OPERATIONAL GUIDANCE NOTE

ERITREA

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1. Introduction

1.1 This document provides UK Border Agency caseowners 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. Caseowners must refer to the relevant Asylum Instructions for further details of the policy on these areas.

1.2 Caseowners *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 caseowners must likewise take into account all available evidence. It is therefore essential that this guidance is read in conjunction with the relevant COI Service country of origin information and any other relevant information.

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

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

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

2. Country assessment

2.1 Caseowners 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/accessible-hrd-report-2010

2.3 Actors of protection

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

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

2.3.3 Police, who often were conscripted, were paid 15 nakfa (approximately 61 pence per day) and corruption was a problem. During the year (2010) there were reports of police and other security forces committing crimes to supplement their income, including breaking into homes to confiscate jewellery, money, and food. Police typically used their influence as government officials to assist friends and family, such as in facilitating family members' release from prison. There were reports that police demanded bribes to release detainees and that military forces accepted money to smuggle citizens from the country.[2]

2.3.4 There were no mechanisms to address allegations of official abuse, and impunity was a problem. Public officials were not subject to financial disclosure laws, and there was no government agency responsible for combating government corruption. Corruption was extensive for government services involving identification and travel documents.[3]

2.3.5 During the year (2010) the police, armed forces, and internal security arrested and detained persons without due process and often used violence. Police forcibly arrested individuals on the street who were unable to present identification documents. Those in the government

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[1] US State Department Human Rights Report 2010: Eritrea http://www.state.gov/g/drl/rls/hrrpt/2010/af/154345.htm
[2] US State Department Human Rights Report 2010: Eritrea http://www.state.gov/g/drl/rls/hrrpt/2010/af/154345.htm
[3] US State Department Human Rights Report 2010: Eritrea http://www.state.gov/g/drl/rls/hrrpt/2010/af/154345.htm

national service were required to present "movement papers" issued by their offices or departments authorising their presence in a particular location. Those persons who did not present "movement papers" were arrested.[4]

2.3.5 The law and unimplemented constitution provide for an independent judiciary; however, in practice the judiciary was impotent. Judicial corruption remained a problem. The judiciary suffered from a lack of trained personnel, inadequate funding, and poor infrastructure that limited the ability of the accused persons to a speedy and fair trial. Public trials were held for some detainees facing criminal charges. However, no cases involving individuals detained for national security or political reasons were brought to trial, and the fate of these detainees remains unknown. The drafting into national service of many civilian court administrators, defendants, judges, lawyers, and others involved in the legal system continued to have a significant negative effect on the judiciary.[5]

2.4 Internal relocation.

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

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

2.4.3 Eritrea lies on the West Coast of the Red Sea. It has land borders with Sudan to the west, Djibouti to the east and Ethiopia to the south.[6] The estimated population of Eritrea in 2010 was 5.6 million.[7]

2.4.4 The law and unimplemented constitution provide for freedom of movement, foreign travel, emigration, and repatriation; however, the government restricted all of these rights in practice. Citizens required government permission for most travel within the country and to change their places of residence. The government severely restricts travel to the border regions.[8] It may be practical for applicants in some categories who may have a well-founded fear of persecution in one area to relocate to other parts of Eritrea where they would not have a well founded fear and, taking into account their personal circumstances, it would not be unduly harsh to expect them to do so.

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[4] US State Department Human Rights Report 2010: Eritrea http://www.state.gov/g/drl/rls/hrrpt/2010/af/154345.htm
[5] US State Department Human Rights Report 2010: Eritrea http://www.state.gov/g/drl/rls/hrrpt/2010/af/154345.htm
[6] FCO Country profile; Eritrea http://www.fco.gov.uk/en/travel-and-living-abroad/travel-advice-by-country/country-profile/sub-saharan-africa/eritrea/?profile=geography
[7] COIS Eritrea Country Report August 2011 (para 1.02) http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/
[8] US State Department Human Rights Report 2010: Eritrea http://www.state.gov/g/drl/rls/hrrpt/2010/af/154345.htm

2.5 Country guidance 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.

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 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.

