



Home Office

# OPERATIONAL GUIDANCE NOTE

## ERITREA

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## 1. Introduction

- 1.1** This document provides Home Office caseworkers 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. Caseworkers must refer to the relevant asylum instructions (AIs) for further details of the policy on these areas.
- 1.2** Caseworkers **must not** base decisions on the country of origin information (COI) in this guidance; it is included to provide context only and does not purport to be comprehensive.
- 1.3** The conclusions in this guidance are based on the totality of the available evidence, not just the brief extracts contained herein, and caseworkers must likewise take into account all available evidence. It is therefore essential that this guidance is read in conjunction with the relevant COI and any other pertinent data, such as country guidance caselaw.

- 1.4 COI is published by the [Country Policy and Information Team](#) and is available on the intranet.
- 1.5 Claims should be considered on an individual basis, but taking full account of the guidance contained in this document. Where a claim for asylum or humanitarian protection is being considered, caseworkers must consider any elements of Article 8 of the European Convention on Human Rights (ECHR) in line with the provisions of Appendix FM (Family Life) and paragraphs 276 ADE to 276DH (Private Life) of the Immigration Rules.
- 1.6 Where a person is being considered for deportation, caseworkers must consider any elements of Article 8 of the ECHR in line with the provisions of Part 13 of the Immigration Rules. Caseworkers must also consider if the applicant qualifies for discretionary leave in accordance with the published policy.
- 1.7 If, following consideration, a claim is to be refused, caseworkers 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 Caseworkers should refer to the relevant Country Policy and Information Team country of origin information material. An overview of the human rights situation in certain countries can also be found in the [Foreign & Commonwealth \(FCO\) Human Rights and Democracy Report](#), which examines developments in countries where human rights issues are of greatest concern:

### 2.2 Actors of protection

- 2.2.1 Caseworkers must refer to section 7 of the AI - [Considering the asylum claim and assessing credibility](#). To qualify for asylum, an individual must have a fear of persecution for a Convention reason and be able to demonstrate that their fear of persecution is well founded and that they are unable, or unwilling because of their fear, to seek protection in their country of origin or habitual residence.
- 2.2.2 Caseworkers must 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.
- 2.2.3 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. 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.
- 2.2.4 The Bertelsmann Stiftung Transformation Index Eritrea Country Report 2012, states that "The ruling PFDJ and the government form a monolithic power apparatus. There is no separation of powers and not even a convening parliament. The legislative, executive and judicial branches are controlled by the president, who rules by decree. He heads the cabinet of ministers, who have very little autonomy

as to setting up policies in their respective portfolios”.<sup>1</sup> This is supported by the UN Special Rapporteur for Eritrea who states “The basic tenets of the rule of law are not respected in Eritrea owing to a centralized system of Government where decision-making powers are concentrated in the hands of the President and his close collaborators. The failure to implement the Constitution adopted in 1997 is another reason for the breakdown of the rule of law, although there are other contributory factors, such as arbitrariness, lack of transparency and accountability, all of which have a negative impact on the enjoyment of human rights and fundamental freedoms. Systematic human rights violations stem from the absence of due process and a lack of credible institutions through which affected individuals can take their complaints to be examined and have their rights upheld.”<sup>2</sup>

**2.2.5** The US State Department Human Rights report 2012 for Eritrea notes “Police were responsible for maintaining internal security, and the army was responsible for external security, but the government sometimes utilized the armed forces, the reserves, demobilized soldiers, or the newly mustered civilian militia to meet domestic and 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 authority to arrest and detain civilians. Police generally did not have a role in cases involving national security. Impunity for abuse was the norm”.<sup>3</sup>

**2.2.6** “The law stipulates that, unless there is a “crime in progress”, police must conduct an investigation and obtain a warrant prior to making an arrest. In cases involving national security, this process may be waived. In practice very few individuals were arrested with a warrant. The law stipulates that detainees must be brought before a judge within 48 hours of arrest and may not be held more than 28 days without being charged with a crime. In practice suspects were detained for longer periods without being brought before a judge, charged with a crime, or in some cases being told the reason for their detention. Authorities also sometimes changed charges during detention. The government took the position that those detained without charge should be assumed to be held in relation to national security concerns”.<sup>4</sup>

**2.2.7** “The law provides for a bail system. In practice bail was arbitrary and not always set, and sometimes reportedly involved paying bribes to persons with government connections to intercede. Incommunicado detention was widespread. Detainees in prisons, including those held on national security grounds and those considered indigent, often did not have access to counsel. Detainees in police stations not held on national security grounds sometimes received family visits”.<sup>5</sup>

**2.2.8** The UN Special Rapporteur notes “The number of people arrested and detained without charge or due process amounts to thousands. National service evaders or escapees, and those suspected of wanting to flee or caught during flight further swell detention figures and may reach tens of thousands. Individuals arrested arbitrarily are subjected to physical and psychological torture, cruel, inhuman or

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<sup>1</sup> [The Bertelsmann Stiftung Transformation Index Eritrea Country Report 2012 published 2013: 3 Rule of Law: Separation of Powers.](#)

<sup>2</sup> [UN Human Rights Council: The Report of the United Nations Special Rapporteur on the situation of human rights in Eritrea, Sheila B. Keetharuth, dated 28 May 2013: paragraphs 35 and 38 page 8](#)

<sup>3</sup> [US State Department: Country Reports on Human Rights Practices: Eritrea, 19 April 2013: Section 1d: Role of the Police and Security Apparatus](#)

<sup>4</sup> [US State Department: Country Reports on Human Rights Practices: Eritrea, 19 April 2013: Section 1d: Arrest Procedures and Treatment whilst in Detention.](#)

<sup>5</sup> [US State Department: Country Reports on Human Rights Practices: Eritrea, 19 April 2013: Section 1d: Arrest Procedures and Treatment whilst in Detention.](#)

degrading treatment”.<sup>6</sup> This is supported by Amnesty International in its report “Eritrea - 20 years of independence, but still no freedom”, which states “Throughout the 20 years of Eritrea’s independence, the government of President Isaias Afewerki has systematically used arbitrary arrest and detention without trial to crush all opposition, to silence all dissent, and to punish anyone who refuses to comply with the restrictions placed on freedom of religion and belief, the system of indefinite conscription into national service and other restrictions on human rights imposed by the government. There is no independent judiciary in Eritrea, and there are no avenues for individuals or their families to legally challenge this system of arbitrary detention”.<sup>7</sup>

**2.2.9** The Bertelsmann Stiftung Transformation Index Eritrea Country Report 2012, states “There have been no judiciary reforms [since independence], and the formal judiciary remains poorly organized and dependent on the government. The military or special courts headed by military officers, who act as judges without following legal procedures, remained in place. In numerous cases, people were jailed for several months without being accused or brought before a court of law. The informal sector of traditional juridical institutions is the backbone of jurisdiction in civil, and to some extent criminal, cases. They decide cases on the basis of traditional law, which focuses strongly on mediation and judgments accepted by all parties involved. There are also community courts headed by lay judges, appointed by the government, who are supposed to adjudicate based on traditional law, but these courts enjoy less confidence among the public than do informal customary institutions”.<sup>8</sup>

**2.2.10** The UN Special Rapporteur notes “Despite the guarantee regarding the independence of the judiciary stipulated in article 7 of proclamation 37/1993, which provides for the structure, powers and responsibilities of the Government of Eritrea, the court system is weak and prone to interference”.<sup>9</sup>

**2.2.11** “In July 2001, the Chief Judge of the High Court was removed from office after having expressed his disapproval of executive interference in judicial proceedings and called for the dismantling of the Special Court. The Special Court has jurisdiction over cases involving corruption and related crimes; its decisions are final. It has the power to re-open and adjudicate cases already processed through the regular criminal justice system, disregarding the basic principle of protection from double jeopardy and other fair trial guarantees. A high percentage of those serving in the Special Court do not have formal legal training and are not bound to apply prevailing laws. Civil courts comprise the community court, the Zoba Court and the High Court. The Military Court has jurisdiction over penal cases brought against members of the armed forces”.<sup>10</sup>

**2.2.12** “The law and unimplemented constitution provide for presumption of innocence, for defendants to be informed promptly and in detail of charges, and for fair public trial by a court of law, but in practice many detained persons were not brought to trial.

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<sup>6</sup> [UN Human Rights Council, The Report of the United Nations Special Rapporteur on the situation of human rights in Eritrea, Sheila B. Keetharuth, dated 28 May 2013: paragraph 51 page 11](#)

<sup>7</sup> [Amnesty International: ‘Eritrea - 20 years of Independence, but still no freedom’, 9 May 2013: page 6 Summary](#)

<sup>8</sup> [The Bertelsmann Stiftung Transformation Index Eritrea Country Report 2012, published 2013: 3 Rule of Law: Separation of Powers.](#)

<sup>9</sup> [UN Human Rights Council: The Report of the United Nations Special Rapporteur on the situation of human rights in Eritrea, Sheila B. Keetharuth, dated 28 May 2013: paragraph 35 page 8-9](#)

<sup>10</sup> [UN Human Rights Council: The Report of the United Nations Special Rapporteur on the situation of human rights in Eritrea, Sheila B. Keetharuth, dated 28 May 2013: paragraph 35 page 8-9](#)

No cases involving individuals detained for national security or political reasons were brought to trial during the year [2012]. The law does not specifically address adequate time to prepare one's defence, access to government-held evidence, the right of defendants to confront witnesses, or the right of defendants to refuse to testify, although courts afforded some of these rights to defendants in practice. No lawyers practice in special courts, which deal with high profile cases and operate under the executive branch".<sup>11</sup>

**2.2.13** "Persons seeking executive or judicial services sometimes reported that they obtained services more easily after having paid a "gift" or bribe through a system of patronage and cronyism. Petty corruption within the executive branch was based largely on family connections and used to facilitate access to social benefits. There were reports of police corruption. Police occasionally used their influence to assist friends and family in facilitating their release from prison. There were reports that police demanded bribes to release detainees. There were no effective mechanisms to address allegations of official abuse, and impunity was a problem".<sup>12</sup>

**2.2.14 Conclusion:** There is no effective rule of law within Eritrea; all instruments of state are subject to the authority of the President and individuals can be dealt with extremely harshly. If an 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.

**2.2.15** In cases where the fear is from a non state agent, then the question as to whether protection would be available from the Eritrean authorities must be determined on a case-by-case basis. Effective state protection is unlikely to be available in some cases given the state's lack of respect for the basic tenets of the rule of law; impunity for serious rights abuse; and police and judicial corruption. For any claim based upon gender - see paragraphs 3.17.27 to 30.

## **2.3 Internal relocation.**

**2.3.1** Where an applicant's category of fear is of ill-treatment/persecution by the state authorities, then internal relocation to escape that persecution will not generally be an option. However caseworkers must refer to the AI on [Internal Relocation](#) and in the case of a female applicant, the AI on [Gender Issues in the Asylum Claim](#), for guidance on the circumstances in which internal relocation would be a 'reasonable' option, so as to apply the test set out in paragraph 339O of the Immigration Rules. The fact that there may be technical obstacles to return, such as re-documentation problems, does not prevent internal relocation from being applied.

**2.3.2** 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.

**2.3.3** Similarly, if there is a part of the country of return where the person would not face a

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<sup>11</sup> [US State Department: Country Reports on Human Rights Practices: Eritrea, 19 April 2013: Section 1e: Trial Procedures](#)

<sup>12</sup> [US State Department: Country Reports on Human Rights Practices: Eritrea, 19 April 2013: Section 4. Corruption and Lack of Transparency in Government](#)

real risk of suffering serious harm and they can reasonably be expected to stay there, then they will not be eligible for asylum or 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.

