



UNHCR ELIGIBILITY GUIDELINES FOR ASSESSING THE INTERNATIONAL PROTECTION NEEDS OF ASYLUM-SEEKERS FROM ERITREA

United Nations High Commissioner for Refugees (UNHCR)

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NOTE

UNHCR *Eligibility Guidelines* are issued by the Office to assist decision-makers, including UNHCR staff, Governments and private practitioners, in assessing the international protection needs of asylum-seekers. They are legal interpretations of the refugee criteria in respect of specific profiles on the basis of assessed social, political, economic, security, human rights and humanitarian conditions in the country/territory of origin concerned. The pertinent international protection needs are analyzed in detail, and recommendations made as to how the applications in question relate to the relevant principles and criteria of international refugee law as per, notably, the UNHCR Statute, the 1951 Refugee Convention and its 1967 Protocol, and relevant regional instruments such as the Cartagena Declaration, the 1969 OAU Convention and the EU Qualification Directive. The recommendations may also touch upon, as relevant, complementary or subsidiary protection regimes.

UNHCR issues *Eligibility Guidelines* to promote the accurate interpretation and application of the above-mentioned refugee criteria in line with its supervisory responsibility as contained in paragraph 8 of its Statute in conjunction with Article 35 of the 1951 Convention and Article II of its 1967 Protocol and based on the expertise it has developed over the years in matters related to eligibility and refugee status determination. It is hoped that the guidance and information contained in the *Guidelines* will be considered carefully by the authorities and the judiciary in reaching decisions on asylum applications. The *Guidelines* are based on in-depth research, information provided by UNHCR's global network of field offices and material from independent country specialists, researchers and other sources, rigorously reviewed for reliability. The *Guidelines* are posted on UNHCR's Refworld website at <http://www.refworld.org>.

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I. Introduction

These Guidelines replace the April 2009 *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Eritrea*.¹ They are issued against a backdrop of continuous high numbers of asylum applications by Eritreans which require an update on the particular profiles for which international protection needs may arise.²

Claims lodged by asylum-seekers from Eritrea, whether on the basis of the refugee criteria contained in the 1951 Convention relating to the Status of Refugees (1951 Convention) and its 1967 Protocol³ and/or the 1969 Convention Governing the Specific Aspects of Refugee Problems in Africa (OAU Convention),⁴ will generally need to be considered on their own merits according to fair and efficient status determination procedures and up-to-date and relevant country of origin information.

UNHCR considers that individuals with the profiles outlined below require a particularly careful examination of possible risks. These risk profiles, while not necessarily exhaustive, include (i) persons avoiding military/national service; (ii) members of political opposition groups and Government critics; (iii) journalists and other media professionals; (iv) trade unionists and labour rights activists; (v) members of minority religious groups; (vi) women and children with specific profiles; (vii) lesbian, gay, bisexual, transgender and intersex (LGBTI) individuals; (viii) members of certain minority ethnic groups; and (ix) victims of trafficking.

Given the omnipresence of the military, a well-established network of Government informants, as well as the countrywide control over the population exercised by State agents, UNHCR does not consider internal flight as a reasonable alternative where the risk of persecution emanates from the State and its agents. For categories of claimants who fear persecution at the hands of non-State agents, the question whether an internal flight or relocation alternative is available would need to be given careful consideration.

In light of current serious human rights violations, as well as transgressions of international humanitarian law during the 30-year war for independence from Ethiopia and subsequent border disputes, exclusion considerations under Article 1F of the 1951 Convention and/or Article I(5) of the OAU Convention may arise in individual claims by Eritrean asylum-seekers. Careful consideration needs to be given in particular to the following profiles: (i) members of the Eritrean military; (ii) Government officials in positions of authority, including Cabinet members; (iii) prison wardens and guards; (iv) members of State security/intelligence apparatus, including the police forces and the National Security Service; (v) Government informers and agents; (vi) members of the judiciary; (vii) members of armed liberation movements during the war of independence with Ethiopia; (viii) members of opposition groups involved in armed attacks; and (ix) Islamic militant groups.

It should be noted that access to fully comprehensive information on the situation in Eritrea is limited given the ongoing restrictions on freedom of movement and expression in the country, as evidenced by the virtual absence of independent media, political opposition or civil society.⁵ UNHCR assessed the most up-to-date relevant information from a wide variety of sources at the time of writing of these Guidelines. Older sources may be referred to where they are still relevant. The analysis contained in

¹ UNHCR, *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Eritrea*, April 2009, <http://www.unhcr.org/refworld/docid/49de06122.html>.

² These Guidelines are based on information available to UNHCR as of 15 April 2011, unless otherwise stated.

³ Convention Relating to the Status of Refugees, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, <http://www.unhcr.org/refworld/docid/3be01b964.html>; and Protocol Relating to the Status of Refugees, 31 January 1967, United Nations, Treaty Series, vol. 606, p. 267, <http://www.unhcr.org/refworld/docid/3ae6b3ae4.html>.

⁴ Convention Governing the Specific Aspects of Refugee Problems in Africa, 10 September 1969, 1001 U.N.T.S. 45, <http://www.unhcr.org/refworld/docid/3ae6b36018.html>.

⁵ As a result of legislative measures adopted in 2005, international human rights organizations have had virtually no access to Eritrea in the last few years. Hence independent monitoring of the human rights situation on the ground has been severely limited and reports from independent monitors are largely based on interviews with Eritrean refugees and asylum-seekers in neighbouring countries, a source also used by UNHCR. See also UK Foreign and Commonwealth Office, *Human Rights and Democracy: The 2010 Foreign & Commonwealth Office Report - Eritrea*, 31 March 2011, <http://www.unhcr.org/refworld/docid/4d99aa836e.html>, on the serious obstacles to obtaining reliable information from inside Eritrea.

these Guidelines is also informed by coherent and consistent reports provided to UNHCR by refugees across the globe.

