



OPERATIONAL GUIDANCE NOTE

ERITREA

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1. Introduction

- 1.1** This document provides UKBA case owners with guidance on the nature and handling of the most common types of claims received from nationals/residents of Eritrea, including whether claims are or are not likely to justify the granting of asylum, Humanitarian Protection or Discretionary Leave. Case owners must refer to the relevant Asylum Instructions for further details of the policy on these areas.
- 1.2** Case owners *must not* base decisions on the country of origin information in this guidance; it is included to provide context only and does not purport to be comprehensive. The conclusions in this guidance are based on the totality of the available evidence, not just the brief extracts contained herein, and case owners must likewise take into account all available evidence. It is therefore essential that this guidance is read in conjunction with the relevant COI Service country of origin information and any other relevant information.

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

http://www.homeoffice.gov.uk/rds/country_reports.html

- 1.3** Claims should be considered on an individual basis, but taking full account of the guidance contained in this document. In considering claims where the main applicant has dependent family members who are a part of his/her claim, account must be taken of the situation of all the dependent family members included in the claim in accordance with the Asylum Instruction on Article 8 ECHR. If, following consideration, a claim is to be refused, case owners should consider whether it can be certified as clearly unfounded under the case by case certification power in section 94(2) of the Nationality Immigration and Asylum Act 2002. A claim will be clearly unfounded if it is so clearly without substance that it is bound to fail.

2. Country assessment

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

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

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

<http://centralcontent.fco.gov.uk/resources/en/pdf/human-rights-reports/human-rights-report-2009>

3. Main categories of claims

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

<http://www.ind.homeoffice.gov.uk/documents/asylumpolicyinstructions/>

3.5 Credibility

- 3.5.1** This guidance is **not** designed to cover issues of credibility. Case owners will need to consider credibility issues based on all the information available to them. For guidance on credibility see para 11 of the Asylum Instructions on 'Considering the Asylum Claim' and 'Assessing Credibility in Asylum and Human Rights claims'. Case owners must also ensure that each asylum application has been checked against previous UK visa applications. Where an asylum application has been biometrically matched to a previous visa application, details should already be in the Home Office file. In all other cases, the case owner should satisfy themselves through CRS database checks that there is no match to a

non-biometric visa. Asylum applications matched to visas should be investigated prior to the asylum interview, including obtaining the Visa Application Form (VAF) from the visa post that processed the application.

3.6 Pentecostals and Jehovah's Witnesses

3.6.1 Most Eritreans make an asylum and/or human rights claim based on alleged state mistreatment on account of their being Pentecostals.

3.6.2 *Treatment.* The as yet unimplemented constitution provides for freedom of religion. However in practice, the Government severely restricts this right for all but the four sanctioned religious groups: Orthodox Christians, Muslims, Catholics and the Evangelical Church of Eritrea (affiliated with the Lutheran World Federation).¹ Although there is no state religion, the government has close ties to the Orthodox Church and is suspicious of newer groups – in particular, Protestant, Evangelical, Pentecostal, and other Christian denominations not traditional to Eritrea.² For the past five years, a campaign by the government against Christian minorities has focussed mainly on the evangelical³ and pentecostal movements⁴ and also on Jehovah's Witnesses.⁵

3.6.3 In May 2002, the government ordered several minority churches referred to collectively as the Pentes (including Born Again Christians, Pentecostals, Full Gospel and other small Protestant groups) to close down. These churches were required to register with the Department of Religious Affairs in order to reopen. Although the churches were reported to have complied with the requirement and were informally allowed to continue to worship, no churches other than the four sanctioned religious groups have been allowed to register since 2002.⁶ Government spokesmen have since cited Pentecostals, along with extremist Islamic groups, as threats to national security.⁷ A presidential decree declared that Jehovah's Witnesses had "forsaken their nationality" due to their refusal to vote or to perform military service, causing economic, employment and travel difficulties for them.⁸

3.6.4 During 2008, the authorities reportedly detained at least 125 members of various unregistered churches. Numerous detainees were required to sign statements repudiating their faith as a condition of their release, and there were continued reports that relatives were asked to sign for detainees who refused to sign such documents. There were also reports that many of those held were detained for failure to complete military service but significant numbers were held solely for belonging to unregistered religious groups.⁹ Some detainees were released after detentions of several days or less while others spent longer periods in confinement without charges or access to legal counsel or their families.¹⁰ Government restrictions made it difficult to determine the precise number of religious prisoners at any one time and release sometimes went unreported. However, the number of long term prisoners was reported to grow. In June 2009, police arrested 22 Jehovah's Witnesses during worship in Asmara. Most of these were wives or daughters of previously arrested men, leaving entire households in detention in many cases.¹¹ At the end of 2009, reports indicated there were more than 3,000 Christians from unregistered groups detained

¹ USSD 2009

² COI Eritrea Country Report (Evangelical Churches) June 2010

³ COI Eritrea Country Report (Evangelical churches) June 2010

⁴ COI Eritrea Country Report (Evangelical churches) June 2010

⁵ USSD International Religious Freedom Report – Eritrea – October 2009

⁶ USSD International Religious Freedom Report – Eritrea - 2009

⁷ 'Refugees from Eritrea' Times On-line June 2008

[Refugees from Eritrea, a young state riven with conflict and divided by faith - Times Online](#)

⁸ USSD International Religious Freedom Report – Eritrea 2009

⁹ USSD 2009

¹⁰ USSD International Religious Freedom Report - Eritrea 2009

¹¹ USSD International Religious Freedom Report – Eritrea 2009

in prison. These reports indicated that nearly 40 leaders and pastors of Pentecostal churches were in detention, some for more than three years without due process.¹²

