Consequently it concluded that one more demonstration was needed as a warning. This time ten* **'**trouble makers' *were rounded up from Sawa, taken to Tessenei, lined against a wall, and shot in the back by an execution squad. People were told that these too had tried to escape to Sudan.*

The tactic of shooting prisoners in the back to make it look like they were shot while escaping the law, was developed by scared commanders who worried that someday they might be held responsible for the lives of people they were shooting. Military commanders warned that they worry that they might be incriminated in the future when human remains might be exhumed for forensic tests as had happened in Bosnia and other places." (Our emphasis).

352. We glean from this article in summary that:

- The Eritrean Government has placed an obligation on civil servants not only to report those who have escaped but those who they believe are thinking of escaping.

- The President has given the military permission to shoot on sight any Eritrean caught attempting to flee or helping anyone else to flee by special order.

- Execution of that order is no better and tragically exemplified, than by the reports of Eritrean youths having been shot dead trying to escape in August and October 2006.

- In relation to the ten Eritrean youths shot in the back by an execution squad in October 2006 as a warning to those considering fleeing to Sudan it is suggested in the report that the tactic of shooting prisoners in the back is so as to make it look that they were shot while escaping from the law and in order to provide a potential defence to military commanders, involved in such shooting, were human remains in the future to be exhumed for forensic tests.

353. As Ms Quinn rightly submitted, it is therefore apparent from the evidence, that the Eritrean Government has indeed taken *"draconian steps to prevent its citizens leaving illegally"*.

354. We are mindful that the written submissions of the Respondent in this regard, take issue, in particular with Dr Kibreab's evidence, that it is virtually impossible to obtain an exit visa from Eritrea if one is over the age of ten or under the age fifty. We would agree that for Dr Kibreab to suggest that it was virtually impossible to obtain an exit visa under any other circumstances would be an exaggeration, bearing in mind his evidence to us of those who might arguably obtain exit visas. (See paragraph 348 above)

355. We are surprised by the Secretary of State's submission that such an important matter as the ability of Eritrean citizens to leave the country by legal means was not something that he anticipated as a likely major issue in the appeal. Nonetheless, the Secretary of State had since obtained evidence from the Visa section of the British Embassy to which is attached a Table of Visa Applications at the British Embassy in Asmara for 2006. The Respondent seeks to demonstrate that it shows:

> "A wide range of paid applications were made to the British Embassy for entry clearance to the United Kingdom. A significant number of these are people who are between the ages of ten and fifty. In my submission it is simply not credible that these people would waste their money if they had not already obtained exit visas from the authorities. Furthermore, the UK is only one of a number of possible destinations Eritreans might seek to travel to; it is clear from a Canadian Embassy document (attached) that they have a facility for processing entry clearance applications from Eritrea. If this evidence is taken in the round, it would clearly suggest there are a significant number of Eritreans who are able to and can make applications to Eritrea. The position of Dr Kibreab, in particular, and others is not supported by the evidence of the British Embassy and the wider presumptions can be draw from it relating to the opportunities to seek entry clearance form another country. It would be wholly unlikely that the only country that was approached for, and was granted, visas to enter was the UK.

> In short, there appear to be opportunities to gain exit visas without falling within the very restrictive categories outlined by Dr Kibreab in his evidence. In fact Dr Kibreab stated at the hearing the Eritrean Government had granted visas for students but had ceased because they did not come back. That is fundamentally at odds with the evidence of the British Embassy which shows a number of student applications. The suggestion that no migration is allowed is furthermore inconsistent with the concept of Eritrea being a country that relies heavily for its economic survival on remittances from abroad (a point acknowledged by Dr Kibreab in cross-examination)."

356. As regards the Table of Visa applications from the British Embassy in Asmara for 2006, we have noted that 230 people applied for entry clearance to the United Kingdom, of which 150 applications were granted.

357. We note with approval Ms Quinn's submission, that it is not the Appellant's case, that it is never possible for anyone to obtain an exit visa. Indeed, Dr Kibreab, as we have already identified, gave examples of the categories of people who would probably be able to secure exit visas. However upon our consideration of the background material, it is unlikely that a male of military service age would be able to obtain an exit visa unless he came within one of the categories described in paragraphs 205, 344 and 348 above. In this regard, a distinction should perhaps be made between scholarship students and the significant number of ordinary student applicants who would likely to be of draft age. Indeed the US Statement Department Report of 2006 notes that males under the age of fifty are routinely denied exit visas, regardless of whether they have completed their National Service.

358. The submissions of the Respondent make no reference to the special order of the President of Eritrea giving permission to a "*shoot on sight*" any Eritrean attempting to flee or helping anyone who was fleeing; nor to the background material as to the decision of the Eritrean Government to the posting of bonds of approximately 100,000 nakfa (10 years salary). These we find to be indicative of a government seeking to prevent its citizens from leaving the country.

359. Ms Quinn submitted that the Respondent's assertion that Eritrean citizens would not lodge applications for entry clearance without first having secured an exit visa, was simply speculation without any evidential foundation.

360. There is no evidence as to how many of those Eritrean citizens who secure entry clearance for the United Kingdom actually travel abroad, or how they do it. However we consider it sensible to infer that those who have gone to the trouble and expense of getting entry clearance to the United Kingdom, would intend to use it.

361. There are no figures as to how many that those Eritrean citizens who secure entry clearance to travel, for example, to the United Kingdom,

leave Eritrea legally. Many people, as is apparent from the background material, leave Eritrea illegally.