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)

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).

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

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 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

MO (illegal exit – risk on return) Eritrea CG [2011] UKUT 00190 (IAC)
The issues in this case were confined to: 1) risk on return where there has been illegal exit from Eritrea; and/or 2) [risk on return] where a person has claimed asylum in the United Kingdom (regardless of status of exit). The IAC found as follows;

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.

ST (Ethnic Eritrean – nationality – return) Ethiopia CG [2011] UKUT 00252 (IAC)

The CG case relates to persons from Ethiopia of Eritrean descent who left Ethiopia in 1998 during the border war or immediately thereafter and who did not acquire another nationality and can not (by implication) avail themselves of Eritrean nationality. These claims to be refugees involved the assertion that, whether or not entitled to Ethiopian nationality as a matter of international law, they were denied such nationality by the Ethiopian authorities.

The Tribunal summarized the relevant law as follows:

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

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

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

The country guidance findings of the Upper Tribunal (IAC) should be read in full and can be found at:

http://www.judiciary.gov.uk/Resources/JCO/Documents/Tribunals/tribunals-country-guidance-list-updated-130711.pdf

In brief:

i) 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 (1998), 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. It is expected that such a person should attempt to establish that they have been deprived of their nationality by attending the London embassy with the relevant documents (paragraph 105).

ii)A person who left Ethiopia as described 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, however, they may eventually be able to re-acquire Ethiopian nationality by means of the 2003 Nationality Proclamation (paragraphs 110-113).

The Tribunal found that the appellant, in 2011, was being deprived of his Ethiopian nationality and of the associated right of return, in circumstances that amount to persecution for a Refugee Convention reason, and as such the appellant was entitled to recognition as a refugee.

3. Main categories of claims

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

3.2 Each claim should be assessed to determine whether there are reasonable grounds for

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

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

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

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

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 the Asylum Policy Instruction on considering the protection (asylum) claim and assessing credibility. Caseowners 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 Applicants may make an asylum and/or human rights claim based on alleged state mistreatment on account of their being Pentecostals.

3.6.2 ***Treatment.*** The 1997 constitution, and the former constitution implemented in 1952 both provide for religious freedom; however, the government has yet to implement the 1997 constitution. Although the government requires religious groups to register; it has not approved any registrations beyond the country's four principal religious groups since 2002: the Eritrean Orthodox Church, the Evangelical (Lutheran) Church of Eritrea, Islam, and the Roman Catholic Church.[9] The government forbids religious practice outside the four recognised faiths, and even recognised faiths are often forbidden from managing their own operations and finances.[10]

3.6.3 There were few reports of societal abuses or discrimination based on religious affiliation, belief, or practice. Citizens generally were tolerant of one another in the practice of their religion with the exception of societal attitudes toward Jehovah's Witnesses, Pentecostal groups, and conscientious objectors. Some individuals viewed failure to perform the required military service as a sign of disloyalty and encouraged harassment of those unwilling to perform military duty.[11]

3.6.4 Persecution of minority Christian sects has escalated, particularly for Jehovah's Witnesses, who were stripped of their basic civil rights in 1994, and evangelical and Pentecostal churches.[12] Authorities regularly harassed, arrested, and detained members of various

[9] COIS Eritrea Country Report August 2011 (para 18.01) http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/
[10] COIS Eritrea Country Report August 2011 (para 18.04) http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/
[11] US State Department International Religious Freedom report 2010: Eritrea http://www.state.gov/g/drl/rls/irf/2010/148686.htm
[12] Freedom House country report Eritrea (2011) http://www.freedomhouse.org/template.cfm?page=22&year=2011&country=8034

religious groups. The government closely monitored the activities and movements of unregistered religious groups and members, including nonreligious social functions attended by members. Persons arrested for religious reasons were often detained for extended periods in harsher conditions and without due process.[13]

