OPERATIONAL GUIDANCE NOTE

ERITREA

CONTENTS

1. Introduction

1.1 This document provides UK Border Agency case owners with guidance on the nature and handling of the most common types of claims received from nationals/residents of Eritrea, including whether claims are or are not likely to justify the granting of asylum, Humanitarian Protection or Discretionary Leave. Case owners must refer to the relevant Asylum Instructions for further details of the policy on these areas.

1.2 Case owners **must not** base decisions on the country of origin information in this guidance; it is included to provide context only and does not purport to be comprehensive. The conclusions in this guidance are based on the totality of the available evidence, not just the brief extracts contained herein, and case owners must likewise take into account all available evidence. It is therefore essential that this guidance is read in conjunction with the relevant COI Service country of origin information and any other relevant information.

COI Service information is published on Horizon and on the internet at:

http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

1.3 Claims should be considered on an individual basis, but taking full account of the guidance contained in this document. In considering claims where the main

applicant has dependent family members who are a part of his/her claim, account must be taken of the situation of all the dependent family members included in the claim in accordance with the Asylum Instruction on Article 8 ECHR. If, following consideration, a claim is to be refused, case owners should consider whether it can be certified as clearly unfounded under the case by case certification power in section 94(2) of the Nationality Immigration and Asylum Act 2002. A claim will be clearly unfounded if it is so clearly without substance that it is bound to fail.

2. Country assessment

2.1 Case owners should refer the relevant COI Service country of origin information material. An overview of the country situation including headline facts and figures about the population, capital city, currency as well as geography, recent history and current politics can also be found in the relevant FCO country profile at:

http://www.fco.gov.uk/en/travel-and-living-abroad/travel-advice-by-country/country-profile/

2.2 An overview of the human rights situation in certain countries can also be found in the FCO Annual Report on Human Rights which examines developments in countries where human rights issues are of greatest concern:

http://fcohrdreport.readandcomment.com/wp-content/uploads/2011/02/Cm-8339.pdf

2.3 Actors of protection

2.3.1 Case owners must refer to the Asylum Policy Instruction on 'considering the protection (asylum) claim' and 'assessing credibility'. To qualify for asylum, an individual not only needs to have a fear of persecution for a Convention reason, they must also be able to demonstrate that their fear of persecution is well founded and that they are unable, or unwilling because of their fear, to avail themselves of the protection of their home country. Case owners should also take into account whether or not the applicant has sought the protection of the authorities or the organisation controlling all or a substantial part of the State, any outcome of doing so or the reason for not doing so. Effective protection is generally provided when the authorities (or other organisation controlling all or a substantial part of the State) take reasonable steps to prevent the persecution or suffering of serious harm by for example operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and the applicant has access to such protection.

2.3.2 Police were responsible for maintaining internal security, and the army was responsible for external security; however, the government utilized the armed forces, the reserves, and demobilized soldiers to meet either domestic or external security requirements. Agents of the National Security Office, which reports to the Office of the President, were responsible for detaining persons suspected of threatening national security. The armed forces have the authority to arrest and detain civilians. Police generally did not have a role in cases involving national security, but they were heavily involved in rounding up individuals evading national service.[1]

2.3.3 Police, who often were conscripted, were paid 15 nakfa (61 pence), and corruption

[1] US State Department Human Rights Report 2011: Eritrea, section 1d

was a problem. Reports were common of police and other security force members committing crimes to supplement their income, including breaking into homes to steal jewellery, money, and food. Police typically used their influence to assist friends and family, such as facilitating their release from prison. Reports were common that police demanded bribes to release detainees and that military personnel systematically accepted money to smuggle citizens from the country and cooperated with human trafficking groups. There were no mechanisms to address allegations of official abuse, and impunity was a problem.[2]

2.3.4 Public officials were not subject to financial disclosure laws, and there was no government agency responsible for combating government corruption. Corruption was extensive for government services involving issuance of identification and travel documents, including in the passport office. Individuals requesting exit visas or passports often had to pay bribes.[3]

2.3.5 During 2011 the police, armed forces, and internal security arrested and detained persons without due process and often used violence. In 2011, the U.S. Department of State listed the following types of human rights violations committed by the Eritrean authorities: forced labour of indefinite duration through the mandatory national service program; severe restriction of civil liberties including freedom of speech, press, assembly, association, and religion; unlawful killings by security forces; politically motivated disappearances; arbitrary arrest and detention, including of national service evaders and their family members; executive interference in the judiciary and the use of a special court system to limit due process. The report further noted that the Eritrean government "did not take steps to prosecute or punish officials who committed abuses, whether in the security services or elsewhere in the government" and found that "Impunity was the norm". Police forcibly arrested individuals on the street who were unable to present identification documents.[4]

2.3.6 The judiciary, which was formed by decree in 1993, has never issued rulings significantly at variance with government positions. Constitutional due process guarantees are often ignored in cases related to state security. The International Crisis Group has described Eritrea as a "prison state" for its flagrant disregard of the rule of law and its willingness to detain anyone suspected of opposing the regime, often without charge.[5] Similarly, Freedom House reported that arbitrary detention remains the authorities' most common method of stifling independent action by citizens".[6] Amnesty International reported in 2012 that "there were thousands of prisoners of conscience in the country" including political activists, journalists, religious practitioners and draft evaders, none of whom were charged or tried for any offence, but were at risk of and often subjected to torture and other ill-treatment.[7]

2.3.7 Corruption continued to be a problem in 2011. The government's control over foreign exchange effectively gives it sole authority over imports. At the same time, those in favour with the regime are allowed to profit from the smuggling and sale of scarce goods such as building materials, food, and alcohol. According to the International Crisis Group, senior military officials are the chief culprits in this trade. They have also been accused of enriching themselves by charging fees to assist the

[2] US State Department Human Rights Report 2011: Eritrea section 1d
[3] US State Department Human Rights Report 2011: Eritrea Section 4
[4] US State Department Human Rights Report 2011: Eritrea, Executive Summary and section 1d
[5] Freedom House, Freedom in the World 2012; Eritrea http://www.freedomhouse.org/report/freedom-world/2012/eritrea
[6] Freedom House, Freedom in the World 2012; Eritrea http://www.freedomhouse.org/report/freedom-world/2012/eritrea
[7] Amnesty International, Annual Report 2012: Eritrea, http://www.amnesty.org/en/region/eritrea/report-2012

growing number of Eritreans who wish to flee the country, and using conscript labour for private building projects.[8]

2.3.8 The judicial system in Eritrea is opaque, often arbitrary and harsh. Where trials do occur they are conducted in secret, often in special courts where judges also serve as prosecutors. For the most part, those detained are not brought to trial. The Eritrean government does not allow access to most of its prisons and there are no accurate figures on the number of prisoners. The number of those in detention on political and religious grounds could be in the tens of thousands.[9] In 2012, Human Rights Watch referred to Eritrea as "one of the world's most repressive governments", where civilians "suffer arbitrary and indefinite detention; torture; inhumane conditions of confinement; restrictions on freedom of speech, movement, and belief; and indefinite conscription and forced labour in national service".[10]

2.3.9 If the applicant's fear is of ill treatment or persecution by the state authorities, or by agents acting on behalf of the state, then they will not be able to apply to those authorities for protection.

2.4 Internal relocation.

2.4.1 Case owners must refer to the Asylum Policy Instructions on both internal relocation and Gender Issues in the asylum claim and apply the test set out in paragraph 339O of the Immigration Rules. It is important to note that internal relocation can be relevant in both cases of state and non-state agents of persecution, but in the main it is likely to be most relevant in the context of acts of persecution by localised non-state agents. If there is a part of the country of return where the person would not have a well founded fear of being persecuted and the person can reasonably be expected to stay there, then they will not be eligible for a grant of asylum. Similarly, if there is a part of the country of return where the person would not face a real risk of suffering serious harm and they can reasonably be expected to stay there, then they will not be eligible for humanitarian protection. Both the general circumstances prevailing in that part of the country and the personal circumstances of the person concerned including any gender issues should be taken into account, but the fact that there may be technical obstacles to return, such as re-documentation problems, does not prevent internal relocation from being applied.

2.4.2 Very careful consideration must be given to whether internal relocation would be an effective way to avoid a real risk of ill-treatment/persecution at the hands of, tolerated by, or with the connivance of, state agents. If an applicant who faces a real risk of ill-treatment/persecution in their home area would be able to relocate to a part of the country where they would not be at real risk, whether from state or non-state actors, and it would not be unduly harsh to expect them to do so, then asylum or humanitarian protection should be refused.

2.4.3 Freedom of movement is heavily restricted.

2.4.4 The government restricts travel within the country. This is especially true of national service members on active duty who must obtain authorisation to move from town

[8] Freedom House, Freedom in the World 2012; Eritrea http://www.freedomhouse.org/report/freedom-world/2012/eritrea
[9] UK Foreign & Commonwealth Office (FCO), Human Rights and Democracy: The 2011 Foreign & Commonwealth Office Report: Human rights in Countries of Concern: Eritrea, 30/04/2012, Access to justice and the rule of law, http://fcohrdreport.readandcomment.com/wp-content/uploads/2011/02/Cm-8339.pdf
[10] Human Rights Watch, World Report 2012: Eritrea, http://www.hrw.org/world-report-2012/world-report-2012-eritrea

to town. All car and bus passengers must show identification cards at military roadblocks before each town of significant size. National service conscripts who cannot present authorisation to travel to a particular location are arrested. Access to border areas is strictly regulated: persons with identification cards showing residence outside the general area are subject to questioning; arrest is likely if they cannot adequately justify their presence.[11] The U.S. Department of State similarly reported that "Those in the government national service were required to present "movement papers" issued by their offices or departments authorising their presence in a particular location".[12] But also ordinary citizens required "government permission for most travel within the country and to change their places of residence. The government severely restricts travel to the border regions and even bans bus services to certain towns near the border with Ethiopia. Military police periodically set up surprise checkpoints in Asmara and on roads between cities to find draft evaders and deserters. Police also stopped persons on the street and detained those who were unable to present identification documents or movement papers showing they had permission to be in that area".[13]

2.4.5 UNHCR concluded in its most recent Eligibility Guidelines that "Given the omnipresence of the military, a well-established network of Government informants, and the countrywide control and reach over the population exercised by State agents, including through round-ups, house searches and setting roadblocks, an internal flight or relocation alternative to another part of the country cannot be considered as available where the risk of persecution emanates from the State and its agents".[14]

2.4.6 For those fearing persecution at the hands of non-state agents, UNHCR's position is that "given the widespread endorsement of harmful traditional practices and social norms of a persecutory nature – such as FGM – by large segments of the population, it is unlikely that an IFA/IRA would be available for individuals who fear harm as a result of such practices".[15]

2.5 Country guidance caselaw

RT (Zimbabwe) & Ors v Secretary of State for the Home Department [2012] UKSC 38 (25 July 2012)

The Supreme Court ruled that the rationale of the decision in HJ (Iran) applies to cases concerning imputed political opinion. Under both international and European human rights law, the right to freedom of thought, opinion and expression protects non-believers as well as believers and extends to the freedom not to hold and not to express opinions. Refugee law does not require a person to express false support for an oppressive regime, any more than it requires an agnostic to pretend to be a

[11] Human Rights Watch, 10 long years- a briefing on Eritrea's missing political prisoners, September 2011, http://www.hrw.org/sites/default/files/reports/eritrea0911WebForUpload.pdf
[12] US State Department Human Rights Report 2011; Eritrea, Section 1d, Role of the Police and Security Apparatus.
[13] US State Department Human Rights Report 2011; Eritrea, Section 2d, Freedom of Movement, Internally Displaced Persons, Protection of Refugees, and Stateless Persons.
[14] UNHCR, UNHCR Eligibility guidelines for assessing the International protection needs of asylum seekers from Eritrea, 20/04/2011, Section III., B. Internal flight or relocation alternative(IFA/IRA). http://www.unhcr.org/refworld/pdfid/4dafe0ec2.pdf
[15] UNHCR, UNHCR Eligibility guidelines for assessing the International protection needs of asylum seekers from Eritrea, 20/04/2011, Section III., B. Internal flight or relocation alternative(IFA/IRA). http://www.unhcr.org/refworld/pdfid/4dafe0ec2.pdf

religious believer in order to avoid persecution. Consequently an individual cannot be expected to modify their political beliefs, deny their opinion (or lack thereof) or feign support for a regime in order to avoid persecution.