- 2.3.4** UNHCR concluded in Eligibility Guidelines for assessing Eritrean asylum claims 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”.<sup>13</sup> Human Rights Watch describes Eritrea as “among the most closed countries in the world”.<sup>14</sup>
- 2.3.5** “For categories of claimants who fear persecution at the hands of non-State agents, the question of whether an IFA/IRA is available would need to be given careful consideration. 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”.<sup>15</sup>
- 2.3.6** “Whether an IFA/IRA is “reasonable” must be determined on a case-by-case basis, taking fully into account the human rights and humanitarian environment in the prospective area of relocation at the time of the decision. To this effect, the following elements are important: (i) the availability of basic infrastructure, access to essential services and potable water, as well as food security in the area of prospective relocation; (ii) the availability of traditional support mechanisms, such as family and friends, in the area of prospective relocation; (iii) the ability of displaced individuals to sustain themselves, including livelihood opportunities; (iv) the presence of landmines and unexploded ordnance; and (v) restrictions on freedom of movement within the country, particularly along the borders with Sudan and Ethiopia. Relocation to other tribal or ethnic areas may not be possible due to latent or overt conflicts between such groups, lack of acceptance, and other societal and cultural barriers. Employment opportunities in urban centres, including Asmara, remain limited”.<sup>16</sup>
- 2.3.7** The US State Department reports “The law and unimplemented constitution provide for freedom of internal movement, foreign travel, emigration, and repatriation; however, the government restricted all these rights in practice. The government required citizens to notify local authorities when they changed residence. When travelling within the country, particularly in remote regions or near borders, authorities asked them to provide justification for travel at checkpoints. Checkpoints were few in number except in remote regions. In contrast with previous years, there was no evidence that the government extensively used checkpoints to identify national service evaders or military deserters”.<sup>17</sup>

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<sup>13</sup> [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\(IFA/IRA\).](#)

<sup>14</sup> <sup>14</sup> [Human Rights Watch: World Report 2014: Events of 2013: 21 January 2014: Eritrea.](#)

<sup>15</sup> [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\(IFA/IRA\).](#)

<sup>16</sup> [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\(IFA/IRA\).](#)

<sup>17</sup> [US State Department: Country Reports on Human Rights Practices: Eritrea, 19 April 2013: Section 2d: Freedom of Movement.](#)

- 2.3.8** According to the UN Special Rapporteur on the situation of human rights in Eritrea, “travel within the country is extremely restricted and requires a travel permit, which is difficult to obtain. Controls are frequent at checkpoints between cities”.<sup>18</sup> Amnesty International reports “In Eritrea, a travel permit is required to move around the country or to travel from one town to another. According to the testimonies of former detainees, some people caught moving without a travel permit have been suspected of an intention to travel to one of the country’s borders in order to flee”. It is not known if all people caught without an internal travel permit are arrested, or whether in all cases arrest is based on a suspicion of intention to leave the country without authorisation. While no reason was given to these detainees for their arrest, many told Amnesty International that they understood it to be a punishment for evasion or desertion from national service.<sup>19</sup>
- 2.3.9 Conclusion:** The regime has a tight control of the state and internal relocation is not a feasible option where the fear of persecution stems from the Eritrean authorities or its agents.
- 2.3.10** Careful consideration must be given to the relevance and reasonableness of internal relocation on a case by case basis taking full account of the individual circumstances of the particular claimant. Case workers need to consider the ability of the persecutor to pursue the claimant in the proposed site of relocation, and whether effective protection is available in that area. Caseworkers will also need to consider the age, gender, health, ethnicity, religion, financial circumstances and support network of the claimant, as well as the security, human rights and socioeconomic conditions in the proposed area of relocation, including the claimant’s ability to sustain themselves. See paragraph 3.17.28 for gender applications.

## **2.4 Country guidance caselaw**

**[Supreme Court. RT \(Zimbabwe\) & others 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 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

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<sup>18</sup> [UN Human Rights Council, The Report of the United Nations Special Rapporteur on the situation of human rights in Eritrea, Sheila B. Keetharuth, dated 28 May 2013: paragraph 67](#)

<sup>19</sup> [Amnesty International: Eritrea - 20 years of independence, but still no freedom', 9 May 2013, Page 28-29: People fleeing the country .](#)

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 of 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; and DA (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 as 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, [IN \(Draft evaders – evidence of risk\) Eritrea CG \[2005\] UKIAT 00106](#); [KA \(draft-related risk categories updated\) Eritrea CG UKAIT 00165](#); [AH \(Failed asylum seekers – involuntary returns\) Eritrea CG \[2006\] UKAIT 00078](#) and [WA \(Draft-related risks updated – Muslim Women\) Eritrea CG \[2006\] UKAIT 00079](#). These cases remain country guidance.

**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.

**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.

**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).

**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.
- 3.2** 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.
- 3.3** All asylum instructions (AIs) can be accessed via the Horizon intranet site. The instructions are also published externally on the Home Office internet site at [asylum policy instructions](#).
- 3.4** Each claim should be assessed to determine whether there is a reasonable likelihood 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 the Court of Appeal's judgment in [Karanakaran](#) should be followed when deciding how much weight to be given to the material provided in support of the claim (see the AI '[Considering the asylum claim and assessing credibility](#)').
- 3.5** For any asylum cases which involve children either as dependents or as the main applicants, caseworkers must have due regard to Section 55 of the Borders, Citizenship and Immigration Act 2009. The instruction '[Every Child Matters; Change for Children](#)' sets out the key principles to take into account.
- 3.6** If the applicant does not qualify for asylum, consideration should be given as to whether a grant of humanitarian protection is appropriate (see AI on [Humanitarian Protection](#)). Where an application for asylum and humanitarian protection falls to be refused, caseworkers must consider any elements of Article 8 of the ECHR in line with the provisions of Appendix FM (Family Life) and paragraphs 276 ADE to 276DH (Private Life) of the Immigration Rules.
- 3.7** They must also consider whether there are any compelling reasons for granting discretionary leave (DL) to the individual concerned (see AI on [Discretionary Leave](#)).

## Credibility

- 3.8** Caseworkers will need to assess credibility issues based on all the evidence available to them from the interview, documentary evidence and country of origin information. For guidance on credibility see 'Section 4 – Making the Decision' in the AI - ['Considering asylum claims and assessing credibility'](#).
- 3.9** Caseworkers 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.
- 3.10** In all other cases, the caseworkers should satisfy themselves through CRS database checks that there is no match to a non-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.

## Categories of claim

### **3.11 Members of the registered and unregistered religious groups, including Pentecostals and Jehovah's Witnesses**

See separate [country information and guidance](#) on registered and unregistered groups.

### **3.12 Military Service**

**3.12.1** 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.

**3.12.2 Treatment:** The International Crisis Group report, 'Eritrea: The Siege State', dated 2010 states "Eritrea is a highly militarised society shaped by war, run by warriors and in which citizenship has come to be equated with indefinite national service - associated not with rights but with obligations. The ethos of the armed struggle permeates all aspects of public life, and the country has proved unable, as yet, to escape its violent past. Immediately after independence, the EPLF [Eritrean People's Liberation Front] created a system of national service, the core component of which was military, centred on the training camp at Sawa, where it sought to inculcate the next generation with the culture and spirit of the liberation struggle. Sawa was conceived as the foundation stone of the nation-building process. Initially, it was a potentially constructive arrangement: all men and women between the ages of eighteen and 50 were to undergo six months of military training, followed by twelve months either of active duty deployment or developmental work".<sup>20</sup>

**3.12.3** Amnesty International in its report "Eritrea - 20 years of independence, but still no freedom" states "In 1995, the government issued the Proclamation of National Service (No. 82/1995) under which national service, which encompasses active

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<sup>20</sup> [The International Crisis Group report, 'Eritrea: The Siege State', published on 21 September 2010: 111 Evolution of the Military State: C The Military, page 9.](#)

national service and reserve military service, was declared mandatory for men and women between the ages of 18 and 50. Active national service is compulsory for all citizens between the ages of 18 to 40, followed by additional reserve duties. The initial national service period is 18 months long, generally consisting of six months' military service followed by 12 months' deployment in military or government service. However, this period is frequently extended indefinitely. Much of the adult population of Eritrea is currently engaged in mandatory national service; many of them have been conscripted for over ten years. There is no exemption from military service for conscientious objectors. The government of Eritrea has not designed any service alternative to military service".<sup>21</sup>

**3.12.4** UNHCR in its Eligibility Guidelines for asylum seekers from Eritrea, published 2011, reports "Since the obligation to undertake military service applies to all citizens, Eritreans living abroad since childhood and those born in exile are not exempt from military service. Hence, Eritreans who are forcibly returned, or who return voluntarily, will be subject to conscription in the military service if they satisfy the age criteria and are medically fit".<sup>22</sup>

**3.12.5** "Although the Proclamation on National Service makes no reference to gender-based exemptions, some official Eritrean Government sources indicate that women in the military who marry are discharged. Other categories reportedly exempt from national service include Muslim women, nursing mothers, married women and women with children. Instances of round-ups for the purpose of conscription of women, including Muslim women and mothers, have nevertheless been recorded. The Government has also 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".<sup>23</sup>

**3.12.6** Amnesty International report "Women with children are reportedly exempt from military service, but are required to undertake various duties in the civil sector within the framework of national service. However, this policy is unwritten, and, as with all aspects of written and unwritten national service policy, appears to be arbitrarily implemented (based on the testimonies of former conscripts and other refugees)".<sup>24</sup>

**3.12.7** The UN Special Rapporteur reports that "Owing to the harsh conditions at the Sawa military training camp, students commit suicide or fall ill and die. In one year, two girls died. For having failed to clean the bathroom, a female student was punished by being forced to roll on the hot ground, thus sustaining severe burns to her body. Unable to bear the pain, she leaned on a live electric wire and was electrocuted. Her friend, who was trying to rescue her, also died".<sup>25</sup>

**3.12.8** "Some conscripts are reportedly assigned as labour in state and private projects and enterprises, such as construction projects and road building; testimonies of former conscripts suggest that large numbers are assigned to work as agricultural labourers on large-scale farms; some reportedly work for companies owned and

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<sup>21</sup> [Amnesty International: Eritrea - 20 years of independence, but still no freedom', 9 May 2013, People evading or deserting National Service conscription.](#)

<sup>22</sup> [UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Eritrea, 20 April 2011, A: Potential Risk Categories: 1 Military/National Service.](#)

<sup>23</sup> [UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Eritrea, 20 April 2011, A: Potential Risk Categories: 1 Military/National Service.](#)

<sup>24</sup> [Amnesty International: Eritrea - 20 years of independence, but still no freedom', 9 May 2013, People evading or deserting National Service conscription.](#)

<sup>25</sup> [UN Human Rights Council, The Report of the United Nations Special Rapporteur on the situation of human rights in Eritrea, Sheila B. Keetharuth, dated 28 May 2013: paragraphs 44](#)

operated by the military or ruling party elites. Other conscripts are reportedly assigned to work in the civil service, in government departments or various roles in the military administrative infrastructure. A significant portion of conscripts are assigned to remain as soldiers after the initial six months' military service. The system of indefinite, involuntary conscription imposed in Eritrea amounts to forced labour and a violation of human rights".<sup>26</sup>

**3.12.9** Amnesty International reports "Female conscripts have told Amnesty International that they were subjected to rape and other forms of sexual violence during national service conscription. The UNHCR Eligibility Guidelines report that some female conscripts are reportedly subject to sexual harassment and violence, including rape, by their supervisors. It is reported that female conscripts are coerced into having sex with commanders, including through threats of heavy military duties, harsh postings, and denial of home leave. Refusal to submit to sexual exploitation and abuse is allegedly punished by detention, torture and ill-treatment, including exposure to extreme heat and limitation of food rations. No effective mechanism for redress and protection exists within or outside the military, and perpetrators generally go unpunished. Women, who become pregnant as a result, are decommissioned and likely to experience social ostracism from their families and communities as unmarried mothers".<sup>27</sup>

**3.12.10** "Within the national service system, any form of criticism or insubordination is not tolerated. Conscripts in any role in the national service framework can be arrested and detained arbitrarily – with no charge, trial, judicial oversight or opportunity to challenge their detention– for minor infractions including questioning an order of a senior officer or post holder, being late for work, criticising levels of pay, questioning a commanding officer or allegedly not working to the best of their ability".<sup>28</sup>