3.6.5 Since 1994, the government of Eritrea has denied Jehovah's Witnesses citizenship and a range of government services, as well as civil and political rights. President Isais Afwerki issued a decree in October 1994 barring Witnesses from obtaining government jobs, business licenses, and government issued identity and travel documents. He reportedly viewed their refusal on religious grounds to participate in the 1993 independence referendum or to perform mandatory national military service as a rejection of Eritrean citizenship. Without Eritrean identity cards Jehovah's Witnesses cannot obtain legal recognition of marriages or land purchases.[14]

3.6.6 Although members of several religious groups were imprisoned in past years for failure to participate in required national military service, the government singled out Jehovah's Witnesses to receive harsher treatment than that given to followers of other religious groups for similar actions.[15]

See also: **Actors of protection (section 2.3 above)**

Internal relocation (section 2.4 above)

Caselaw (section 2.5 above)

3.6.7 ***Conclusion.*** Case owners must assess the credibility of the applicant and the evidence they submit in accordance with the relevant Asylum Instruction (see para 3.5.1 above)

3.6.8 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 obligation under the 1951 Convention. The grant of asylum in such cases us 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 Some applicants may make an asylum and/or human rights claim based on ill-treatment amounting to persecution for refusing to undertake military service or deserting from military service. Applicants may cite their religious beliefs (usually as Jehovah's Witnesses) as the reason why their objection has resulted in, or is likely to lead to, persecution.

3.7.9 ***Treatment***. Under the parameters set forth in Proclamation of National Service (No. 82/1995), men aged 18 to 54 and women aged 18 to 47 are required to provide 18 months of military and non-military public works and services in any location or capacity chosen by the government.[16] Active National Service consists of six months of training in the National Service Training Center and 12 months of active military service and development tasks in military forces.[17]

3.7.9 Normally, married women or women with young children are exempt from military service as are those registered disabled. The elderly have usually completed their national service, but if conflict ensues they could be expected to take up arms. Military commanders are able

[13] US State Department International Religious Freedom report 2010: Eritrea http://www.state.gov/g/drl/rls/irf/2010/148686.htm
[14] COIS Eritrea Country Report August 2011 (para 18.14) http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/
[15] US State Department International Religious Freedom report 2010: Eritrea http://www.state.gov/g/drl/rls/irf/2010/148686.htm
[16] COIS Eritrea Country Report August 2011 (para 9.16) http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/
[17] COIS Eritrea Country Report August 2011 (para 9.05) http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

to authorise medical exemptions, with a report from a military medical officer. There are no exemptions for those from a poor background or those who have family members dependent on them through age or illness.[18]

3.7.9 Article 13(1) of the Proclamation on National Service states that individuals who are deemed to be medically unfit for military service may be given non-military duties as an alternative to military service for a period of eighteen months. This will depend on the nature of the illness or disability of the individual concerned. For some individuals, this will not be possible, and they will be exempt from all types of national service. Article 15 of the Proclamation allows individuals who are disabled, blind or psychologically deranged to be exempt from national service altogether - whether this is military service or some other type of national service.[19]

3.7.9 According to information obtained from the British Embassy in Asmara in April 2010 full-time religious clerics/nuns can be required to do military/national service although in previous years they have been exempt. It is believed that some churches or mosques are limited to having a minimum of serving religious members who are exempt from military/national service.[20]

3.7.9 The National Service Proclamation of 1995 makes no provision for conscientious objection to military service.[21] Jehovah's Witnesses and other conscientious objectors were normally willing to perform non-military national service. At least three Jehovah's witnesses were detained for 15 years, reportedly for evading compulsory military service, far beyond the maximum legal penalty of two years for refusing to perform national service. In addition, Jehovah's Witnesses who did not participate in national military service were subject to dismissal from the civil service, revocation of business licenses, eviction from government-owned housing, and denial of passports, identity cards, and exit visas. They were also prohibited from having civil authorities legalise their marriages.[22]

3.7.9 Deserting from the army or even expressing dissent over the indefinite military service is viewed as a political issue by the government. Therefore, most prisoners held for political reasons are detained without charge or trial for refusing or questioning national service or for offences punishable under military law.[23] Several persons detained for evading national service reportedly died after receiving harsh treatment by security forces. There were reports that individuals were severely beaten and killed during roundups of young men and women for national service. There was a pattern of mistreating and hazing conscripts, a practice that sometimes resulted in deaths. However, no official cases were available for citation. The government continued the practice of summary executions and shooting of individuals on sight near mining camps and border regions for allegedly attempting to flee military service, interfering with mining activities, or attempting to leave the country without an exit visa.[24]

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

3.7.8 ***Conclusion.*** Case owners must assess the credibility of the applicant and the evidence they submit in accordance with the relevant Asylum Instructions (see para 3.5.1 above).