II. Background Information

Despite the political pluralism enshrined in the Constitution, Eritrea has been governed by the country's only political party, the People's Front for Democracy and Justice (PFDJ), since independence.⁶ Political opposition movements are unable to operate openly in the country.⁷ The only functioning opposition exists in the diaspora.⁸ Presidential and legislative elections, planned for 1997 and 2001, respectively, have been postponed indefinitely.⁹ The Constitution,¹⁰ which was approved by referendum in 1997, is not effectively implemented.¹¹

The judiciary is reportedly subject to executive interference,¹² and the judicial system¹³ as a whole suffers from a lack of trained personnel, inadequate funding, and poor infrastructure.¹⁴ Members of the armed forces (including conscripts) are subject to military jurisdiction in the military courts. It is reported that in practice, however, punishments for military offences, including draft evasion and desertion, are generally administered by local commanders without judicial control.¹⁵

The State owns and exercises complete control over the media.¹⁶ As a result, Eritrea has been ranked last in the Reporters Without Borders Press Freedom Index for the last three years.¹⁷ The activities of human rights monitors and domestic and international non-governmental organizations (NGOs) have

⁶ Economist Intelligence Unit, *Country Report: Eritrea*, February 2011; and International Crisis Group, *Eritrea: The Siege State*, 21 September 2010, p. 11, <http://www.unhcr.org/refworld/docid/4c9c65eb2.html>.

⁷ See, for instance, Economist Intelligence Unit, *Country Report: Eritrea*, February 2011; and US Department of State, *2010 Country Reports on Human Rights Practices – Eritrea*, 8 April 2011, <http://www.unhcr.org/refworld/docid/4da56dccc.html>.

⁸ Economist Intelligence Unit, *Country Report: Eritrea*, February 2011.

⁹ See, for instance, US Department of State, *2010 Country Reports on Human Rights Practices – Eritrea*, 8 April 2011, <http://www.unhcr.org/refworld/docid/4da56dccc.html>; and BBC, *Country Profile Eritrea*, 30 November 2010, http://news.bbc.co.uk/2/hi/africa/country_profiles/1070813.stm.

¹⁰ *Constitution of Eritrea*, 23 May 1997, <http://www.unhcr.org/refworld/docid/3dd8aa904.html>.

¹¹ Global Christian, Eritrean Christians and the Eritrean Constitution, 2 September 2009, <http://www.globalchristian.org/articles/3-intermediate/62-eritrean-christians-and-the-eritrean-constitution.html>. Eritrean law derives from transitional laws which incorporate pre-independence statutes of the Eritrean People's Liberation Front, revised Ethiopian laws, customary laws, and post-independence enacted laws; see Dr. David Winslow, *Crime and Society A Comparative Criminology Tour of the World*, San Diego State University, *undated*, <http://www-rohan.sdsu.edu/faculty/rwinslow/africa/eritrea.html>.

¹² See, for example, UK Foreign and Commonwealth Office, *Human Rights and Democracy: The 2010 Foreign & Commonwealth Office Report - Eritrea*, 31 March 2011, <http://www.unhcr.org/refworld/docid/4d99aa836e.html>; Human Rights Watch, *World Report 2011 - Eritrea*, 24 January 2011, <http://www.unhcr.org/refworld/docid/4d3e801bc.html>; Asmarino, *Special Courts in Eritrea*, 15 May 2010, <http://www.asmarino.com/articles/673-special-courts-in-eritrea>; International Crisis Group, *Eritrea: The Siege State*, 21 September 2010, p. 11, <http://www.unhcr.org/refworld/docid/4c9c65eb2.html>; and Freedom House, *The Worst of the Worst 2010 – Eritrea*, 3 June 2010, <http://www.unhcr.org/refworld/docid/4c0e0afc1e.html>. The judicial process is reportedly influenced by patronage of former fighters who subsequently became judges; see US Department of State, *2010 Country Reports on Human Rights Practices – Eritrea*, 8 April 2011, <http://www.unhcr.org/refworld/docid/4da56dccc.html>.

¹³ For an in-depth overview of the Eritrean judicial system, see Luwam Dirar and Kibrom Tesfagabir, *Introduction of Eritrean Legal System and Research*, March 2011, <http://www.nyulawglobal.org/Globalex/Eritrea.htm>. The judicial system consists of civil, military and executive-controlled "special courts" which have reportedly tried politically motivated cases. The Office of the Attorney General decides which cases are to be tried by these courts, including the retrial of civilian court cases. No legal representation or right of appeal is available before the special courts, and judges are military officers with little or no legal training. See US Department of State, *2010 Country Reports on Human Rights Practices – Eritrea*, 8 April 2011, <http://www.unhcr.org/refworld/docid/4da56dccc.html>; and Amnesty International, *Eritrea: 'You have no right to ask' – Government resists scrutiny on human rights*, AFR 64/003/2004, 19 May 2004, p. 24, <http://www.unhcr.org/refworld/docid/4129dcf54.html>. Settlement of disputes through customary law is reportedly encouraged by judicial authorities; see Shabait, *Eritrea: The Society Called Upon to Properly Preserve and Bequeath Customary Law*, 1 March 2010, <http://allafrica.com/stories/201003020103.html>; and Shabait, *Eritrea: 42 Percent of Cases Presented to Central Region's Community Magistrates Settled Through Reconciliation*, 27 February 2010, <http://allafrica.com/stories/201003011114.html>.

¹⁴ US Department of State, *2010 Country Reports on Human Rights Practices – Eritrea*, 8 April 2011, <http://www.unhcr.org/refworld/docid/4da56dccc.html>; and International Crisis Group, *Eritrea: The Siege State*, 21 September 2010, <http://www.unhcr.org/refworld/docid/4c9c65eb2.html>.

¹⁵ See, for example, Human Rights Watch, *Service for Life: State Repression and Indefinite Conscription in Eritrea*, 16 April 2009, p. 27, <http://www.unhcr.org/refworld/docid/49e6dc60.html>; and Tronvoll, Kjetil, *The Lasting Struggle for Freedom in Eritrea – Human Rights and Political Development*, Oslo Centre for Peace and Human Rights, 1991-2009, 2009, http://www.oslocenter.no/images/stories/eritrearapport_2_endelig_versjon.pdf.