362. In that regard, the Awate.com article of 26 November 2006 states that approximately 250 people escape to Ethiopia each month and approximately 45 people escape to Sudan each day. As Ms Quinn submits, an individual who secured entry clearance could nonetheless illegally cross the border into Sudan/Ethiopia and then fly direct to the United Kingdom.

363. We are mindful of the assertion of the Respondent that Dr Kibreab's evidence (that the Eritrean Government had granted visas for students but had ceased because they did not come back) was fundamentally at odds with the evidence of the British Embassy in Asmara that indicated that student visas were being granted. We have borne in mind that the fact that Eritrean citizens have secured student visas does not necessarily mean that they have secured exit visas. Having said this, however, it is not readily apparent why a person who has no realistic expectation of securing an exit visa would go to the trouble of obtaining a visa to enter the United Kingdom, where he or she has secured or expects to secure the services of an "*agent*" (i.e. people smuggler), who will provide the necessary false documentation to leave Eritrea and/or to reach a port in the United Kingdom. This is particularly so, since given the repressive nature of the Eritrean regime, a person who applies to the UK Embassy for a visa is likely to be taking a risk that he or she will be detected by the authorities. In conclusion, therefore, whilst it is plainly the case that many of those who exit Eritrea do so illegally, the evidence regarding visas issued by the UK Embassy in Asmara, read with the evidence regarding the range of categories of persons whom Dr Kibreab considered would be allowed to leave legally, shows that it cannot simply be assumed that an Eritrean claimant who has left Eritrea has done so illegally.

364. Dr Kibreab told us that the Eritrean Government had experienced problems with students not returning at the end of their course of study. Such a view was indeed supported by an Amnesty International Report of May 2004, that described the experience of Eritrean students studying in South Africa, that many of the 6,000 Eritreans studying at South African Universities on a special World Bank-funded study programme, did not wish to return home afterwards for political reasons. There had been organised demonstrations against the Eritrean Government. The Eritrean Embassy had pressed for the return of the students (who had been National Service conscripts) and two were deported to Eritrea in August 2003 and forced back into National Service. Amnesty International called on the South African Government not to deport any student from Eritrea who would be at risk of human rights abuses on account of their opinions as the organisation believed many would be.

365. At page 8 of the 2006 State Department Report to which we have earlier referred, it is reported that there were numerous cases where foreign nationals were delayed in leaving for up to two months or initially denied

permission to leave when they applied for an exit visa. Certainly men under the age of 50, regardless of whether they had completed NS; women aged eighteen to twenty-seven; Jehovah's Witnesses and others who were out of favour with or seen as critical of the government were routinely denied exit visas. Further and as Ms Quinn reminded us, in determining the consequences for those who risked leaving the country illegally one had to be mindful of the President's "*shoot to kill* "policy.

366. We would agree with Ms Quinn who submitted that if such was an example of the draconian measures that the Eritrean Government would undertake to stop illegal exit from Eritrea, it would be even more likely, that the authorities would treat very harshly those presented on return who had exited illegally.

367. We noted that this was precisely the conclusion of the Tribunal in KA as to the risk to those of military service age. One also had to be mindful of the requirement of a bond of 100,000 nakfa which represented, on the evidence, ten years of a civil servant's salary, that further exemplified the fact that for a wide range of people, but not all applicants, (see paragraph 348), the fact that exit visas were effectively denied to a wide swathe of the population.

368. We have further considered the contention of the Respondent, that suggested that the claim that Eritrea did not allow migration, was inconsistent with the concept of Eritrea as being a country that relies heavily for its economic survival on remittances from abroad. We would acknowledge that there is a large Eritrean diaspora. Indeed, the CIO Report, at paragraph 31.10, notes that over 100,000 Eritreans have lived in Sudan for up to 25 years.

369. Dr Pool told us about the difficulties in determining Eritrea's population. He drew to our attention that at the time of the referendum in 1993 Eritreans were living in Ethiopia, Sudan, Saudi Arabia and Europe.

370. Dr Kibreab had touched on the same issue in his oral evidence; indeed in the course of cross-examination on this very point, he explained that there were occasions when it was possible to raise the bond money of 100,000 nakfa from relatives abroad.

371. We are not persuaded by the Respondent's submissions that there is no risk on return for an individual who has left Eritrea illegally. We have already identified the ample evidence from the background material that supports our conclusions in this regard. In the course of Dr Kibreab's evidence, he demonstrated by cross-sourcing to relevant background material, the way in which the Eritrean authorities treated those who were caught seeking to exit Eritrea illegally.

372. We find that given the evidence as to the treatment of those attempting to leave Eritrea illegally, the risk on return to those found to have left the country illegally, can but only, in such circumstances, be heightened.

373. In the course of his evidence, and on this particular issue, Dr Kibreab demonstrated the basis upon which he concluded that the fate of returnees aged 18 to 50 who left Eritrea illegally and were returned, included the real risk of their disappearance or possibly death, (bearing in mind not least by way of example), the experience of the Maltese returnees in 2001.

374. We have earlier set out his evidence as to the categories of those who will be at risk and their likely fate on return. Within those categories it is worth repeating that Dr Kibreab told us that they included those that had:

> ".. sought asylum in another country – that is also considered a serious offence because they had been disloyal and have exposed the weakness of the country to strangers. It is a criminal offence called "*disloyalty*'. Washing '*dirty linen in public*' in Eritrea is recognised as a very serious matter".