[18] COIS Eritrea Country Report August 2011 (para 9.44) http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/
[19] COIS Eritrea Country Report August 2011 (para 9.46) http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/
[20] COIS Eritrea Country Report August 2011 (para 9.50) http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/
[21] COIS Eritrea Country Report August 2011 (para 9.39) http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/
[22] COIS Eritrea Country Report August 2011 (para 18.15) http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/
[23] COIS Eritrea Country Report August 2011 (para 9.51 http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/
[24] US State Department Human Rights Report 2010: Eritrea http://www.state.gov/g/drl/rls/hrrpt/2010/af/154345.htm

3.7.9 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. Credible applicants who can demonstrate that they:

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

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

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

3.7.11 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

3.8.1 Some applicants may make an asylum and/or human rights claim on the grounds that they are face threats or harassment by the authorities on account of their membership of, 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.

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

3.8.2 ***Treatment.*** The unimplemented Eritrean Constitution guarantees to every citizen the right to form organisations for political ends.[25] Although the Constitution guarantees the right to form political organizations, the People's Front for Democracy and Justice (PFDJ) remains the only authorized political party in the country and has dominated public and private life since 1994, when it came to power. All opposition groups have been driven out of the country and, since late 2004, operate only in exile, mainly in neighbouring countries.[26]

3.8.3 Although no political parties operated in the country, citizens living abroad established several political parties and even a shadow government in Ethiopia. During the year the government continued to label individuals as traitors, rapists, paedophiles, and traffickers if they created or participated in the political parties other than the PFDJ.[27]

3.8.4 Opposition groups abroad, most of which are based in neighbouring Ethiopia and Sudan, are split into two major affiliations, namely (i) the Democratic Party, which has agreed a common set of objectives with two older parties (the Eritrean Liberation Front

[25] The Eritrean Constitution http://unpan1.un.org/intradoc/groups/public/documents/cafrad/unpan004654.pdf
[26] COIS Eritrea Country Report August 2011 (para 14.16) http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/
[27] US State Department Human Rights Report 2010: Eritrea http://www.state.gov/g/drl/rls/hrrpt/2010/af/154345.htm

(ELF) and the Eritrean Liberation Front - Revolutionary Council (ELF-RC), a splinter group of the ELF); and (ii) the Eritrean National Alliance (ENA), an umbrella organisation consisting of several and varied opposition groups. Some of these groups broadcast radio and television programmes to Eritrea via satellite, and maintain active websites highly critical of the Eritrean Government.[28]

3.8.5 Persons are routinely arrested on political grounds, and there was lack of due process and lack of transparency surrounding the penal system. The most famous politically motivated mass arrest occurred when several hundred individuals were detained in 2001. Many were perceived to have ties to political dissidents or were believed to have spoken against government actions. These detainees have not been tried and did not have access to legal counsel. Several have been tortured to death and others are still in Era-Ero prison.[29]

G-15 Activists

3.8.6 G-15 refers to 11 former members of parliament, 10 journalists and hundreds of other men and women who were arrested in a crackdown on government critics calling for democratic reforms in September 2001. The 11 members of parliament (known as members of the "G15" or "group of 15" and including former government ministers) were publicly accused of “treason” during the war with Ethiopia, and the detained journalists were accused of supporting them through their publications as "spies and mercenaries".[30]

3.8.7 The Eritrean chapter in the Amnesty International 2011 Annual Report states that the G-15 group, prisoners of conscience detained without charge or trial since 2001, continued to be held in secret detention. During 2010 the government again did not respond to allegations that nine of the G-15 had died in detention.[31]

See also: **Actors of protection (section 2.3 above)**

Internal relocation (section 2.4 above)

Caselaw (section 2.5 above)

3.8.8 ***Conclusion.*** Case owners must assess the credibility of the applicant and the evidence they submit in accordance with the relevant Asylum Instructions (see para 3.5.1 above)

3.8.9 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.