ST (Ethnic Eritrean - nationality - return) Ethiopia CG [2011] UKUT 252 (IAC) (01 July 2011)

Law:
(A) There is nothing in MS (Palestinian Territories) [2010] UKSC 25 that overrules the judgments in MA (Ethiopia) [2009] EWCA Civ 289. Where a claim to recognition as a refugee depends on whether a person is being arbitrarily denied the right of return to a country as one of its nationals, that issue must be decided on an appeal under section 82 the Nationality, Immigration and Asylum Act 2002 (paragraphs 69 to 72).

(B) Although the question of whether a person is a national of a particular state is a matter of law for that state, the question whether a national of a particular state has been lawfully or unlawfully deprived of the nationality of that state is a legitimate issue for a court or tribunal to determine, in the course of deciding a person's entitlement to international protection (paragraph 74).

(C) Whether arbitrary deprivation of nationality amounts to persecution is a question of fact. The same is true of the denial of the right of return as a national; although in practice it is likely that such a denial will be found to be persecutory (paragraphs 76 and 82 to 89).

Country Guidance:
(1) Although the process established by the Ethiopian authorities in 1998 for identifying ethnic Eritreans who might pose a risk to the national security of Ethiopia, following the outbreak of war between the countries, was not arbitrary or contrary to international law, in many cases people were arbitrarily expelled to Eritrea without having been subjected to that process. Those perceived as ethnic Eritreans, who remained in Ethiopia during the war, and who were deprived of Ethiopian nationality, suffered arbitrary treatment, contrary to international law. Those who left Ethiopia at this time or who were then already outside Ethiopia were arbitrarily deprived of their Ethiopian nationality. Also during this time, the Ethiopian authorities made a practice of seizing and destroying identification documents of those perceived as ethnic Eritreans in Ethiopia (paragraphs 60 to 65).

(2) A person whose Ethiopian identity documents were taken or destroyed by the authorities during this time and who then left Ethiopia is as a general matter likely to have been arbitrarily deprived on Ethiopian nationality. Whether that deprivation amounted to persecution (whether on its own or combined with other factors) is a question of fact (paragraphs 76 to 78).

(3) The practices just described provide the background against which to consider today the claim to international protection of a person who asserts that he or she is an Ethiopian national who is being denied that nationality, and with it the right to return from the United Kingdom to Ethiopia, for a Refugee Convention reason. Findings on the credibility and consequences of events in Ethiopia, prior to a person's departure, will be important, as a finding of past persecution may have an important bearing on how one views the present

attitude of the Ethiopian authorities. Conversely, a person whose account is not found to be credible may find it difficult to show that a refusal on the part of the authorities to accept his or her return is persecutory or based on any Refugee Convention reason (paragraphs 79 to 81).

(4) Although, pursuant to MA (Ethiopia), each claimant must demonstrate that he or she has done all that could be reasonably expected to facilitate return as a national of Ethiopia, the present procedures and practices of the Ethiopian Embassy in London will provide the backdrop against which judicial fact-finders will decide whether an appellant has complied with this requirement. A person who is regarded by the Ethiopian authorities as an ethnic Eritrean and who left Ethiopia during or in the immediate aftermath of the border war between Ethiopia and Eritrea, is likely to face very significant practical difficulties in establishing nationality and the attendant right to return, stemming from the reluctance of the Ethiopian authorities to countenance the return of someone it regards as a "foreigner", whether or not in international law the person concerned holds the nationality of another country (paragraphs 93 to 104).

(5) Judicial fact-finders will expect a person asserting arbitrary deprivation of Ethiopian nationality to approach the embassy in London with all documentation emanating from Ethiopia that the person may have, relevant to establishing nationality, including ID card, address, place of birth, identity and place of birth of parents, identity and whereabouts of any relatives in Ethiopia and details of the person's schooling in Ethiopia. Failing production of Ethiopian documentation in respect of such matters, the person should put in writing all relevant details, to be handed to the embassy. Whilst persons are not for this purpose entitled to portray themselves to the embassy as Eritrean, there is no need to suppress details which disclose an Eritrean connection (paragraph 105).

(6) A person who left Ethiopia as described in (4) above is unlikely to be able to re-acquire Ethiopian nationality as a matter of right by means of the 2003 Nationality Proclamation and would be likely first to have to live in Ethiopia for a significant period of time (probably 4 years) (paragraphs 110 to 113).

(7) The 2004 Directive, which provided a means whereby Eritreans in Ethiopia could obtain registered foreigner status and in some cases a route to reacquisition of citizenship, applied only to those who were resident in Ethiopia when Eritrea became independent and who had continued so to reside up until the date of the Directive. The finding to the contrary in MA (Disputed Nationality) Ethiopia [2008] UKAIT 00032 was wrong (paragraphs 115 and 116).

(8) The 2009 Directive, which enables certain Eritreans to return to Ethiopia as foreigners to reclaim and manage property in Ethiopia, applies only to those who were deported due to the war between Ethiopia and Eritrea and who still have property in Ethiopia (paragraphs 117 and 118).

(9) A person who left Ethiopia as described in (4) above, if returned to Ethiopia at the present time, would in general be likely to be able to hold property, although the bureaucratic obstacles are likely to be more severe than in the case of Ethiopian citizens. Such a person would be likely to be able to work, after acquiring a work permit, although government employment is unlikely to

be available. Entitlement to use educational and health services is, however, much more doubtful. At best, the person will face a bureaucratic battle to acquire them. He or she will have no right to vote (paragraphs 119 to 124).

(10) Such a person would be likely to feel insecure, lacking even the limited security afforded by the 2004 Directive. Tensions between Ethiopia and Eritrea remain high (paragraph 125).

(11) The following CG cases on Ethiopia are superseded or replaced, as the case may be, by the present determination: GG (Return – Eritrean) Ethiopia CG [2002] UKIAT 05996; NB (Mixed Ethnicity – Ethiopian – Eritrean) Ethiopia CG [2002] UKIAT 06526; AA (Children – Eritrean) Ethiopia CG UKIAT 06533; TG (Mixed Ethnicity) Ethiopia CG [2002] UKIAT 07289; andDA (Ethnicity – Eritrean – Country Conditions) Ethiopia CG [2004] UKIAT 00046.

MO (illegal exit - risk on return) Eritrea CG [2011] UKUT 190 (IAC) (27 May 2011)

i) The figures relating to UK entry clearance applications since 2006 – particularly since September 2008 – show a very significant change from those considered by the Tribunal in MA (Draft evaders-illegal departures-risk) Eritrea CG [2007] UKAIT 00059 and are among a number of indications that it has become more difficult for Eritreans to obtain lawful exit from Eritrea.

(ii) The Eritrean authorities continue to envisage lawful exit as being possible for those who are above national service age or children of 7 or younger. Otherwise, however, the potential categories of lawful exit are limited to two narrowly drawn medical categories and those who are either highly trusted government officials or their families or who are members of ministerial staff recommended by the department to attend studies abroad.

(iii) The general position concerning illegal exit remains as expressed in **MA,** namely that illegal exit by a person of or approaching draft age and not medically unfit cannot be assumed, if they had been found wholly incredible. However, if such a person is found to have left Eritrea on or after August/September 2008, it may be, that inferences can be drawn from their health history or level of education or their skills profile as to whether legal exit on their part was feasible, provided that such inferences can be drawn in the light of the adverse credibility findings.

(iv) The general position adopted in **MA**, that a person of or approaching draft age (i.e. aged 8 or over and still not above the upper age limits for military service, being under 54 for men and under 47 for women) and not medically unfit who is accepted as having left Eritrea illegally is reasonably likely to be regarded with serious hostility on return, is reconfirmed, subject to limited exceptions in respect of (1) persons whom the regime's military and political leadership perceives as having given them valuable service (either in Eritrea or abroad); (2) persons who are trusted family members of, or are themselves part of, the regime's military or political leadership. A further possible exception, requiring a more case-specific analysis, is (3) persons (and their children born afterwards) who fled (what later became the territory of) Eritrea during the war of independence.

(v) Whilst it also remains the position that failed asylum seekers as such are not generally at real risk of persecution or serious harm on return, on present evidence the great majority of such persons are likely to be perceived as having left

illegally and this fact, save for very limited exceptions, will mean that on return they face a real risk of persecution or serious harm.

KA (statelessness: meaning and relevance) Stateless [2008] UKAIT 00042 (14 April 2008)

1. Statelessness does not of itself constitute persecution, although the circumstances in which a person has been deprived of citizenship may be a guide to the circumstances likely to attend his life as a non-citizen.
2. The Refugee Convention uses nationality as one of the criteria of the identification of refugees; there is no relevant criterion of 'effective' nationality for this purpose.

MA (Disputed Nationality) Ethiopia [2008] UKAIT 00032 (17 April 2008)

In any case of disputed nationality the first question to be considered should be: "Is the person de jure a national of the country concerned?" This question is to be answered by examining whether the person fulfils the nationality law requirements of his or her country. Matters such the text of nationality laws, expert evidence, relevant documentation, the appellant's own testimony, agreement between the parties, Foreign Office letters, may all legitimately inform the assessment, In deciding the answer to be given, it may be relevant to examine evidence of what the authorities in the appellant's country of origin have done in respect of his or her nationality.

If it is concluded that the person is de jure a national of the country concerned, then the next question to be considered is purely factual, i.e. "Is it reasonably likely that the authorities of the state concerned will accept the person, if returned, as one of its own nationals?"

This decision replaces MA (Ethiopia – mixed ethnicity – dual nationality) Eritrea [2004] UKIAT 00324

MA (Draft evaders; illegal departures; risk) Eritrea CG [2007] UKAIT 00059 (26 June 2007)

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 case supplements and amends to the above extent the Country Guidance in, 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.

AH (Failed asylum seekers, involuntary returns) Eritrea CG [2006] UKAIT 00078 (27 November 2006).

Neither involuntary returnees nor failed asylum seekers are as such at real risk on

return to Eritrea. The country guidance on this 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 risks updated – Muslim Women) Eritrea CG [2006] UKAIT 00079

WA (Draft related risks updated, Muslim Women) Eritrea CG [2006] UKAIT 00079 (30 October 2006)

On the basis of the 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. With this addition (amending paragraph 113 of the determination), 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. In 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 within that particular area. NB: This decision should be read with **AH (Failed asylum seekers – involuntary returns) Eritrea CG [2006] UKAIT 00078.**

KA (draft, related risk categories updated) Eritrea CG [2005] UKAIT 00165 (25 November 2005)

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

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

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

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

authorities as traitors and ill treated in consequence.

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

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

(f) Subject to the above, persons of eligible draft age (defined in the context of return as being between 18 and 50 for men and 18-40 for women) are currently at real risk of persecution as well as treatment contrary to Article 3 unless:
(i) they can be considered to have left Eritrea legally. Regarding this subcategory, it must be borne in mind that an appellant`s assertion that he left illegally will raise an issue that will need to be established to the required standard. A person who generally lacks credibility will not be assumed to have left illegally. We think those falling into the "left legally" subcategory will often include persons who are considered to have already done national service, persons who have got an exemption and persons who have been eligible for call-up over a significant period but have not been called up. Conversely those falling outside this subcategory and so at risk will often include persons who left Eritrea when they were approaching draft age(18) or had recently passed that age; or
(ii) they have not been in Eritrea since the start of the war with Ethiopia in 1998 (that being the year when the authorities increased dramatically the numbers required for call up and took the national service system in a much more authoritarian direction) and are able to show that there was no draft-evasion motive behind their absence. This subcategory reflects our view that the authorities would know that persons who left Eritrea before the start of the war would not have had draft evasion as a possible motive; or
(iii) they have never been to Eritrea and are able to show that there was no draft-evasion motive behind their absence. If they have not yet obtained formal nationality documents, there is no reason to think they will be perceived as draft-evaders.

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

(h) Otherwise, however, the Tribunal does not consider that mere performance of military service gives rise to a real risk of persecution or treatment contrary to Article 3.
(i) We reiterate the point made in **IN** that the guidance given here is not intended to be applied abstractly: it remains that each case must be considered and assessed in the light of the appellant's particular circumstances. It may be, for example, that a

person who is of eligible draft age, at least if he or she is still relatively young, will not need to establish very much more. However, we think that in all cases something more must be shown. It would be quite wrong, for example, for someone who in fact has obtained an exemption from military service, to succeed simply on the basis that he has shown he was of eligible draft age. Persons who fail to give a credible account of material particulars relating to their history and circumstances cannot easily show that they would be at risk solely because they are of eligible draft age.