375. Dr Kibreab's observations in this regard are indeed reinforced by the May 2004 Amnesty International Report to which the Tribunal in KA referred at paragraph 51. Indeed the same report was noted to have been before the Tribunal in IN the Tribunal in KA considered it important to examine Amnesty International's summary of its view of current risk categories more closely. They noted in a section of the report headed "*Eritrean Asylum Seekers at Risk*". It stated inter alia that Amnesty International considered amongst the categories of people who they considered to be particularly at risk of arbitrary detention included:

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

376. Thus, although taken at face value, Dr Kibreab's comment in this regard could be taken to amount to the proposition that any failed returning asylum seeker might be per se, at risk in Eritrea, regardless of whether he or she had shown that their departure from Eritrea was illegal, that would not in our view be a proper interpretation of Dr Kibreab's evidence in this regard.

377. As paragraph 373 makes plain, his comments followed and must be read as being in the context of his views on what is likely to happen to those who exit illegally. But, even if Dr Kibreab intended to make a more general assertion, the Tribunal is unable to accept it. If the position really were that returning failed asylum seekers were as such, being persecuted in Eritrea, absent any other factors such as actual or perceived desertion, we would have expected that to be reflected to some extent at least, in the background evidence before us and it is not.

378. A person who is permitted to leave Eritrea by the authorities, despite being of draft age and not medically unfit, may well not be at real risk on return even if he or she has made an asylum claim whilst abroad. There are many reasons why this may be so including the wish on the part of the Eritrean authorities to embed family members of their regime abroad in case trouble arises in Eritrea to infiltrate the diaspora community or as a means of encouraging foreign remittances to Eritrea from those who are, in reality, well-disposed towards it.

379. The Tribunal in KA looked at this issue of illegal exit specifically and at paragraph 113(f) of their determination had this to say:

> "... persons of eligible draft age (defined in the context of return as being between eighteen to fifty for men and eighteen – forty 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...
>
> (ii) they have not been in Eritrea since the start of the war with Ethiopia in 1998...
>
> (iii) they have never been to Eritrea and are able to show that there was no draft-evasion motive behind their absence."

380. Further in KA the Tribunal continued at paragraph 113(i) to state as follows:

> "They can be considered to have left Eritrea illegally. Regarding this sub-category, it must be borne in mind that if 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 genuinely lacks credibility will not be assumed to have left illegally. We think that those falling into the '*left legally*' sub-category 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 would not have been called up. Conversely, those falling outside this sub-category will often include persons who left Eritrea when they were approaching draft age or recently passed that age."

381. The question arises, does the much fuller evidence on the issue of National Service (NS) and Military Service (MS) in Eritrea require modification of the guidance given in KA? We think it does.

382. We have concluded upon our consideration of the current background material, that the finding of the Tribunal in KA that the '*left legally*' sub-category applies to men who have already done their National Service, (a concept that we would now, in any event, conclude takes no account of those who are regarded as "Members of the National Service"), is now to be read in the light of the fresh evidence contained not least in the US State Department Report of March 2006, that clearly shows that amongst the categories of those routinely denied exit visas were "men,

under the age of fifty, regardless of whether they had completed National Service' (Our emphasis).

383. That passage is in fact repeated in the April 2006 CIO Report for Eritrea. Neither of those documents were before the Tribunal in KA.

384. Mr Parkinson at one stage in the hearing, produced before us a transcript of the recent decision of the Tribunal in WA (Draft Related Risks Updated – Muslim women (Eritrea) CG [2006] UKAIT 00079. Mr Parkinson explained that WA was:

> " .. not very material to this appeal. There is only one minor reference to the degree of National Service conscription that is of any materiality and that appears at paragraph 67".

385. Subsequently he submitted in his written closing submissions, that the decision demonstrated that conscription was not universally imposed, in that regions existed in Eritrea that exercised "*a degree of latitude*". However, WA was concerned solely with the issue of women of draft age. It is noteworthy that before us, Mr Parkinson was clear that he did not place significant reliance on WA in the context of the issues with which we were seized in the instant appeal.

386. It is, however, clear from WA that there was before the Tribunal background evidence that established that Afar Muslim women from the Dankalra region were not subject to forceful recruitment into National Service. Nothing that we have heard or seen affects this finding.

The "*Giffa*" (Round-up)

387. Dr Kibreab told us in evidence he did not know how many people were reconscripted after the war broke out in 1998 but he continued:

> "They conscript secondary school students and relocate them to Sawa and ensure they complete their military education in a military camp since 2003 – *the reason they do that is that most students would otherwise disappear."* (Our emphasis).

388. As we have already sought to demonstrate, the evidence shows that because of the Eritrean Government's concerns in that regard, there are:

(i) Tight (although not absolutist) controls imposed on exit visas;
(ii) A policy of collective punishment and; penalties for draft evasion for the parents of those who do not fulfil the provisions of the NSP;
(iii) The imposition of bail bonds to some citizens given exit visas that equate in many cases to a civilian salary of some ten years.
(iv) An obligation imposed on civil servants not only to report on those who had escaped but those who are even thinking of escaping;

(v) The "*shoot-on-sight*" policy by special order of the Eritrean President, in relation to any Eritrean caught attempting to flee or helping anyone who is fleeing.