¹⁶ See, for example, Freedom House, *The Worst of the Worst 2010 – Eritrea*, 3 June 2010, <http://www.unhcr.org/refworld/docid/4c0e0afc1e.html>.

¹⁷ Reporters Without Borders, *Journalists still hunted down nine years after September 2001 purges*, 17 September 2010, <http://www.unhcr.org/refworld/docid/4c984645c.html>.

also been significantly curtailed following the adoption of the NGO Proclamation in May 2005.¹⁸ International NGOs, which failed to receive the approval of the authorities under the new registration process, were required to leave the country.¹⁹ During 2010 and 2011, Eritrea has continued to restrict humanitarian access,²⁰ in line with its policy of self-reliance and cash-for-work programmes in preference to free food distribution,²¹ despite available information on significant malnourishment rates among the population.²²

Eritrea's strained relations with its neighbours, particularly the "no peace, no war" stalemate with Ethiopia, are said to be responsible for a sustained high-level military mobilization.²³ In December 2009, the UN Security Council imposed sanctions against Eritrea for its alleged support of armed Islamist factions opposed to the Somali Transitional Federal Government. The sanctions consist of an arms embargo, the freezing of the assets of Eritrea's political and military leaders and restrictions on their ability to travel.²⁴

Ethiopia's non-compliance with the 2002 ruling of the Eritrea-Ethiopia Boundary Commission²⁵ and its alleged readiness to host exiled Eritrean opposition groups contribute to the tensions between the two countries.²⁶ In January 2011, the Ethiopian authorities reported the arrest of seven militants who allegedly intended to carry out attacks on Ethiopian targets under orders from the Eritrean

¹⁸ *Proclamation No. 145/2005, a Proclamation to Determine the Administration of Non-governmental Organizations*, 11 May 2005, <http://www.unhcr.org/refworld/docid/493507c92.html>, regulates the activities of non-governmental organizations. Under the Proclamation, international NGOs are limited to relief and rehabilitation work, and may not engage directly with the local communities (Articles 5-9).

¹⁹ See, for example, Human Rights Watch, *World Report 2011 - Eritrea*, 24 January 2011, <http://www.unhcr.org/refworld/docid/4d3e801bc.html>; and Freedom House, *The Worst of the Worst 2010 - Eritrea*, 3 June 2010, <http://www.unhcr.org/refworld/docid/4c0e0afc1e.html>. According to some reports only six international humanitarian NGOs remain in Eritrea: Oxfam, Lutheran World Federation, Irish Self-Help, Gruppo Missione Asmara of Italy, Refugee Trust International, and Norwegian Church Aid.. It is also reported that the Catholic Relief Services, having not complied with Government regulations, closed down its office in 2010; see US Department of State, *2010 Country Reports on Human Rights Practices - Eritrea*, 8 April 2011, <http://www.unhcr.org/refworld/docid/4da56dcc.html>. All assistance activities are reportedly implemented through Government structures, despite capacity limitations. The international and domestic NGOs still operational are reportedly not permitted to be implementing partners for UN agencies; see UN Office for the Coordination of Humanitarian Affairs, *Eritrea*, undated (accessed on 11 March 2011), <http://ochaonline.un.org/OCHAHome/WhereWeWork/Eritrea/tabid/5990/language/en-US/Default.aspx>.

²⁰ See, for example, BBC News, *Eritrea refuses food aid*, 3 January 2010, <http://news.bbc.co.uk/2/hi/africa/8438207.stm>. Eritrea is facing a food crisis, but aid workers say they cannot fully determine its severity as they are unable to assess the situation because of travel restrictions and the government's policy of "self-reliance"; see Aadalvoice, *WFP: concerned about Eritrea as can not get any information*, 28 September 2009, <http://adalvoice.wordpress.com/2009/09/28/wfp-concerned-about-eritrea-because-cannot-get-any-information/>; and IRIN, *Eritrea: How bad is the food crisis really?*, 12 June 2009, <http://www.irinnews.org/report.aspx?ReportId=84827>.

²¹ With a view to address food-aid dependency, the Government of Eritrea suspended food aid in favour of a food-for-work scheme and, eventually, in April 2006 introduced a cash-for-work policy; see, for example, UN Office for the Coordination of Humanitarian Affairs, *Eritrea*, undated (accessed on 12 April 2011), <http://www.unocha.org/where-we-work/eritrea>; and World Food Programme, *Country - Eritrea*, undated (accessed on 25 January 2011), <http://www.wfp.org/countries/eritrea>.

²² According to UNICEF, children and women remain vulnerable to pervasive under-nutrition; see UNICEF, *2011 UNICEF Humanitarian Action for Children, March 2011*, p. 47, [http://www.reliefweb.int/rw/RWFiles2011.nsf/FilesByRWDocUnidFilename/MCOI-8EQFBU-full_report.pdf/\\$File/full_report.pdf](http://www.reliefweb.int/rw/RWFiles2011.nsf/FilesByRWDocUnidFilename/MCOI-8EQFBU-full_report.pdf/$File/full_report.pdf); and UNICEF, *UNICEF Humanitarian Action 2010 Report: Mid-Year Review*, June 2010, pp. 23-25, http://www.unicef.org/infobycountry/files/HAR_Mid-Year_Review_2010.pdf.

²³ Economist Intelligence Unit, *Country Report: Eritrea*, February 2011.

²⁴ UN Security Council, *Security Council resolution 1907 (2009) [on arms embargo against Eritrea and on expansion of the mandate of the Security Council Committee Established pursuant to Resolution 751 (1992)]*, S/RES/1907 (2009), 23 December 2009, <http://www.unhcr.org/refworld/docid/4b6cc06cd.html>. See also BBC News, *Eritrea hit with sanctions for 'aiding insurgents'*, 23 December 2009, <http://news.bbc.co.uk/2/hi/8428881.stm>.