IN (Draft evaders, evidence of risk) Eritrea CG [2005] UKIAT 00106 (24 May 2005)

Summary of our conclusions

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 that 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 has yet to reach the age for military service, he would not be regarded as a draft evader: see paragraph 14 of *AT*. If someone has been eligible for call-up over a significant period but has not been called up, then again there will normally be no basis for a finding that he or she would be regarded as a draft evader. Those at risk on the present evidence are those suspected of having left to avoid the draft. Those who received call up papers or who were approaching or had recently passed draft age at the time they left Eritrea may, depending on their own particular circumstances, on the present evidence be regarded by the authorities as draft evaders.

(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 **MA.**

(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. In so far as they dealt with a risk arising from the evasion of military service, they have been superseded by further evidence and on this issue should be read in the light of this determination.

FA (Eritrea, nationality) Eritrea CG [2005] UKIAT 00047 (18 February 2005)

Eritrea – Nationality. This appellant claimed to have been born in Asmara but moved to Ethiopia when she was a child. The Adjudicator considered objective evidence and found that the appellant was entitled to Eritrean nationality and would be able to relocate there.

The Adjudicator was entitled to take into account all evidence when concluding that this appellant is entitled to Eritrean nationality. She did not fail to attach weight to the 1992 Nationality Proclamation and did not err in accepting the evidence in the Home Office Report (Fact-Finding Mission to Eritrea 4-18 November 2002) when considering how the Proclamation was interpreted and applied by the authorities (paras 20-21). The Tribunal follow the case of **YL,** (and in turn **Bradshaw [1994] Imm. AR 359**) in considering the correct approach to determining nationality (para 24). The test identified as "one of serious obstacles" in **YL** is followed and a claimant would be expected to exercise due diligence in respect of such a test (para 26).

YT (Minority church members at risk) Eritrea CG [2004] UKIAT 00218 (09 August 2004)

The appellant converted from being an Orthodox Christian to the Pentecostal Church. From an early age he was an activist in the Kale Hiwot [“Word of Life”] Church in Asmara, Eritrea. The Tribunal allowed this appeal stating that there is evidence of continued arrests on the basis of religion in 2003 and 2004, including a KHCE Pastor. There has not been a general relaxation in the Eritrean authorities’ attitude towards minority churches.

19. For these reasons, we consider that the Adjudicator was wrong in his finding that there has been a general relaxation in the Eritrean attitude towards minority churches. Since it is clear from his determination that his rejection of the Appellant's claim was based solely upon his finding that conditions had improved, the Appellant's claim must succeed. Given the Adjudicator's findings as to what the Appellant is likely to do on return to Eritrea as a result of his religious convictions, we are satisfied that his activities will result in his coming into conflict with the authorities. This is likely to result in his detention in conditions that violate the Refugee Convention and his Article 3 rights.

AN (ELF-RC, low level members, risk) Eritrea CG [2004] UKIAT 00300 (09 November 2004)

ELF-RC low level members – risk. Members or supporters likely to come to the attention of the authorities were confined to anything that could be interpreted as terrorism or violence (Para. 27).

27. Given the lack of evidence showing that members of opposition political groups are systematically targeted, we consider that the Adjudicator was quite entitled to take as his criteria the CIPU approach to the risk facing ELF or ELF-RC members of

seeing it as dependent on the position held in the organisation and the type of activity undertaken. The CIPU assessment that those ELF or ELF-RC members or supporters likely to come to the attention of the authorities were confined to those who had been responsible for "anything that could be interpreted as terrorism or violence" also dovetailed with mention made in the 2004 US State Department Report on p. 4 that:
"An unknown number of persons suspected of association with the Ethiopian Mengistu regime, Islamic elements considered radical, or suspected terrorist organisations continue to remain in detention without charge, some of who have been detained for more than nine years."

3. Main categories of claims

3.1 This Section sets out the main types of asylum claim, humanitarian protection claim and discretionary leave claim on human rights grounds (whether explicit or implied) made by those entitled to reside in Eritrea. Where appropriate it provides guidance on whether or not an individual making a claim is likely to face a real risk of persecution, unlawful killing or torture or inhuman or degrading treatment/ punishment. It also provides guidance on whether or not sufficiency of protection is available in cases where the threat comes from a non-state actor; and whether or not internal relocation is an option. The law and policies on persecution, Humanitarian Protection, sufficiency of protection and internal relocation are set out in the relevant Asylum Instructions, but how these affect particular categories of claim are set out in the instructions below.

3.2 Each claim should be assessed to determine whether there are reasonable grounds for believing that the applicant would, if returned, face persecution for a Convention reason - i.e. due to their race, religion, nationality, membership of a particular social group or political opinion. The approach set out in Karanakaran should be followed when deciding how much weight to be given to the material provided in support of the claim (see the Asylum Instruction on ‘considering the protection (Asylum) claim’ and ‘assessing credibility’).

3.3 If the applicant does not qualify for asylum, consideration should be given as to whether a grant of Humanitarian Protection is appropriate. If the applicant qualifies for neither asylum nor Humanitarian Protection, consideration should be given as to whether he/she qualifies for Discretionary Leave, either on the basis of the particular categories detailed in Section 4 or on their individual circumstances.

3.4 All Asylum Instructions can be accessed via the on the Horizon intranet site. The instructions are also published externally on the Home Office internet site at:

http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions/

3.5 Credibility

3.5.1 This guidance is **not** designed to cover issues of credibility. Case owners will need to consider credibility issues based on all the information available to them. For guidance on credibility see ‘establishing the facts of the claim (material and non-material facts)’ in the Asylum Instruction ‘considering the protection (asylum) claim’ and ‘assessing credibility’. Case owners must also ensure that each asylum application has been checked against previous UK visa applications. Where an

asylum application has been biometrically matched to a previous visa application, details should already be in the Home Office file. In all other cases, the case owner should satisfy themselves through CRS database checks that there is no match to anon-biometric visa. Asylum applications matches to visas should be investigated prior to the asylum interview, including obtaining the Visa Application Form (VAF) from the visa post that processed the application.

3.6 Members of registered and unregistered religious groups including Pentecostals and Jehovah's Witnesses

3.6.1 Applicants may make an asylum and/or human rights claim based on alleged state mistreatment on account of their religion.

3.6.2 **Treatment:** The 1997 constitution protects religious freedom; however, the government has yet to implement the constitution in law and in practice. In 2002 the Eritrean government banned religious activities other than those administered by four registered religious organisations: Sunni Islam, Eritrean Orthodox Church, Roman Catholic Church, and Evangelical (Lutheran) Church of Eritrea. In 2002 Eritrea established a mechanism that could be used to allow religious organisations to register and be recognised as legitimate. The mechanism has not been implemented, despite applications in 2002 by the Presbyterian, Methodist, Seventh-day Adventist, and Baha'i denominations.[16] The government forbids religious practice outside the four recognised faiths, and even recognised faiths are often forbidden from managing their own operations and finances.[17]

3.6.3 The government's record on religious freedom remained poor. The Government continued to harass and detain thousands of members of registered and unregistered religious groups and retained substantial control over the four registered religious groups. The government failed to approve religious groups that fulfilled the registration requirements and arrested persons during religious gatherings. The government subjected religious prisoners to harsher conditions and held them for long periods of time, without due process. There continued to be reports of forced renunciations of faith, torture of religious prisoners, and deaths while in custody.[18]

Registered/Sanctioned religions

3.6.4 The Isaias government appointed the leadership of both the Orthodox Church and Sunni Islam. It appointed the Eritrean Orthodox Church patriarch and deposed his predecessor, Abune Antonios, after the Abune protested government interference in church affairs. Abune Antonios has been under house arrest, cut off from all but a housekeeper, since 2006. The government also appointed the head of the Muslim community, Mufti Sheik Al-Amin Osman Al-Amin, over the objections of some of the faithful. Over 180 Muslims who objected to the appointment have been jailed. There have been reports that the government confiscates property and funds from churches and mosques.[19] The U.S. Department of State reported that in May and June 2011, 3,000 religious workers from the government-approved Eritrean

[16] Human Rights Watch, Ten Long Years- A Briefing on Eritrea's Missing Political Prisoners, September 2011 http://www.hrw.org/sites/default/files/reports/eritrea0911WebForUpload.pdf
[17] COIS Eritrea Country Report August 2011 (para 18.04) http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/
[18] COIS Eritrea Country Report August 2011 (para 18.01) http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/
[19] Human Rights Watch, Ten Long Years- A Briefing on Eritrea's Missing Political Prisoners, September 2011 http://www.hrw.org/sites/default/files/reports/eritrea0911WebForUpload.pdf

Orthodox, Evangelical (Lutheran), and Islamic faiths were rounded up and sent to the Wi'a military camp for national service and noted that in previous years persons detained at Wi'a had died from poor conditions and been subjected to torture.[20] The U.S. Department of State also noted that "All four recognised religious groups were also required to provide a list of members for possible enrolment in military and national service. Those who publically protested such direct government management were branded as radicals and were imprisoned indefinitely in harsh conditions, even if they were members of recognised religious faiths".[21] UNHCR similarly reported that "the authorities are increasingly involved in controlling the religious activities of the four recognised religious groups. It stated that most facets of religious life are under State control and that "Members of the four registered religions may also face harassment and imprisonment, particularly where they publicly protest against Government action. Members of (unregistered) minority religious groups, as well as members and clergy of the State sanctioned religions, continue to face arrest and protracted detention in harsh conditions for refusal to perform military service".[22]

Unregistered/unsanctioned religions

3.6.5 Adherents of "unrecognised" religions, such as Evangelical and Pentecostal Christians, have been seized in raids on churches and homes. They are imprisoned and tortured until they renounce their faiths. Many die in custody. Evangelical and Pentecostal national service recruits are not allowed to have religious books or to participate in religious services. Witnesses told Human Rights Watch that no prayer, Muslim or Christian, is permitted in national service. Violations result in prolonged detention and the burning of Bibles and other religious materials.[23]

3.6.6 Authorities regularly harassed, arrested, and detained members of unregistered religious groups. The government closely monitored the activities and movements of unregistered religious groups and members, including nonreligious social functions attended by members. Persons arrested for religious reasons were often detained for extended periods in harsher conditions than the general population and without due process.[24]

3.6.7 According to the website Perscution.org unless believers are members of recognised denominations, they are rounded up and jailed in hot, unsanitary shipping containers or filthy prisons. According to Christian Solidarity Worldwide (CSW), thousands are detained arbitrarily for political purposes, suffering routine deprivation and torture. An estimated 2,000 to 3,000 Christians are inhumanely and indefinitely detained without trial.[25] The U.S. Commission on International Religious Freedom similarly reported that "Detainees imprisoned in violation of freedom of religion [without specifying whether members of registered or unregistered religions] have reportedly been beaten and tortured […] Released religious prisoners report being confined in cramped conditions such as 20-foot metal shipping containers or

[20] US State Department Human Rights Report 2011; Eritrea, Section 1a. Arbitrary or Unlawful Deprivation of Life.
[21] US State Department International Religious Freedom report July- December 2010: Eritrea, Section II Restrictions on Religious Freedom. http://www.state.gov/j/drl/rls/irf/2010_5/168406.htm
[22] UNHCR, UNHCR Eligibility guidelines for assessing the International Protection needs of asylum seekers from Eritrea, 20/04/2011, Section III A5 Members of Minority Religious Groups. http://www.unhcr.org/refworld/pdfid/4dafe0ec2.pdf
[23] Human Rights Watch, Ten Long Years- A Briefing on Eritrea's Missing Political Prisoners, September 2011 http://www.hrw.org/sites/default/files/reports/eritrea0911WebForUpload.pdf
[24] US State Department International Religious Freedom report 2010: Eritrea http://www.state.gov/g/drl/rls/irf/2010/148686.htm
[25] Perscution.org, Eritrean Christians continue suffering torture, 19 March 2012 http://www.persecution.org/2012/03/19/eritrean-christians-continue-suffering-torture/

in underground barracks, some located in areas subjecting prisoners to extreme temperature fluctuations […] There continue to be reports of deaths of religious prisoners who refused to recant their beliefs, were denied medical care, or were subjected to other ill treatment".[26]

3.6.8 Members of Evangelical and Pentecostal churches face persecution, but the most severe treatment is reserved for Jehovah's Witnesses, who are barred from government jobs and refused business permits or identity cards.[27]