389. The Respondent submits that, what is described as "*a consistent thread*" in all three of the experts' reports is that the aim of National Service was to obtain skills and abilities "*on the cheap*". It is thus contended there would be no point in taking into National Service, the illiterate and the large percentage of the population involved in subsistence agriculture, bearing in mind that the usefulness of the Eritrean population to the Government of Eritrea in terms of its objectives has to be considered against the fact that between some 70 to 86 per cent of the population are illiterate. The Respondent thus argues that it appears that there are strong reasons to accept that only some 12-15 per cent of the population are actually called for NS.

390. We mention this contention, because it forms the backdrop of the Respondent's submission that such action by the Government of Eritrea is not fundamentally incompatible with the round-ups or "*giffa*".

391. It is argued that these could be taking place to ensure that the government recruits those citizens whose proven ability has rendered them desirable for conscription and retention in National Service for the benefit of Eritrea.

392. The Respondent seeks support for that contention in the COI Report of September 2006 at 11.07 where it is stated that:

> "... The government has initiated targeted campaigns to <u>apprehend female students who had completed the eleventh grade</u> [their underlining] but opted to stay at home instead of reporting to Sawa. Last week [10 July onwards] the town of Dekemhare was the target. Similar campaigns are expected in Asmara and other major towns."

393. Further in the same COI Report at 11.08 it is stated:

> "Awate.com ran reports on 24 February 2006 that a new round of giffa had been launched in the Anseaba region which included the sweeping up of <u>seventeen year olds from three high schools in Keren</u> [their underlining] transporting them to Wia (near the eastern coast)... <u>Other high schools</u> [their underlining] in the Northern Red Sea region were similarly cleared a few days previously."

394. In contradiction, the Respondent nonetheless acknowledges that there was evidence of an indiscriminate round up in 2004 (see also the COI at paragraph 11.06), and there was good evidence that it was high school attendees that were primarily targeted.

395. We would, however, agree with Ms Quinn that the Respondent, has selectively quoted from the background evidence, that when looked at in the round, demonstrates that the giffa is relatively indiscriminate.

396. We shall demonstrate the way in which the background material before us reinforces that conclusion, but before so doing, we feel it necessary to explain why evidence regarding the "*giffa*", has a bearing on the issues before us. It is further evidence of the robust approach of the Eritrean authorities, not only to those youths eligible for the draft who seek to evade it, but also to those who have completed their military training and having been transferred to "civilian" jobs might be minded to leave the country in an effort to avoid the possibility of further recall.

397. The evidence concerning the "*giffa*" is a pointer as to the attitude of the Eritrean authorities in relation to those in that category who flee Eritrea illegally and as to the treatment they can expect on return, at the hands of the Eritrean authorities. And in that regard as to the importance they attach to maintaining a large army.

398. In evidence before us, Dr Pool was referred to a report, (indeed within the Respondent's bundle), of Awate. com sub-headed "*Government Rounds-up Under Age Youth*" dated 23 February 2006 which stated as follows:

> "... Round-ups started when students were in class which gave them no chance to say goodbye to their families or prepare themselves. They were taken straight from their desks to the waiting buses. The sudden and harsh manner in which the rounding-up was conducted has stunned and angered the entire population of Keren. One source says URC who was contacted by Awate.com showed that similar sentiments were reported in other towns."

399. A further passage within the same Awati.com report, demonstrates that the round-up of young students is only but a part of the overall policy of the Eritrean Government to ensure, if necessary by force, that the armed forces of Eritrea are maintained at optimum levels. Indeed, a further extract from the same report continues:

> "Demobilised soldiers and National Service Corps who had been discharged for medical reasons ('Medical Board Cases') were also ordered to re-register. It is expected that this sweeping round-up of young students, which has already started in the north and Red Sea and Anceba regions, will be continued in all regions of the country. One alarming aspect of this **new wave of round-ups**, is that it has affected young students under eighteen years of age." (Our emphasis).

400. Our emphasis in relation to the above passage exposes the point that the report talks of a "*new wave of round-ups*" as recently as February 2006. The Respondent is thus incorrect in appearing to suggest that the only evidence of indiscriminate round-ups occurred in 2004.

401. Further, in Dr Pool's report, he was clear that the "*giffa*" was indiscriminate and continued:

> "The 'giffa' (round-ups) are organised in villages and town quarters and targeted those who appeared to be of eligible age. They are not particularly targeted to distinct categories as mentioned in my instructions (i.e. those required to register, those who fail to attend final year schooling at Sawa or those who fail to enlist). The Amnesty International Report on the giffa accurately describes the process '*police search houses, workplaces and streets and detain suspected draft evaders to check their identity documents and at military roadblocks on main roads*". It is quite usual for buses and other forms of transport to be stopped and the identity cards of all passengers to be checked for age and other documents checked for military status. According to the Human Rights Office of the United Nations Mission to Eritrea and Ethiopia (UNMEE) in its quarterly report for 2003–4 describes the giffas: thus: '*Eritrean military and security officials conduct aggressive searches to enforce compliance with National Service obligations. Military and security officials conduct house searches, often during the night, in order to pick up all persons suspected of draft evasion*'."

402. Ms Quinn further referred us to the personal account of Musse Habtemichael, a military policeman recorded by War Resisters International that also indicates the indiscriminate nature of the giffa:

> "Sometimes we also surrounded entire quarters and controlled every house. At first the quarter was surrounded. Then we went from house to house got all out on the street, everybody. Everyone was checked, if someone was student he/she had the student card and was allowed to leave ... If he/she had nothing to show, he/she would be brought to a military unit. Some stayed with their children. We had to take them out of their family and take them from their children... Some were ill. We took them too and brought them to their division. There they were put in prison. Some of the sick persons died."