- 3.6.5** The Eritrean government's denials and assurances about its treatment of minority religious groups have not been sufficient to convince advocates of religious freedom elsewhere in the world that their actions are reasonable. In November 2006, the US Secretary of State re-designated Eritrea a Country of Particular Concern under the International Religious Freedom Act for particularly severe violations of religious freedom. This was renewed in January 2009.¹³
- 3.6.6** *Sufficiency of protection.* As this category of claimants' fear is of ill treatment/persecution by the state authorities, they cannot apply to these authorities for protection.
- 3.6.7** *Internal relocation.* This category of applicants' fear is of ill treatment/persecution by the state authorities. This does not mean that case owners should automatically presume that internal relocation is not an option. As Lord Bingham observed in Januzi ([2006] UKHL 5):
- "The more closely the persecution in question is linked to the state, and the greater the control of the state over those acting or purporting to act on its behalf, the more likely (other things being equal) that a victim of persecution in one place will be similarly vulnerable in another place within the state. The converse may also be true. All must depend on a fair assessment of the relevant facts."*
- 3.6.8** Very careful consideration must be given to whether internal relocation would be an effective way to avoid a real risk of ill-treatment/persecution at the hands of, tolerated by, or with the connivance of, state agents. If an applicant who faces a real risk of ill-treatment/persecution in their home area would be able to relocate to a part of the country where they would not be at real risk, whether from state or non-state actors, and it would not be unduly harsh to expect them to do so, then asylum or Humanitarian Protection should be refused.
- 3.6.9** *Caselaw.*
- YT (Eritrea) CG [2004] UKIAT 00218.** The appellant converted from being an Orthodox Christian to the Pentecostal Church. From an early age he was an activist in the Kale Hiwot ["Word of Life"] Church in Asmara, Eritrea. The Tribunal allowed this appeal stating that there is evidence of continued arrests on the basis of religion in 2003 and 2004, including a KHCE Pastor. There has not been a general relaxation in the Eritrean authorities' attitude towards minority churches.
- 3.6.10** *Conclusion.* Case owners must assess the credibility of the applicant and the evidence they submit in accordance with the relevant Asylum Instructions (see para 3.2-3.5 above).
- 3.6.11** State persecution of non-sanctioned religions such as Pentecostalism, and also of the Jehovah's Witness' community is systematic and widespread throughout Eritrea. If it is accepted that the claimant is a practising Pentecostal or a Jehovah's Witness, and they have demonstrated that they will have a well-founded fear of persecution, their claim is likely to engage the UK's obligations under the 1951 Convention. The grant of asylum in such cases is therefore likely to be appropriate except where in particular individual cases there are reasons not to do so.

3.7 Military service

- 3.7.1** Many Eritrean applicants make an asylum and/or human rights claim on the basis that they will be mistreated by the authorities for refusing to undertake military service or deserting from military service. Applicants may cite their religious beliefs (usually as Jehovah's

¹² USSD International Religious Freedom Report – Eritrea 2009

¹³ USSD International Religious Freedom Report – Eritrea 2009

Witnesses) as the reason why their objection has resulted in, or is likely to lead to, persecution.

- 3.7.2 Treatment.** The main piece of legislation covering military service in Eritrea is the National Service proclamation issued by the government on 23 October 1995. National service is compulsory for all citizens aged between 18 and 50 years, male and female. It consists of six months of military training (performed at Sawa military training centre near Tessenei in western Eritrea) and 12 months of active military service and development tasks in military forces' under Ministry of Defence authority. It extends to military reserve duties up to the age of 50. It may be continued under 'mobilisation or emergency situation directives given by the government'.¹⁴
- 3.7.3** The Government does not excuse those individuals who object to military service for reasons of religion or conscience, nor does the Government allow alternative service. In November 2006, the government decreed that church leaders from the four state sanctioned religions were required to perform military and national service; previously religious leaders such as priests and clerics were exempt from national and military service. Although members of several religious groups, including Muslims, had been imprisoned in past years for failure to undertake military service, the government continues to single out Jehovah's witnesses for harsher treatment than that received by followers of other faiths for similar actions.¹⁵
- 3.7.4** According to Human Rights Watch, conscripts are used in labour battalions on public works and on projects benefiting military commanders personally. Pay is nominal and working conditions often harsh. Over a dozen conscripts were reported to have died in the summer of 2007 at the Wi'a military training camp near the Red Sea coast from intense heat, malnutrition and lack of medical care.¹⁶ The Wi'a camp was closed during 2009, but prisoners were moved to other desert prisons, and deaths due to lack of medical care have been reported.¹⁷
- 3.7.5** Violations of military service may be punished under more severe penalties contained in Eritrea's criminal law, including imprisonment of up to two years or a fine and a financial penalty, or both. Since 2005, Human Rights Watch has reported that families of conscription evaders are fined at least 50000 Nafka (US\$ 3300) a large sum as yearly income is less than US\$1000. Additionally, since late 2006, some family members have been conscripted to substitute for relatives.¹⁸ For those avoiding national service by deceit or self-inflicted injury, the same penalties apply, followed by national service. If the self-inflicted injury precludes national service, the prison term is extended to three years. Those travelling abroad to avoid national service who return before they are forty years of age must then undertake national service; for those who return after that age, they are punished by imprisonment of five years and lose rights to own a business licence or apply for an exit visa, land ownership or a job. Those who assist others to avoid national service can receive two years imprisonment and/or a fine. In reality, draft evaders or deserters who have been caught in recent years have been detained incommunicado for extended periods of time.¹⁹
- 3.7.6** On 22 May 2008, Awate reported that "giffa" or round ups had taken place in Asmara which targeted two groups of young people: those registered for national service but who had taken a leave of absence without permission and those over the age of conscription who had not voluntarily signed up for national service.²⁰ In its 2009 report, USSD reported that the government continued to authorise the use of lethal force against individuals resisting or

¹⁴ COI Eritrea Country Report (Military and National Service in Practice) June 2010

¹⁵ USSD 2009

¹⁶ Human Rights Watch World Report 2009 - Eritrea

¹⁷ USSD 2009

¹⁸ Human Rights Watch: Eritrea April 16 2009

¹⁹ COI Eritrea Country Report (Military Service; Draft evaders) 2010

²⁰ COI Eritrea Country Report (Military Service; Round-ups) 2010

attempting to flee during military searches for deserters and draft evaders, and the practice reportedly resulted in deaths during the year. There were also reports that individuals were severely beaten and killed during roundups of young men and women for national service during 2009.²¹