3.6.9 Human Rights Watch stated that adherents of "unrecognised" religions were seized in raids on churches and homes and imprisoned and tortured until they renounced their faiths. Jehovah's Witnesses are especially victimised. Usually reliable sources who monitor religious persecutions reported continuing persecution of religious practitioners in 2011. Thirty members of an evangelical Christian church were arrested in Asmara in January. In May and June authorities reportedly arrested over 90 members of unrecognised Christian churches, including 26 college students. Two women and one man in their twenties, arrested in 2009 for participating in prayer meetings while serving in national service, reportedly died in captivity at military camps in 2011. A 62-year-old Jehovah's Witness arrested in 2008 died in July, a week after he was placed in solitary confinement in a metal shipping container.[28]

3.6.10 The government singles out Jehovah's Witnesses for particular severity because they refused to vote in the 1991 referendum on independence from Ethiopia. In an October 25, 1994, letter, President Isaias is reported to have personally ordered government agencies to deny them citizenship rights, including business and drivers' licenses. Eritrean law does not recognise any form of conscientious objection or substitute service. Because Jehovah's Witnesses will not perform military service for religious reasons, adherents of this faith are imprisoned when they reach military age.[29] As of 31 January 2012, the Jehovah's Witness media website lists 48 Witnesses incarcerated as conscientious objectors, for participation in religious meetings, or for unknown reasons; three conscientious objectors have been imprisoned for 17 years.[30]

3.6.11 Although members of several religious groups were imprisoned in past years for failure to participate in required national military service, the government singled out Jehovah's Witnesses to receive harsher treatment than that given to followers of other religious groups.[31]

3.6.12 There were few reports of societal abuses or discrimination based on religious affiliation, belief, or practice. Citizens generally were tolerant of those practicing other religions; exceptions included negative societal attitudes towards Jehovah's Witnesses, Pentecostal groups, and conscientious objectors to military service based on religious beliefs. Some individuals viewed refusal to perform the required military service as a sign of disloyalty and encouraged harassment of those

[26] US Commission on International Religious Freedom, 2012 Annual Report, March 2012, Eritrea: Arrest, Detention, and Torture. http://www.uscirf.gov/images/Annual%20Report%20of%20USCIRF%202012%282%29.pdf
[27] Freedom House, Freedom in the World 2012: Eritrea, http://www.freedomhouse.org/report/freedom-world/2012/eritrea
[28] Human Rights Watch, World Report 2012: Eritrea http://www.hrw.org/world-report-2012/world-report-2012-eritrea
[29] Human Rights Watch, Ten Long Years- A Briefing on Eritrea's Missing Political Prisoners, September 2011 http://www.hrw.org/sites/default/files/reports/eritrea0911WebForUpload.pdf
[30] Jehovah's Witnesses: Official Media Website, Forty-eight Jehovah's Witnesses imprisoned in Eritrea: As of January 31, 2012, Last updated 17/02/2012, http://www.jw-media.org/eri/20120131rpt.htm
[31] US State Department International Religious Freedom report 2010: Eritrea http://www.state.gov/g/drl/rls/irf/2010/148686.htm

unwilling to serve in the military.[32]

3.6.13 The application for an exit visa requires a designation of religious affiliation, and Christians must include their denomination in the application. Members of registered faiths can often obtain exit visas if they have completed national service requirements and were of retirement age. Members of unregistered faiths require additional permission from the Office of Religious Affairs, which has been reported to grant permission, deny permission, or arrest applicants on the spot for practicing an unrecognised faith.

See also: **Actors of protection (section 2.3 above)**
Internal relocation (section 2.4 above)
Caselaw (section 2.5 above)

3.6.14 **Conclusion:** State persecution of non-sanctioned religions is systematic and widespread throughout Eritrea. If it is accepted that the claimant is a member of a religious minority and they have demonstrated that they will have a well-founded fear of persecution, their claim is likely to engage the UK's obligation under the 1951 Convention. The grant of asylum in such cases will therefore be appropriate.

3.6.15 Members of recognised/sanctioned religious groups may also face persecution and ill-treatment, including arrest, imprisonment and torture. If it is accepted that the claimant is at risk of persecution or ill-treatment than a grant of asylum is likely to be appropriate. However, each case must be considered on its merits taking into consideration the individual circumstances of the applicant.

3.7 Military Service

3.7.1 Some applicants may make an asylum and/or human rights claim based on ill-treatment amounting to persecution for refusing to undertake military service or deserting from military service. Applicants may cite their religious beliefs (usually as Jehovah's Witnesses) as the reason why their objection has resulted in, or is likely to lead to, persecution.

3.7.2 **Treatment**: Under the parameters set forth in Proclamation of National Service (No. 82/1995), men aged 18 to 54 and women aged 18 to 47 are required to provide 18 months of military and non-military public works and services in any location or capacity chosen by the government.[33] Active National Service consists of six months of training in the National Service Training Centre and 12 months of active military service and development tasks in military forces.[34]

3.7.3 Normally, married women or women with young children are exempt from military service as are those registered disabled. The elderly have usually completed their national service, but if conflict ensues they could be expected to take up arms. Military commanders are able to authorise medical exemptions, with a report from a military medical officer. There are no exemptions for those from a poor background or those who have family members dependent on them through age or illness.[35]

[32] COIS Eritrea Country Report August 2011 (para 18.01) http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/
[33] COIS Eritrea Country Report August 2011 (para 9.16) http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/
[34] COIS Eritrea Country Report August 2011 (para 9.05) http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/
[35] COIS Eritrea Country Report August 2011 (para 9.44) http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

3.7.4 Article 13(1) of the Proclamation on National Service states that individuals who are deemed to be medically unfit for military service may be given non-military duties as an alternative to military service for a period of eighteen months. This will depend on the nature of the illness or disability of the individual concerned. For some individuals, this will not be possible, and they will be exempt from all types of national service. Article 15 of the Proclamation allows individuals who are disabled, blind or psychologically deranged to be exempt from national service altogether - whether this is military service or some other type of national service.[36] The April 2011 UNHCR Eligibility Guidelines also mention the following two categories of people being exempt from military service: students enrolled in a regular daily course may be temporarily exempted and Muslim women.[37] However, the same report also noted that "instances of round-ups for the purpose of conscription of women, including Muslim women and mothers, have nevertheless been recorded".[38]

3.7.5 According to information obtained from the British Embassy in Asmara in April 2010 full-time religious clerics/nuns can be required to do military/national service although in previous years they have been exempt. It is believed that some churches or mosques are limited to having a minimum of serving religious members who are exempt from military/national service.[39] However, in April 2011, the UNHCR reported that the Eritrean government had "reportedly revoked the exemption from military service for most Orthodox priests and full time religious clerics/nuns are now reportedly required to undertake military/national service".[40] In 2012, the U.S. Department of State reported that, despite these categories of potential exemptions, numerous individuals were arrested "even if they had valid papers showing that they had completed or were exempt from national service. In practice most detainees were informally charged with issues relating to national service, effectively allowing authorities to incarcerate citizens indefinitely".[41]

3.7.6 Since 2002, when the government announced a "Warsay-Yikealo development campaign," service is open-ended and typically lasts a decade or longer. With some exceptions for women with children and disabled people, service is compulsory until release but release is at the whim of military commanders. Even after being demobilized recruits can be recalled at any time. The recall mechanism is capriciously applied and routinely used to punish perceived dissent. Male conscripts remain eligible to serve until they are in their fifties. Most of Eritrea's able-bodied adult population is on involuntary and indefinite active national service or on reserve duty. Four or five times a year the government, looking for draft evaders, conducts huge roundups.[42]

3.7.7 Human Rights Watch reports that since 2002 Eritrea has misused its national service system to keep a generation of Eritreans in bondage. Service is indefinitely prolonged, extending for much of a citizen's working life. Pay is barely sufficient for survival. Recruits are used as cheap labour for civil service jobs, development

[36] COIS Eritrea Country Report August 2011 (para 9.46) http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/
[37] UNHCR, UNHCR Eligibility guidelines for assessing the International protection needs of asylum seekers from Eritrea 20/04/2011, Section III A1 Military/National Service. http://www.unhcr.org/refworld/pdfid/4dafe0ec2.pdf
[38] UNHCR, UNHCR Eligibility guidelines for assessing the International protection needs of asylum seekers from Eritrea 20/04/2011, Section III A1 Military/National Service. http://www.unhcr.org/refworld/pdfid/4dafe0ec2.pdf
[39] COIS Eritrea Country Report August 2011 (para 9.50) http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/
[40] UNHCR, UNHCR Eligibility guidelines for assessing the International protection needs of asylum seekers from Eritrea 20/04/2011, Section III A1 Military/National Service. http://www.unhcr.org/refworld/pdfid/4dafe0ec2.pdf
[41] US State Department Human Rights report 2011: Eritrea, Section 1d Arrest Procedures and Treatment While in Detention.
[42] Human Rights Watch, Ten Long Years; A Briefing on Eritrea's Missing Political Prisoners, September 2011http://www.hrw.org/sites/default/files/reports/eritrea0911WebForUpload.pdf

projects, and the ruling party's commercial and agricultural enterprises. Female recruits have reported sexual abuse by higher-ranking officers.[43] The U.S Department of State similarly noted that "the country's mandatory national service program of indefinite duration requires conscripts to perform a wide variety of both military and non-military activities, including harvesting and work in the service sector. There were also reports that military officials used soldiers in national service to perform free labour for personal tasks such as construction of houses and crop harvesting."[44] Amnesty International also reported on the indefinite extension of military service and their involvement of forced labour in "in state projects, including road building, or working for companies owned and operated by the military or ruling party elites".[45]

3.7.8 Thousands of Eritreans, mostly of younger generations, flee the country because of the harsh conditions in national service. The United Nations High Commissioner for Refugees (UNHCR) reported in early 2011 that 220,000 Eritreans, about 5 percent of the population, have fled. During a visit to a refugee camp in Ethiopia in mid-2011, an assistant high commissioner said she was shocked to see such a "sea of young faces." The new refugees included a significant number of unaccompanied children, some as young as six-years-old. Among the most prominent defectors in 2011 were 13 members of a 25-member soccer (football) team who refused to return after a regional tournament in Tanzania. Such defections are not new. In 2009, 12 soccer players absconded in Kenya. Earlier in 2011, fearful of further defections, the government refused to allow a soccer team that won a first-round game in Eritrea to play a return match in Kenya.[46]

3.7.9 A UN Monitoring Group on Somalia and Eritrea found strong evidence that high-level Eritrean officials facilitate escapes to earn hard currency: "People smuggling is so pervasive that it could not be possible without the complicity of Government and party officials, especially military officers…." Military officers charge about £1800 per person for a border crossing and up to £12,300 for smuggling escapees through Sudan and Egypt. According to the UN group, receipts are funnelled through Eritrean embassy staff into a Swiss bank account.[47]

3.7.10 The National Service Proclamation of 1995 makes no provision for conscientious objection to military service.[48] Jehovah's Witnesses and other conscientious objectors were normally willing to perform non-military national service. At least three Jehovah's Witnesses were detained for 15 years, reportedly for evading compulsory military service, a term far beyond the maximum legal penalty of two years for refusing to perform national service. In addition, Jehovah's Witnesses who did not participate in national military service were subject to dismissal from the civil service, revocation of business licenses, eviction from government-owned housing, and denial of passports, identity cards, and exit visas. They are also prohibited from having civil authorities legalise their marriages.[49] Similarly, the U.S. Commission on International Religious Freedom reported that "a third of the Jehovah's Witnesses currently detained are reported to be over 60 years old, well beyond draft age".[50]

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[43] Human Rights Watch World Report 2012: Eritrea http://www.hrw.org/world-report-2012/world-report-2012-eritrea
[44] US State Department Human Rights report 2011: Eritrea, Section 7b. Prohibition of Forced or Compulsory Labour.
[45] Amnesty International, Annual Report 2012: Eritrea, http://www.amnesty.org/en/region/eritrea/report-2012#section-8-5
[46] Human Rights Watch World Report 2012: Eritrea http://www.hrw.org/world-report-2012/world-report-2012-eritrea
[47] Human Rights Watch World Report 2012: Eritreahttp://www.hrw.org/world-report-2012/world-report-2012-eritrea
[48] COIS Eritrea Country Report August 2011 (para 9.39) http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/
[49] COIS Eritrea Country Report August 2011 (para 18.15) http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/
[50] US Commission on International Religious Freedom, 2012 Annual Report; Eritrea: Arrest, Detention, and Torture. http://www.uscirf.gov/images/Annual%20Report%20of%20USCIRF%202012%282%29.pdf