**3.12.11** Human Rights Watch in its World Report 2013 states "National service keeps most young Eritreans in perpetual bondage. National service conscripts are poorly fed and receive inadequate medical care. Eritrean refugees describe them as emaciated. Their pay (less than US\$30 per month) is insufficient to provide sustenance for a family. Conscripts allegedly provided forced labour to construct infrastructure at the Bisha gold mine, Eritrea's only operating mine and a major source of revenue. On average, over 1,500 Eritreans flee the country monthly despite shoot-to-kill orders to border guards and immense dangers along escape routes. Unaccompanied minors also flee".<sup>29</sup>

**3.12.12** The US State Department reports "With few exceptions, secondary school students spent their last high school year at the Sawa military and educational camp. Students had to complete military training at Sawa (or receive a medical or other waiver) before being allowed to take entrance exams for institutes of higher education<sup>30</sup> The law prohibits the recruitment of children under 18 into the armed forces. Younger children sometimes attended Sawa military and educational camp, and those who refused to attend with their cohort risked arrest. Students at Sawa were typically 18 years old or older, although some were reported to be as young as

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<sup>26</sup> [Amnesty International: Eritrea - 20 years of independence, but still no freedom', 9 May 2013, People evading or deserting National Service conscription.](#)

<sup>27</sup> [UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Eritrea, 20 April 2011, A: Potential Risk Categories: 1 Military/National Service.](#)

<sup>28</sup> [Amnesty International: Eritrea - 20 years of independence, but still no freedom', 9 May 2013, People evading or deserting National Service conscription.](#)

<sup>29</sup> <http://www.refworld.org/country,COI,HRW,ANNUALREPORT,ERI,,510fb4ebc,0.html>

<sup>30</sup> [US State Department: Country Reports on Human Rights Practices: Eritrea, 19 April 2013: section 2: Academic Freedom](#)

16. Information was not available on whether persons who reached the last year of secondary school before they turned 18 were required to participate in military training at Sawa even if they did not wish to. Some reports indicated that unit commanders of the citizen militia inaugurated during the year had instructions to provide weapons to persons as young as 14, but it was not known if commanders complied with these orders or if persons under 18 participated in the militia”.<sup>31</sup> Children, including those in schools, are reportedly victims of torture, cruel and degrading treatment by the police and military, when seeking to avoid military service.<sup>32</sup>

**3.12.13** UNHCR in its Eligibility Guidelines notes “The Proclamation on National Service sets out the penalties for attempting to avoid national service. The standard sanction is a fine of 3,000 Bir (now ca. 4,600 Nakfa) and/or two years’ imprisonment. Those who fled abroad specifically to avoid military service and who did not return to undertake military service before the age of 40 are subject to five years’ imprisonment. Rights to own land, to obtain an exit visa, to work and other “privileges” can also be suspended. In addition the penalties stipulated in the Eritrean Transitional Penal Code also cover military violations, including failure to enlist, or re-enlist, seeking fraudulent exemptions, desertion, absence without leave, refusal to perform military service and infliction of unfitness (injury to avoid service). The punishment ranges from six months ‘to 10 years imprisonment depending on the gravity of the act. During emergencies or mobilizations, the penalties are significantly more severe. Desertion is the most severely sanctioned and entails imprisonment for up to five years. In times of mobilization or emergency this can increase from five years to life, or, in the gravest cases, the death penalty, for desertion from a unit, post or military duties or for failure to return to them after an authorized period of absence”.<sup>33</sup>

**3.12.14** “In practice, punishment for military offences is carried out extra-judicially, and has been reported to include —shoot to kill orders, detention for long periods often in inhumane conditions, torture and forced labour. Draft evaders/deserters are reported to be frequently subjected to torture, while conscientious objectors can face severe physical punishment as a means of forcing them to perform military service. Furthermore, extrajudicial executions are allegedly ordered by local commanders and carried out in front of military units for what are considered serious military offences”.<sup>34</sup>

**3.12.15** “The usual punishment for evading or deserting national service is arrest and detention without charge or trial. Amnesty International has also received information of cases in which people were arrested on the suspicion that they were intending to desert. “Many thousands of draft evaders and deserters have been detained without charge or trial since 1995. As with the cases of other political prisoners, the lack of transparency and judicial oversight mean that it is impossible to know an exact number. The testimonies of former detainees indicate that arrest on the basis of evading national service or of desertion occur on a very regular basis. When caught, draft evaders and deserters have been subjected to torture and other ill-treatment, including brutal beatings and being tied in contorted

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<sup>31</sup> [US State Department: Country Reports on Human Rights Practices: Eritrea, 19 April 2013: section 6: Children](#)

<sup>32</sup> [UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Eritrea, 20 April 2011, A: Potential Risk Categories: 1 Military/National Service.](#)

<sup>33</sup> [UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Eritrea, 20 April 2011, A: Potential Risk Categories: 1 Military/National Service.](#)

<sup>34</sup> [UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Eritrea, 20 April 2011, A: Potential Risk Categories: 1 Military/National Service.](#)



positions, as punishment. The families of draft evaders and deserters are also often punished. Individuals of conscription age, who left the country, whether legally or illegally, are also suspected of draft evasion upon return”.<sup>35</sup>

**3.12.16** The US State Department note “Refusal to perform military service, failure to enlist, fraudulent evasion of military service and desertion were punishable by lengthy imprisonment. Detention centre conditions for persons temporarily held for evading national service were said to be harsh, equivalent to conditions for national security detainees. Authorities placed political prisoners in solitary confinement more often than other detainees”.<sup>36</sup>

**3.12.17** UNHCR report “Following their arrest, draft evaders and deserters are often reported to be subjected to torture. Persons who evade or desert military service may be regarded as disloyal and treasonous towards the Government, and therefore punished for their perceived disloyalty. Once arrested, many detainees reportedly “disappear”. Furthermore there are reports of death in custody as a result of ill-treatment, torture, denial of access to medical treatment and other harsh prison conditions”.<sup>37</sup> Since 2005, the Government has instituted measures to address the widespread evasion of and desertion from military service. Although not systematically applied, such measures target the family members of draft evaders and deserters and include: (i) arrest of family members, mostly parents, of young men and women who have not completed national service or of children who have not reported to the military training camp at Sawa for their final year of high school or have not reported for national service; (ii) imposition of fines on families of draft evaders; (iii) forced conscription of family members, particularly the father, of the draft evader; and (iv) withdrawal of trade licenses and closure of businesses held by members of the nuclear family of a deserter/draft evader.”.<sup>38</sup>

**3.12.18** “Conscription is reportedly enforced through routine “round-ups” (*giffa*). These are conducted by police or the Eritrean Defence Forces through work-place and house searches, street abductions and identity document checks, including at military road blocks on major roads. However, some individuals are reportedly able to buy false exemption papers or to pay bribes to security officials to evade military service and/or obtain assistance in crossing the border”.<sup>39</sup>

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

**3.12.19 Conclusion:** The Government views as political opponents those who evade 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. Applicants who can demonstrate that they:

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<sup>35</sup> [Amnesty International: Eritrea - 20 years of independence, but still no freedom', 9 May 2013, People evading or deserting National Service conscription.](#)

<sup>36</sup> [US State Department: Country Reports on Human Rights Practices: Eritrea, 19 April 2013: section 1c: Prison & Detention Centre Conditions.](#)

<sup>37</sup> [UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Eritrea, 20 April 2011, A: Potential Risk Categories: 1 Military/National Service: i: Draft Evaders and Deserters](#)

<sup>38</sup> [UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Eritrea, 20 April 2011, A: Potential Risk Categories: 1 Military/National Service: iv Family Members of draft evaders and deserters.](#)

<sup>39</sup> [UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Eritrea, 20 April 2011, A: Potential Risk Categories: 1 Military/National Service: i Draft Evaders and Deserters](#)

- 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 on grounds of political opinion, unless they are excluded from the 1951 Convention under Article 1F. The evidence is that gender and religious belief are not acceptable reasons for evading military conscription.

**3.12.20** 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, given inadequate food and medical care and suffer arbitrary arrest and detention for minor infractions. Female conscripts in particular may be subjected to rape and other forms of sexual violence. Claimants of this profile may qualify for protection depending on the particular circumstances of their case.

**3.12.21** An applicant 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 protection unless there are reasons particular to their individual case why they do so.

**3.12.22** Family members of draft evaders and deserters are also at risk of arbitrary arrest, fines, forced conscription and withdrawal of trade licenses and closure of businesses

### **3.13 Members of Opposition Political Groups**

**3.13.1** 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.

**3.13.2 Treatment:** UNHCR in their 2011 Eligibility Guidelines for assessing asylum seekers from Eritrea state “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”.<sup>40</sup>

**3.13.3** “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

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<sup>40</sup> [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.](#)

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. In the most high profile case to date, eleven former Government ministers and Eritrean liberation war veterans, who called for democratic reforms, including the implementation of the Constitution and the holding of elections, remain in secret detention since their arrest in September 2001. Known as the Group of 15 (G15), they have never been charged or appeared in court to face trial. Over half of those arrested have reportedly died in custody. Since 2001, thousands of politically-motivated arrests have been reported; most of those detained are yet to be charged or prosecuted”<sup>41</sup>

**3.13.4** The Bertelsmann Stiftung Transformation Index Eritrea Country Report 2012 notes “Since Eritrea’s independence in 1993, there have been no elections on the national or regional (zoba) levels and no free elections on the sub-regional and local levels. The PFDJ is the only political party, and President Isaias Afewerki, who has been in power since independence, has firmly declared that he has no intention to hold elections within the foreseeable future. The constitution ratified in 1997 has not been implemented, and the PFDJ held its last congress in 1994. It is dominated by a few “strongmen” who act as presidential advisers. The National Assembly met for the last time in 2001, leaving the president and his cabinet of ministers – the latter’s political impact is very limited – as the only political decision-makers in the country. The military has been awarded considerable political power on the regional level in the past decade”<sup>42</sup>.

**3.13.5** “The state’s monopoly on the use of force remained in place nationwide, but it was challenged by a number of militant opposition groups mainly based in and supported by Ethiopia. These opposition groups were either grounded in ethnic group affiliations or had an Islamic background. Both ethnic minorities and the Islam-based movement resisted suppression by the PFDJ government, which is perceived as dominated by the Tigrinya. The legitimacy of the nation-state was not questioned by the population, as it is commonly seen as the legacy of a liberation struggle that took a heavy toll on all segments of society. However, the ruling PFDJ’s attempt to equate itself with the state and the people of Eritrea further lost acceptance within the population. There was also a growing tendency to question the perceived unity and equality of all nine ethnic groups and the religious groups (“one people, one heart”)”<sup>43</sup>.

**3.13.6** Amnesty International in ‘Eritrea - 20 years of Independence, but still no freedom’, report that “The Eritrean government, and particularly President Isaias Afewerki, does not tolerate any dissent, even from senior members of the government and the ruling party. Hundreds of people are being held in arbitrary detention in Eritrea, arrested because they criticised the President or government policies”<sup>44</sup>.