- 3.7.7** In practice, there may be some gender based exemptions or modification of conscription. There are also medical exemptions which are set out in the Proclamation on National Service with modifications. Regarding women conscripts, exemptions referred to in some documents have included: Muslim women, nursing mothers, women with children, married women and women over the age of 27.
- 3.7.8** According to the FCO, the age for military then national service for men is 18 to 57 and for women 18 – 47. Women do routinely perform national service over the age of 27 but are unlikely to have to do military training if they have not done so already. Married women and mothers are generally exempt from military service and able to leave Eritrea before the age of 47.²²
- 3.7.9** There have been reports that demobilisation from military/ national service had ceased and that those who had completed national service were being recalled and national service through conscription of both men and women between the ages of 18 and 40 had been extended indefinitely.²³
- 3.7.10 Sufficiency of protection.** As this category of claimants' fear is of ill treatment/persecution by the state authorities, they cannot apply to these authorities for protection.
- 3.7.11 Internal relocation.** This category of applicants' fear is of ill treatment/persecution by the state authorities. This does not mean that case owners should automatically presume that internal relocation is not an option. As Lord Bingham observed in Januzi ([2006] UKHL 5):
- “The more closely the persecution in question is linked to the state, and the greater the control of the state over those acting or purporting to act on its behalf, the more likely (other things being equal) that a victim of persecution in one place will be similarly vulnerable in another place within the state. The converse may also be true. All must depend on a fair assessment of the relevant facts.”*
- 3.7.12** Very careful consideration must be given to whether internal relocation would be an effective way to avoid a real risk of ill-treatment/persecution at the hands of, tolerated by, or with the connivance of, state agents. If an applicant who faces a real risk of ill-treatment/persecution in their home area would be able to relocate to a part of the country where they would not be at real risk, whether from state or non-state actors, and it would not be unduly harsh to expect them to do so, then asylum or Humanitarian Protection should be refused.
- 3.7.13 Caselaw.**

WA Eritrea CG [2006] UKAIT 00079. On the basis of the evidence now available, Muslim women should not be excluded from being within the draft related at risk category. The evidence indicates that Muslim women, per se are not exempt from military service. In some areas, however, local protests prevent their call up and in others the draft is not so strictly implemented. With this addition (amending paragraph 113 of the determination), the draft related risk categories in KA (Draft –related risk categories updated) Eritrea CG [2005] 00165 are reaffirmed. In particular it remains the case that in general someone who has lived in Eritrea for a significant period without being called up would not fall within the category of a draft evader. The evidence indicates that the administration of National service is devolved to six regional commands and the degree to which recruitment is carried out varies from region to region. In considering risk on return a decision maker should pay regard to any credible evidence relating to the particular region from whence an appellant comes and the

²¹ USSD 2009

²² COI Eritrea Country Report (Military Service) 2010

²³ COI Eritrea Country Report (Military Service)2010

degree to which recruitment is enforced within that particular area. NB: This decision should be read with AH (Failed asylum seekers – involuntary returns) Eritrea CG [2006] UKAIT 00078

MA Eritrea CG [2007] UKAIT 00059. 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.

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.

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

GM (Eritrea); YT (Eritrea); MY (Eritrea) EWCA Civ 833. Court of Appeal (CoA) 17 July 2008.

The CoA found that the burden of proof is on the applicant to show that they have left Eritrea illegally. The Court referred to the case of R v Home Secretary Eritrea p Sivakumaran [1988] which said that the question in any particular case is...whether there is a reasonable degree of likelihood that the applicant left Eritrea illegally.

Whilst the CoA said that the question of illegal exit raises particular difficulties, the court underlined what was said in Ariaya and Sammy v SSHD [2006], another draft military service case that considered draft evasion as well as illegal exit, that persons who fail to give a credible account of material particulars relating to their history and circumstances cannot easily show that they would be at risk solely because they are of eligible draft age. The CoA also echoed the approach taken in MA Eritrea CG [2007] that a finding as to whether an Eritrean applicant has shown that it is reasonably likely he or she left the country illegally is....crucial in deciding risk on return to that country.

3.7.14 Conclusion. Case owners must assess the credibility of the applicant and the evidence they submit in accordance with the relevant Asylum Instructions (see para 3.2 – 3.5 above).

3.7.15 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:

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

will therefore qualify for asylum unless they are excluded from the 1951 Convention under Article 1F or where in particular individual cases there are reasons not to do so.

3.7.16 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, even if the authorities were aware that that person had made an unsuccessful asylum claim abroad, and will not qualify for asylum unless there are reasons particular to their individual case why they do so.

3.7.17 An applicant who falls within an exemption from the draft, or who is outside the age for military service, would not be perceived by the authorities to be a draft evader and is therefore unlikely to encounter ill treatment amounting to persecution for that reason. They

will not therefore qualify for asylum unless there are reasons particular to their individual case why they do so.

3.8 Members of opposition political groups

Some asylum or human rights claim may be based on threats or harassment by the authorities on account of their membership of, or association with, opposition political groups such as the Eritrean Democratic Party (EDP) (formerly the Eritrean People's Liberation Front Democratic Party EPLF-DP), the Eritrean National Alliance (ENA) or the Eritrean Liberation Party or as activists in support of the 11 detained members of the G15 group of dissidents.²⁴

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

3.8.1.1 *Treatment.* There is no official political opposition in Eritrea. The unimplemented constitution states that every citizen has the right to form organisations for political ends. However, the government has not allowed the formation of any political parties other than the People's Front for Democracy and Justice (PFDJ) and has said that it will not implement the constitution until the border demarcation with Ethiopia is finalised.²⁵

3.8.1.2 There are a number of opposition political groups that have since 2004 operated in exile outside of Eritrea under the umbrella of the Eritrean National Alliance (ENA) also known as the Eritrean Democratic Alliance (EDA) which are highly critical of the current regime. These groups have little physical presence in Eritrea. Their polemics are followed via the internet on sites including Asmara.com and Awate.com.²⁶

3.8.1.3 The ENA/ EDA include the EIS (Arafa movement), the ELF (Eritrean Liberation Front) and ELF factions, EDP (Eritrean Democratic Party), the ENSF (Eritrean National Salvation Front) and the EIJ (Eritrean Islamic Jihad) and is split into two camps.²⁷ The first camp comprises those which form a secular nationalist bloc. This faction includes the EDP, the ENSF and the ELF-RC. The second camp led by the ELF tends to represent regional, religious and ethnic constituencies.²⁸ The ENA/ EDA were reported by Awate.com in February 2005 as having been instrumental in setting up a conference of opposition groups in Khartoum.²⁹ The government in Khartoum has since banned the activities of the Eritrean opposition in Sudan.³⁰