403. The US State Department Report of March 2006 indicates that the giffa is indiscriminate:

> "Security forces detained, generally for less than three days, many persons during searches, for evaders of National Service even if they had valid papers showing that they had completed or [were] exempt from National Service."

404. Thus it is apparent that the giffa is conducted in a way that targets a cross-section of Eritrean society, not any particular group.

A *"Closed Society"*

405. In her closing submissions before us, Ms Quinn drew our attention to the difficulties "for both sides to obtain information about Eritrea because it really is a '*very closed society*'." We would agree. The expert evidence, the expressed problems of the World Bank in that regard and the background material in general before us, echo that difficulty.

406. In that we are required to reach conclusions as to real risk on return to Eritrea on the basis of a reasonable degree of likelihood, in relation to the particular circumstances of the Appellant in the instant appeal as

well as in relation to the wider issues that we are required to consider, it follows that the paucity of information emanating from Eritrea is an important factor that we must take into account in reaching our conclusions.

407. In that regard, the US State Department Report of March 2006 under the sub-heading "*Freedom of Speech and Press*", refers to the restrictions on press freedom. The report tells us that:

> "The government controlled all media, including three newspapers, two magazines, one radio station and one television station. There was no private media in the country, the law does not allow private ownership of broadcast media or foreign influence or ownership of media and the government also banned the import of foreign publications. The government had to approve publications distributed by religious international organisations before their release, and the government continued to restrict the right of religious media to comment on politics or government policies. The press law forbids reprinting of articles from banned publications."

408. The report cites an example of three reporters from foreign news organisations allowed by the government to operate in the country. One of them was subsequently held by the government for nearly four years, released for medical treatment and then detained again a few days later, and remained in detention without charge until the end of 1995.

409. The report recalls that the Eritrean Government allowed only one domestic human rights NGO, *"Citizens for Peace in Eritrea" (CP)*, to operate, but its work was limited to advocacy on behalf of war victims. The government did not permit international human rights organisations to operate in the country. All NGO's regardless of their scope of work were required to register with the Ministry of Labour and Human Welfare. In May 2005 the government issued the law that required all NGOs to register with the government for permission to continue operations in the country. All international NGOs to have $2 million (in US currency) in the local bank. The report continues:

> "Many NGOs were unable to register under the new law and were required to leave the country. As of years end there were sixteen registered NGOs.
>
> During the year the government ordered a foreign government's aid agency to stop operating in the country."

410. An internet report of "*The Committee to Protect Journalists*" of 2 May 2006 in detailing what it described as its "*The 10 Most Censored Countries*" identified Eritrea within that list. Their summarised reasons for its inclusion were set out as follows:

> "Eritrea was the only country in sub-Saharan Africa without a single private media outlet. More than four years after a vicious crackdown shattered a fledgling independent press, the government's repressive

> policies have left the tiny Horn of Africa nation largely hidden from international scrutiny and with almost no local access to independent information. A privileged few have access to the Internet. The handful of foreign correspondents in the capital, Asmara, are subject to intensive monitoring by authorities."

411. At least 15 journalists have been jailed or otherwise deprived of their liberty. Most are held incommunicado in secret detention centres. When CPJ sought information about the imprisoned journalists in the fall of 2005, Information Minister, Ali Abdou, told Agence Franc-Presse, "*It is up to us what, why, when, and where we do things.*"

412. We pause there to note the reference to the Information Minister who was quoted in terms of the indefinite nature of National Service in the Middle East Times, to which we have above referred and the reference within the report as to the Eritrean authorities' treatment of perceived opponents of the regime including the deprivation of their liberty, that can lead to their being "*held incommunicado in secret detention centres*", a matter reflected in Dr Kibreab's evidence before us in terms of the fate of those whom he considered to be at real risk if returned to Eritrea.

413. We have noted further reports concerning Eritrea's detention of foreign journalists exemplified by a May 2006 Annual Report of Raporteurs Sans Frontieres (Reporters Without Borders) in which the following is stated:

> "Africa's youngest country is still the continent's largest prison for journalists. Thirteen of the newspaper editors from before 2001, are being secretly held, somewhere in the country, without ever going before a court, see a lawyer or speak to their families. The government which controls the country with an iron fist, claims they are traitors to the country. Ethiopian spies or deserters. It is not known if they are still alive.
>
> In November, the disturbing episode of the two-day release of the founder of the Weekly Setit, Dawit Isaac, served as a reminder of the extent to which President Issaias Afewurki is pitiless towards those he considers his opponents. The journalist was released on 19 November and was able to phone his wife and friends who are in exile in Sweden to tell then he will be joining them. But the Eritrean Government, for unknown reasons, decided to throw him back in prison two days later, to general bewilderment."

414. The US State Department Report of March 2006 refers to the fact that arbitrary arrest and detention are '*serious problems*' and notably the Amnesty International Report of May 2004 describes how the Eritrean Government does not accept any criticism and ignores the rule of law:

> "The government dismisses the criticism from all sides of its appalling human rights record. it ignores the principle of the rule of law and flagrantly contravenes the human rights safeguards in Eritrea's Constitution and law. It has ratified several international human rights

> treaties – although not the whole range – but does not adhere to them in practice. It allows no criticism in the country - critics and human rights defenders have been detained or have fled the country. The government refused to engage in dialogue about human rights, either with its own citizens or with the international community."