**3.13.7** The same report noted “According to available information, none of the actual or suspected political opponents arrested in Eritrea in the last 20 years has ever been

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<sup>41</sup> [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.](#)

<sup>42</sup> [The Bertelsmann Stiftung Transformation Index Eritrea Country Report 2012, published 2013: 1. Political Transformation: 2. Political Participation.](#)

<sup>43</sup> [The Bertelsmann Stiftung Transformation Index Eritrea Country Report 2012, published 2013: 1. Political Transformation: Stateness.](#)

<sup>44</sup> [Amnesty International: ‘Eritrea - 20 years of Independence, but still no freedom’: 9 May 2013: pages 14 Suspected and Actual Political Opponents.](#)

charged with a crime, brought to court, or provided with access to a lawyer. Detainees who the government sees as political opponents have been held indefinitely, incommunicado in secret locations. Their families have not been informed of their whereabouts, nor of the reason for their detention. In many cases these detentions amount to enforced disappearance as the government refuses to acknowledge the detention or to provide information on the whereabouts and fate of the prisoners. Many of the suspected political opponents arrested throughout the first ten years of independence remain in arbitrary detention without charge – if they are still alive”.<sup>45</sup>

**3.13.8** The Report of the United Nations Special Rapporteur on the situation of human rights in Eritrea states “Government officials, zonal administrators, community and religious leaders, businesspeople, journalists and teachers, as well as ordinary citizens expressing critical views or posing questions, have been jailed for explicit or inferred opposition to the Government or its policies. Mere suspicion appears to be enough for somebody to be subjected to interrogation and detention without charge or without being brought before a court of law. The number of Eritreans jailed for their perceived political opposition is difficult to confirm, but may be as high as 10,000. They are often held indefinitely without access to family members or lawyers, and there are no court appearances or public trials” Individuals arrested arbitrarily are subjected to physical and psychological torture, cruel, inhuman or degrading treatment.<sup>46</sup>

**3.13.9** The US State Department reports that “Membership in the PFDJ, the only legal political party, was not mandatory; however, some categories of individuals, particularly those occupying government positions, were pressured to join. The majority of citizens were occasionally convoked to attend political indoctrination meetings irrespective of PFDJ membership. Some Eritreans in the Diaspora claimed that convocations occurred at Eritrean embassies, and the names of those not attending were reported to government officials. Other Diaspora Eritreans whom the regime deemed insufficiently loyal--either through lack of tax payments or other support--asserted that their families in Eritrea were subjected to government harassment”.<sup>47</sup>

**3.13.10** 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.<sup>48</sup>

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

**3.13.11 Conclusion:** Eritrea is a one-party state, in which power rests with the PFDJ and its institutions and individuals can be coerced to join the PFDJ. Dissent and

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<sup>45</sup> [Amnesty International: ‘Eritrea - 20 years of Independence, but still no freedom’: 9 May 2013: pages 14 Suspected and Actual Political Opponents.](#)

<sup>46</sup> [UN Human Rights Council, The Report of the United Nations Special Rapporteur on the situation of human rights in Eritrea, Sheila B. Keetharuth, dated 28 May 2013: paragraph 49: page 10](#)

<sup>47</sup> [US State Department: Country Reports on Human Rights Practices: Eritrea, 19 April 2013: Section 1f: Arbitrary interference with Privacy, Family, Home or Correspondence.](#)

<sup>48</sup> [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.](#)

opposition to the Eritrean regime is not tolerated in any form. Suspected Government critics, including citizens expressing critical views or posing questions have 'disappeared' or held incommunicado in detention where severe punishments, torture, starvation and other ill-treatment are commonplace. Consequently any individual with a known or perceived profile of opposition to the Eritrean authorities is at risk of treatment amounting to persecution. Each case should be determined on its individual merits and unless there are specific grounds not to, for example because the exclusion clauses apply, a grant of asylum on the grounds of political opinion will be appropriate.

**3.13.12** The Supreme Court held in RT (Zimbabwe) that the rationale of the 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.

**3.13.13** 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 who are not supporters of the regime, either because they are opponents or they have no political opinion and unless they are excluded, such claimants will qualify to be recognised as refugees.

### **3.14 Journalists and Human Rights Activists**

**3.14.1** Some applicants may claim fear of ill-treatment amounting to persecution at the hands of the Ethiopian authorities due to perceived criticism of the government in their roles as journalists or human rights activists.

#### **Journalists**

**3.14.2 Treatment:** The US State Department in its 2012 Human Rights report for Eritrea states "The law and unimplemented constitution provide for freedom of speech and press; however, the government severely restricted these rights in practice The government controlled all existing media, which included one newspaper, editions of which were published in Tigrinya, English, and Arabic; three radio stations; and a television station. The law requires journalists to be licensed. Those who regularly publish materials must have permits. The law restricts printing and publication of materials. The printing of a publication that does not have a permit and the printing or dissemination of prohibited foreign publications are both punishable. Government approval is required for distribution of publications from religious or international organizations".<sup>49</sup>

**3.14.3** "The government monitored some Internet communications, including e-mail, without obtaining warrants. Government informants frequented Internet cafes during periods of unrest in nearby countries or when international media reported news about the country. In previous years some Internet cafes closed on short notice, and their owners were said to have been detained on grounds of circulating pornography, although many believed that the cafes had facilitated access to opposition Web sites of the Diaspora. The government became more sophisticated in disseminating information via the Internet, and a number of pro-government sites

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<sup>49</sup> [US State Department: Country Reports on Human Rights Practices: Eritrea, 19 April 2013: Section 2 Respect for Civil Liberties](#)

competed with opposition sites”.<sup>50</sup>

- 3.14.4** “Most independent journalists remained in detention or abroad, which effectively limited any domestic media criticism of the government. Journalists practiced self-censorship due to fear of government reprisal”.<sup>51</sup>
- 3.14.5** Amnesty International report that “At least 28 journalists are believed to be currently detained in Eritrea. This is one of the largest numbers of journalists detained in any country, and as a proportion of the population Eritrea has significantly more journalists in detention than any other country in the world. On 19 September 2001 the government withdrew the licenses of all of the country’s eight independent newspapers and arrested ten leading journalists. Other journalists had been warned of the crackdown and had managed to escape the country. Since that time there has been no independent media in the country. However, journalists employed by state radio and television media have continued to be arrested for any suspicion of criticism, and arbitrarily detained without charge. Many of these journalists arrested since 2001 are also held indefinitely, incommunicado without any contact with the outside world in secret detention. There have been unconfirmed reports that at least seven journalists have died in detention. The government has neither confirmed nor denied these reports”.<sup>52</sup>
- 3.14.6** “In February and March 2011, four journalists working for the government-controlled radio Dimtsi Hafash were arrested. Nebiel Edris worked for the Arabic-language service; Ahmed Usman worked for the Tigray-language service, Mohamed Osman for the Bilen-language service, and Eyob Kessete for the Amharic-language service. No reason was given for their arrests. The four are believed to remain in arbitrary detention at time of writing. They have not been charged with a crime or brought before a court, or provided with access to a lawyer or their families. They are held incommunicado in an unknown location”.<sup>53</sup>
- 3.14.7** According to the UN Special Rapporteur on the situation of human rights in Eritrea, “since 2001, propaganda channels run by the Ministry of Information have been the only domestic source of news. The content and flow of information are closely controlled by government sources. According to a former Eritrean media employee, independent sources of information are forbidden and alternative voices silenced or threatened.”<sup>54</sup>
- 3.14.8** The widely reported coup attempt that was staged on 21 January 2013 illustrates how access to information is tightly controlled. Accurate information on the event is still not available and the fate of those involved is unknown, apart from unconfirmed reports of extrajudicial killings and disappearances. Internet access is limited, with a penetration below four percent, primarily through cyber cafés in Asmara and other main towns. Users are closely monitored, and some were reportedly arrested in early 2011. Telephone services and the Internet are unavailable in rural areas. To obtain a mobile telephone number, an application must be forwarded to a government-appointed committee, which vets the applicant before a decision is

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<sup>50</sup> [US State Department: Country Reports on Human Rights Practices: Eritrea, 19 April 2013: Section 2 Respect for Civil Liberties: Internet Freedom](#)

<sup>51</sup> [US State Department: Country Reports on Human Rights Practices: Eritrea, 19 April 2013: Section 2 Respect for Civil Liberties: Internet Freedom](#)

<sup>52</sup> [Amnesty International: ‘Eritrea - 20 years of Independence, but still no freedom’: 9 May 2013: pages 19-20 Journalists.](#)

<sup>53</sup> [Amnesty International: ‘Eritrea - 20 years of Independence, but still no freedom’: 9 May 2013: pages 19-20 Journalists.](#)

<sup>54</sup> [UN Human Rights Council, The Report of the United Nations Special Rapporteur on the situation of human rights in Eritrea, Sheila B. Keetharuth, dated 28 May 2013: paragraphs 59 and 60](#)

reached. Young people are denied their own mobile telephone numbers”.<sup>55</sup>

**3.14.9** Freedom House in its Freedom in the World: Eritrea report notes “The law does not allow independent media to operate in Eritrea, and the government controls all broadcasting outlets. A group of journalists arrested in 2001 remained imprisoned without charge, and the government refuses to provide any information on their status. Reporters Without Borders said in August [2012] that it had received confirmation of the deaths of three of the journalists detained in 2001 as well as a fourth, held since 2009. Eleven members of the Asmara-based broadcaster Radio Bana, who were detained in 2009 on suspicion of collaborating with exiled opposition groups, remained in custody without charge”.<sup>56</sup>

**3.14.10** The Committee to Protect Journalists (CPJ) “Attacks on the Press 2012” report state that: “CPJ identified Eritrea as the most censored country in the world in 2012. State media operate under the rigid control of Information Minister Ali Abdu, who uses intimidation and imprisonment to enforce a government-approved message. The Red Sea nation is the continent’s leading jailer of journalists; detainees are held without charge and in secret locations. Eritrea has the fifth highest number of exiled journalists in the world”.<sup>57</sup>

### **Human Rights Activists**

**3.14.11** “No active human rights NGOs or groups operate in Eritrea. The government of Eritrea does not permit human rights groups to visit the country. Civil society is tightly controlled, with no effective fully independent civil society groups”.<sup>58</sup>

**3.14.12** Freedom House reports that “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. The six remaining international NGOs that had been working in Eritrea were forced to leave in 2011. The government placed strict controls on UN operations in the country, preventing staff from leaving the capital”.<sup>59</sup>

**3.14.13** The Bertelsmann Stiftung Transformation Index Eritrea Country Report 2012, states that: “Civil society in the modern sense is absent in Eritrea, as its development has been suppressed since independence. The National Union of Women, the National Union of Youth and Students, and the Confederation of Eritrean Workers remained under the control of the government and did not play any significant role in channelling the interests of the groups they represent. Traditional civil society, represented by religious and local elders, was excluded from the political decision-making process and was not consulted by governmental authorities on local issues. Private charities and religious civil society groups were not allowed. Within the context of its policy deliberations, the government and PFDJ view themselves as the only representatives of the society”.<sup>60</sup>

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<sup>55</sup> [UN Human Rights Council, The Report of the United Nations Special Rapporteur on the situation of human rights in Eritrea, Sheila B. Keetharuth, dated 28 May 2013: paragraphs 59 and 60](#)

<sup>56</sup> [Freedom House: Freedom in the World: Eritrea: 16 March 2013: Political Rights & Civil Liberties.](#)

<sup>57</sup> [The Committee to Protect Journalists \(CPJ\) ‘Attacks on the Press 2012’ report: accessed 26 November 2013](#)

<sup>58</sup> [UK Foreign & Commonwealth Office \(FCO\) : 2012 Human Rights & Democracy report: April 2013; Countries of Concern: Eritrea: page 168: Human Rights Defenders.](#)

<sup>59</sup> [Freedom House: Freedom in the World: Eritrea: 16 March 2013: Political Rights & Civil Liberties.](#)

<sup>60</sup> [The Bertelsmann Stiftung Transformation Index Eritrea Country Report 2012, published 2013: 16 Consensus Building: Civil Society participation.](#)

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

**3.14.14 Conclusion:** Journalists, including bloggers and internet users and human rights defenders who are perceived to be in opposition to the Eritrean government are at risk of persecution by the state.

**3.14.15** A grant of asylum on the grounds of perceived or actual political opinion would be appropriate to applicants in this category unless excluded. Internal relocation is not a viable option.