3.7.11 A Human Rights Watch report stated that national service members are routinely jailed for raising objections about national service or the mistreatment of fellow recruits. A conscript told Human Rights Watch, "If you don't work, you go to prison.… If you refuse they see it as a political problem." No court martial hearings or other opportunities to defend themselves against accusations are given. The length of imprisonment is at the whim of the local military commander; so is access to medical treatment while jailed.[51]

3.7.12 Deserting from the army or even expressing dissent over the indefinite military service is viewed as a political issue by the government. Therefore, most prisoners held for political reasons are detained without charge or trial for refusing or questioning national service or for offences punishable under military law.[52] The most recent U.S. State Department report notes that "Security forces tortured and beat army deserters and draft evaders" and that "Persons detained for evading national service reportedly died from harsh treatment, and young men and women reportedly were severely beaten and killed during round-ups for national service. Widespread mistreating and hazing of conscripts sometimes resulted in deaths and suicides of national service members. The government continued summary executions and shooting of individuals on sight near mining camps and border regions for allegedly attempting to flee military service, interfering with mining activities, or attempting to leave the country without an exit visa".[53] Amnesty International similarly reported that "Penalties for desertion and draft evasion included torture and detention without trial".[54]

3.7.13 The U.S. Department of State reported that the "Security forces continued to detain and arrest parents and other family members of individuals who evaded national service or fled the country. There were reports that such parents were either fined 50,000 nakfa (£2141) or forced to surrender their children to the government".[55] Similarly, Human Rights Watch also stated that "Families are punished for the acts of one of its members, especially for draft evasion or desertion. The family is given no opportunity to defend itself. …Those who do not or cannot pay are jailed and may have property confiscated".[56] A former officer explained to Human Rights Watch that "If one of the men escapes, you have to go to his house and find him. If you don't find him you have to capture his family and take them to prison" The report further found that "Sometimes a family member is required to serve in place of the absconder even if that family member has satisfied his or her individual national service obligations".[57]

See also: **Actors of protection (section 2.3 above)**
Internal relocation (section 2.4 above)
Caselaw (section 2.5 above)

3.7.14 **Conclusion:** The Government views as political opponents those who evade

[51] Human Rights Watch, Ten Long Years; A Briefing on Eritrea's Missing Political Prisoners, September 2011 http://www.hrw.org/sites/default/files/reports/eritrea0911WebForUpload.pdf

[52] COIS Eritrea Country Report August 2011 (para 9.51) http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/
[53] US State Department Human Rights report 2011: Eritrea, Section 1a Arbitrary or Unlawful Deprivation of Life.
[54] Amnesty International, Annual Report 2012: Eritrea, 24/05/2012, Military conscription.
[55] US State Department Human Rights report 2011: Eritrea, Section 1f Arbitrary Interference with Privacy, Family, Home, or Correspondence.
[56] Human Rights Watch, World Report 2012: Eritrea, http://www.hrw.org/world-report-2012/world-report-2012-eritrea
[57] Human Rights Watch, Ten Long Years: A Briefing on Eritrea's Missing Political Prisoners, September 2011. http://www.hrw.org/sites/default/files/reports/eritrea0911WebForUpload.pdf

military service or desert from the military, and the treatment of such individuals is likely to amount to persecution under the terms of the Refugee Convention. Credible applicants who can demonstrate that they:

- are of military service age or are approaching military service age; and
- are not medically unfit; and
- have left Eritrea illegally before undertaking or completing Active National Service (as defined in Article 8 of the 1995 Proclamation), or have left illegally having been "demobilised" from Active National Service (because the authorities would still consider them to be subject to National Service and liable for recall)

will therefore qualify for asylum unless they are excluded from the 1951 Convention under Article 1F or where in particular individual cases there are reasons not to do so. Family members of those evading or deserting from military service may also face ill-treatment and/or persecution.

3.7.15 An applicant of, or approaching, draft age who did not leave Eritrea illegally is not reasonably likely to be regarded with serious hostility on return. However, applicants who face being drafted into military service may be exposed to forced labour for an indefinite period of time. Claimants of this profile may therefore qualify for asylum depending on the particular circumstances of their case.

3.7.16 An applicant who falls within an exemption from the draft, or who is outside the age for military service, would not be perceived by the authorities to be a draft evader and is therefore unlikely to encounter ill treatment amounting to persecution for that reason. They will not therefore qualify for asylum unless there are reasons particular to their individual case why they do so.

3.8 Opponents and perceived opponents of the Eritrean Regime, including political groups, journalists and human rights activists

3.8.1 Some applicants may make an asylum and/or human rights claim on the grounds that they are face threats or harassment by the authorities on account of their membership of and actual or perceived association with opponents of the Eritrean regime. This includes political groups, journalists and Human Rights activists.

3.8.2 **Treatment:** Although the Constitution guarantees the right to form political organisations, the People's Front for Democracy and Justice (PFDJ) remains the only authorised political party in the country and has dominated public and private life since 1994, when it came into power. All opposition groups have been driven out of the country and, since late 2004, operate only in exile, mainly in neighbouring countries.[58] Amnesty International noted that "There were thousands of prisoners of conscience in the country. These included political activists, journalists, religious practitioners and draft evaders. None were charged or tried for any offence".[59]

[58] UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Eritrea, 20 April 2011, Section III, A., 2. Members of Political Opposition Groups and Government Critics, http://www.unhcr.org/refworld/docid/4dafe0ec2.html

[59] Amnesty International, Annual Report 2012: Eritrea, 24/05/2012 http://www.amnesty.org/en/region/eritrea/report-2012#section-8-5

3.8.3 Since September 2001 or even before, Eritreans from all walks of life—government officials, leaders of government-controlled labour unions, businesspeople, journalists, and national service evaders or escapees—have been jailed for explicit or inferred opposition to President Isaias Afwerki and his policies. The number of Eritreans jailed for such opposition is difficult to confirm, but ranges from 5,000 to 10,000, excluding national service evaders and deserters, who may number tens of thousands more. Twenty prominent critics and journalists have been held in incommunicado isolation for a decade; nine are feared dead.[60] The U.S. Department of State similarly reported that "persons were routinely arrested on political grounds" and further noted that "Membership in the PFDJ, the only legal political party, was not mandatory for all citizens [but] all citizens were forced to attend PFDJ indoctrination meetings irrespective of membership, and there were reports of threats to withhold the ration cards of those who did not attend."[61] The Eritrean government also reportedly "continued to label individuals as gay, traitors, rapists, paedophiles, and traffickers if they were deemed not loyal to the government".[62]

3.8.4 The climate of intolerance of political dissent in Eritrea has reportedly led to frequent arrests of suspected Government critics. Those arrested are often held in incommunicado detention or "disappear" in secret detention facilities, where they are reportedly held in poor conditions and denied access to legal counsel or medical treatment. Severe punishments, torture, starvation and other ill-treatment are commonplace. Relatives reportedly face reprisals from the authorities for inquiring about the arrest or detention of family members.[63]

3.8.5 Furthermore, Government officials reportedly monitor the political activities of the Diaspora, allegedly harassing critics and intimidating exiled Eritreans into participating in pro-Government rallies and paying remittances – the two percent "income tax" required of all citizens residing abroad – for fear of reprisals against family members in Eritrea.[64]

3.8.6 Prisoners are often held indefinitely without access to family members, prison monitors, or lawyers. There are no public trials and no appeals. Persons inquiring about a relative's whereabouts risk being jailed themselves.[65]

3.8.7 The Eritrean government does not allow access to most of its prisons and there are no accurate figures on the number of prisoners. The number of those in detention on political and religious grounds could be in the tens of thousands. These include the so-called G11, senior government figures imprisoned without trial since September 2001 and a number of journalists detained around the same time. There are unconfirmed reports that many detainees have died in captivity, but the government of Eritrea refuses to give details on the whereabouts and fate of any of them, citing national security grounds. The Eritrean government has ignored frequent calls for them to be brought to justice or released.[66] In April 2011, UNHCR

[60] Human Rights Watch World Report 2012: Eritrea http://www.hrw.org/world-report-2012/world-report-2012-eritrea
[61] US State Department Human Rights report 2011: Eritrea, Section 1e Political Prisoners and Detainees and f. Arbitrary Interference with Privacy, Family, Home, or Correspondence.
[62] US State Department Human Rights report 2011: Eritrea, Section 3 Elections and Political Participation.
[63] UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Eritrea, 20 April 2011, Section III, A., 2. Members of Political Opposition Groups and Government Critics, http://www.unhcr.org/refworld/docid/4dafe0ec2.html
[64] UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Eritrea, 20 April 2011, Section III, A., 2. Members of Political Opposition Groups and Government Critics, http://www.unhcr.org/refworld/docid/4dafe0ec2.html
[65] Human Rights Watch World Report 2012: Eritrea http://www.hrw.org/world-report-2012/world-report-2012-eritrea
[66] UK Foreign & Commonwealth Office (FCO), Human Rights and Democracy: The 2011 Foreign & Commonwealth Office Report: Human rights in Countries of Concern: Eritrea, 30/04/2012, Access to justice and the rule of law,

found that "In light of the sustained climate of political intolerance, as evidenced by thousands of politically motivated arrests, UNHCR considers that members of, or individuals associated with or perceived to be associated with, opposition political groups, as well as (perceived) Government critics, may be at risk on the basis of their (imputed) political opinion".[67]

Members of the ENA/EDA including the ELF and the EDP

3.8.8 Eritrea is a one-party state. The Eritrean constitution ratified in 1997 provides for an elected national assembly, but the constitution has not been implemented. There have been no national elections since independence in 1993. Regional elections, which should have taken place in 2009, have yet to be held.[68]

3.8.9 The U.S. Department of State reported that "There were reports that the government continued to hold without charge and sometimes torture 2,000 to 3,000 members of unregistered religious groups and numerous members of the Eritrean Liberation Front, an armed opposition group that fought against Ethiopia during the struggle for independence".[69]

G-15 (now G-11) Activists

3.8.10 The 20 men and one woman arrested in September 2001—11 high government officials and 10 independent journalists—have never been seen again. They have collectively come to be known as the G-15 (now referred to as the G-11) because the original group of signatories to a manifesto critical of the government numbered 15. The government has provided no information about their whereabouts or conditions in the decade since their arrests. What is known about them has been garnered largely from information supplied by defectors who have fled the country. Kept hidden in a secret detention facility, 10 of the 21 have died in prison according to reports that Human Rights Watch has not been able to independently confirm. The others remain in solitary confinement, physically or mentally incapacitated, and emaciated. None of the 21 has been formally charged with a crime, much less convicted. Since the arrest of the journalists and closure of their newspapers, no independent news media have been allowed in Eritrea.[70]

3.8.11 Appeals from the families of the G-11 and human rights activists that the prisoners be formally charged and tried or else released, and criticising their secret incommunicado detention, have been dismissed repeatedly by the Eritrean authorities.[71]

3.8.12 In the months following the arrest of G11 members, dozens of journalists, government critics and supporters of the dissidents were also detained in a sweeping crackdown on freedom of expression. Many of those arrested also continue to be detained without trial. In the decade since the G11 prisoners were

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http://fcohrdreport.readandcomment.com/human-rights-in-countries-of-concern/eritrea/

[67] UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Eritrea, 20 April 2011, Section III A 2 Members of Political Opposition Groups and Government Critics. http://www.unhcr.org/refworld/docid/4dafe0ec2.html

[68] UK Foreign & Commonwealth Office (FCO), Human Rights and Democracy: The 2011 Foreign & Commonwealth Office Report: Human rights in Countries of Concern: Eritrea, 30/04/2012, Elections http://fcohrdreport.readandcomment.com/human-rights-in-countries-of-concern/eritrea/

[69] US State Department Human Rights report 2011: Eritrea, Section 1e Political Prisoners and Detainees.