415. The Amnesty International Report of May 2004 observes:

> "Eritrea is a de facto one-party state, where the only permitted party is the ruling People's Front for Democracy and Justice (PFDJ) the re-named former Marxist/Leninist Eritrean People Liberation Front (EPLF) which won independence from Ethiopia in 1991 after a thirty year liberation war."

416. We would agree with Ms Quinn, that as a government of Marxist/Leninist persuasion, both in theory and in practice it seeks state control of the economy and is hostile to the private sector.

417. In the Appellant's bundle, there is a report of a half-day Conference chaired by an ex-Director of the United Nations Association organised by JCWI, the Eritrean Education Trust, the Eritrean Elders Welfare Association, the Royal African Society and the Centre of African Studies at the University of London.

418. The topic was "*Refugees and African Development: the Case of Eritreans in the UK.*" Among the 120 people who were reported to have attended, were representatives of organisations such as the Refugee Council, the Red Cross, the United Nations Association, Amnesty International and others. It is right to say that many Eritrean community groups were also recorded as being present.

419. The preamble to the Conference report remarked that the Conference "*presented an opportunity for networking between the grass-roots community organisations and larger organisation who worked with, and on behalf of, Eritrean refugees and asylum seekers.*"

420. We make the above clear, in order to fairly and properly place the extract to which we are now going to refer in its proper perspective and context. One of the speakers was a journalist, Michela Wrong, author of a recently published non-fiction book about Eritrea giving an account of conditions there. She made her observations as a result of her claimed extensive knowledge of the country's present history and her recent trip to Eritrea.

421. Ms Quinn in her closing written submissions refers to the following extract of the comments of Michela Wrong:

> "Economic policy is firmly in the hands of the government, which is now openly hostile to the private sector and shown a classical Marxist appetite for state control. No new import licences have been issued to shopkeepers since the start of the year and the government is planning to open up bureaux where 12 key commodities will be on sale."

422. We have already exemplified the clear intentions of the Eritrean Government to bring large sectors of the population within National Service as evidenced by their decision to re-register the National Service Corps who have been discharged for medical reasons ("*Medical Board cases*").

The Eritrean Economy and National Service

423. The Respondent, in his closing submissions rightly identified the fact that Eritrea is one of the world's poorest countries. It has an apparent population of 4.3 million of whom 80 per cent are employed in or are dependent upon the subsistence agriculture sector (see the report of the International Monitory Fund (IMF) and the Home Office COI. Paragraph 2.01; and Hutchison's Country Facts under "*Labour Force*").

424. The Respondent points out that subsistence agriculture is in essence whereby people grow food and rear animals for the principal purpose of feeding themselves, occasionally generating a small surplus for sale. They refer to a passage from the IMF Report that states, "*The authorities have produced an Interim Poverty Reduction Strategy paper and a National Food Security Strategy, which together set out plans aimed at increasing rural incomes [their underlining) and increasing productivity.*"

425. The Respondent points to the US Censors Bureau second table that states that the population of Eritrea aged between 15 and 19 is 504,000. The respondent thus submits that the population likely to be called for service in any one year when they reach the age of eighteen is 100,000, being one fifth of the population between fifteen and nineteen.

426. As is apparent from what we have already found, the Eritrean Government uses National Service as a means of controlling and exploiting the economic potential of those of its citizens who could be said to be in their prime.

427. The Human Rights Watch report of 2006 states that:

> "Conscripts are often used for public work projects, such as road building. There have been persistent reports they are also used as labourers on Party, military and officers' personal farms."

428. The journalist Michela Wrong, to whom we earlier referred, notes that even Eritrea's most skilled citizens are doing manual labour:

> "The results of the works undertaken by those doing National Service are obvious and striking. New dams have been built, the causeways in the Sawa Massawa are being widened, many towns boast brand new hospitals, roads have been improved. *However, key national resource – Eritreans best and brightest – is going tragically to waste as graduates and skilled technicians do manual work for free.*" (Our emphasis).

429. It is necessary for us to further consider those who might be characterised as "*approaching draft age*". This is a matter which has exercised the Tribunal in IN, KA and, most recently, WA. On this question we are unable to give a definite view but it is likely to be on a sliding scale whereby anyone of say fifteen years and over is highly likely to be regarded by the authorities as such, whereas someone under the age of ten is highly unlikely to be so regarded. On the contrary, as is apparent from paragraphs 273-281 above, the legislation on National Service contains no such exemption.

430. The Respondent's assertion that if such a large number of individuals were in National Service the agricultural sector would have collapsed, first of all ignores the background material that establishes that the agricultural sector has suffered as a result of a large number of individuals carrying out National Service.

431. Indeed, in that regard, Ms Quinn has drawn our attention by way of example, to paragraph 2.03 of the COI Report that states:

> "Erratic rainfall and the delayed demobilisation of agriculturalists from the Ministry kept cereal production well below normal, holding down growth in 2002-05."

432. The Respondent's submission in this regard significantly fails, secondly, to take account of the background material that establishes that the development tasks carried out by National Service draftees include work on state and PFDJ farms. In that regard our attention has been drawn to the Amnesty International Report of May 2004:

> "The development tasks mainly consist of labour or construction projects, such as road, dams, *farms*, clinics, schools and government or military buildings anywhere in the country. " (Our emphasis).