3.8.10 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.

3.8.11 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

[28] UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Eritrea http://www.unhcr.org/refworld/docid/49de06122.html
[29] US State Department Human Rights Report 2010: Eritrea http://www.state.gov/g/drl/rls/hrrpt/2010/af/154345.htm
[30] Amnesty International, Eritrea: Five years on, members of parliament and journalists remain in secret detention without trial, with fears that some may have died in custody 18 September 2006 http://www.amnesty.org/en/library/asset/AFR64/009/2006/en/1be631ed-d3f2-11dd-8743-d305bea2b2c7/afr640092006en.html
[31] Amnesty International Annual Report 2011; Eritrea http://www.amnesty.org/en/region/eritrea/report-2011

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

3.9.2 ***Treatment of Eritreans of Ethiopian origin in Eritrea.*** The Ethiopian government is known to have forcibly expelled an estimated 75,000 people of Eritrean origin during the war. Ethiopian authorities launched a vast campaign to round up and expel people of Eritrean origin from Ethiopia in June 1998. Most had been born in Ethiopia when Eritrea was still held to be a part of that country-and had no other recognised citizenship other than Ethiopian. Most adults had spent all or most of their working lives in Ethiopia, outside of Eritrea. Ethiopian authorities in June 1998 announced the planned expulsion of residents who posed a security risk to the state, to include members of Eritrean political and community organisations, and former or current members of the Eritrean liberation front. The Ethiopian government also forced deportees to sign away their property rights-by demanding deportees sign powers of attorney under threat.[32]

3.9.3 By and large, the government of Eritrea gave deportees from Ethiopia a warm reception. The Eritrean government mobilized quickly to assist the deportees. The government-run Eritrean Relief and Rehabilitation Commission (ERREC) was 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.[33]

3.9.4 ***Treatment of Ethiopians of Eritrean origin in Eritrea.*** There were 16,000 Ethiopians estimated to have temporary residence in Eritrea in 2006, 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. [34] In February 2007, the Canadian Immigration Board noted that persons of Ethiopian origin continue to face discriminatory practices in Eritrea, including the demand for payment or high 'repatriation clearance' fees.[35]

3.9.5 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

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[32] Human Rights Watch report, The Horn of Africa 29 January 2003 http://www.hrw.org/node/12364/section/1
[33] Human Rights Watch report, The Horn of Africa 29 January 2003 http://www.hrw.org/node/12364/section/1
[34] US State Department Human Rights Report 2006: Eritrea http://www.state.gov/g/drl/rls/hrrpt/2006/78733.htm
[35] Immigration and Refugee Board of Canada, Ethiopia and Eritrea: Possibility of repatriation of Ethiopian and Eritrean civilians to their homelands (2006), 20 February 2007 http://www.unhcr.org/refworld/country,COI,IRBC,,ERI,456d621e2,469cd6b52,0.html

and obtain exit visas to leave the country.[36]

3.9.6 An International Committee of the Red Cross report, published in August 2009, stated that the Eritrean authorities have informed the International Committee of the Red Cross (ICRC) that it will no longer be involved in any repatriation of Ethiopians from the country. According to the authorities, this decision was motivated by the unilateral cancellation of two repatriation operations in late 2008 and early 2009 by Ethiopia. The report further stated that since 2000, more than 43,000 Ethiopian and Eritrean civilians have been repatriated to their respective countries, and that the decision of the Eritrean authorities to terminate the ICRC's involvement in the repatriations does not affect the right of Ethiopian nationals to leave Eritrea if they wish to do so.[37]

3.9.7 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.