3.8.1.4 USSD report that the authorities continued to authorise unlawful killings by security forces.³¹ Amnesty has also recorded that there were frequent reports of arrests of government critics during 2008 and no tolerance of dissent. In addition, eleven former government Ministers and Eritrean liberation veterans (the G15 activists) who had called for reform had remained in secret detention, their whereabouts unknown since 2001.³² Freedom House lists Eritrea as being thirteenth on their list of the world's most repressive independent countries.³³

²⁴ COI Country Report Eritrea (Political Affiliation) 2010

²⁵ USSD 2009

²⁶ Awate.com

<http://awate.com>

²⁷ Freedom House – Countries at the Crossroads – Eritrea 2007

²⁸ EDP website - <http://selfi-democracy.com>

²⁹ COI Country Report Eritrea 2010

³⁰ COI Country Report Eritrea 2010

³¹ USSD 2009

³² Amnesty 2009 report

³³ Freedom House "Worst of the Worst" Report 2009

3.8.2 **G15 activists**

3.8.2.1 Among the more prominent political prisoners detained in Eritrea are the 11 former independent movement leaders and government ministers known as the Group of 15 (G15) who were jailed in September 2001 after publicly criticising undemocratic practices pursued by the President of Eritrea. At the end of 2008, the G15 detainees were still in prison and their whereabouts remained unknown.³⁴ The USSD reports that nine of these detainees have died in detention.³⁵

3.8.2.2 A report titled ‘The obscure and tragic end of the G -15’, published on 31 August 2006, presents information about the political prisoners since their arrest up to 2006. It claims that the prisoners are held at a prison complex at Eiraeiro alongside other political prisoners. Prior to 2003, the G15 group were held at Embatkala, a former naval facility. Of the prisoners and of the G15 group prior to transfer to Eiraeiro, nine people are mentioned as having died in detention. The article claims food, clothing and hygiene are basic; the prisoners are held in solitary confinement, in chains, and totally *incommunicado*. Other reports corroborate this and have pointed to possible instances of torture of the G15 activists during their detention.³⁶

3.8.2.3 Sufficiency of protection. As this category of applicants’ fear is of ill-treatment or persecution by the state authorities, they cannot apply to these authorities for protection.

3.8.2.4 Internal relocation. This category of applicants’ fear is of ill treatment/persecution by the state authorities. This does not mean that case owners should automatically presume that internal relocation is not an option. As Lord Bingham observed in *Januzi* ([2006] UKHL 5):

“The more closely the persecution in question is linked to the state, and the greater the control of the state over those acting or purporting to act on its behalf, the more likely (other things being equal) that a victim of persecution in one place will be similarly vulnerable in another place within the state. The converse may also be true. All must depend on a fair assessment of the relevant facts.”

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

3.8.2.6 Caselaw.

AN Eritrea [2003] (CG) UKIAT 00300. 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)

3.8.2.7 Conclusion. Case owners must assess the credibility of the applicant and the evidence they submit in accordance with the relevant Asylum Instructions (see para 3.2 – 3.5 above).

3.8.2.8 High-level former opposition activists of parties under the umbrella of the ENA/ EDA are likely to be of interest to the Eritrean authorities and as such at risk of treatment amounting to persecution. They are therefore likely to qualify for asylum unless there are reasons why in the individual case they do not.

³⁴ Freedom House “Countries at the crossroads – Eritrea”

³⁵ USSD 2009

³⁶ COI Country Report Eritrea 2010

- 3.8.2.9** Low or medium-level current or former members of parties under the umbrella of the ENA/EDA who have not come to the attention of the authorities are unlikely to have a well-founded fear of persecution for that reason. They are therefore unlikely to qualify for asylum unless there are reasons why in the individual case they should do so.
- 3.8.2.10** Despite numerous reports of politically motivated detentions since 2001 there have been no further confirmed arrests or detentions of G15-associated activists. Applicants who claim to fear arrest or detention on account of their low to medium-level activism in support of the detained members of the G15 group are therefore unlikely to qualify for asylum, unless there are reasons why in an individual case they should do so.
- 3.8.2.11** A grant of asylum may be appropriate for those applicants who can establish that they were formerly associated with high profile G15 activists and have previously come to the attention of the authorities as a result.

3.9 Persons of mixed Ethiopian/Eritrean origin

- 3.9.1** A significant proportion of claims will raise the issue of whether the claimant considers him/herself to be Eritrean or Ethiopian, and the state authorities' treatment of those with some element of mixed ethnicity. Though this will not usually be a main or sole basis for a claim, it will be crucial to establish the applicant's parentage, length of time spent in a particular country and location of alleged persecution to substantively assess the wider claim.
- 3.9.2** *Treatment of Eritreans of Ethiopian origin in Eritrea.* There have been no reports in recent years that the Eritrean authorities have harassed and detained deportees of Eritrean origin from Ethiopia while their status was checked. Expellees were asked to fill out a detailed registration form and were issued the same type of registration card that Eritrean refugees returning from exile received. Once registered, the deportees were entitled to the standard government assistance for returning refugees: including short-term housing, food and settlement aid, medical coverage and job placement assistance.³⁷
- 3.9.3** *Treatment of Ethiopians of Eritrean origin in Eritrea.* During the border war the Ethiopian Government detained and deported Eritreans and Ethiopians of Eritrean origin without due process. Deportations ceased following the signing of the cessation of hostilities agreement in June 2000. Between June and August 2001 this agreement was broken but this has been the only breach and all returns are now voluntary and administered by the ICRC. During 2008, in conjunction with the ICRC, the government repatriated approximately 1,023 Ethiopians; and 27 citizens were repatriated from Ethiopia under the auspices of the ICRC.³⁸
- 3.9.4** There were 16,000 Ethiopians estimated to have temporary residence in Eritrea in 2005, including 600 Ethiopians in the Gash Barka region to which the UNHCR had no access or responsibility. The Government issued residency permits to Ethiopians living in the country for a fee; however, it did not issue them exit visas. According to the UNHCR Ethiopians must renew their residency permits every year. In February 2007, the Canadian Immigration Board noted that persons of Ethiopian origin continue to face discriminatory practices in Eritrea including demand for payment or high repatriation fees.³⁹
- 3.9.5** As regards entitlement to Eritrean nationality, case owners should note that the criteria for citizenship and nationality, including the legal requirement of three witnesses to confirm a claimant's identity and background, is set out in full in the COI Eritrea Country Report in the section titled Citizenship and Nationality.