²⁵ In 1998, a border dispute with Ethiopia around the town of Badme erupted into a full-scale war between the two countries. The conflict ended following a ceasefire agreement in June 2000, leaving both sides with tens of thousands of soldiers dead. In April 2002, a UN-backed Boundary Commission issued its recommendations for the demarcation of the border in favour of Eritrea's territorial claim; see UN Security Council, *Letter dated 2 October 2008 from the Secretary-General addressed to the President of the Security Council (United Nations Mission in Ethiopia and Eritrea)*, S/2008/630, 3 October 2008, http://www.un.org/Docs/sc/unsc_presandsg_letters08.htm. Ethiopia's failure to accept as final the border demarcated by the Boundary Commission is reportedly invoked as a justification for maintaining Eritrea on a "war footing"; see UK Foreign and Commonwealth Office, *Human Rights and Democracy: The 2010 Foreign & Commonwealth Office Report - Eritrea*, 31 March 2011, <http://www.unhcr.org/refworld/docid/4d99aa836e.html>; Human Rights Watch, *World Report 2011 - Eritrea*, 24 January 2011, <http://www.unhcr.org/refworld/docid/4d3e801bc.html>; and Sudan Tribune, *Eritrean President barely escapes assassination attempt - report*, 17 August 2009, <http://www.sudantribune.com/Eritrean-president-barely-escapes.32162>. In 2010, an incident occurred on the Zalam Besa front on the Ethiopian border. The Eritrean and Ethiopian ministries of information provided contrasting accounts of army fatalities suffered; see TVNZ, Reuters, *Eritrea says 10 Ethiopian troops killed*, 4 January 2010, <http://tvnz.co.nz/world-news/eritrea-says-10-ethiopian-troop-killed-3323600>.

²⁶ Economist Intelligence Unit, *Country Report: Eritrea*, February 2011.

Government.²⁷ On the other hand, in June 2010, Eritrea withdrew its troops from Ras Doumeira and Doumeira Island, a disputed area on the border with Djibouti and the scene of serious clashes in 2008.²⁸ The two countries have authorized Qatar to mediate an agreement.²⁹ In January 2011, the Eritrean Government reopened its mission to the African Union.³⁰

Being effectively on a military footing since its independence and with an estimated 200,000 to 320,000 personnel, Eritrea has the largest army in sub-Saharan Africa.³¹ It spends approximately 6.3 percent of its gross domestic product (GDP) on the military, placing it ninth globally in per capita military expenditure,³² while an estimated 35 percent of its population is reported to be in military service.³³

Thousands of citizens and residents were reportedly expelled by both Ethiopia and Eritrea during the 1998-2000 war,³⁴ including an estimated 70,000 persons of Ethiopian origin forcibly expelled or voluntarily repatriated from Eritrea.³⁵ Furthermore, during that period, many Ethiopians reportedly lost their jobs, were arbitrarily and/or unlawfully detained or became the subject of physical attacks.³⁶

²⁷ It is as yet unclear whether those arrested are Eritrean nationals or belong to an anti-Government group from within Ethiopia; see Economist Intelligence Unit, *Country Report: Eritrea*, February 2011.

²⁸ In June 2008, after several weeks of military build-up, serious clashes were reported between the Djibouti Armed Forces (DAF) and the Eritrean Defence Forces (EDF) along the undemarcated border between the two countries and resulted in over 35 deaths and dozens of wounded; see UN Security Council, *Letter dated 11 September 2008 from the Secretary-General addressed to the President of the Security Council: report of the United Nations fact-finding mission on the Djibouti-Eritrea crisis*, S/2008/602, 12 September 2008, <http://www.unhcr.org/refworld/docid/49997ad80.html>. Most of the border between Djibouti and Eritrea was never officially demarcated. Eritrea claims that both Ras Doumeira and Doumeira Island occupied by EDF forces since March 2008 form part of its territory in accordance with an unratified 1935 agreement between France and Italy allocating Doumeira Island to the then Italian-ruled Eritrea. See UN Security Council, *Letter dated 11 September 2008 from the Secretary-General addressed to the President of the Security Council: report of the United Nations fact-finding mission on the Djibouti-Eritrea crisis*, S/2008/602, 12 September 2008, <http://www.unhcr.org/refworld/docid/49997ad80.htm>.

²⁹ UN Security Council, *Under-Secretary-General, Briefing Security Council, Commends Recent Steps by Eritrea, Djibouti to Negotiate Settlement of 2008 Border Dispute*, SC/9987, 20 July 2010, <http://www.un.org/News/Press/docs/2010/sc9987.doc.htm>; and UN Security Council, *Report of the Secretary-General on the Eritrea*, S/2010/327, 22 June 2010, paras. 11-18, <http://www.unhcr.org/refworld/docid/4c35653e2.html>.

³⁰ Voice of America, *Eritrea Reopens African Union Mission*, 19 January 2011, <http://www.voanews.com/english/news/africa/Eritrea-Reopens-African-Union-Mission-114212594.html>; and African Union, *The Chairperson of the African Union Commission Receives the Credentials of the Permanent Representatives of Eritrea*, 18 January 2011, <http://www.africa-union.org/root/ar/index/Chairperson-receives-credentials-of-Eritrea-Jan2011.pdf>. Eritrea's withdrawal from the African Union in May 2009 was in protest at what it saw as the African Union's 'failure' to condemn Ethiopia's alleged violations of a peace agreement that ended the 1998-2000 border war; see Economist Intelligence Unit, *Country Report: Eritrea*, February 2011.

³¹ Some sources estimate the Eritrean army at 200,000 personnel and the reserve forces, at 120,000, see, for instance, EuropaONline, *Eritrea Profile*, as quoted in the United Kingdom Home Office, *Country of Origin Information Report – Eritrea*, 15 April 2011, para. 8.02, <http://www.unhcr.org/refworld/docid/4dabf33c2.html>; and Jane's Information Group, *Sentinel Security Assessment - North Africa: Armed forces (Eritrea)*, 26 January 2010, <http://www.janes.com/articles/Janes-Sentinel-Security-Assessment-North-Africa/Armed-forces-Eritrea.html>. Other sources estimate the Eritrean army at 320,000; see Reuters, *In Eritrea, youth say frustrated by long service*, 18 July 2008, <http://www.reuters.com/article/latestCrisis/idUSL14124755>. In comparison, in 2009, the Ethiopian armed forces were estimated at 150,000; see Jane's Information Group, *Sentinel Security Assessment - North Africa: Armed forces (Ethiopia)*, 30 November 2009, <http://www.janes.com/articles/Janes-Sentinel-Security-Assessment-North-Africa/Armed-forces-Ethiopia.html>.