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

3.9.8 ***Conclusion*** Case owners must assess the credibility of the applicant and the evidence they submit in accordance with the relevant Asylum Instruction (see para 3.5.1)

3.9.9 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 assess accordingly. Guidance on handling such claims is included in the Ethiopia OGN.

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

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

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

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

[36] COIS Eritrea Country Report August 2011 (para 26.08) http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/
[37] COIS Eritrea Country Report August 2011 (para 26.09) http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

be equated of a person's nationality must be equated with persecution (*EB* considered)". Lord Justice Stanley Burnton agreed that deprivation of a person's nationality *can* amount to persecution but that such deprivation, while relevant to the determination of refugee status, is not necessarily in itself sufficiently serious as to amount to persecution….." It will do so if the consequences are sufficiently serious".

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

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

3.10 Claimed illegal Exit from Eritrea

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

3.10.2 ***Treatment.*** Individuals working in government ministries or agencies must obtain ministerial permission before applying for a passport. Other individuals must obtain authorisation from a local government administrator and present a birth certificate, any military/national service medical exemption documents, and an ID card. The administrator then instructs the Department of Immigration (which has offices in regional capitals) to issue a passport.[38] 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. [39]

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.[40] 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 government continually modified its requirements to obtain passports and exit visas, sometimes suspending passport or exit visa services without prior warning. During the year the government introduced a new, machine-readable passport at a cost of 4,000 nakfa (£164) valid for two years. It costs a citizen in national service approximately 40 percent of his gross yearly salary just to maintain a valid passport. The prohibitive cost of the passport deters many citizens from foreign travel.[42]

3.10.5 Eritreans who are forcibly returned may, according to several reports, face arrest without charge, detention, ill-treatment, torture or sometimes death at the hands of the authorities. They are reportedly held incommunicado, in over-crowded and unhygienic conditions, with little access to medical care, sometimes for extended periods of time. For some Eritreans, being outside the country may be sufficient cause on return to be subjected to scrutiny, reprisals and harsh treatment. Individuals may be suspected of having sought asylum, participating in diaspora-based opposition meetings or otherwise posing a (real or

[38] COIS Eritrea Country Report August 2011 (para 28.01) http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/
[39] COIS Eritrea Country Report August 2011 (para 28.06) http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/
[40] COIS Eritrea Country Report August 2011 (para 28.01) http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/
[41] COIS Eritrea Country Report August 2011 (para 28.06) http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/
[42] US State Department Human Rights Report 2010: Eritrea http://www.state.gov/g/drl/rls/hrrpt/2010/af/154345.htm

perceived) threat to the Government, particularly where they have exited the country illegally.[43]

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

3.10.6 ***Conclusion.*** Case owners must assess the credibility of the applicant and the evidence they submit in accordance with the relevant Asylum Instructions (see para 3.5.1 above).

3.10.7 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*). Lawful exit is considered 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.

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

3.10.9 Applicants who can therefore demonstrate a reasonable likelihood of having left Eritrea illegally will qualify for asylum unless they are excluded from the 1951 Convention under Article 1F, or where in particular individual cases there are reasons not to do so.

3.11 Prison conditions

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

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

3.11.3 **Treatment** Prison conditions remained harsh and in some cases life threatening. Severe overcrowding was common. Some prisoners were shackled in unventilated holding cells for long periods of time in extreme heat, with outside temperatures reaching 120 degrees Fahrenheit, and died due to heat exhaustion in combination with other medical conditions. 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 of those incarcerated to lie down at the same time. Other prisoners were held in cement lined underground bunkers with no ventilation. Up to 200 prisoners were held in each bunker, and there are reports that prisoners lost consciousness from the extreme heat while in detention.[44]

[43] COIS Eritrea Country Report August 2011 (para 28.12) http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/
[44] US State Department Human Rights Report 2010: Eritrea http://www.state.gov/g/drl/rls/hrrpt/2010/af/154345.htm

3.11.4 The government does not provide adequate provisions for basic and emergency medical care in prisons and detention centres, and detainees were known to have died due to lack of medical treatment during the year. Food provided was not adequate. Potable water was generally not available.[45]