433. Further, Dr Kibreab stated in his report:

> "Recruits are regimented in different units and participate in productive activities as groups and/or individuals, such as urban housing development, construction of dams, roads, bridges, clinics, health centres, hospitals, schools etc. *They also work in State and PFDJ-owned banks, commercial farms* and construction sites. The Ministry of Defence also hirers out draftees to private firms in which the latter paid the salaries of the draftees to the Ministry of Defence. Recruits, whether they are assigned to the defence force, ministries, departments, PFDJ firms, *state farms* or private firms are paid uniform pocket money." (Our emphasis).

434. The assertion that Dr Pool and Dr Kibreab's reports demonstrate, that it is those of the highest educational level with specific technical skills and qualifications who are retained by the government on a NS basis (so as to enable their skills to be utilised at a lower cost, thus enabling the economy to benefit from lower labour costs), ignores their evidence as to

how NS draftees with scarce skills/qualifications were hired out by the Ministry of Defence to the civil service, government departments and private firms. However it is right to say that the evidence in this regard suggests that some with skills are utilised but some are not.

435. Ms Quinn rightly submits that neither Dr Pool nor Dr Kibreab suggested that it was only those with scarce skills and qualifications who are required to carry out National Service.

Eritrean Population

436. We now turn to the Respondent's assertion that it is not possible for 1.2 million individuals to be in NS. They have based this figure on Eritrea having a population of 4.3 million and on there being 405,000 Eritreans aged between 15 and 19. This information appears to derive from both the COI Report of September 2006 and Hutchinson's Country Facts on Eritrea that includes a US Census and Bureau data reference updated on 24 August 2006. We can only repeat the obvious difficulties with Eritrean population statistics that were indeed in particular identified by Dr Pool in his evidence, although we are unpersuaded by Ms Quinn's submission that these figures take no account of the estimated 70,000 to one 100,000 Eritreans said to be killed in the border war between 1998 to 2000 and indeed identified in the Respondent's bundle of documents within the COI of 21 September 2006 at paragraph 3.07. We take the view that if estimates such as these post-dated the year 2000 then surely it would be right not to include in such data the figures for those who had been killed.

437. We are mindful that Dr Pool in his oral evidence before us, stated that there had never been a population survey and that population statistics were based on the 1993 referendum and that many Eritreans lived elsewhere such as in Ethiopia, Sudan, Saudi Arabia and the United Kingdom and they voted in the referendum.

438. The assertion of the Respondent that 80 per cent of the population is employed in or dependent upon subsistence agriculture relies on the COI Report of September 2006 and Hutchinson's Country Facts (undated) that from its chronology would appear to suggest that it was published no later than 2000.

439. Hutchison's Country Facts indeed state that in 1990, 85 per cent of the labour force worked in the agricultural sector, but we cannot ignore the fact this is a statistic now 17 years out of date and of course it pre-dates the introduction of NS in 1994.

440. The Respondent makes reference to a COI Report that refers to the devastation to the subsistence agricultural sector, following the Eritrean-Ethiopian war of 1998 to 2000, on which 80 per cent of the population relied for food production provided by 62 per cent.

441. Ms Quinn rightly asserts, that as the Eritrean-Ethiopian war devastated subsistence agriculture and food production, there must have been a significant reduction in the percentage of the population involved in subsistence agriculture.

442. The following point also needs to be made. The apparent assumption on the part of the Respondent, that the numbers of those involved in NS is considerably less than that claimed on behalf of the Appellant, depends upon those involved in agriculture being generally exempt from the requirements of NS. We have not had our attention drawn to any evidence that suggests this to be the case.

443. The broad objectives of National Service are as set out in Article 5 of the 1995 Proclamation. We would agree with Ms Quinn who submitted that:

> "An individual does not need to be educated and literate in order to be able to develop a sense of patriotism and commitment to national unity. The Eritrean Head of State has consistently stated that nationalism and patriotism do not develop naturally but have to be fostered and nurtured. Clearly they can be fostered and nurtured among the educated/literate and the non-educated/illiterate."

The Nature of Eritrean "*Demobilisation*" and the risk on return

444. We have already explained the basis of our finding that the word "*demobilisation*" as we would normally understand it, means that a person leaves military service and becomes a free agent but that does not appear to be always what is understood in Eritrea. The Eritrean authorities, in effect, ascribe a dual meaning to their definition of demobilisation. In the classic sense, those for example severely disabled are demobilised in the sense of being freed to return to civilian life. There were those 5,000 individuals who were demobilised within the pilot project between 1993 and 1994. Dr Pool told us that those demobilised prior to the war comprising between 48,000 to 54,000 people between 1992 and 1994 who were given grants for setting up businesses generally to return to civilian society. Dr Pool told us in his report that "*these people are demobilised in all senses of the term...*" He went on to explain that many of them were called back as they were old EPLF fighters in 1998. Dr Kibreab indeed identified a further grouping of those, in the classic sense, who were actually demobilised for example having been discharged on medical grounds. Although again, as he pointed out, many were now subject to re-call. We find that demobilisation is otherwise the term used to describe the process whereby a person having completed the military training portion of his call-up continues to be subject to NS in the sense identified earlier in this determination. (see especially paragraphs 283-308)

445. It is clear that a person of military service age or who is approaching military service age who leaves Eritrea illegally before undertaking or completing Active National Service (as defined in Article 8 of the 1995

Proclamation) (see paragraph 283 above), is reasonably likely to be regarded by the Eritrean authorities as a deserter and punished accordingly. The evidence of a "*shoot to kill*" policy in respect of deserters, the imprisoning of parents and the process known as "*the giffa*", together with the more general objective evidence regarding the oppressive nature of the Eritrean regime, confirms that any such punishment is likely to be both extra-judicial and of such a severity as to amount to persecution, serious harm and ill-treatment.