³² It is reported that 25 percent of the country's budget is allocated for military use; UN Human Rights Council, *Written statement submitted by the Jubilee Campaign, a non-governmental organization in special consultative status*, A/HRC/16/NGO/128, 1 March 2011, p.3, http://ap.ohchr.org/documents/dpage_e.aspx?c=61&su=69. US Central Intelligence Agency, *The World Factbook: Eritrea*, last updated 27 May 2010, <https://www.cia.gov/library/publications/the-world-factbook/geos/er.html>. In comparison, Ethiopia's estimated military spending represented 1.2 percent of the GDP ranking it 120th in the world; see US Central Intelligence Agency, *The World Factbook: Ethiopia*, last updated 27 May 2010, <https://www.cia.gov/library/publications/the-world-factbook/geos/et.html>.

³³ Immigration and Refugee Board of Canada, *Eritrea: Military service, including age of recruitment, length of service, grounds for exemption, penalties for desertion from and evasion of military service and availability of alternative service (2005 – 2006)*, ERI102026.E, 28 February 2007, <http://www.unhcr.org/refworld/docid/469cd6b83.html>.

³⁴ The Eritrean Government has consistently denied an official policy of expulsion; see Human Rights Watch, *The Horn of Africa War: Mass Expulsions and the Nationality Issue*, 30 January 2003, <http://www.unhcr.org/refworld/docid/3f4f59523.html>.

³⁵ Open Society Justice Initiative, *Discrimination in Access to Nationality, Statement Submitted by the Open Society Justice Initiative for Consideration by the United Nations Human Rights Council at its Sixth Session, on the occasion of its Universal Periodic Review of Eritrea November 30 – December 11, 2009, April 2009*, http://lib.ohchr.org/HRBodies/UPR/Documents/Session6/ER/OSJI_ERI_UPR_S06_2009.pdf; and Human Rights Watch, *The Horn of Africa War: Mass Expulsions and the Nationality Issue*, 30 January 2003, <http://www.unhcr.org/refworld/docid/3f4f59523.html>. Deportations ceased following the ceasefire agreement in June 2000. Repatriation of Ethiopian and Eritrean nationals was subsequently undertaken under the auspices of the ICRC. In March 2009, however, the Eritrean Government withdrew ICRC's authorization to assist the voluntary repatriation of civilians; see ICRC, *Annual Report: Eritrea 2009*, 2010, <http://www.icrc.org/eng/assets/files/annual-report/icrc-annual-report-2009-eritrea.pdf>.

³⁶ See, for example, Writenet, *Eritrea: The challenges of a new State and their implications for refugees and other persons of concern to UNHCR*, June 2006, pp. 16-17, <http://www.unhcr.org/refworld/docid/4538821e4.html>; and Human Rights Watch, *The Horn of Africa War: Mass Expulsions and the Nationality Issue*, 30 January 2003, <http://www.unhcr.org/refworld/docid/3f4f59523.html>.

It is estimated that some 15,000 individuals of Ethiopian origin are currently residing in Eritrea.³⁷ Most of them are reportedly still considered aliens, having failed to obtain naturalization prior to 1998. As such, they are issued residence permits and are not entitled to Eritrean national identity cards or passports.³⁸ In addition, persons with mixed Eritrean-Ethiopian parentage reportedly face administrative obstacles when seeking recognition of their nationality in Eritrea, Ethiopia or while in exile.³⁹

The estimated GDP per capita for 2010 stands at less than USD 423.⁴⁰ The country has practically no exports, while the cost of imports accounts for roughly 40 percent of the GDP. The cost of living, particularly in urban areas, is steadily increasing beyond the reach of most Eritreans.⁴¹ Social services remain limited and poverty is reportedly widespread. Basic consumer needs, such as food and energy, are increasingly hard to meet.⁴²

At the end of 2009 there were approximately 197,313 Eritrean refugees, mainly in neighbouring countries such as Sudan and Ethiopia.⁴³ The actual number of Eritrean refugees at the end of 2010 was 103,798 persons in Sudan, while in Ethiopia, the overall number was 44,791.⁴⁴ The third quarter statistics for new asylum applications lodged by Eritreans in selected industrialized countries also remain high.⁴⁵ The profile of the outflow from Eritrea is largely young, educated applicants from urban centres in the Highlands, many of Christian denomination.

III. Eligibility for International Protection

Claims by asylum-seekers from Eritrea need generally to be considered individually on their merits according to fair and efficient refugee status determination procedures and up-to-date country of origin information. UNHCR considers that individuals with the profiles outlined below require a particularly careful examination of possible risks. This listing is not necessarily exhaustive and is based on information available to UNHCR at the time of writing. Hence, a claim should not automatically be considered as without merit simply because it does not fall within any of the profiles

³⁷ Open Society Justice Initiative, *Discrimination in Access to Nationality, Statement Submitted by the Open Society Justice Initiative for Consideration by the United Nations Human Rights Council at its Sixth Session, on the occasion of its Universal Periodic Review of Eritrea November 30 – December 11, 2009, April 2009*, http://lib.ohchr.org/HRBodies/UPR/Documents/Session6/ER/OSJI_ERI_UPR_S06_2009.pdf.