[70] Human Rights Watch, Ten Long Years; A Briefing on Eritrea's Missing Political Prisoners, September 2011, http://www.hrw.org/sites/default/files/reports/eritrea0911WebForUpload.pdf

[71] Amnesty International, Eritrea: Prisoners of conscience held for a decade must be released, 16 September 2011 http://www.amnesty.org.uk/news_details.asp?NewsID=19692

arrested the Eritrean authorities have repeatedly used arbitrary arrests, detentions and torture to stifle opposition. No opposition parties, independent journalism or civil society organisations are allowed.[72]

Journalists

3.8.13 The law and unimplemented constitution provide for freedom of speech and of the press; however, the government severely restricted these rights in practice. The government severely restricted the ability of individuals to criticize the government in public or in private, and some who did were arrested or detained. The private press remained banned, and most independent journalists remained in detention or had fled the country, which effectively prevented any public and media criticism of the government. All other journalists practiced self-censorship due to fear of government reprisal.[73] The government monitored mail, e-mail, text messages, and telephone calls without obtaining warrants as required by law. Government informers were present throughout the country.[74]

3.8.14 The government destroyed Eritrea's private press in September 2001 and arrested its journalists. Since then propaganda outlets run by the Ministry of Information—television, radio, and newspapers—serve as the only domestic sources of news. Information inconsistent with President Isaias's preconceptions is suppressed. It took a month for government media to mention the Tunisian, Libyan, and Egyptian revolutions. When they did, it was to assert that Egyptian President Hosni Mubarak's government deserved to fall for not adopting Isaias's policy of self-reliance.[75]

3.8.15 There are no independent media in Eritrea. The government controls all broadcasting outlets and banned privately owned newspapers in its 2001 crackdown. A group of journalists arrested in 2001 remained imprisoned without charge, and as many as half of the original 10 are believed to have died in custody; however, the government refuses to provide any information on their status. In 2009, the entire staff of the Asmara-based broadcaster Radio Bana was detained; at least 11 of them remained in custody without charge at year's end. According to the Committee to Protect Journalists, at least 28 journalists were in prison in 2011. Eritrea's treatment of the media drew a rebuke from the European Union, which in September 2011 passed a resolution condemning its detention of independent journalists and calling for the release of a dual Swedish-Eritrean national who was among those arrested in 2001. The government controls the internet infrastructure and is thought to monitor online communications. Foreign media are available to those few who can afford a satellite dish.[76]

3.8.16 According to Reporters Without Borders, four additional journalists were detained in 2011 and remain in custody. Internet access is available but difficult. Penetration is under 4 percent, primarily through cyber cafés in Asmara. Users are closely monitored. Some users were reportedly arrested in early 2011.[77] In its annual report Reporters Without Borders classified Eritrea as coming last (179th) in its World Press Freedom Index for the fifth consecutive year and stated that "Freedom of

[72] Amnesty International, Eritrea: Prisoners of conscience held for a decade must be released, 16 September 2011 http://www.amnesty.org.uk/news_details.asp?NewsID=19692
[73] COIS Eritrea Country Report August 2011 (para 15.01) http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/
[74] US State Department Human Rights report 2011: Eritrea Section 2a, Status of Freedom of Speech and Press.
[75] Human Rights Watch World Report 2012: Eritrea http://www.hrw.org/world-report-2012/world-report-2012-eritrea
[76] Freedom House, Freedom in the World 2012; Eritrea http://www.freedomhouse.org/report/freedom-world/2012/eritrea
[77] Human Rights Watch World Report 2012: Eritrea http://www.hrw.org/world-report-2012/world-report-2012-eritrea

opinion, like all the other freedoms, does not exist under the totalitarian dictatorship that President Issaias Afeworki has imposed on this Horn of Africa country".[78] It also noted that "The regime, which has totally cordoned off the country and continues its indiscriminate repression of the population, is somewhat overwhelmed by the Net's influence on Eritreans based abroad. It is now waging its propaganda war on social networks. Pro-opposition websites have been targeted for cyber attacks on an unprecedented scale".[79] The Committee to Protect Journalists also reported that for 10 consecutive years, Eritrea has been "the leading jailer of journalists in Africa."[80]

Human Rights activists

3.8.17 Freedoms of assembly and association are not recognized. The government maintains a hostile attitude toward civil society, and independent NGOs are not tolerated. A 2005 law requires NGOs to pay taxes on imported materials, submit project reports every three months, renew their licenses annually, and meet government-established target levels of financial resources. International human rights NGOs are barred and only six international humanitarian NGOs are present in the country. In September 2011, Eritrea accused Amnesty International of infiltrating the country to try to foment a North African-style revolution. Amnesty denied the claims, saying that it has been refused access to Eritrea for more than a decade by the government.[81]

3.8.18 The FCO Human Rights report for 2011 stated that no active NGOs or human rights groups operate in Eritrea. Civil society is tightly controlled with no effective fully independent civil society groups. The government of Eritrea does not grant permission for human rights groups to visit the country.[82]

3.8.19 The U.S. Department of State similarly reported that the Eritrean government "forced the closure of all remaining international NGO offices during the year (Oxfam, Lutheran World Federation, Irish Self-Help, Gruppo Missione Asmara of Italy, Refugee Trust International, and Norwegian Church Aid), and seized NGO property that it claimed belonged to the government".[83] The report further noted that "Civil society organisations were few in number, lacked capacity, and were controlled by the government or fearful of government reprisal".[84]

See also: **Actors of protection (section 2.3 above)**
Internal relocation (section 2.4 above)
Caselaw (section 2.5 above)

3.8.20 Conclusion: The Supreme Court held in RT (Zimbabwe) that the rationale of the

[78] Reporters Without Borders, 2011-2012 World Press Freedom Index, 25/01/2012 http://en.rsf.org/IMG/CLASSEMENT_2012/C_GENERAL_ANG.pdf
[79] Reporters Without Borders, Enemies of the Internet - Countries under surveillance 2012, 12/03/2012. http://issuu.com/rsf_webmaster/docs/rapport-internet2012_ang?mode=a_p
[80] Committee to Protect Journalists, Attacks on the Press in 2011: Eritrea, 21/02/2012. http://www.cpj.org/2012/02/attacks-on-the-press-in-2011-eritrea.php
[81] Freedom House, Freedom in the World 2012; Eritrea http://www.freedomhouse.org/report/freedom-world/2012/eritrea
[82] UK Foreign & Commonwealth Office (FCO), Human Rights and Democracy: The 2011 Foreign & Commonwealth Office Report: Human rights in Countries of Concern: Eritrea, 30/04/2012, Human rights defenders, http://fcohrdreport.readandcomment.com/human-rights-in-countries-of-concern/eritrea/
[83] US State Department Human Rights report 2011: Eritrea Section 5. Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Violations of Human Rights
[84] US State Department Human Rights report 2011: Eritrea, Section 5 Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Violations of Human Rights.

decision in **HJ (Iran**) extends to the holding of political opinions. An individual should not be expected to modify or deny their political belief, or the lack of one, in order to avoid persecution.

3.8.21 High-level former opposition activists of parties under the umbrella of the ENA/ EDA are likely to be of interest to the Eritrean authorities. As such they are at risk of treatment amounting to persecution and are likely to qualify for asylum. However, as dissent and opposition to the Eritrean regime is not tolerated in any form, persons who do not have a political profile, such as low level opposition party members and individual government critics, are likely to be perceived by the authorities as opposing the regime and similarly would face a risk of persecution and ill-treatment.

3.8.22 Those returning from the UK would face a real risk of persecution because of a continuing risk of being required to demonstrate loyalty to the PFDJ (including those who may have no political opinion at all). As internal relocation would not be an option then the principle established in RT applies with regard to those with no political opinion and such claimants, like those who do hold political views opposing the PFDJ, will qualify to be recognised as refugees.

3.8.23 Despite numerous reports of politically motivated detentions since 2001 there have been no further confirmed arrests or detentions of G15-associated activists. Applicants who claim to fear arrest or detention on account of their low to medium–level activism in support of the detained members of the G15 group are therefore unlikely to qualify for asylum, unless there are reasons why in an individual case they should do so. A grant of asylum may be appropriate for those applicants who can establish that they were formerly associated with high profile G15 activists and have previously come to the attention of the authorities as a result.

3.8.24 Journalists and human rights applicants perceived to be in opposition to the Eritrean government and those with sufficient profile to be perceived to be government critics are at risk of persecution by the state. Claimants who fall in this category are likely to qualify for asylum.

3.9 Persons of mixed Ethiopian/Eritrean Origin

3.9.1 Applicants may make an asylum and/or human rights claim on the basis that they fear persecution from the state as someone of mixed ethnicity as the applicant considers him/herself to be Eritrean or Ethiopian. Though this will not usually be a main or sole basis for a claim, it will be crucial to establish the applicant's parentage, length of time spent in a particular country and location of alleged persecution to substantively assess the wider claim.

3.9.2 **Treatment of Eritreans of Ethiopian origin in Eritrea.** The Ethiopian government is known to have forcibly expelled an estimated 75,000 people of Eritrean origin during the war. Ethiopian authorities launched a vast campaign to round up and expel people of Eritrean origin from Ethiopia in June 1998. Most had been born in Ethiopia when Eritrea was still held to be a part of that country-and had no other recognised citizenship other than Ethiopian. Most adults had spent all or most of their working lives in Ethiopia, outside of Eritrea. Ethiopian authorities in June 1998 announced the planned expulsion of residents who posed a security risk to the state, to include members of Eritrean political and community organisations, and former or current members of the Eritrean liberation front. The Ethiopian government also forced deportees to sign away their property rights-by demanding

deportees sign powers of attorney under threat.[85]

3.9.3 By and large, the government of Eritrea gave deportees from Ethiopia a warm reception. The Eritrean government mobilized quickly to assist the deportees. The government-run Eritrean Relief and Rehabilitation Commission (ERREC) were put in charge of assisting the deportees and facilitating their resettlement in Eritrea. A month after the arrival of the first deportees, the ERREC had set up reception centres for them near the main border crossings with Ethiopia. In addition to offering the deportees emergency aid and counselling, the ERREC registered them as refugees. Expellees were asked to fill out a detailed registration form and were issued the same type of registration card that Eritrean refugees returning from exile received. Once registered, the deportees were entitled to the standard government assistance for returning refugees: including short-term housing, food, and settlement aid; medical coverage; and job placement assistance.[86]

3.9.4 **Treatment of Ethiopians of Eritrean origin in Eritrea.** Thousands of citizens and residents were reportedly expelled by both Ethiopia and Eritrea during the 1998-2000 war, including an estimated 70,000 persons of Ethiopian origin forcibly expelled or voluntarily repatriated from Eritrea. Furthermore, during that period, many Ethiopians reportedly lost their jobs, were arbitrarily and/or unlawfully detained or became the subject of physical attacks. It is estimated that some 15,000 individuals of Ethiopian origin are currently residing in Eritrea. Most of them are reportedly still considered aliens, having failed to obtain naturalisation prior to 1998. As such, they are issued residence permits and are not entitled to Eritrean national identity cards or passports. In addition, persons with mixed Eritrean-Ethiopian parentage reportedly face administrative obstacles when seeking recognition of their nationality in Eritrea, Ethiopia or while in exile. The April 2011 UNHCR Eligibility Guidelines further noted that “It should be borne in mind in the context of asylum claims by Eritreans that lengthy residence requirements for naturalization, coupled with the lack of proof of Ethiopian citizenship, reportedly creates a risk of statelessness for the persons of Ethiopian or mixed Ethiopian/Eritrean origin. In cases where such persons are determined to be stateless, their asylum claims need to be determined against the current conditions in Eritrea, as their country of habitual residence”.[87]

3.9.5 In February 2007, the Canadian Immigration Board noted that persons of Ethiopian origin continue to face discriminatory practices in Eritrea, including the demand for payment or high 'repatriation clearance’ fees.[88]

3.9.6 Governmental and societal abuse of Ethiopians occurred. Ethiopians were arbitrarily arrested and asked to pay bribes to be released. [89]

3.9.7 The legal status of Ethiopian residents in Eritrea who had not sought Eritrean nationality at the time of the war’s [with Ethiopia] outbreak [in 1998] does not appear to be in dispute. The Eritrean government as a rule considered them as aliens. It did not automatically issue the Eritrean national identity card or passport to these

[85] Human Rights Watch, The Horn of Africa , 30/01/2003, I. Summary, http://www.hrw.org/node/12364/section/1
[86] Human Rights Watch, The Horn of Africa , 30/01/2003, IV. EXPULSIONS BY ETHIOPIA, http://www.hrw.org/node/12364/section/1
[87] UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Eritrea, 20 April 2011 Footnote 38 http://www.unhcr.org/refworld/docid/4dafe0ec2.html
[88] Immigration and Refugee Board of Canada, Ethiopia and Eritrea: Possibility of repatriation of Ethiopian and Eritrean civilians to their homelands (2006), 20 February 2007 http://www.unhcr.org/refworld/country,COI,IRBC,,ERI,456d621e2,469cd6b52,0.html
[89] US State Department Human Rights report 2011: Eritrea, Section 6 National/Racial/Ethnic Minorities.