³⁷ COI Country Report Eritrea June 2010

³⁸ USSD 2009

³⁹ COI Country Report Eritrea (Ethiopians in Eritrea) 2010

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

3.9.7 Internal relocation. Internal relocation is not relevant to this category of claim.

3.9.8 Caselaw.

FA Eritrea CG [2005] UKIAT 00047. Eritrea – Nationality. This appellant claimed to have been born in Asmara but moved to Ethiopia when she was a child. The Adjudicator considered objective evidence and found that the appellant was entitled to Eritrean nationality and would be able to relocate there.

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

EB Ethiopia CoA [2007] EWCA Civ 809 Ethiopia – Nationality. This was a Court of Appeal case against a Tribunal (AIT) decision to refuse asylum or leave to remain on human rights grounds. The appeal gave rise to the general issue of treatment of persons with Eritrean ancestral connections who had left Ethiopia.

It had been accepted by the AIT that the appellant (EB), an Ethiopian national of Eritrean descent, had had her identity documents taken by the Ethiopian authorities around the year 2000, had left Ethiopia in 2001 and had subsequently visited the Ethiopian embassy in London on two occasions who had refused to issue her with a passport because she did not have the required documents. In their findings on the case, the Tribunal referred to **MA and others [2004] UKIAT 00324** which stated that loss of nationality on its own did not amount to persecution. The Tribunal concluded that EB's loss of nationality was a result of her leaving Ethiopia and the deprivation of her documents in Ethiopia was not of itself an activity which resulted in ill treatment to her whilst she was in Ethiopia.

On referral of EB to the Court of Appeal, the Court of Appeal looked at the case of **Lazarevic [1997] 1 WLR 1107**, upon which the Tribunal in **MA** based their decision. The Court of Appeal noted that the Tribunal in **MA** found that if a State arbitrarily excludes one of its citizens such conduct can amount to persecution in that a "person may properly say both that he is being persecuted and that he fears persecution in the future." The Court of Appeal noted that in **MA**, the Tribunal emphasised the word 'can' and that it was not the act of depriving someone of their citizenship that was persecutory but the consequences of such an act could amount to persecution. The Court of Appeal disagreed with this position in **MA**. The Court of Appeal said that in the case of **Lazarevic** the deprivation of citizenship had not been found to be persecutory due to the fact that the situation in that case did not include a convention reason. In EB's case the identity documents were removed for a convention reason – therefore the question to be answered was "whether the removal of identity documents itself constituted persecution for a Convention reason or could only be such persecution if it led to other conduct which could itself be categorized as ill-treatment".

The Court of Appeal findings in EB were as follows:

- By arbitrarily depriving someone of their citizenship, that person lost their basic right to freely enter and leave their country which was at odds with Article 12 of the International Covenant on Civil and Political Rights 1966 and Article 15 of the Universal Declaration of Human Rights (Paragraph 68). There was no difference between the removal of identity documents in EB's case and a deprivation of citizenship – the "precariousness is the same; the "loss of the right to have rights" is the same; the "uncertainty and the consequent psychological hurt" is the same." The act of depriving EB of her identity documents amounted to persecution at the time it occurred and that persecution would last as long as the deprivation itself.
- Therefore contrary to the position of the Tribunal in EB and that of the Tribunal in MA; "the taking of EB's identity documents was indeed persecution for a Convention reason when it

happened and the AIT in MA were wrong to conclude that some further (presumably physical) ill treatment was required". (Paragraph 70).

MA (Disputed Nationality) Ethiopia [2008] UKAIT 00032

The appellant was born to parents of Eritrean descent but had always resided in Ethiopia. It was claimed that her husband had been involved with the ELF (Eritrean Liberation Front), had been deported to Eritrea in 1999 and subsequently imprisoned due to his involvement with the ELF. The appellant feared that if returned to Eritrea she would face imprisonment based on her husband's involvement with the ELF and if returned to Ethiopia she feared deportation to Eritrea.

The findings in MA were as follows:

- The Tribunal concludes that a two step approach to deciding the question of disputed nationality should be followed. Firstly, is the person entitled to the nationality in question by law (the *de jure* question)? Secondly, is it reasonably likely that the person concerned will be accepted back into that country as one of its nationals (the *de facto* question)? (paragraph 110).
- This determination replaces what the IAT said regarding the proper approach in cases of disputed nationality in YL (Nationality – statelessness – Eritrea – Ethiopia) Eritrea CG [2003] UKIAT 00016 (paragraph 110). It also replaces MA (Ethiopia – mixed ethnicity – dual nationality) Eritrea [2004] UKIAT 00324.
- The *de jure* question is an exclusively legal question and is a necessary element of the definition under the Refugee Convention, Article 1A(2). To answer the *de jure* question, nationality laws, expert evidence, documentation, evidence from the appellant, agreement among the parties and evidence from the FCO can all be considered. The ways in which nationality must be assessed are the subject of guidance given by the Tribunal in **Smith** 00/TH/02130. It may also be relevant to consider what actions the relevant authorities have taken e.g. the issuing of a passport or the removal of means to prove nationality (paragraphs 81 – 82).
- Where nationality laws contain elements of discretion, e.g. character, conduct, or length of residence, the question of whether the appellant has taken or could take the relevant steps to acquire the nationality is relevant. The Tribunal affirms its previously stated view concerning the importance of the claimant taking relevant steps, where discretion is involved (paragraph 83).
- If the person is a *de jure* national there is a presumption that the country concerned will give him the same treatment as other nationals (paragraph 86).
- If the answer to the *de jure* question is that it has not been shown that the appellant is a national of the country concerned, then the appellant is a national of another state, or is stateless (paragraph 84).
- The *de facto* question, "Is it reasonably likely that the authorities of the state concerned will accept the person concerned if returned as one of its own nationals?" is purely factual. The question is to be addressed on a hypothetical basis, and this approach has been endorsed by the Court of Appeal in EB [2007] EWCA Civ 809] (paragraph 85).

MA (Ethiopia) [2009] EWCA Civ 289 (this case-law followed on from MA [2008] above).