³⁸ It should be borne in mind in the context of asylum claims by Eritreans that lengthy residence requirements for naturalization, coupled with the lack of proof of Ethiopian citizenship, reportedly creates a risk of statelessness for the persons of Ethiopian or mixed Ethiopian/Eritrean origin. In cases where such persons are determined to be stateless, their asylum claims need to be determined against the current conditions in Eritrea, as their country of habitual residence. On the risk of statelessness, see Open Society Justice Initiative, *Discrimination in Access to Nationality, Statement Submitted by the Open Society Justice Initiative for Consideration by the United Nations Human Rights Council at its Sixth Session, on the occasion of its Universal Periodic Review of Eritrea November 30 – December 11, 2009, April 2009*, http://lib.ohchr.org/HRBodies/UPR/Documents/Session6/ER/OSJI_ERI_UPR_S06_2009.pdf; and Human Rights Watch, *The Horn of Africa War: Mass Expulsions and the Nationality Issue*, 30 January 2003, <http://www.unhcr.org/refworld/docid/3f4f59523.html>. Current regulations require persons of Ethiopian descent to renew their residence permits every six months; see Writenet, *Eritrea: The challenges of a new State and their implications for refugees and other persons of concern to UNHCR*, June 2006, pp. 5-16, <http://www.unhcr.org/refworld/docid/4538821e4.html>.

³⁹ Louise Thomas, *Refugees and Asylum Seekers from Mixed Eritrean-Ethiopian families in Cairo*', American University Cairo, June 2006, pp. 17-34, <http://www.aucgypt.edu/GAPP/cmrs/reports/Documents/Mixedfamilies.pdf>, which states that "[p]eople who are of mixed parentage have often found it impossible to gain recognition of either [Ethiopian or Eritrean] nationality on account of their parentage, or administrative obstacles which may or may not be intended to block an individual's application for recognition of nationality on account of this mixed parentage. This report contends that the participants are at least de facto if not de jure stateless."

⁴⁰ In 2009, the GDP per capita was less than USD 362. See International Monetary Fund, *World Economic Outlook Database*, April 2010, <http://www.imf.org/external/pubs/ft/weo/2010/01/weodata/weorept.aspx?sy=2008&ey=2015&scsm=1&ssd=1&sort=country&ds=&br=1&c=643&s=NGDPDPC&grp=0&a=&pr.x=56&pr.y=8>.

⁴¹ Awate.com, *Eritrea: sightings, hearings and movements*, 29 April 2008, <http://www.awate.com/portal/content/view/4826/3/>.

⁴² Bertelsmann Transformation Index, *BTI 2010 - Eritrea Country Report*, 2010, <http://www.bertelsmann-transformation-index.de/bti/laendergutachten/laendergutachten/oestliches-und-suedliches-afrika/eritrea/-market>.

⁴³ UNHCR, *2009 Global Trends, Table 2 – Refugees, asylum-seekers, internally displaced persons (IDPs), returnees (refugees and IDPs), stateless persons, and others of concern to UNHCR by origin, end 2009*, June 2010, <http://www.unhcr.org/pages/49c3646c4d6.html>. By comparison, at the end of 2008 there were 181,971 Eritrean refugees. See UNHCR, *2008 Global Trends, Table 2 – Refugees, asylum-seekers, internally displaced persons (IDPs), returnees (refugees and IDPs), stateless persons, and others of concern to UNHCR by origin, end 2008*, June 2009, <http://www.unhcr.org/4bcc5bb79.html>.

⁴⁴ According to UNHCR statistics.

⁴⁵ UNHCR, *Asylum claims in industrialized countries – latest monthly data, Eritrea, 17 September 2010*, <http://www.unhcr.org/pages/4a0174156.html>.

identified below. Certain claims by asylum-seekers from Eritrea may require examination for possible exclusion from refugee status.

In countries where Eritrean asylum-seekers have arrived in large numbers, represent a discernible and similar pattern in the nature of their claims that demonstrate manifest international protection needs, and where refugee status determination on an individual basis would exceed local capacities, the adoption of group-based protection approaches may be appropriate.⁴⁶ An analysis of claims and international protection needs is required in order to establish such a pattern.

The status of recognized refugees should be reviewed only if there are indications, in an individual case, that there are grounds for cancellation of refugee status which was wrongly granted in the first instance; revocation of refugee status on the grounds of Article 1F of the 1951 Convention (or Article I(5) of the OAU Convention); or cessation of refugee status on the basis of Article 1C(1-4) of the 1951 Convention (or Article I(4)(a-d) of the OAU Convention).⁴⁷ UNHCR considers that the current situation in Eritrea does not warrant cessation of refugee status on the basis of Article 1C(5) of the 1951 Convention (or Article I(4)(e) of the OAU Convention).

A. Potential Risk Profiles

I. Military/National Service

Military/national service, which encompasses “active” military service and “reserve” military service, is mandatory for every Eritrean,⁴⁸ male or female, between the ages of 18 and 50.⁴⁹ Active national service is compulsory for all citizens between the ages of 18 and 40. It consists of six months of military training and 12 months of active military service and development tasks in the military forces for a total of 18 months,⁵⁰ save in situations of mobilization or war when it can be extended.⁵¹ Persons under the age of 50 who have completed active national service or have been demobilized are nevertheless subject to compulsory service in the reserve army,⁵² and as such are liable to be called for national mobilization, (further) military training or “defence in artificial or natural disasters”.⁵³ Persons suffering from disabilities may be exempted from national service,⁵⁴ while students enrolled in a regular daily course and those medically unfit may be temporarily exempted.⁵⁵ Those considered

⁴⁶ Group-based approaches may include, as appropriate in the circumstances, a range of options from grouping together of claims of a similar nature in an accelerated process, to the application of *prima facie* group recognition, to the granting of temporary protection.

⁴⁷ Convention Relating to the Status of Refugees, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, <http://www.unhcr.org/refworld/docid/3be01b964.html>.

⁴⁸ Article 2(2) of the *Proclamation on National Service No. 82/1995*, 23 October 1995, <http://www.unhcr.org/refworld/docid/3dd8d3af4.html>. The duty to undertake national service is also entrenched in Article 25(3) of the *Constitution of Eritrea*, 23 May 1997, <http://www.unhcr.org/refworld/docid/3dd8aa904.html>. For the purposes of these Guidelines, the terms “national service” and “military service” will be used interchangeably.