Ethiopians nor did it recruit them for employment reserved for nationals. Ethiopians were also not called up for military service in Eritrea. For the purposes of residency and departure procedures, the Eritrean government continued to deal with Ethiopian nationals under the normal institutions and procedures governing aliens residing in the country, i.e. they were required to acquire residency permits and obtain exit visas to leave the country.[90]

3.9.8 As regards entitlement to Eritrean nationality, case owners should note that the criteria for citizenship and nationality is set out in full in the COI Eritrea Country Report in the section titled Citizenship and Nationality.

See also: **Actors of protection (section 2.3 above)**
Internal relocation (section 2.4 above)
Caselaw (section 2.5 above)

3.9.9 **Conclusion**: Applicants of Eritrean descent who claim to be Ethiopian, have lived in Ethiopia all their lives and fear persecution in Ethiopia should be considered as Ethiopian and their wider claim assessed accordingly. Guidance on handling such claims is included in the Ethiopia OGN.

3.9.10 Where an applicant is of Eritrean descent and claims to have been deprived of Ethiopian citizenship, case owners should, in line with **MA (Disputed Nationality) Ethiopia [2008] UKAIT 00032 and MA (Ethiopia) [2009] EWCA Civ 289** assess whether they would qualify for Eritrean citizenship. If an applicant does qualify for Eritrean citizenship they would not be entitled to asylum in the UK as protection should have been sought in the first instance from the Eritrean authorities (see paragraphs 106 and 107 of the UNHCR handbook on Procedures and Criteria for Determining Refugee Status). Case owners should therefore make clear reference to an applicant's entitlement to Eritrean nationality.

3.9.11 An applicant of Eritrean descent who has been deprived of Ethiopian citizenship but does not qualify for citizenship in Eritrea, is likely to qualify for asylum, unless there are reasons why on the facts of the individual case they do not. This is because in the case of **EB Ethiopia 2007**, the Court of Appeal found that arbitrarily depriving someone of their citizenship was contrary to Article 12 of the International Covenant on Civil and Political Rights 1966 and Article 15 of the Universal Declaration of Human Rights effectively amounting to persecution and continuing to amount to persecution as long as the deprivation of citizenship itself lasted.

3.9.12 However, case owners should note the subsequent findings of the Asylum and Immigration Tribunal in **KA (statelessness: meaning and relevance) Stateless [2008] UKAIT 00042.** The Tribunal found that statelessness does not of itself constitute persecution, although the circumstances in which a person has been deprived of citizenship may be a guide to the circumstances likely to attend his life as a non-citizen.

3.9.13 Case owners should also note the obiter findings in **MA (Ethiopia) [2009] EWCA Civ 289** that "it is not possible to state as a universal proposition that deprivation of nationality must be equated with persecution. Persecution is a matter of fact, not

[90] Human Rights Watch, The Horn of Africa, 30/01/2003, V. EXPULSIONS BY ERITREA, http://www.hrw.org/node/12364/section/1

law. Whether ill treatment amounts to persecution will depend upon what results from refusing to afford the full status of a de jure national in the country concerned" (para. 59).". Lord Justice Stanley Burnton agreed that deprivation of a person's nationality **can** amount to persecution – "It will do so if the consequences are sufficiently serious. And clearly, deprivation of nationality may be one aspect of ill treatment by the state that in its totality amounts to sufficiently serious ill treatment as to constitute persecution" (para. 66).

3.9.14 Applicants of mixed parentage, who have lived in Ethiopia for most of their lives, but consider themselves Eritrean (usually by virtue of them having been deported to Eritrea relatively recently) and claim to fear persecution in Eritrea, should be considered as Eritrean and their wider claim assessed accordingly. Consideration must be given to any claim of illegal exit from Eritrea, although the burden of proof remains with the applicant to demonstrate this.

For guidance on mixed or disputed nationality cases and returns see Returns paragraph 5.3.

3.10 Claimed illegal Exit from Eritrea

3.10.1 Applicants may make an asylum and/or human rights claim partly on the ground that that they have left Eritrea illegally, and are therefore unable to return due to the risk of severe punishment amounting to serious ill-treatment.

3.10.2 **Treatment:** Individuals working in government ministries or agencies must obtain ministerial permission before applying for a passport. Other individuals must obtain authorisation from a local government administrator and present a birth certificate, any military/national service medical exemption documents, and an ID card. The administrator then instructs the Department of Immigration (which has offices in regional capitals) to issue a passport.[91] Exit visas were previously issued in sticker form but following allegations of visa fraud in 2009, they are now issued as stamps. They are produced in a standard format, in English only. They are issued by the Department of Immigration, and applicants must apply in person. [92]

3.10.3 In practice, it is very difficult to obtain first-issue passports in Eritrea. Individuals who are ill, or old and government officials who are required to travel abroad on official business, will find it easier to obtain passports, but even in these cases, applications are frequently rejected.[93] The majority of Eritreans wishing to travel abroad are not issued with exit visas and therefore cannot leave the country legally.[94] According to the U.S. State Department, the government continued summary executions and shooting of individuals on sight near border regions for allegedly attempting to flee military service or attempting to leave the country without an exit visa.[95]

3.10.4 The government denies exit visas to anyone of military age, from 18 to 57 (or older for men) and 18 to 47 for women—even for Eritreans who have ostensibly "completed" national service. The United States Department of State reports that boys as young as five have been denied exit visas. Eritreans who are theoretically able to apply for permission to travel outside the country must pay 4,000nakfa

[91] COIS Eritrea Country Report August 2011 (para 28.01) http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/
[92] COIS Eritrea Country Report August 2011 (para 28.06) http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/
[93] COIS Eritrea Country Report August 2011 (para 28.01) http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/
[94] COIS Eritrea Country Report August 2011 (para 28.06) http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/
[95] US State Department Human Rights report 2011: Eritrea Section 1a Arbitrary or Unlawful Deprivation of Life.

(£168) for a passport valid for two years; this is equal to an average year's income.[96] The U.S. State Department reports with regards to children being granted exit permits that "In 2006 the government began refusing to issue exit visas to children 11 years old and older. Increasingly, children of any age were denied exit visas either on the grounds that they were approaching the age of eligibility for national service or because their foreign-based parents had not paid the 2 percent income tax required of all citizens residing abroad. The government did not in general grant exit visas to entire families or both parents of children simultaneously in order to prevent families from fleeing the country".[97]

3.10.5 In 2012, the U.S. State Department stated that "the government severely restricted foreign travel and continually modified its requirements to obtain passports and exit visas, sometimes suspending passport or exit visa services without warning. The prohibitive cost of passports deters many citizens from foreign travel. It costs a citizen in national service the equivalent of 40 percent of his or her gross yearly salary to obtain a valid passport. Some persons previously issued passports were not allowed to renew them, nor were they granted exit visas".[98] It further notes that "Some citizens were given exit visas only after posting bonds of approximately 150,000 nakfa (£6432) or more. Exit visa policies were frequently adjusted in non-transparent ways specifically to benefit the relatives of high-ranking government officials. For example, the government posted notices on current exit visa regulations in non-designated, inconsistent, and inaccessible locations".[99] According to the U.S. State Department, other persons routinely denied exit visas included Jehovah's Witnesses and other unregistered religious groups; persons who had not completed national service; and other persons seen as critical of, the government.[100]

3.10.6 Eritreans who are forcibly returned may, according to several reports, face arrest without charge, detention, ill-treatment, torture or sometimes death at the hands of the authorities. They are reportedly held incommunicado, in over-crowded and unhygienic conditions, with little access to medical care, sometimes for extended periods of time. For some Eritreans, being outside the country may be sufficient cause on return to be subjected to scrutiny, reprisals and harsh treatment. Individuals may be suspected of having sought asylum, participating in diaspora-based opposition meetings or otherwise posing a (real or perceived) threat to the Government, particularly where they have exited the country illegally.[101] In 2012, Amnesty International stated that in Eritrea "Large numbers of political prisoners and prisoners of conscience continued to be detained indefinitely without charge, trial or access to legal counsel. They included suspected critics of the government, political activists, journalists, religious practitioners, draft evaders, military deserters and failed asylum-seekers forcibly returned to Eritrea. Many were held in incommunicado detention for long periods".[102] In May 2012 Freedom House reported that "Eritrean refugees and asylum seekers who are repatriated from other

[96] Human Rights Watch, 10 long years- a briefing on Eritrea's missing political prisoners, September 2011, http://www.hrw.org/sites/default/files/reports/eritrea0911WebForUpload.pdf
[97] US State Department Human Rights report 2011: Eritrea, Section 2d Freedom of Movement, Internally Displaced Persons, Protection of Refugees, and Stateless Persons, Foreign Travel.
[98] US State Department Human Rights report 2011: Eritrea, Section 2d Freedom of Movement, Internally Displaced Persons, Protection of Refugees, and Stateless Persons, Foreign Travel.
[99] US State Department Human Rights report 2011: Eritrea, Section 2d Freedom of Movement, Internally Displaced Persons, Protection of Refugees, and Stateless Persons, Foreign Travel.
[100] US State Department Human Rights report 2011: Eritrea, Section 2d Freedom of Movement, Internally Displaced Persons, Protection of Refugees, and Stateless Persons, Foreign Travel
[101] COIS Eritrea Country Report August 2011 (para 28.12) http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/
[102] Amnesty International, Annual Report 2012: Eritrea, http://www.amnesty.org/en/region/eritrea/report-2012

countries are also detained; a number of repatriated Eritreans disappeared while in custody in 2011".[103] In 2011, Amnesty International also noted that "Eritrean nationals forcibly returned to Eritrea have been detained incommunicado and tortured upon return, particularly those who had fled the country to avoid conscription".[104]

3.10.7 According to the Human Rights Watch report, Ten Long Years- a Briefing on Eritrea's Missing Political Prisoners, Involuntarily returned refugees are placed under arrest, held incommunicado, and often tortured. In 2009 UNHCR reported that Eritreans forcibly returned from Malta in 2002 and Libya in 2004 were arrested on arrival in Eritrea and tortured; some were killed. More recently, two Eritreans expelled to Eritrea from Germany in 2008 were immediately imprisoned, one in an overcrowded underground cell and the other in a shipping container. According to Amnesty International, which interviewed the men after they managed to escape and return to Europe, "[b]oth men recounted inhumane conditions, including disease, insanity and death among fellow detainees."[105]

See also: **Actors of protection (section 2.3 above)**
Internal relocation (section 2.4 above)
Caselaw (section 2.5 above)

3.10.8 **Conclusion*:*** Eritreans who are forcibly returned may be subjected to arrest without charge, detention, torture and other forms of ill-treatment at the hands of the authorities.

3.10.9 Case owners should establish the likely manner of departure in individual cases and assess whether applicants have left Eritrea legally by reference to the recent country guidance given by the Upper Tribunal in the case of **MO (illegal exit – risk on return) Eritrea CG [2011] UKUT 00190 (IAC).** This case determines that it has become more difficult for Eritreans to obtain lawful exit from Eritrea. The Eritrean authorities continue to envisage lawful exit as being possible for those who are above national service age or children of 7 or younger. Otherwise, however, the potential categories of lawful exit are limited to two narrowly drawn medical categories and those who are either highly trusted government officials or their families or who are members of ministerial staff recommended by the department to attend studies abroad. It should be noted that some country information published since MO was heard reports that children under the age of 7 may be denied exit permits.

3.10.10 The Tribunal confirmed that, subject to limited exceptions, the general position adopted in MA, that a person of or approaching draft age (i.e. aged 8 or over and still not above the upper age limits for military service, being under 54 for men and under 47 for women) and not medically unfit who is accepted as having left Eritrea illegally is reasonably likely to be regarded with serious hostility on return.