### **3.15 Persons of mixed Ethiopian / Eritrean Origin**

**3.15.1** 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.

**3.15.2 Treatment of Eritreans of Ethiopian origin in Eritrea.** The Human Rights Watch (HRW) report, 'The Horn of Africa War: Mass Expulsions and the Nationality Issue', notes that: "The Ethiopian government is known to have forcibly expelled an estimated 75,000 people of Eritrean origin during the war [1998 – 2000]. 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".<sup>61</sup>

**3.15.3** "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".<sup>62</sup>

**3.15.4 Treatment of Ethiopians of Eritrean origin in Eritrea:** UNHCR in its Eligibility Guidelines for Eritrea, published 2011, state "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

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<sup>61</sup> [Human Rights Watch, The Horn of Africa , 30/01/2003, I. Summary; Deportations.](#)

<sup>62</sup> [Human Rights Watch, The Horn of Africa , 30/01/2003, IV. Expulsions by Ethiopia](#)



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”.<sup>63</sup>

**3.15.5** “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”.<sup>64</sup>

**3.15.6** The HRW report notes “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 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”.<sup>65</sup>

**3.15.7** The U.S. Department of State reports that there did not appear to be discrimination based on nationality in terms of employment or entitlements with the exception of resident Ethiopians, some of whom the government viewed as potential security risks. Individuals of Ethiopian origin living in the country sometimes claimed that they received social entitlements commensurate with their perceived degree of loyalty to the government.<sup>66</sup>

**3.15.8 Relations with Ethiopia:** “Tensions with Ethiopia escalated once more in 2011 when the United Nations accused Eritrean officials of masterminding a failed plot to bomb the African Union (AU) headquarters in Addis Ababa. In March 2012, Ethiopian troops carried out a series of military incursions into Eritrea, the first since the end of the war. The death of Ethiopian Prime Minister Meles Zenawi raised hopes of a rapprochement between the two countries, although there was no immediate improvement in relations”.<sup>67</sup>

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

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<sup>63</sup> [UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Eritrea, 20 April 2011, II. Background Information](#)

<sup>64</sup> [UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Eritrea, 20 April 2011 Footnote 38](#)

<sup>65</sup> [Human Rights Watch, The Horn of Africa, 30/01/2003, V. Expulsions by Eritrea](#)

<sup>66</sup> [US State Department: Country Reports on Human Rights Practices: Eritrea, 19 April 2013: Section 2d: Protection of Refugees](#)

<sup>67</sup> [Freedom in the World 2013: Eritrea: 16 March 2013](#)

**3.15.9 Conclusion:** Whilst tensions remain between Eritrea and Ethiopia, there is no recent evidence to indicate that mixed or Ethiopian ethnicity is a real risk within Eritrea warranting a grant of international protection. Each case should however be considered on its individual merits against up to date country information. Caseworkers should note that the criteria for citizenship and nationality in Eritrea is set out in full in the [COI Eritrea Country Report: section 26: Citizenship and Nationality](#).

**3.15.10** There is a risk of statelessness for persons of Ethiopian or mixed Ethiopian/Eritrean origin. In 2013, the UK introduced a procedure for stateless persons.<sup>68</sup> Caseworkers designated to assess applications for leave to remain as a stateless person must determine whether or not an applicant meets the definition of a stateless person and other criteria under Part 14 of the Immigration Rules and in accordance with the Statelessness Guidance. Where the relevant criteria are met, stateless persons are entitled to limited leave to remain for a period not exceeding 30 months and, subsequently, indefinite leave to remain. The assessment of an applicant's case must also include consideration of any wider claim from them relating to deprivation of citizenship in Eritrea on account of Ethiopian descent and caseworkers should refer to the relevant caselaw section 2.4 in this document. Further guidance should be obtained as necessary from Senior Caseworkers.

### **3.16 Claimed Illegal Exit from Eritrea**

**3.16.1** 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. See also section 6: Returns.

**3.16.2 Treatment.** The British Embassy in Asmara, in a letter dated 1 April 2010, provided the following information, obtained from Eritrean sources, "Individuals working in a government ministry or agency 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 will then instruct the Department of Immigration (which has offices in regional capitals) to issue a passport. For some time now, it has been very difficult to obtain first-issue passports. In practice, those individuals who are exempt from military/national service, such as people who are ill or old, as well as government officials who need to travel abroad on official business, will find it easier to obtain passports. Even in these cases, however, there is no guarantee that a passport application will be accepted. Passports, which are due to go biometric at some point, are printed in English, Tigrinya and Arabic".<sup>69</sup>

**3.16.3** "Passports cannot be obtained by conscripts and so-called demobilized National Service members. Passports and ID cards can be obtained upon request at Eritrean embassies and consulates abroad".<sup>70</sup>

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<sup>68</sup> UK Visas and Immigration – Apply to stay in the UK as a stateless person –

<https://www.gov.uk/stay-in-uk-stateless>

<sup>69</sup> [Home Office Eritrea Country of Origin Information Report 18 September 2013: paragraph 28.01](#)

<sup>70</sup> [National Service and State Structures in Eritrea' \(agreed minutes of presentation by Dr David Bozzini\), 16 February 2012, Women in National Service, 3.2 Police Control, page 6](#)

- 3.16.4** “The government required citizens and some foreign nationals to obtain exit visas to depart the country. Categories of persons most commonly denied exit visas included men under the age of 54, regardless of whether they had completed the military portion of national service, and women younger than 47. Some relaxation of exit visa requirements appeared to take place during the year [2012], including for medical purposes allowing an unknown number of persons below the age cut-offs to leave the country. To prevent emigration, the government generally did not grant exit visas to entire families or both parents of children simultaneously”.<sup>71</sup>
- 3.16.5** The British Embassy in Asmara, in a letter dated 1 April 2010, noted that “Exit visas are issued by the Department of Immigration which has regional offices. All these regional offices have the authority to issue exit visas. Applicants must apply in person only...in practice, the majority of Eritreans wishing to travel abroad are not issued with exit visas and therefore cannot leave the country legally. Government officials and ministers can certainly obtain exit visas provided they have been given authorisation to travel abroad on official business. People who need medical treatment abroad can also obtain exit visas. Businessmen will almost always have to satisfy the age limit. In other words, they would have to be over the age of 57 before they would be allowed to apply for an exit visa. Women are not given preferential treatment or dispensation. Religious ministers or clerics can obtain exit visas if they need to travel abroad to attend meetings or events in connection with their religious faith, but they would have to belong to one of the officially recognised religions, such as the Roman Catholic Church...multi-exit visas are not issued. Exit visas are valid for one month and for one journey only”.<sup>72</sup>
- 3.16.6** The British Embassy in Asmara, in a letter dated 1 April 2010, noted that “People wishing to travel overseas for medical treatment are required to have a medical certificate provided by a government medical panel. The medical panel is made up of doctors who have the authority to carry out a medical examination on the person concerned. Medical certificates are only issued after a medical examination has been carried out. Depending on the age of the person concerned and severity of the condition, the normal requirement for military/national service exemption papers may be waived. We do not believe that letters from foreign doctors are also required as it is local medical opinion that carries weight in these matters”.<sup>73</sup>
- 3.16.7** The Amnesty International report, “Eritrea - 20 years of Independence, but still no freedom” states “According to testimonies of people who have fled the country, as well as other information received by Amnesty International, it is frequent for family members of people who have successfully fled to be arrested and detained, apparently as punishment for the acts of their relative. This is particularly the case where people who have fled are of national service age but has also reportedly occurred in the cases of high-profile members of the government who have fled”.<sup>74</sup>
- 3.16.8** The UN Special Rapporteur on the situation of human rights in Eritrea reports that “exit visas are required to travel abroad, and they are not granted to men between 18 to 54 years of age and women between 18 and 47. Reports have been received about children as young as 5 years of age being denied applications for exit visas”.<sup>75</sup>

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<sup>71</sup> [US State Department: Country Reports on Human Rights Practices: Eritrea, 19 April 2013: section 2d: Respect for Civil Liberties: Freedom of Movement.](#)

<sup>72</sup> [Home Office Eritrea Country of Origin Information Report 18 September 2013: paragraph 28.06](#)

<sup>73</sup> [Home Office Eritrea Country of Origin Information Report 18 September 2013: paragraph 28.08](#)

<sup>74</sup> [Amnesty International: 'Eritrea - 20 years of Independence, but still no freedom', 9 May 2013: page 32: Punishment of family members--](#)

<sup>75</sup> [UN Human Rights Council, Report of the United Nations Special Rapporteur on the situation of human rights in](#)

- 3.16.9** The UNHCR Guidelines report that individuals of draft age, who left Eritrea illegally, may be perceived as draft evader upon return, irrespective of whether they have completed active national service or have been demobilized.<sup>76</sup> It also notes that Proclamation No. 24/1992 issued to regulate the issuing of travel documents, entry and exit visa from Eritrea, and to control residence permits of foreigners in Eritrea, 1992 strictly prohibits departure from Eritrea without an exit visa (Article 12). Violation of the exit provisions can lead to sentencing upon conviction of up to five years imprisonment or a fine of up to 10,000 Bir (now ca. 15.000 Nakfa) or to both imprisonment and a fine (Article 29.2).<sup>77</sup>
- 3.16.10** UNHCR estimates that approximately 3,000 individuals enter Sudan from Eritrea every month. Amnesty International reports that while a policy to shoot to kill anyone sighted crossing the border reportedly remains in place, it seems that this policy is not consistently implemented”.<sup>78</sup>
- 3.16.11** “Testimonies collected by Amnesty International indicate that many people are caught in the act of trying to flee, and suggest that when they are caught, most, if not all, are subjected to arbitrary arrest and detention without charge. The periods of detention reported by people arrested on this basis vary, but many former detainees reported a period of between one and two years’ detention. In addition to the arbitrary nature of the detention itself, its duration appears to be decided by senior commanders and prison authorities”.<sup>79</sup>
- 3.16.12** “Some former detainees have told Amnesty International that they were also detained alongside others held in connection with unauthorised exit from the country, including people arrested for forging documentation to assist people to leave and people smugglers who arrange passage out of the country for a fee. Former detainees have also said that they were detained along with people who had been caught moving around the country without the requisite travel permit. Some people caught trying to flee were reportedly subjected to torture as a punishment and for the purposes of interrogation. Former detainees told Amnesty International they were interrogated about who assisted them to leave the country, how much they paid, and other related questions”.<sup>80</sup>
- See also:**    [Actors of protection](#) (section 2.3 above)  
                  [Internal relocation](#) (section 2.4 above)  
                  [Caselaw](#) (section 2.5 above)
- 3.16.13 Conclusion:** Eritrea is governed by a harsh regime and those of its nationals who are forcibly returned having left illegally will be subjected to arrest without charge, detention, torture and other forms of ill-treatment at the hands of the authorities.

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[Eritrea, Sheila B. Keetharuth, dated 28 May 2013: paragraph 67](#)

<sup>76</sup> [UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Eritrea, 20 April 2011, A: Potential Risk Categories: 1 Military/National Service.](#)

<sup>77</sup> [UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Eritrea, 20 April 2011, A: Potential Risk Categories: 1 Military/National Service, footnote 113](#)

<sup>78</sup> [Amnesty International: ‘Eritrea - 20 years of Independence, but still no freedom’, 9 May 2013: page 27, People fleeing the country](#)

<sup>79</sup> [Amnesty International: ‘Eritrea - 20 years of Independence, but still no freedom’, 9 May 2013: page 27, People fleeing the country](#)

<sup>80</sup> [Amnesty International: ‘Eritrea - 20 years of Independence, but still no freedom’, 9 May 2013: page 27, People fleeing the country](#)

- 3.16.14** 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)**.
- 3.16.15** The case of MO 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.
- 3.16.16** The Eritrean Government will allow Muslims to take part in the Hajj and to travel abroad for religious study. Religious leaders from one of the officially recognised religions can travel abroad in connection with their faith. See paragraphs 3.11.7 and 3.16.5.
- 3.16.17** The Tribunal in MO 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.
- 3.16.18** Subject to an individual's facts, in general applicants who can demonstrate a reasonable likelihood of having left Eritrea illegally will qualify for protection, unless subject to exclusion.