⁴⁹ Article 6 of the *Proclamation on National Service No. 82/1995*, 23 October 1995, <http://www.unhcr.org/refworld/docid/3dd8d3af4.html>. In practice, the upper limit for military service was reported to be 55, with other sources claiming up to 57 for men and 47 for women; see Human Rights Watch, *Service for Life: State Repression and Indefinite Conscription in Eritrea*, 16 April 2009, p. 43, <http://www.unhcr.org/refworld/docid/49e6dcc60.html>.

⁵⁰ Articles 8 and 9 of the *Proclamation on National Service No. 82/1995*, 23 October 1995, <http://www.unhcr.org/refworld/docid/3dd8d3af4.html>.

⁵¹ Articles 18 and 21 of the *Proclamation on National Service No. 82/1995*, 23 October 1995, <http://www.unhcr.org/refworld/docid/3dd8d3af4.html>. In practice, national service has reportedly been extended indefinitely through the introduction, in May 2002, of the Warsai Yekalo Development Campaign; see, for example, International Crisis Group, *Eritrea: The Siege State*, 21 September 2010, pp.9-10, <http://www.unhcr.org/refworld/docid/4c9c65eb2.html>; Human Rights Watch, *Service for Life: State Repression and Indefinite Conscription in Eritrea*, 16 April 2009, p. 43, <http://www.unhcr.org/refworld/docid/49e6dcc60.html>; and Kibreab, Gaim, *Forced labour in Eritrea*, J. of Modern African Studies, 47, 1 (2009), pp. 41–72, <http://www.ehrea.org/force.pdf>.

⁵² Article 23 of the *Proclamation on National Service No. 82/1995*, 23 October 1995, <http://www.unhcr.org/refworld/docid/3dd8d3af4.html>.

⁵³ Article 28 of the *Proclamation on National Service No. 82/1995*, 23 October 1995, <http://www.unhcr.org/refworld/docid/3dd8d3af4.html>.

⁵⁴ Article 15 of the *Proclamation on National Service No. 82/1995*, 23 October 1995, <http://www.unhcr.org/refworld/docid/3dd8d3af4.html>. “Disabilities” include invalidity, blindness and “psychological derangement” (Article 14(5.1)). Credible and consistent reports obtained through refugee status determination interviews conducted by UNHCR field offices confirmed that individuals with apparent physical disabilities are generally exempted from military service.

⁵⁵ Article 14 of the *Proclamation on National Service No. 82/1995*, 23 October 1995, <http://www.unhcr.org/refworld/docid/3dd8d3af4.html>. “Psychological derangement” a ground for exemption from military service (Article 14(5.1)), is reported to be a popular way to attempt to evade service; Human Rights Watch, *Service for Life: State Repression and Indefinite Conscription in Eritrea*, 16 April 2009, <http://www.unhcr.org/refworld/docid/49e6dcc60.html>.

unfit for military training must serve “in any public and government organ according to their profession”.⁵⁶ No exemption or alternative service is provided for conscientious objectors.⁵⁷ It is unclear whether, in practice, the upper age limit for female conscription has been reduced to 27, or whether it remains at 47.⁵⁸

Since the obligation to undertake military service applies to all citizens,⁵⁹ Eritreans living abroad since childhood and those born in exile are not exempt from military service.⁶⁰ Hence, Eritreans who are forcibly returned, or who return voluntarily, will be subject to conscription in the military service if they satisfy the age criteria and are medically fit.

Although the Proclamation on National Service makes no reference to gender-based exemptions, some official Eritrean Government sources indicate that women in the military who marry are discharged.⁶¹ Other categories reportedly exempt from national service include Muslim women, nursing mothers, married women and women with children. Instances of round-ups for the purpose of conscription of women, including Muslim women and mothers, have nevertheless been recorded.⁶² The Government has also reportedly revoked the exemption from military service for most Orthodox priests⁶³ and full time religious clerics/nuns are now reportedly required to undertake military/national service.⁶⁴ In practice, children of high ranking individuals, individuals not registered at birth and who therefore do not appear on national databases, and individuals not registered for school, are reportedly able to avoid national service.⁶⁵

The Proclamation on National Service sets out the penalties for attempting to avoid national service.⁶⁶ The standard sanction is a fine of 3,000 Bir (now ca. 4,600 Nakfa) and/or two years’ imprisonment.⁶⁷ Those who fled abroad specifically to avoid military service and who did not return to undertake

⁵⁶ Article 13 of the *Proclamation on National Service* No. 82/1995, 23 October 1995, <http://www.unhcr.org/refworld/docid/3dd8d3af4.html>.

⁵⁷ See, for example, Amnesty International, *Amnesty International Report 2010 - Eritrea*, 28 May 2010, <http://www.unhcr.org/refworld/docid/4c03a82d23.html>.

⁵⁸ See Amnesty International, *The Report 2010 - Eritrea*, <http://www.unhcr.org/refworld/docid/4c03a82d23.html>, which states national service is mandatory for women aged 18 to at least 27. According to the US Department of State, *2010 Country Reports on Human Rights Practices – Eritrea*, 8 April 2011, <http://www.unhcr.org/refworld/docid/4da56dcc.html>, women up to the age of 47 are required to perform national service by law and women under the age of 47 are regularly denied exit visas. See also Human Rights Watch, *Service for Life: State Repression and Indefinite Conscription in Eritrea*, 16 April 2009, p. 43, <http://www.unhcr.org/refworld/docid/49e6dcc60.html>.

⁵⁹ Article 6 of the *Proclamation on National Service* No. 82/1995, 23 October 1995, <http://www.unhcr.org/refworld/docid/3dd8d3af4.html>.

⁶⁰ In accordance with the Eritrean Nationality Proclamation, any person born to a father or a mother of Eritrean origin, whether in Eritrea or abroad, is an Eritrean national by birth; see Article 2(1) of the *Eritrean Nationality Proclamation* (No. 21/1992), 6 April 1992, <http://www.unhcr.org/refworld/docid/3ae6b4e026.html>. See also Article 3 of the *Constitution of Eritrea*, 23 May 1997, <http://www.unhcr.org/refworld/docid/3dd8aa904.html>.