The appellant (MA) appealed against the decision of the AIT dismissing her appeal against the decision of the Secretary of State refusing her asylum claim. The following points were held:

- The AIT had perceived the issue to be whether MA would face the risk of being denied her status as a national; it was assumed that would, if established, constitute persecution. Having recourse to legal and factual nationality was likely to obscure that question (EB (Ethiopia) SSHD [2007] EWCA Civ 809 (2009) considered). It followed that the AIT's analysis of how MA would be treated if returned to Ethiopia was wrong in law.
- The case was unusual, in that it became apparent during the hearing before the AIT that the outcome of the appeal was dependent upon whether the Ethiopian authorities would allow MA to return to Ethiopia. Normally, if the essential issue before the AIT was whether someone would be returned or not, the AIT should usually require the appellant to have

taken all reasonable and practical steps to obtain the requisite documentation for return. There was no reason why MA should not visit the embassy to obtain the relevant documents. Such an approach entailed no injustice to MA; it did not put her at risk, but was consistent with the principle that, before an asylum applicant could claim protection from a surrogate state, he should first have taken all reasonable steps to secure protection from the home state (*R v SSHD Ex p Bradshaw* (1994) Imm. AR 359 considered). The AIT did not approach matters in that way.

- Lacking evidence as to how MA would have been treated had she made a proper application, the AIT sought to resolve the issue by considering whether someone in her position was likely to be allowed to be returned or not. It followed that the AIT had erred in law as it ought not to have engaged in that enquiry without first establishing that MA had taken all reasonable and practical steps to obtain authorisation to return. Generally, remittal would be appropriate; however the position in respect of MA's efforts to obtain permission were known, since she had given evidence that she had gone to the Ethiopian embassy and asked for a passport, but told staff there she was Eritrean. That could not constitute a reasonable or bona fide attempt to obtain necessary documentation. Therefore, there was no ground to enable the AIT to find that she had acted in good faith and taken all reasonable and practical steps to obtain a passport, and any remission would be futile.
- (Obiter) it was not possible to state as a universal proposition that deprivation of nationality had to be equated with persecution (EB considered).

The Court of Appeal held that whilst the AIT had erred in law by considering whether an asylum seeker of Ethiopian nationality was likely to be allowed to return to Ethiopia without first establishing whether she had taken all reasonable and practical steps to obtain authorisation to return, remittal was inappropriate as on the evidence, she had not made a bona fide attempt to obtain the necessary documentation.

- 3.9.9 Conclusion.** Case owners must assess the credibility of the applicant and the evidence they submit in accordance with the relevant Asylum Instructions (see para 3.2 – 3.5 above).
- 3.9.10** Applicants of Eritrean descent who claim to be Ethiopian, have lived in Ethiopia all their lives and fear persecution in Ethiopia should be considered as Ethiopian and their wider claim assessed accordingly. Guidance on the handling of such claims is included in the Ethiopia OGN.
- 3.9.11** Where an applicant is of Eritrean descent and claims to have been deprived of Ethiopian citizenship, case owners should, in line with *MA (Disputed Nationality) Ethiopia [2008] UKAIT 00032* and *MA (Ethiopia) [2009] EWCA Civ 289* assess whether they would qualify for Eritrean citizenship. If an applicant does qualify for Eritrean citizenship they would not be entitled to asylum in the UK as protection should have been sought in the first instance from the Eritrean authorities (see paragraphs 106 and 107 of the UNHCR handbook on Procedures and Criteria for Determining Refugee Status). Case owners should therefore make clear reference to an applicant's entitlement to Eritrean nationality.
- 3.9.12** An applicant of Eritrean descent who has been deprived of Ethiopian citizenship but does not qualify for citizenship in Eritrea, is likely to qualify for asylum, unless there are reasons why on the facts of the individual case they do not. This is because in the case of *EB Ethiopia 2007*, the Court of Appeal found that arbitrarily depriving someone of their citizenship was contrary to Article 12 of the International Covenant on Civil and Political Rights 1966 and Article 15 of the Universal Declaration of Human Rights effectively amounting to persecution and continuing to amount to persecution as long as the deprivation of citizenship itself lasted.
- 3.9.13** Applicants of mixed parentage who have lived in Ethiopia for most of their lives but consider themselves Eritrean (usually by virtue of them having been deported to Eritrea relatively recently) and claim to fear persecution in Eritrea, should be considered as Eritrean and their wider claim assessed accordingly. Consideration must be given to any claim of illegal exit from Eritrea, although the burden of proof remains with the applicant to demonstrate this.

For guidance on mixed or disputed nationality cases and returns see [Returns](#) paragraph 5.2.

3.10 Claimed Illegal Exit from Eritrea

- 3.10.1** Many applicants base their asylum claim partly on the ground that that they have left Eritrea illegally, and are therefore unable to return due to the risk of severe punishment amounting to serious ill-treatment.
- 3.10.2** Individuals working in government ministries or agencies must obtain ministerial permission before applying for a passport. Other individuals must obtain authorisation from a local government administrator and present a birth certificate, any military/national service medical exemption documents, and an ID card. The administrator then instructs the Department of Immigration (which has offices in regional capitals) to issue a passport. Exit visas were previously issued in sticker form but following allegations of visa fraud in 2009, they are now issued as stamps. They are produced in a standard format, in English only. They are issued by the Department of Immigration, and applicants must apply in person.⁴⁰
- 3.10.3** In practice, it is very difficult to obtain first-issue passports in Eritrea. Individuals who are ill, or old and government officials who are required to travel abroad on official business, will find it easier to obtain passports, but even in these cases, applications are frequently rejected. The majority of Eritreans wishing to travel abroad are not issued with exit visas and therefore cannot leave the country legally.⁴¹
- 3.10.4** The Human Rights Watch 2009 Report states that Eritrean nationals who are forcibly returned are subject to arbitrary detention, torture and death. The Eritrean government considers leaving the country without a valid exit visa as a crime, and absconding or avoidance of national service as tantamount to treason.⁴² Human Rights Watch were informed by various sources that the Eritrean authorities operate an official “shoot to kill” policy against all individuals attempting to cross the border illegally.⁴³
- 3.10.5** All Eritreans who have left illegally are at risk of arbitrary arrest and detention on return, and regarded as implicitly politically opposed to the authorities. In addition, those who have returned voluntarily rather than as failed asylum seekers are also at risk if they are, or are perceived to be, politically opposed to the government, or are known to be members of minority Pentecostal churches, or the Jehovah’s Witness religion. In May 2003 two Eritrean nationals were reportedly detained on arrival from Saudi Arabia at Asmara airport, and subsequently ‘disappeared’.⁴⁴
- 3.10.6 Sufficiency of Protection.** As this category of claimants’ fear is of ill treatment/persecution by the state authorities, they cannot apply to these authorities for protection.
- 3.10.7 Internal Relocation.** Internal relocation is not relevant to this category of claim.
- 3.10.8 Conclusion.** Case owners must assess the credibility of the applicant and the evidence they submit in accordance with the relevant Asylum Instructions (see para 3.2 – 3.5 above). In light of the above, applicants who can demonstrate a reasonable likelihood of having left Eritrea illegally will qualify for asylum unless they are excluded from the 1951 Convention under Article 1F, or where in particular individual cases there are reasons not to do so.