3.11.5 There were numerous unofficial detention centres, most located in military camps and used as overflow detention centres following mass arrests and roundups. There were reports that detention centre conditions for persons temporarily held for evading military service were also harsh and life threatening.[46]

3.11.6 The government did not provide current number of prisoners. The government did not investigate and monitor prison and detention centre conditions. It was known that there are more than 300 prisons and detention centres, which were filled to capacity. Prisoners and detainees did not have reasonable access to visitors and were not always permitted religious observance. Authorities did not permit prisoners and detainees to submit complaints to judicial authorities without censorship and to request investigation of credible allegations of inhumane conditions. Authorities did not investigate credible allegations of inhumane conditions and document the results of such investigations in a publicly accessible manner.[47]

3.11.7 Ombudsmen cannot serve on behalf of prisoners to alleviate inhumane overcrowding. There are no provisions for addressing the status and circumstances of confinement of juvenile offenders, pre-trial detention, or bail. Record keeping procedures are not transparent making it impossible to assure that prisoners do not serve beyond the maximum sentence for the charged offense, even if a specific charge is brought. Although there was a juvenile detention centre in Asmara, juveniles frequently were held with adults in prisons and detention centres. Juveniles as young as 15 years old were tried as adults.[48]

3.11.8 **Conclusion.** Conditions in prisons and detentions facilities in Eritrea are extremely poor and likely to breach the Article 3 threshold. Where an individual applicant is able to demonstrate a real risk of significant period of detention or imprisonment on return to Eritrea, and exclusion under Article 1F is not justified, a grant of Humanitarian Protection will be appropriate.

4. Discretionary Leave

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

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

4.3 Minors claiming in their own right

4.3.1 Minors claiming in their own right who have not been granted asylum or HP can only be

[45] US State Department Human Rights Report 2010: Eritrea http://www.state.gov/g/drl/rls/hrrpt/2010/af/154345.htm
[46] US State Department Human Rights Report 2010: Eritrea http://www.state.gov/g/drl/rls/hrrpt/2010/af/154345.htm
[47] US State Department Human Rights Report 2010: Eritrea http://www.state.gov/g/drl/rls/hrrpt/2010/af/154345.htm
[48] US State Department Human Rights Report 2010: Eritrea http://www.state.gov/g/drl/rls/hrrpt/2010/af/154345.htm

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

4.4 Medical treatment

4.4.1 Applicants may claim they cannot return to Eritrea due to a lack of specific medical treatment. See the IDI on Medical Treatment which sets out in detail the requirements for Article 3 and/or 8 to be engaged.

4.4.2 Since independence in 1991, Eritrea has made considerable progress in promoting equitable, accessible and affordable health services to the majority of its citizens with the support of its partners. This is demonstrated by the significant improvement of health indicators. The country still experiences acute shortage of human resource at all levels of the Health Care delivery System. The health service is delivered in a three tier system in the country and an effort to improve the referral system is underway.[49]

4.4.3 Ninety percent of the country's 5 million people are allowed to access free medical treatment at public hospitals and clinics. However, Eritrea has only one doctor per 10,000 people and most health care providers are located in urban areas. With 80% of the country's population living in rural areas, it is much harder to access health care or travel to urban health facilities. Strengthening the public health system is a priority. In recent years, significant investments have been made and several new hospitals and teaching facilities were opened to reach medically underserved communities. [50]

4.4.3 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. <u>Returns</u>

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

5.2 Factors that affect the practicality of return such as the difficulty or otherwise of obtaining a travel document should not be taken into account when considering the merits of an asylum or human rights claim. Where the claim includes dependent family members their situation on return should however be considered in line with the Immigration Rules, in particular paragraph 395C requires the consideration of all relevant factors known to the Secretary of State, and with regard to family members refers also to the factors listed in paragraphs 365-368 of the Immigration Rules.

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

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

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.

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

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

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

Country Specific Litigation Team
Immigration Group
UK Border Agency

September 2011