446. What also emerges plainly from the evidence, is that a person of draft age, who has left illegally and who is not medically unfit will be similarly regarded even if he has completed Active National Service and has been "*demobilised*" therefrom because, in the absence of special factors, he or she is still regarded as being subject to National Service. The country guidance in IN, KA and AH is therefore modified so as to include this category of persons amongst those who are in general at real risk.

447. As stated in paragraphs 371 - 374 above, we do not find that all returning failed asylum seekers are as such at real risk. That is so even if the returnee is of draft age (or approaching it). If the position were otherwise, we should expect to see some evidence in the background materials. Dr Pool did not advance such a view in his evidence. The only specific evidence was in the comments of Dr Kibreab, recorded in paragraph 374 above. Although we have found him in general a witness whose testimony carries weight, his comments on this issue are unrelated to any specific case history and struck us as unacceptably vague.

448. A person of or approaching draft age who fails to show that he or she left Eritrea illegally is not reasonably likely to be regarded with serious hostility on return, even if the authorities are or would be reasonably likely to be aware that that person had made an unsuccessful asylum claim abroad.

449. A finding as to whether an Eritrean appellant has shown that it is reasonably likely he or she left the country illegally, is therefore likely to remain crucial in deciding risk on return to that country (see paragraph 234 above). In making such a finding, judicial fact-finders will need to be aware of evidence that tends to show the numbers of those exiting Eritrea illegally appear to be substantially higher than those who do so legally and that distaste for what is effectively open-ended service at the behest of the state lies behind a good deal of the current emigration from Eritrea. Nevertheless, where a person has come to this country and given what the fact-finder concludes (according to the requisite standard of proof) to be an incredible account of his or her experiences, that person may well fail to show that he or she exited illegally.

The Appeal of the Appellant

450. We take as our starting point the findings of fact of Immigration Judge Reid, but bear in mind that when considered at the first stage

reconsideration hearing by the Tribunal it was found that there were significant omissions in the fact finding in relation to the military service evasion element of the Appellant's account.

451. We had the benefit of hearing the Appellant give evidence.

452. In common with the Immigration Judge and for like reason we do not consider the Appellant's account of his escape from Eritrea is credible.

453. It was, however, significant that, in cross-examination, the Appellant was asked, and answered, as follows:

> "Q. Did you have contact with the Eritrean authorities?
> A. No – had I been stopped I would not have been able to leave.
>
> Q. Did you ever apply for an exit visa?
> A. No – it would not have been granted to me.
>
> Q. Can you tell us why an exit visa would not have been granted to you?
> A. According to the Government Protocol, exit visas are not allowed for a soldier."

454. In our view and in light of our general conclusions as set out above, this is important, because whatever other problems there may be with the Appellant's credibility, the Respondent has not sought to maintain a challenge to the Appellant's claim that he did not have permission from the authorities to leave Eritrea. That puts him in a very different position from many other Eritrean appellants found to be not credible in material respects.

455. As a person of draft age who exited illegally (see KA) and is not medically unfit, the Appellant therefore must be regarded as being at real risk on return as a perceived deserter or evader of NS.

456. We have thus concluded that by reason of political opinion, perceived or otherwise, the Appellant's circumstances, engage the Geneva Convention. It follows we find that he is a person whose return to Eritrea would violate Article 3 of the ECHR.

457. We would add for the sake of completeness that we do not find that the provisions of section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 apply in this case. The Appellant arrived in the United Kingdom on 24 January 2005 and claimed asylum on the same day. Further, it was not a matter raised by Mr Parkinson in the course of his written submissions or by his colleague, Mr Oguntolu, when making further oral submissions before us.

Decision

The original Tribunal made a material error of law. The following decision is substituted.

The appeal is allowed on asylum grounds.

The appeal is allowed on human rights grounds (Article 3).

By reason of paragraph 339C(ii) of the Immigration Rules, the Appellant is not entitled to the grant of humanitarian protection.

Signed

Date

Senior Immigration Judge Goldstein

ANNEX

Expert Evidence

Report prepared by Dr Giam Kibreab, 30 August 2006.

Report prepared by Dr David Pool, 30 August 2006.

Affidavit of Dr Amanuel Gebremedhin, undated – (circa 2006)

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Human Rights Watch letter, 5 May 2006.

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News 24.com "Eritrea arrests UN staff" 11 May 2006.

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International Herald Tribune: "UN Chief warns that Ethiopia – Eritrea tensions could explode without attention" 30 October 2006.

Amnesty International report Public Statement "Eritrea Over 500 parents of conscripts arrested" 21 December 2006.

Documents submitted by Respondent relating to country situation, Eritrea

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The World Bank "Eritrea – Demobilisation and Reintegration Programme – Project Appraisal" 22 June 2001.

The World Bank – "Eritrea – Emergency Demobilisation and Reintegration Project, Volume 1" 22 April 2002.

The World Bank Technical Annex for a Proposed Credit of US$60 Million to the State of Eritrea – Emergency Demobilisation and Reintegration Project, 22 April 2002.

UNHCR – Position on Return of Rejected Asylum Seekers to Eritrea, January 2004.

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USAID/Eritrea Annual Report, 15 June 2005.

Operations Policy and Country Services – Status of Projects in Execution – FY05 and FY06 – Eritrea, 19 September 2005.

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