⁴⁰ COI Country Report Eritrea June 2010 (Exit and Return)

⁴¹ COI Country Report Eritrea June 2010 (Exit and Return)

⁴² COI Country Report Eritrea June 2010

⁴³ COI Country Report Eritrea June 2010 (Illegal Exit from Eritrea)

⁴⁴ COI Country Report Eritrea June 2010 (Treatment of failed asylum seekers)

3.11 Prison conditions

- 3.11.1** Applicants may claim that they cannot return to Eritrea due to the fact that there is a serious risk that they will be imprisoned on return and that prison conditions in Eritrea are so poor as to amount to torture or inhuman treatment or punishment.
- 3.11.2** The guidance in this section is concerned solely with whether prison conditions are such that they breach Article 3 of ECHR and warrant a grant of Humanitarian Protection. If imprisonment would be for a Refugee Convention reason or in cases where for a Convention reason a prison sentence is extended above the norm, the claim should be considered as a whole but it is not necessary for prison conditions to breach Article 3 in order to justify a grant of asylum.
- 3.11.3 *Consideration.*** Prison conditions for the general prison population in 2009 were harsh and life threatening. There were reports that prisoners were held in underground cells or in shipping containers with little or no ventilation in extreme temperatures. The shipping containers were reportedly not large enough to allow all those incarcerated to lie down at the same time.⁴⁵
- 3.11.4** There were credible reports that the detention centre conditions for persons temporarily held for evading military service were also harsh and life threatening in 2009. Unconfirmed reports suggested there may be hundreds of such detainees. Draft evaders were typically held for one to 12 weeks before being reassigned to their units, although some were held for as long as two years. At one detention facility outside Asmara, detainees reportedly were held in an underground hall with no access to light or ventilation and sometimes in very crowded conditions. Some detainees reportedly suffered from severe mental and physical stress due to these conditions. There were also reports of deaths in prisons due to widespread disease and lack of medical care, though statistics are unavailable.⁴⁶ The Report 'Service For Life' states: "Apart from torture and routine punishment, detainees in Eritrea's huge network of prisons endure terrible conditions, forced labor, and lethal starvation. Deaths in custody are common".⁴⁷
- 3.11.5** There was a juvenile detention centre in Asmara but juvenile offenders were often incarcerated with adults. Pre-trial detainees generally were not held separately from convicted prisoners. Visits by family members were generally permitted except for family members of detainees arrested for national security reasons and those detained for evading military service.⁴⁸
- 3.11.6** There were no visits from local human rights organisations since the government prevented these from operating during 2009. The government permitted the International Committee of the Red Cross (ICRC) to visit several Ethiopian soldiers, who the government claimed were deserters from the Ethiopian army, and to visit and register Ethiopian civilian detainees in police stations and prisons. However, the government did not permit the ICRC to visit other prisoners or detainees.⁴⁹
- 3.11.7 *Conclusion.*** Conditions in prisons and detention facilities in Eritrea are extremely poor and are likely to breach the Article 3 threshold. Where an individual applicant is able to demonstrate a real risk of a significant period of detention or imprisonment on return to Eritrea, and exclusion under Article 1F is not justified, a grant of Humanitarian Protection will be appropriate.

⁴⁵ USSD 2009

⁴⁶ USSD Country Report on Human Rights Practices in Eritrea 2009

⁴⁷ Human Rights Watch 'Service For Life' Conditions in Detention April 2009

⁴⁸ USSD 2009

⁴⁹ USSD 2009

4. Discretionary Leave

- 4.1** Where an application for asylum and Humanitarian Protection falls to be refused there may be compelling reasons for granting Discretionary Leave (DL) to the individual concerned. (See Asylum Instructions on Discretionary Leave) Where the claim includes dependent family members consideration must also be given to the particular situation of those dependants in accordance with the Asylum Instructions on Article 8 ECHR.
- 4.2** With particular reference to Eritrea the types of claim which may raise the issue of whether or not it will be appropriate to grant DL are likely to fall within the following categories. Each case must be considered on its individual merits and membership of one of these groups should *not* imply an automatic grant of DL. There may be other specific circumstances related to the applicant, or dependent family members who are part of the claim, not covered by the categories below which warrant a grant of DL - see the Asylum Instructions on Discretionary Leave and on Article 8 ECHR.
- 4.3 Minors claiming in their own right**
- 4.3.1** Minors claiming in their own right who have not been granted asylum or HP can only be returned where (a) they have family to return to; or (b) there are adequate reception and care arrangements. Those who cannot be returned should, if they do not qualify for leave on any more favourable grounds, be granted Discretionary Leave for a period as set out in the relevant Asylum Instructions.
- 4.4 Medical treatment**
- 4.4.1** Applicants may claim they cannot return to Eritrea due to a lack of specific medical treatment. See the IDI on Medical Treatment which sets out in detail the requirements for Article 3 and/or 8 to be engaged.
- 4.4.2** Eritrea's health care system is relatively basic and cannot currently provide satisfactory treatment for all medical conditions, although the range of treatments and medications available is constantly developing. Eritrea has made significant progress in the provision of accessible and affordable healthcare to the majority of the populace since independence, with a corresponding improvement of health indicators.⁵⁰
- 4.4.3** In cases where the level of medical treatment is clearly sufficient: The Article 3 threshold will not be reached in the majority of medical cases and a grant of Discretionary Leave will not usually be appropriate. Where a case owner considers that the circumstances of the individual applicant and the situation in the country reach the threshold detailed in the IDI on Medical Treatment making removal contrary to Article 3 or 8 a grant of discretionary leave to remain will be appropriate. Such cases should always be referred to a Senior Caseworker for consideration prior to a grant of Discretionary Leave.
- 5. Returns**
- 5.1** There is no policy which precludes the enforced return to Eritrea of failed asylum seekers who have no legal basis of stay in the United Kingdom. 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, in particular paragraph 395C requires the consideration of all relevant factors known to the Secretary of State, and with regard to

⁵⁰ COI Report Eritrea June 2010 (Medical Issues)

family members refers also to the factors listed in paragraphs 365-368 of the Immigration Rules.