### **3.17 Women**

- 3.17.1** Some women applicants may make an asylum and/or human rights claim based on ill-treatment amounting to persecution on the grounds of gender-based persecution (where the type of harm is related to their gender).
- 3.17.2 Treatment.** Eritrea acceded to the UN Convention to Eliminate on all forms of Discrimination against Women on 5 September 1995. (UN Treaties Databases, 17 August 2012).<sup>81</sup>
- 3.17.3** "A national report submitted by the Eritrean government in 2009 to the United Nations Human Rights Council for the purposes of a United Nations Universal Periodic Review [A/HRC/WG.6/6/ERI/1], carried out in 2009, notes that "The Constitution of Eritrea and other pertinent laws guarantee equality of all persons under the law. It has always been a basic State policy of Eritrea to promote equality between men and women. Eritrea has put in place a variety of legal regimes for protecting the rights and interests of women. This regime has been reflected, inter alia, in the Transitional Civil Code of Eritrea, such as family law, the Land Proclamation No. 58/1994, Election of Regional Assemblies Proclamation No. 140/2004, and a Proclamation to Abolish Female Circumcision No. 158/2007".<sup>82</sup>

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<sup>81</sup> [UK Home Office Country of Origin Information \(COI\) Service: COI report: Eritrea: 18 September 2013: Women: Legal Rights: paragraph 21.01](#)

<sup>82</sup> [UK Home Office Country of Origin Information \(COI\) Service: COI report: Eritrea: 18 September 2013: Women: Legal](#)

- 3.17.4** Commenting on Women's rights, the UK Foreign & Commonwealth Office report "Human Rights & Democracy, 2012" states "The position of women is comparatively well protected by the constitution, but implementation of women's rights is hampered by cultural attitudes and lack of capacity. Female genital mutilation is illegal but widespread. Allegations of sexual abuse of women during national service are common. The Eritrean government has implemented programmes to support the mainly female heads of households in rural communities, improving their access to water and sanitation and livelihoods".<sup>83</sup>
- 3.17.5** "Women have a legal right to equal educational opportunities, equal pay for equal work, and equal property rights. The percentage of men receiving access to education, economic resources, and employment exceeded that of women, particularly in rural areas. The Ministry of Labour and Human Welfare and the Ministry of Health are the primary government offices responsible for promoting legal rights of women along with the quasigovernmental National Union of Eritrean Women (NUEW)".<sup>84</sup>
- 3.17.6** On its web site NUEW states it "was established in 1979 as one of the mass organizations of the Eritrean People's Liberation Front. In its current form, the NUEW is an autonomous non-governmental organization dedicated to improving the status of Eritrean women. During Eritrea's liberation struggle, NUEW succeeded in organizing and encouraging women's participation in the war effort. Since independence in 1991, NUEW has continued to enhance the role of women by raising their political consciousness through literacy campaigns, credit programs, English language lessons, and other skills training. NUEW is administered by a headquarters office located in Asmara, as well as by regional offices located in all six zones. Membership numbers over 200,000 women".<sup>85</sup>
- 3.17.7** "The NUEW played a major role during the drafting of the Eritrean Constitution by organizing workshops and sensitizing women on the crucial issues that concern women. NUEW has played and continues to play a key role in advocating for, monitoring, and evaluating the formulation/planning and implementation of government policies and programs from a gender perspective. In the national and regional assemblies 30% of seats are reserved for women. Women compete against each other for the votes of both men and women. Women also run against men for the remaining 70% of seat".<sup>86</sup>
- 3.17.8** As regards participation in political activity, the US State Department report in their "2012 Country Report on Human Rights Practices: Eritrea" that "Women held four ministerial positions in the government: justice, labour and human welfare, tourism, and health. Women also served in other government positions, including as mayors and regional administrators".<sup>87</sup>

#### Violence against women

- 3.17.9** The UNHCR Eligibility Guidelines report that human rights abuses against women and children in Eritrea are reportedly widespread and stem mainly from harmful

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[Rights: paragraph 21.01](#)

<sup>83</sup> [UK Foreign & Commonwealth Office \(FCO\) : 2012 Human Rights & Democracy report: April 2013; Countries of Concern: Eritrea, Women's Rights, Page 167.](#)

<sup>84</sup> [US State Department: Country Reports on Human Rights Practices: Eritrea, 19 April 2013: section 6 Discrimination, Societal Abuses and Trafficking in Persons: Women.](#)

<sup>85</sup> [The National Union of Eritrean Women web site: About NUEW, accessed 18 November 2013.](#)

<sup>86</sup> [The National Union of Eritrean Women web site: Eritrean Women in Government, accessed 18 November 2013.](#)

<sup>87</sup> [US State Department: Country Reports on Human Rights Practices: Eritrea, 19 April 2013: section 3 Respect for Political Rights: The rights of citizens to change their government t: elections and political participation.](#)

traditional practices, traditional power structures and societal discrimination. Failure to conform to conventional roles and the legal restrictions concerning women's sexual and reproductive rights may expose women and girls to violence, harassment or discrimination in Eritrea.<sup>88</sup>

- 3.17.10** Abortion is illegal in Eritrea and, in the past, it has been reported that pregnancy out-of-wedlock was strongly condemned by the community and could lead to physical and psychological violence and, in some instances, death. Violence against women and children, including domestic violence and rape, is reportedly widespread in Eritrea, despite criminalization of some of these practices.<sup>89</sup>
- 3.17.11** "Violence against women occurred particularly in rural areas. Domestic violence is a crime; however, domestic violence cases rarely were brought to trial, and there were no legal penalties. Women sometimes refrained from openly discussing domestic violence because of societal pressures. Such incidents were more commonly addressed by traditional authorities, within families, or by clergy". A lack of trained personnel, inadequate funding, and unsupportive societal attitudes hindered the authorities' response to domestic violence.<sup>90</sup>
- 3.17.12** "Rape is a crime punishable by up to 10 years of imprisonment. Gang rape or rape of a minor or an invalid is punishable by up to 15 years in prison. Sexual assault is punishable by six months to eight years in prison. Spousal rape is not outlawed specifically. No information was available on the prevalence of rape. Religious authorities or families sometimes responded to reports of rape by encouraging the perpetrator to marry the victim".<sup>91</sup>
- 3.17.13** "Although rape is a criminal offence in Eritrea, there is a provision in the Penal Code that if the perpetrator of rape decides to marry the victim with the consent of the latter the prosecution is closed".<sup>92</sup> The UN Special Rapporteur on the situation of Human Rights in Eritrea reports that allegations of rape and sexual harassment, particularly in military and educational training camps (see paragraphs 3.17.18 - 19) or during interrogation, are frequent.<sup>93</sup>

#### Female Genital Mutilation (FGM)

- 3.17.14** "The law prohibits FGM. According to reliable sources, the practice of FGM/C has been largely eliminated in urban areas through government educational campaigns, but FGM continued among some of the rural population. In lowland areas, infibulations--the most severe form of FGM --was practiced. The government and other organizations, including the NUEW and the National Union of Eritrean Youth and Students, continued to sponsor a variety of education programs that discouraged the practice".<sup>94</sup>

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<sup>88</sup> [UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Eritrea, 20 April 2011, A: Potential Risk Categories: 6. Women and Children with Specific Profiles](#)

<sup>89</sup> [UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Eritrea, 20 April 2011, A: Potential Risk Categories: 6. Women and Children with Specific Profiles](#)

<sup>90</sup> [US State Department: Country Reports on Human Rights Practices: Eritrea, 19 April 2013: section 6 Discrimination, Societal Abuses and Trafficking in Persons: Women.](#)

<sup>91</sup> [US State Department: Country Reports on Human Rights Practices: Eritrea, 19 April 2013: section 6 Discrimination, Societal Abuses and Trafficking in Persons: Women.](#)

<sup>92</sup> [Africa Development Bank: Eritrea Gender profile: 3 March 2009: Gender based violence: paragraph 5.4.2](#)

<sup>93</sup> [UN Human Rights Council, Report of the Special Rapporteur on the situation on Human Rights in Eritrea: 28 May 2013, paragraphs 70-71](#)

<sup>94</sup> [US State Department: Country Reports on Human Rights Practices: Eritrea, 19 April 2013: section 6 Discrimination, Societal Abuses and Trafficking in Persons: Children: Harmful Traditional Practices.](#)

**3.17.15** The Report of the United Nations Special Rapporteur on the situation of human rights in Eritrea notes “The promulgation of proclamation No. 158/2007 to ban female genital mutilation/cutting and subsequent advocacy against the practice has resulted in the decrease in the practice, especially in girls under 15 (from 95 per cent in 1995 to 83 per cent in 2010), but remains high. The prevalence among girls under the age of 15 and 5 stands at 33 per cent and 12.9 per cent, respectively...the number of prosecutions for female genital mutilation since the proclamation was made in 2007 remains, however, unknown”.<sup>95</sup> The UN Population Fund reports that girls who are the least educated, poorest and living in rural areas, are at the greatest risk of FGM/C.<sup>96</sup>

**3.17.16** UNHCR comments in its Eligibility Guidelines of 2011 that “Despite the ban, FGM is still prevalent amongst almost all ethnic and religious groups in rural areas. 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 internal flight / internal relocation (IFA/IRA) alternatives would be available for individuals who fear harm as a result of such practices”.<sup>97</sup>

**3.17.17** The UNHCR guidelines continue on internal flight “Whether an IFA/IRA is “reasonable” must be determined on a case-by-case basis, taking fully into account the human rights and humanitarian environment in the prospective area of relocation at the time of the decision”. Important factors to consider are “the availability of traditional support mechanisms, such as family and friends, in the area of prospective relocation; the ability of displaced individuals to sustain themselves, including livelihood opportunities; and restrictions on freedom of movement within the country, particularly along the borders with Sudan and Ethiopia. Relocation to other tribal or ethnic areas may not be possible due to latent or overt conflicts between such groups, lack of acceptance, and other societal and cultural barriers. Employment opportunities in urban centres, including Asmara, remain limited”.<sup>98</sup>

#### Military Service

**3.17.18** The United Nations High Commissioner for Refugees (UNHCR) ‘Eligibility Guidelines for Assessing the International Protection Needs of Asylum-seekers from Eritrea’ states that: “Sexual violence against female conscripts within the military is being reported by human rights monitors. Some female conscripts are reportedly subject to sexual harassment and violence, including rape, by their supervisors. It is reported that female conscripts are coerced into having sex with commanders, including through threats of heavy military duties, harsh postings, and denial of home leave. Refusal to submit to sexual exploitation and abuse is allegedly punished by detention, torture and ill-treatment, including exposure to extreme heat and limitation of food rations”.<sup>99</sup>

**3.17.19** “No effective mechanism for redress and protection exists within or outside the military, and perpetrators generally go unpunished. Women, who become pregnant as a result, are decommissioned and likely to experience social ostracism from their

<sup>95</sup> UN Human Rights Council, [UN Special Rapporteur on the situation on Human Rights in Eritrea: 28 May 2013: page 14. Gender equality issues and women’s rights.](#)

<sup>96</sup> [UN Population Fund \(UNFPA\), Female Genital Mutilation/Cutting Country Profile: Eritrea, 22 October 2013](#)

<sup>97</sup> [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.](#)

<sup>98</sup> [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.](#)

<sup>99</sup> [The United Nations High Commissioner for Refugees \(UNHCR\) ‘Eligibility Guidelines for Assessing the International Protection Needs of Asylum-seekers from Eritrea’, published 20 April 2011, page 18 Sexual & Gender based violence.](#)



families and communities as unmarried mothers”<sup>100</sup> The US State Department in 2013 Human Rights report noted “Unlike in previous years, there were no reports of rapes of women attending mandatory military and educational training at the Sawa camp”<sup>101</sup>.