3.10.11 Applicants who can therefore demonstrate a reasonable likelihood of having left Eritrea illegally will qualify for asylum unless they are excluded from the 1951 Convention under Article 1F, or where in particular individual cases there are

[103] Freedom House, Freedom in the World 2012: Eritrea, http://www.freedomhouse.org/report/freedom-world/2012/eritrea
[104] Amnesty International, Eritreans in Egypt at risk of forcible return, 02/11/2011.
[105] Human Rights Watch, 10 long years- a briefing on Eritrea's missing political prisoners, September 2011, http://www.hrw.org/sites/default/files/reports/eritrea0911WebForUpload.pdf

reasons not to do so.

3.11 Prison conditions

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

3.11.2 The guidance in this section is concerned solely with whether prison conditions are such that they breach Article 3 of ECHR and warrant a grant of Humanitarian Protection. If imprisonment would be for a Refugee Convention reason or in cases where for a Convention reason a prison sentence is extended above the norm, the asylum claim should be considered first before going on to consider whether prison conditions breach Article 3 if the asylum claim is refused.

3.11.3 **Consideration:** The 2011 U.S. State Department report notes that "Prison conditions remained harsh and life threatening. Severe overcrowding was common. Some prisoners were shackled in unventilated holding cells for long periods of time in extreme desert heat and died due to heat exhaustion and lack of medical care. Underground cells or shipping containers with little or no ventilation in extreme temperatures held prisoners. The shipping containers were reportedly not large enough to allow all of those incarcerated to lie down at the same time. The cement-lined underground bunkers held up to 200 prisoners each; prisoners reportedly lost consciousness from the extreme heat".[106]

3.11.4 The report also notes that, "The law and unimplemented constitution prohibit torture. However, torture and beatings are institutionalised within prison and detention centres. Reports of prisoners' deaths due to torture, poor sanitation, and inadequate medical treatment were common, although secrecy and lack of access make it impossible to determine the number of deaths. Torture or mistreatment included prolonged sun exposure in temperatures of up to 120 degrees Fahrenheit; the binding of hands, elbows, and feet in contorted positions for extended periods of time; forcing inmates to walk barefoot on sharp objects; overcrowded conditions; exposure to extreme heat from confinement in crowded and unventilated metal shipping containers or in crowded cement-lined underground pits without ventilation or sanitation; suspension from trees with arms tied behind the back, a technique known as "almaz" (diamond); and being placed face down with hands tied to feet outside in the desert, a technique known as the "helicopter," while pouring sugar on detainees to attract biting insects. The government sanctioned these torture and abuse methods, and no known action was taken during the year to punish the perpetrators".[107]

3.11.5 Similarly the UNHCR reported that suspected government critics are "often held in incommunicado detention or "disappear" in secret detention facilities, where they are reportedly held in poor conditions and denied access to legal counsel or medical treatment. Severe punishments, torture, starvation and other ill-treatment are commonplace".[108]

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[106] US State Department Human Rights report 2011: Eritrea, section c. Prison and Detention Centre Conditions

[107] US State Department Human Rights report 2011: Eritrea, section, c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

[108] UNHCR, UNHCR Eligibility guidelines for assessing the International protection needs of asylum seekers from Eritrea, A. Potential Risk Profiles, 2. http://www.unhcr.org/refworld/pdfid/4dafe0ec2.pdf

3.11.6 Escaping Eritreans, including prison guards, report that torture and other forms of cruel, inhuman, and degrading treatment in detention are systematic and routine. Aside from severe beatings, punishments include mock drowning, hanging by the arms from trees, being tied up in the sun in contorted positions for hours or days, and being doubled up inside a tire. One investigative technique is to tighten handcuffs so that circulation to the hands is cut off and pain from the swelling hands becomes unbearable.[109]

3.11.7 Many prisoners are held in unlit underground bunkers and in shipping containers with boiling daytime and freezing night time temperatures. Prisoners are held in isolation or are packed tightly in severely crowded cells. Food rations generally consist of lentils and a bread roll once a day and tea twice a day. Deaths in prison from torture, disease, inadequate food, and other harsh conditions are frequent.[110]

3.11.8 Human Rights Watch noted that prisoners are often held indefinitely without access to family members, prison monitors, or lawyers. There are no public trials and no appeals. Persons inquiring about a relative's whereabouts risk being jailed themselves.[111]

3.11.9 The government does not provide adequate provisions for basic and emergency medical care in prisons and detention centres, and detainees died due to lack of medical treatment during the year. Food provided was not adequate. Potable water was generally not available. [112]

3.11.10 There were numerous unofficial detention centres, most located in military camps and used as overflow detention centres following mass arrests and roundups. There were reports that detention centre conditions for persons temporarily held for evading military service were also harsh and life threatening. [113]

3.11.11 The government did not investigate and monitor prison and detention centre conditions. There are more than 300 prisons and detention centres, which were filled to capacity. Although there was a juvenile detention centre in Asmara, juveniles frequently were held with adults in prisons and detention centres, and some young children were held with their mothers. Pre-trial detainees typically were not separated from convicted prisoners. Prisoners and detainees did not have reasonable access to visitors and were not always permitted religious observance. Authorities commonly moved prisoners to locations far from their families to make family visits impossible".[114]

3.11.12 Authorities did not permit prisoners and detainees to submit complaints to judicial authorities without censorship and to request investigation of credible allegations of inhumane conditions, which authorities did not investigate. There were no ombudsmen to serve on behalf of prisoners. There are no provisions for addressing the status and circumstances of confinement of juvenile offenders, pretrial detention, or bail. Recordkeeping procedures are not transparent, making it impossible to assure that prisoners do not serve beyond the maximum sentence for the charged offense".[115]

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[109] Human Rights Watch World Report 2012; Eritrea http://www.hrw.org/world-report-2012/world-report-2012-eritrea
[110] Human Rights Watch World Report 2012; Eritrea http://www.hrw.org/world-report-2012/world-report-2012-eritrea
[111] Human Rights Watch World Report 2012; Eritrea http://www.hrw.org/world-report-2012/world-report-2012-eritrea
[112] US State Department Human Rights report 2011: Eritrea, section c. Prison and Detention Centre Conditions
[113] US State Department Human Rights report 2011: Eritrea, section c. Prison and Detention Centre Conditions
[114] US State Department Human Rights report 2011: Eritrea, section c. Prison and Detention Centre Conditions
[115] US State Department Human Rights report 2011: Eritrea, section c. Prison and Detention Centre Conditions

3.11.13 In 2012, the FCO noted that "the judicial system in Eritrea is opaque, often arbitrary and harsh. Where trials do occur they are conducted in secret, often in special courts where judges also serve as prosecutors. For the most part, those detained are not brought to trial. There are unconfirmed reports that many detainees have died in captivity, but the government of Eritrea refuses to give details on the whereabouts and fate of any of them, citing national security grounds".[116]

3.11.14 Conclusion: Conditions in prisons and detentions facilities in Eritrea are harsh and life threatening and, taking into account the severe overcrowding, poor sanitation, absence of medical facilities, lack of food and the incidence of torture and detainee deaths, are likely to breach the Article 3 threshold. Where an individual applicant is able to demonstrate a real risk of significant period of detention or imprisonment on return to Eritrea, and exclusion under Article 1F is not justified, a grant of Humanitarian Protection will be appropriate.

4. Discretionary Leave

4.1 Where an application for asylum and Humanitarian Protection falls to be refused there may be compelling reasons for granting Discretionary Leave (DL) to the individual concerned. (See Asylum Instructions on Discretionary Leave) Where the claim includes dependent family members consideration must also be given to the particular situation of those dependants in accordance with the Asylum Instructions on Article 8 ECHR.

4.2 With particular reference to Eritrea the types of claim which may raise the issue of whether or not it will be appropriate to grant DL are likely to fall within the following categories. Each case must be considered on its individual merits and membership of one of these groups should *not* imply an automatic grant of DL. There may be other specific circumstances related to the applicant, or dependent family members who are part of the claim, not covered by the categories below which warrant a grant of DL - see the Asylum Instructions on Discretionary Leave and the Asylum Instructions on Article 8 ECHR.

4.3 Minors claiming in their own right

4.3.1 Minors claiming in their own right who have not been granted asylum or HP can only be returned where (a) they have family to return to; or (b) there are adequate reception and care arrangements. At the moment we do not have sufficient information to be satisfied that there are adequate reception, support and care arrangements in place for minors with no family in Eritrea. Those who cannot be returned should, if they do not qualify for leave on any more favourable grounds, be granted Discretionary Leave for a period as set out in the relevant Asylum Instructions.

4.4 Medical treatment

4.4.1 Applicants may claim they cannot return to Eritrea due to a lack of specific medical

[116] Foreign and Commonwealth Office, Human Rights and Democracy: The 2011 Foreign & Commonwealth Office Report, 30/04/2012 SECTION IX: Human Rights in Countries of Concern, Eritrea, Access to justice and the rule of law http://fcohrdreport.readandcomment.com/read-and-download-the-report/

treatment. See the IDI on Medical Treatment which sets out in detail the requirements for Article 3 and/or 8 to be engaged.

4.4.2 Since independence in 1991, Eritrea has made considerable progress in promoting equitable, accessible and affordable health services to the majority of its citizens with the support of its partners. This is demonstrated by the significant improvement of health indicators. The country still experiences acute shortage of human resource at all levels of the Health Care delivery System. The health service is delivered in a three tier system in the country and an effort to improve the referral system is underway.[117]

4.4.3 Ninety percent of the country's 5 million people are allowed to access free medical treatment at public hospitals and clinics. However, Eritrea has only one doctor per 10,000 people and most health care providers are located in urban areas. With 80% of the country's population living in rural areas, it is much harder to access health care or travel to urban health facilities. Strengthening the public health system is a priority. In recent years, significant investments have been made and several new hospitals and teaching facilities were opened to reach medically underserved communities.[118]

4.4.4 The Article 3 threshold will not be reached in the majority of medical cases and a grant of Discretionary Leave will not usually be appropriate. Where a case owner considers that the circumstances of the individual applicant and the situation in the country reach the threshold detailed in the IDI on Medical Treatment making removal contrary to Article 3 or 8 a grant of Discretionary Leave to remain will be appropriate. Such cases should always be referred to a Senior Caseworker for consideration prior to a grant of Discretionary Leave.

5. Returns

5.1 There is no policy which precludes the enforced return to Eritrea of failed asylum seekers who have no legal basis of stay in the United Kingdom.

5.2 Factors that affect the practicality of return such as the difficulty or otherwise of obtaining a travel document should not be taken into account when considering the merits of an asylum or human rights claim. Where the claim includes dependent family members their situation on return should however be considered in line with the Immigration Rules.

5.3 The Immigration (Notices) (Amendment) Regulations 2006 came into force on 31 August 2006. These amend the previous 2003 Regulations, allowing an Immigration Officer or the Secretary of State to specify more than one proposed destination in the Decision Notice (this entails a right of appeal). Where there is a suspensive right of appeal, this will allow the Tribunals Service to consider in one appeal whether removal to any of the countries specified in the Decision Notice would breach the UK's obligations under the Refugee convention or the European Convention on Human Rights, thus reducing the risk of sequential appeals. More than one country, e.g. Ethiopia and Eritrea, may only be specified in the Notice of Decision where there is evidence to justify this. Evidence may be either oral or documentary. Caseworkers are advised that their Decision Service Team/admin

[117] COIS Eritrea Country Report August 2011 (para 24.01)
http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/
[118] COIS Eritrea Country Report August 2011 (para 24.02)
http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

support unit must be instructed to record both countries on the Notice of Decision/Removal Directions for relevant cases (For more information regarding return and claimed illegal exit from Eritrea please see section 3.10).

5.4 Eritrean nationals may return voluntarily to any region of Eritrea at any time in one of three ways: (a) leaving the UK by themselves, where the applicant makes their own arrangements to leave the UK, (b) leaving the UK through the voluntary departure procedure, arranged through the UK Immigration service, or (c) leaving the UK under one of the Assisted Voluntary Return (AVR) schemes.

5.5 The AVR scheme is implemented on behalf of the UK Border Agency by Refugee Action which will provide advice and help with obtaining any travel documents and booking flights, as well as organising reintegration assistance in Eritrea. The programme was established in 1999, and is open to those awaiting an asylum decision or the outcome of an appeal, as well as failed asylum seekers. Eritrean nationals wishing to avail themselves of this opportunity for assisted return to Eritrea should be put in contact with Refugee Action Details can be found on Refugee Action's web site at:

www.refugee-action.org/ourwork/assistedvoluntaryreturn.aspx

Country Specific Litigation Team
Immigration Group
UK Border Agency
August 2012