- 5.2** The Immigration (Notices) (Amendment) Regulations 2006 came into force on 31 August 2006. These amend the previous 2003 Regulations, allowing an Immigration Officer or the Secretary of State to specify more than one proposed destination in the Decision Notice (this entails a right of appeal). Where there is a suspensive right of appeal, this will allow the Tribunals Service to consider in one appeal whether removal to any of the countries specified in the Decision Notice would breach the UK's obligations under the Refugee Convention or the European Convention on Human Rights, thus reducing the risk of sequential appeals. More than one country, e.g. Ethiopia and Eritrea, may only be specified in the Notice of Decision where there is evidence to justify this. Evidence may be either oral or documentary. Caseworkers are advised that their Decision Service Team/admin support unit must be instructed to record both countries on the Notice of Decision/Removal Directions for relevant cases.
- 5.3** UNHCR's Eligibility Guidelines for Eritrea dated April 2009, para V.2, page 35, state the following regarding returns: '...UNHCR urges States to exercise caution when considering the return of individuals not found to be refugees under the criteria of the 1951 and / or OAU Conventions following a determination of their claims in fair and efficient refugee states determination procedures, including the right of appeal. UNHCR further advises against the return of Eritrean asylum-seekers to countries they may have transited or in which they may have been granted status, but from where there is a risk of refoulement or deportation. Should an individual demonstrate other needs for which a complementary form of protection would be appropriate, the needs and appropriate response should be assessed accordingly.'⁵¹

5.4 Caselaw.

AH Eritrea CG [2006] UKIAT 00078. Neither involuntary returnees nor failed asylum seekers are as such at real risk on return to Eritrea. The country guidance on this issue in (Draft evaders - evidence of risk) Eritrea CG [2005] UKIAT 00106 and KA (Draft related risk categories updated) Eritrea CG [2005] UKIAT 00165 is confirmed. NB: This decision should be read with WA (Draft related risks updated- Muslim Women) Eritrea CG [2006] UKIAT 00079

- 5.5** Eritrean nationals may return voluntarily to any region of Eritrea at any time in one of three ways: (a) leaving the UK by themselves, where the applicant makes their own arrangements to leave the UK, (b) leaving the UK through the voluntary departure procedure, arranged through the UK Immigration service, or (c) leaving the UK under one of the Assisted Voluntary Return (AVR) schemes. The AVR scheme is implemented on behalf of the UK Border Agency by the International Organization for Migration (IOM) and co-funded by the European Refugee Fund. . IOM will provide advice and help with obtaining any travel documents and booking flights, as well as organising reintegration assistance in Eritrea. The programme was established in 1999, and is open to those awaiting an asylum decision or the outcome of an appeal, as well as failed asylum seekers. Eritrean nationals wishing to avail themselves of this opportunity for assisted return to Eritrea should be put in contact with the IOM offices in London 0800 783 2332 or www.iomlondon.org.

6. List of source documents

A full list of source documents cited in footnotes in this guidance is set out below:

⁵¹ UNHCR Eligibility Guidelines
[UNHCR | Refworld | UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Eritrea](#)

- Home Office COI Service Eritrea Country of Origin Information Report June 2010 at http://www.homeoffice.gov.uk/rds/country_reports.html
 - Amnesty International – Eritrea report 2008 <http://thereport.amnesty.org/eng/Regions/Africa/Eritrea>
 - BBC online – August 2004 - New Unity in Eritrean Opposition <http://news.bbc.co.uk/1/hi/world/africa/3567190.stm>
 - BBC online – April 2008 – UN Fears new Ethiopia-Eritrea war <http://news.bbc.co.uk/go/pr/fr/-/1/hi/world/africa/7341833.stm>
 - BBC online – July 2008 – UN ends African Horn peace force <http://news.bbc.co.uk/go/pr/fr/-/1/hi/world/africa/7533156.stm>
 - Foreign and Commonwealth Office Country Profile Eritrea – 8 October 2007 <http://www.fco.gov.uk/en/travel-and-living-abroad/travel-advice-by-country/country-profile/sub-saharan-africa/eritrea/?profile=all>
 - Freedom House – Countries at the Crossroads – Eritrea 2007 <http://www.freedomhouse.org/template.cfm?page=140&edition=8&ccrpage=37&ccrcountry=155>
- UK Home Office Eritrea Country of Origin Information Report 13 September 2008 at http://www.homeoffice.gov.uk/rds/country_reports.html
- US Department of State Country Report on Human Rights Practices in 2008: February 2009 <http://www.state.gov/g/drl/rls/hrrpt/2008/af/119000.htm>
- US State Department Report on International Religious Freedom 2008 – Eritrea: 19 September 2008 <http://www.state.gov/g/drl/rls/irf/2009/127231.htm>
 - BBC online – 23 December 2009 – Eritrea hit with UN sanctions for ‘aiding insurgents’ <http://news.bbc.co.uk/1/hi/8428881.stm>
 - BBC Timeline Eritrea April & July 2009 <http://news.bbc.co.uk/1/hi/world/africa/1070861.stm>
 - Human Rights Watch – Eritrea – 16 April 2009 <http://www.hrw.org/en/news/2009/04/16/eritrea-repression-creating-human-rights-crisis>
 - US Department of State Report on International Religious Freedoms – Eritrea – 26 October 2009: <http://www.state.gov/g/drl/rls/irf/2009/127231.htm>
 - Human Rights Watch Report: ‘Service For Life: State Repression and Indefinite Conscription in Eritrea 16 April 2009 – Prison Conditions – Conditions In Detention’ <http://www.hrw.org/en/reports/2009/04/15/service-life-0>
 - UNHCR [UNHCR | Refworld | UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Eritrea](http://www.unhcr.org/refworld/docid/437d1d1d.html)

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