- 3.17.20** The minutes of a presentation by Dr David Bozzini, given to the Swiss Federal Office for Migration on 16 February 2012, entitled ‘National Service and State Structures in Eritrea’, note that: ‘Women who left school and avoided the National Service are often in a clandestine situation. There are two main strategies for these objectors: Either they stay at home and work as housekeepers in their own families, or they search employment in commerce (shops, bars, cafes). There is a certain degree of tolerance towards female objectors; they’re usually left in peace by the police’.<sup>102</sup>
- 3.17.21** “After the age of 27 years, women in clandestine situations can regularize their status, i.e. they’re demobilized without ever having joined the National Service. This possibility was introduced around 2005. Women are able to travel more freely than men in Eritrea. They can often set up small businesses or even be active in the black market trade of items coming from Sudan to the western lowlands. However, it happens sometimes that they’re recruited after a round-up. In some cases, people claimed that certain round ups were targeting young women. They believe that this happens when leaders of military units require new domestic workers”.<sup>103</sup> Note that other sources indicate that the upper age limit for women for military service is 50 (see paragraph 3.12.3).
- 3.17.22** In the same presentation, Dr David Bozzini argues that another way to avoid conscription is marriage or pregnancy. Many marriages are arranged for this goal. Especially in Sawa, women often get pregnant in order to be demobilized. In both cases, such demobilizations are fragile: Women aren’t promptly issued a demobilization paper, which makes them vulnerable during police controls. Mothers usually aren’t re-mobilized, but given the general arbitrariness in Eritrea, such cases can’t be categorically excluded. Some women with children were in the National Service. But there’s certainly no systematic practice to remobilize mothers.<sup>104</sup>
- 3.17.23** The UNHCR Guidelines report that although the Proclamation on National Service makes no reference to gender-based exemptions, some official Eritrean Government sources indicate that women in the military who marry are discharged. Other categories reportedly exempt from national service include Muslim women, nursing mothers, married women and women with children. Instances of round-ups for the purpose of conscription of women, including Muslim women and mothers, have nevertheless been recorded.<sup>105</sup> Amnesty International also notes that “Women with children are reportedly exempt from military service, but are required to undertake various duties in the civil sector within the framework of national service. However, this policy is unwritten, and, as with all aspects of written and

<sup>100</sup> [The United Nations High Commissioner for Refugees \(UNHCR\) ‘Eligibility Guidelines for Assessing the International Protection Needs of Asylum-seekers from Eritrea’, published 20 April 2011, page 18 Sexual & Gender based violence.](#)

<sup>101</sup> [US State Department: Country Reports on Human Rights Practices: Eritrea, 19 April 2013: section 6 Discrimination, Societal Abuses and Trafficking in Persons: Women.](#)

<sup>102</sup> [National Service and State Structures in Eritrea’ \(agreed minutes of presentation by Dr David Bozzini\), 16 February 2012, Women in National Service, pages 8-9](#)

<sup>103</sup> [National Service and State Structures in Eritrea’ \(agreed minutes of presentation by Dr David Bozzini\), 16 February 2012, Women in National Service, pages 8-9](#)

<sup>104</sup> [National Service and State Structures in Eritrea’ \(agreed minutes of presentation by Dr David Bozzini\), 16 February 2012, Women in National Service, pages 8-9](#)

<sup>105</sup> [UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Eritrea, 20 April 2011, A: Potential Risk Categories: 1.Military/National Service](#)

unwritten national service policy, appears to be arbitrarily implemented (based on the testimonies of former conscripts and other refugees)".<sup>106</sup>

#### Trafficking

**3.17.24** The Transitional Penal Code of Eritrea criminalises trafficking in women, infants and young persons which is done for whatsoever purposes (Articles 605-6070). The United States State Department 'Trafficking in Persons Report 2013', published on 19 June 2013 notes "Eritrea is a source country for men, women, and children subjected to forced labour, and to a lesser extent, sex and labour trafficking abroad. Over the reporting period, there were numerous reports of Eritrean nationals being brutalized by smugglers operating in the Sinai; victims were chained together, whipped and beaten regularly, deprived of food, raped, and forced to do construction work at gunpoint at smugglers' personal homes. Eritrean military officers sometimes colluded with Sudanese or Ethiopian military officers to exploit Eritrean migrants. Eritrean military officers sometimes operated within Sudan to abduct refugees from camps, particularly those who voiced criticism of the Eritrean government or were prominent political or military figures. The Government of Eritrea does not fully comply with the minimum standards for the elimination of trafficking and is not making significant efforts to do so".<sup>107</sup>

**3.17.25** "Although the government acknowledged the existence of a trafficking problem, including sending a letter seeking assistance of the UN Secretary-General, and warning its citizens of the dangers that traffickers posed, authorities largely lacked understanding of human trafficking, conflating it with all forms of transnational migration from Eritrea. The Government of Eritrea did not report prosecuting or convicting any traffickers during 2012. During 2012, an unknown number of Eritrean citizens alleged to be traffickers were returned from Uganda. The government did not behave in a transparent or consistent manner regarding information about prosecutions or punishments of these or other suspected trafficking offenders during the reporting period. Nor was the government transparent regarding any investigations or prosecutions of government officials allegedly complicit in human trafficking. The government did not have procedures in place to identify trafficking victims among migrants deported or forcibly removed by Eritrean security forces from neighbouring countries; these individuals, some of whom may have been trafficking victims, often faced detention in Eritrea."<sup>108</sup>

**3.17.26** The UNHCR Eligibility Guidelines report that currently no information is available on trafficking-related convictions or the support/assistance.<sup>109</sup> Amnesty International notes that the July 2012 report of the UN Somalia and Eritrea Monitoring Group stated that Eritrean officials, including senior military officials, presided over weapons smuggling and people trafficking through criminal networks in Sudan and the Sinai, Egypt. According to the report, the scale of activity suggested the complicity of the Eritrean government.<sup>110</sup>

**See also:** [Actors of protection](#) (section 2.3 above)  
[Internal relocation](#) (section 2.4 above)

<sup>106</sup> [Amnesty International: Eritrea - 20 years of independence, but still no freedom', 9 May 2013. People evading or deserting National Service conscription.](#)

<sup>107</sup> [The United States State Department 'Trafficking in Persons Report 2013', published on 19 June 2013: Eritrea.](#)

<sup>108</sup> [The United States State Department 'Trafficking in Persons Report 2013', published on 19 June 2013: Eritrea.](#)

<sup>109</sup> [UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Eritrea, 20 April 2011, A: Potential Risk Categories: 9. Victims of Trafficking](#)

<sup>110</sup> [Amnesty International, Amnesty International Report 2013 State of the World's Human Rights: Eritrea, 23 May 2013](#)

### **Caselaw (section 2.5 above)**

- 3.17.27 Conclusion:** Violence against women and children, including domestic violence and rape, is reportedly widespread in Eritrea, despite criminalization of some of these practices. FGM continues to be prevalent amongst almost all ethnic and religious groups in rural areas. Allegations of rape and sexual harassment, particularly in military and educational training camps or during interrogation, are frequent.
- 3.17.28** In general, state protection is statutorily available to women; however societal norms and a lack of trained personnel and inadequate funding hindered the authorities' response to domestic violence. Religious authorities or families sometimes responded to reports of rape by encouraging the perpetrator to marry the victim. The number of prosecutions for female genital mutilation since 2007 ban remains unknown. No effective mechanism for redress and protection exists within or outside the military for conscripts who are subjected to sexual violence. The government did not report prosecuting or convicting any traffickers during 2012 and did not have procedures in place to identify or assist trafficking victims. Each case however should be considered on its individual merits to assess whether effective protection will be provided to an individual.
- 3.17.29** The reasonableness of internal relocation must be assessed taking full account of the individual circumstances of the particular claimant. In considering whether internal relocation is a viable option, particular factors to consider are the area of proposed relocation, whether the individual can access adequate support from family, or from community members, or is able to support herself and / or any dependents in the new location.
- 3.17.30** Where an Eritrean woman is able to show that she faces a real risk of gender based violence amounting to torture or inhuman or degrading treatment is unable, or unwilling through fear, to access protection and where internal relocation is unduly harsh, a grant of protection would be appropriate.
- 3.18 Prison conditions**
- 3.18.1** 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.
- 3.18.2** 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.
- 3.18.3 Consideration.** The Amnesty International report – “Eritrea - 20 years of Independence, but still no freedom” states that “According to information from the testimonies of former detainees, refugees who formerly worked within the government or military administration, Eritrean human rights defenders in exile, and other sources, there is an extensive network of places of detention in Eritrea, run by the military, security service and civilian authorities. These include large prison facilities, smaller high security prisons, prisons within military camps and police

stations in which prisoners are held for prolonged periods. Some are well-known, some are secret, some were built specifically for purpose, and some are make-shift. Amnesty International has received consistent report that many detention centres use underground cells, and many use metal shipping containers to house prisoners". According to testimonies of former detainees and information received from other sources, police stations are reportedly also used to detain people for extended periods.<sup>111</sup>

- 3.18.4** The Home Office COI report on Eritrea provides a list of places of detention in alphabetical order. It is noted "The list should not be regarded as a complete or comprehensive list of all the Eritrean detention facilities".<sup>112</sup>
- 3.18.5** The United States State Department (USSD) "2012 Human Rights Report: Eritrea" provides the following information about prison conditions: "Prison conditions remained harsh and life-threatening. The government did not permit independent monitoring by domestic or international observers. Neither the approximate number of detainees nor the number of detention centres was known. Severe overcrowding was reportedly common".<sup>113</sup>
- 3.18.6** "Data on the prevalence of death in prison and detention facilities were not available, although persons reportedly died from harsh conditions. One person released midyear [2012] after several weeks in detention reported that the detention facility consisted of a shipping container without ventilation or provision for sanitation. The government did not provide adequate basic or emergency medical care in prisons or detention centres"<sup>114</sup>.
- 3.18.7** The Human Rights Watch 2013 World Report states that "Eritreans are routinely subject to imprisonment without explanation, trial, or any form of due process. Incarceration often lasts indefinitely. According to accounts from those who have fled, conditions in Eritrea's detention facilities are abysmal, with minimal food and medical care. Prisoners are held in underground cells and shipping containers, subject to boiling and freezing temperatures. Many prisoners die from the harsh conditions. Torture and other abuses during detention are routine. Punishments include mock drowning, being hung from trees by the arms, being tied up in the sun in contorted positions for hours or days, being doubled up inside a rolling tire, having handcuffs tightened to cut off circulation, as well as frequent beatings".<sup>115</sup>
- 3.18.8** The USSD report also states "There were reportedly numerous unofficial detention centres, some located in military camps. Use of psychological torture was common, according to former inmates. Some former prisoners reported that interrogations and beatings appeared to be conducted in such a way that those not being interrogated or beaten would hear and fear that they might suffer the same punishment".<sup>116</sup>

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<sup>111</sup> [Amnesty International: Eritrea - 20 years of independence, but still no freedom', 9 May 2013. Page 33: Prisons & Detention Centres.](#)

<sup>112</sup> [Home Office Country of Origin Service report on Eritrea, 18 September 2013, paragraph 12.06: List of prisons and detention centres.](#)

<sup>113</sup> [US State Department: Country Reports on Human Rights Practices: Eritrea, 19 April 2013: section 1c: Prison & Detention Centre Conditions.](#)

<sup>114</sup> [US State Department: Country Reports on Human Rights Practices: Eritrea, 19 April 2013: section 1c: Prison & Detention Centre Conditions.](#)

<sup>115</sup> [Human Rights Watch: World Report 2013 Eritrea: P109 – 110, Torture, Death & Prolonged incarceration without trial, 31 January 2013.](#)

<sup>116</sup> [US State Department: Country Reports on Human Rights Practices: Eritrea, 19 April 2013: section 1c: Prison & Detention Centre Conditions.](#)

- 3.18.9** Amnesty International has received consistent reports which indicate that torture and other ill-treatment are widely used as punishments, in interrogation, and for coercion. It has also received multiple reports of deaths in detention as a result of torture and other ill-treatment, harsh conditions in detention including extreme heat in underground cells and shipping containers, or as a result of lack of medical care for treatable diseases, including malaria. Other prisoners have reportedly died as a result of illnesses caused by inadequate food and sanitation and food and drinking water of insufficient amounts and quality.<sup>117</sup> Detainees in a number of prison camps are forced to do hard labour as a punishment.<sup>118</sup>
- 3.18.10** The UN Special Rapporteur on the situation of human rights in Eritrea reports that former detainees described various types of torture and cruel, inhuman or degrading treatment inflicted upon them, which is still being used today. Obtaining information from inside Eritrea poses severe challenges; it was therefore impossible for the Special Rapporteur to know how many secret detention centres, holding cells such as shipping containers or underground bunkers controlled by the military or internal security service exist. These are scattered throughout the country, at times in areas where temperatures soar to almost 48 degrees Celsius. Not all are officially designated prisons, and outsiders are not permitted access. Deaths in prison from torture, overcrowding, disease, inadequate food and other harsh conditions are frequent, though no exact figures were available.<sup>119</sup>
- 3.18.11** “International religious organizations claimed that the authorities interrogated detained individuals about religious affiliation and asked them to identify members of outlawed religious groups. Prisoners and detainees could not submit complaints to judicial authorities, and authorities did not adequately investigate or monitor prison or detention centre conditions. There were no prison ombudsmen to respond to complaints. During the year [2012] the government did not permit international bodies, including the International Committee of the Red Cross (ICRC), to monitor prison conditions, nor was the ICRC given access to Ethiopian or Djiboutian prisoners of war (POWs) allegedly detained in the country”.<sup>120</sup>
- 3.18.12** “Refusal to perform military service, failure to enlist, fraudulent evasion of military service, and desertion were punishable by lengthy imprisonment. Detention centre conditions for persons temporarily held for evading national service were said to be harsh, equivalent to conditions for national security detainees. Authorities placed political prisoners in solitary confinement more often than other detainees”.<sup>121</sup>
- 3.18.13 Conclusion** Conditions in prisons and detentions facilities in Eritrea are harsh and life threatening, with severe overcrowding, poor sanitation, absence of medical facilities, prevalence of disease, lack of food and high incidence of torture and detainee deaths. These are particularly harsh for political prisoners and military service evaders. Consequently conditions are likely to breach the Article 3 threshold and in such cases a grant of humanitarian protection would be appropriate.

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<sup>117</sup> [Amnesty International: Eritrea - 20 years of independence, but still no freedom', 9 May 2013, Page 36: Torture and other ill-treatment and Page 42 Deaths in detention](#)

<sup>118</sup> [Amnesty International: Eritrea - 20 years of independence, but still no freedom', 9 May 2013, Page 33: Prisons & Detention Centres.](#)

<sup>119</sup> [UN Human Rights Council, The Report of the United Nations Special Rapporteur on the situation of human rights in Eritrea, Sheila B. Keetharuth, dated 28 May 2013: paragraphs 55 and 56](#)

<sup>120</sup> [US State Department: Country Reports on Human Rights Practices: Eritrea, 19 April 2013: section 1c: Prison & Detention Centre Conditions.](#)

<sup>121</sup> [US State Department: Country Reports on Human Rights Practices: Eritrea, 19 April 2013: section 1c: Prison & Detention Centre Conditions.](#)

**3.18.14** Where caseworkers believe that an individual is likely to face imprisonment on return to Eritrea, they should also consider whether the applicant's actions merit exclusion by virtue of [Article 1F of the Refugee Convention](#). Where caseworkers consider that this may be the case they should contact a senior caseworker for further guidance.

#### **4. Minors claiming in their own right**

**4.1** Unaccompanied minors claiming in their own right who have not been granted asylum or HP can only be returned where the Secretary of State is satisfied that safe and adequate reception arrangements are in place in the country to which the child is to be returned.

**4.2** At present the Home Office does not have pre-approved arrangements in place with NGOs or other organisations in Eritrea to provide alternative adequate reception arrangements in cases where the minor cannot be returned to their family. Those who cannot be returned should be considered for leave as Unaccompanied Asylum Seeking Children (UASC).

**4.3** Regulation 6 of the Asylum Seekers (Reception Conditions) Regulations 2005 imposes a duty on the Secretary of State to endeavour to trace the families of UASC as soon as possible after the claim for asylum is made, while ensuring that those endeavours do not jeopardise the child's and/or their family's safety.

**4.4** Information on the infrastructure within Eritrea which may potentially be utilised to assist in endeavouring to trace the families of UASC, can be obtained from the Country Policy and Information Team (CPIT).

**4.5** Caseworkers should refer to the asylum instruction: [Processing an Asylum Application from a Child](#), for further information on assessing the availability of safe and adequate reception arrangements, UASC Leave and family tracing. Additional information on family tracing can be obtained from the [interim guidance](#) on Court of Appeal judgment in [KA \(Afghanistan\) & Others \[2012\] EWCA civ1014](#).

#### **5. Medical treatment**

**5.1** Individuals whose asylum claims have been refused and who seek to remain on the grounds that they require medical treatment which is either unavailable or difficult to access in their countries of origin, will not be removed to those countries if this would be inconsistent with our obligations under the ECHR.

**5.2** Caseworkers should give due consideration to the individual factors of each case and refer to the latest available country of origin information concerning the availability of medical treatment in the country concerned. If the information is not readily available, an information request should be submitted to the Country Policy and Information Team (CPIT).

**5.3** The threshold set by Article 3 ECHR is a high one. It is not simply a question of whether the treatment required is unavailable or not easily accessible in the country of origin. According to the House of Lords' judgment in the case of [N \(FC\) v SSHD \[2005\] UKHL31](#), it is "whether the applicant's illness has reached such a critical stage (i.e. he is dying) that it would be inhuman treatment to deprive him of the care which he is currently receiving and send him home to an early death unless there is

care available there to enable him to meet that fate with dignity". That judgment was upheld in May 2008 by the European Court of Human Rights.

- 5.4** That standard continues to be followed in the Upper Tribunal (UT) where, in the case of [GS and EO \(Article 3 – health cases\) India \[2012\] UKUT 00397\(IAC\)](#) the UT held that a dramatic shortening of life expectancy by the withdrawal of medical treatment as a result of removal cannot amount to the highly exceptional case that engages the Article 3 duty. But the UT also accepted that there are recognised departures from the high threshold approach in cases concerning children, discriminatory denial of treatment, and the absence of resources through civil war or similar human agency.
- 5.5** The improvement or stabilisation in an applicant's medical condition resulting from treatment in the UK and the prospect of serious or fatal relapse on expulsion will therefore not in itself render expulsion inhuman treatment contrary to Article 3 ECHR.
- 5.6** All cases must be considered individually, in the light of the conditions in the country of origin, but an applicant will normally need to show exceptional circumstances that prevent return, namely that there are compelling humanitarian considerations, such as the applicant being in the final stages of a terminal illness without prospect of medical care or family support on return.
- 5.7** Where a caseworker considers that the circumstances of the individual applicant and the situation in the country would make 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. Caseworkers must refer to the Asylum Instruction on [Discretionary Leave](#) for the appropriate period of leave to grant.
- 6. Returns and treatment of refused asylum seekers**
- 6.1** 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. When redocumentation is necessary, the UK does not divulge to the country of origin the basis of stay in the UK of the individual.
- 6.2** 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.
- 6.3** Any medical conditions put forward by the person as a reason not to remove them and which have not previously been considered, must be fully investigated against the background of the latest available country of origin information and the specific facts of the case. A decision should then be made as to whether removal remains the correct course of action, in accordance with [chapter 53.8 of the Enforcement Instructions and Guidance](#).
- 6.4** Amnesty International report that "According to testimonies and other information received by Amnesty International, asylum seekers whose applications have been rejected or who have not been granted access to asylum procedures, who have been forcibly-returned to Eritrea by various other countries have been arbitrarily

arrested and detained without charge. As with other forms of arbitrary arrest and detention without charge or trial it is difficult to follow the cases and discover the fate of many forcibly returned asylum-seekers, due to the lack of transparency around these detentions, the failure of the authorities to inform families of the arrests, and because many of these detainees are held incommunicado with no contact with the outside world”.<sup>122</sup>

- 6.5** Amnesty International has received information, from former detainees and Eritrean human rights defenders in exile, as well as other sources, on numerous cases of individuals and groups of returned asylum-seekers who have reportedly been arbitrarily detained and subjected to torture or other ill-treatment, and it is believed that this may apply to a significant majority of forcibly-returned asylum seekers. Periods of detention reported to Amnesty International range from a number of days to a number of years. In addition to the arbitrary nature of the detention itself, its duration appears to be decided by senior commanders and prison authorities”.<sup>123</sup>
- 6.6** The same Amnesty International report states “Testimonies of returned asylum-seekers indicate that the act of claiming asylum is perceived by the authorities as involving a criticism of the government and – as with all other forms of dissent – is therefore not tolerated. Forcibly returned asylum seekers interviewed by Amnesty International were tortured both as a form of punishment for perceived criticism of the government, and for the purposes of interrogation. According to accounts given by escaped detainees, Eritrean security officials were particularly interested in how asylum seekers fled the country, who assisted them, and what they said against the Eritrean government during their asylum application process. Returnees have reported that under torture, or threat of torture, they were forced to state that they have committed treason by falsely claiming persecution in asylum applications”.<sup>124</sup>
- 6.7** The UN Special Rapporteur on the situation of human rights in Eritrea reports “refouled” refugees, and failed asylum seekers are subjected to torture, cruel, inhuman and degrading treatment or punishment. Detainees are particularly vulnerable to abuse, as they are held incommunicado, without legal procedures or safeguards, while access by family, doctors or lawyers is denied, in blatant disregard for international human rights standards. Perpetrators are not prosecuted or punished, thus perpetuating a culture of impunity. Eritrean nationals who are repatriated after a failed refugee or asylum application usually disappear upon their return. The practice of enforced disappearance is used to intimidate people, to install a climate of fear and to deter people from claiming their rights.<sup>125</sup>
- 6.8** The US State Department reports “In general citizens had the right to return. However, citizens residing abroad had to show proof that they paid the 2-percent tax on foreign earned income to be eligible for some government services, including passport renewals”.<sup>126</sup> Human Rights Watch reported “In June 2013 Canada expelled Toronto’s consul for continuing to solicit “national defence fees (and the 2 percent tax) from Eritrean expatriates despite Canadian demands that he stop because the practice violated UN sanctions”. “Eritrea has been under United

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<sup>122</sup> [Amnesty International report: ‘Eritrea - 20 years of Independence, but still no freedom’, 9 May 2013: page 30 Returned Failed Asylum Seekers.](#)

<sup>123</sup> [Amnesty International report: ‘Eritrea - 20 years of Independence, but still no freedom’, 9 May 2013: page 30 Returned Failed Asylum Seekers.](#)

<sup>124</sup> [Amnesty International report: ‘Eritrea - 20 years of Independence, but still no freedom’, 9 May 2013: page 37: Torture and other ill treatment.](#)

<sup>125</sup> [UN Human Rights Council, Report of the United Nations Special Rapporteur on the situation of human rights in Eritrea, Sheila B. Keetharuth, dated 28 May 2013: paragraphs 45 and 54](#)

<sup>126</sup> [US State Department: Country Reports on Human Rights Practices: Eritrea, 30 May 2013: section 2: Freedom of Movement: Emigration and Repatriation](#)



Nations sanctions since 2009 because of its support for armed Islamic insurgents in Somalia and its refusal; to release Djibouti prisoners of war ---”<sup>127</sup>

- 6.9** “Persons known to have broken laws abroad, contracted serious contagious diseases, or been declared ineligible for political asylum by other governments had their visas and visa requests to enter the country considered with greater scrutiny than others did”.<sup>128</sup>
- 6.10** Individuals can return voluntarily to their country of origin / place of habitual residence at any time in one of three ways:
- leaving the UK by themselves, where the applicant makes their own arrangements to leave the UK
  - leaving the UK through the voluntary departure procedure, arranged through the UK Immigration service, or
  - leaving the UK under one of the [Assisted Voluntary Return \(AVR\) schemes](#).

**Country Policy and Information Team  
Home Office  
November 2014**

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<sup>127</sup> [Human Rights Watch: World Report 2014: Events of 2013: 21 January 2014: Eritrea.](#)

<sup>128</sup> [US State Department: Country Reports on Human Rights Practices: Eritrea, 30 May 2013: section 2: Freedom of Movement: Emigration and Repatriation](#)