⁶¹ In such cases, women must provide their marriage certificate in order to obtain their discharge documents. See Immigration and Refugee Board of Canada, *Eritrea: Whether women serving in the military are discharged when they marry; if so, evidence required to prove marriage*, ERI102729.E, 28 January 2008, <http://www.unhcr.org/refworld/docid/47d6544d23.html>. According to credible and consistent reports obtained through refugee status determination interviews conducted by UNHCR field offices, married women and women with children may also be exempted.

⁶² Information obtained from the British Embassy in Asmara in October 2010; see UK Home Office, *Country of Origin Information Report – Eritrea*, 15 April 2011, para. 9.42, <http://www.unhcr.org/refworld/docid/4dabf33c2.html>. There are, however, reports of round-ups for military service of women, including mothers; see Shaebia, *Eritrea’s Significant Achievement in Child Health*, 10 December 2008, http://www.shaebia.org/artman/publish/article_5720.shtml. In Muslim areas in the east of the country, female recruitment is said to have ceased on account of substantial opposition on grounds of customary and religious beliefs. Based on the evidence available, the UK Asylum and Immigration Tribunal found in WA (*Draft Related Risks Updated – Muslim Women*) Eritrea CG [2006] UKIAT 00079, 30 October 2006, <http://www.unhcr.org/refworld/docid/467f97062.html>, that Muslim women were not *per se* exempt from military service, and thus could still be at risk of punishment for draft evasion.

⁶³ Minority Rights Group International, *State of the World’s Minorities and Indigenous Peoples 2010 - Eritrea*, 1 July 2010, <http://www.unhcr.org/refworld/docid/4c33311832.html>; and Christian Solidarity Worldwide and Human Rights Concern, *Universal Periodic Review – Joint Submission*, April 2009, http://lib.ohchr.org/HRBodies/UPR/Documents/Session6/ER/CSW-HRCE_ERI_UPR_S06_2009.pdf.

⁶⁴ It is reported that Pope Benedict XVI intervened in order to preserve the catholic clergy’s right to exemption from military service; see Christian Solidarity Worldwide and Human Rights Concern, *Universal Periodic Review – Joint Submission*, April 2009, http://lib.ohchr.org/HRBodies/UPR/Documents/Session6/ER/CSW-HRCE_ERI_UPR_S06_2009.pdf.

⁶⁵ According to credible and consistent reports obtained through refugee status determination interviews conducted by UNHCR field offices.

⁶⁶ Article 37 of the *Proclamation on National Service* No. 82/1995, 23 October 1995, <http://www.unhcr.org/refworld/docid/3dd8d3af4.html>.

⁶⁷ Article 37(1) of the *Proclamation on National Service* No. 82/1995, 23 October 1995, <http://www.unhcr.org/refworld/docid/3dd8d3af4.html>.

military service before the age of 40 are subject to five years' imprisonment. Rights to own land, to obtain an exit visa, to work and other "privileges" can also be suspended.⁶⁸ In addition to the penalties imposed under the Proclamation on National Service, the penalties stipulated in the Eritrean Transitional Penal Code⁶⁹ also cover military violations, including failure to enlist, or re-enlist, seeking fraudulent exemptions, desertion, absence without leave, refusal to perform military service and infliction of unfitness (injury to avoid service). The punishment ranges from six months' to 10 years' imprisonment depending on the gravity of the act. During emergencies or mobilizations, the penalties are significantly more severe. Desertion is the most severely sanctioned and entails imprisonment for up to five years. In times of mobilization or emergency this can increase from five years to life, or, in the gravest cases, the death penalty, for desertion from a unit, post or military duties or for failure to return to them after an authorized period of absence.⁷⁰

In practice, punishment for military offences is carried out extrajudicially, and has been reported to include "shoot to kill" orders,⁷¹ detention for long periods often in inhumane conditions, torture and forced labour.⁷² Draft evaders/deserters are reported to be frequently subjected to torture,⁷³ while conscientious objectors can face severe physical punishment as a means of forcing them to perform military service.⁷⁴ Furthermore, extrajudicial executions are allegedly ordered by local commanders and carried out in front of military units for what are considered serious military offences.⁷⁵

Although fear of prosecution and punishment on the grounds of desertion or draft evasion does not in itself constitute a well-founded fear of persecution, a deserter or draft evader may be considered a refugee "*if it can be shown that he [or she] would suffer disproportionately severe punishment for the military offence on account of his [or her] race, religion, nationality, membership of a particular social group or political opinion. The same would apply if it can be shown that he [or she] has a well-founded fear of persecution on [those] grounds [...] and beyond the punishment for desertion.*"⁷⁶ In practice, the punishment for desertion or evasion is so severe and disproportionate such as to amount to persecution.⁷⁷

Refusal to perform military service on the ground of religious convictions may also give rise to a well-founded fear of persecution, where such convictions are proved genuine and they are not taken into account by the authorities in requiring the applicant to perform military service. Moreover, conscientious objection itself may be regarded as a form of political opinion,⁷⁸ and conscientious

⁶⁸ Article 37(3) of the *Proclamation on National Service* No. 82/1995, 23 October 1995, <http://www.unhcr.org/refworld/docid/3dd8d3af4.html>.

⁶⁹ Eritrea Transitional Penal Code, Proclamation No. 158 of 1957), 23 July 1957, <http://www.unhcr.org/refworld/docid/49216a0a2.html>.

⁷⁰ Articles 296 to 302 of the Eritrean Transitional Penal Code, Proclamation No. 158 of 1957), 23 July 1957, <http://www.unhcr.org/refworld/docid/49216a0a2.html>.

⁷¹ See, for example, US Department of State, *2010 Country Reports on Human Rights Practices – Eritrea*, 8 April 2011, <http://www.unhcr.org/refworld/docid/4da56dcc.html>; UN Human Rights Council, *Written statement submitted by the Jubilee Campaign, a non-governmental organization in special consultative status*, A/HRC/16/NGO/128, 1 March 2011, para. 13. http://ap.ohchr.org/documents/dpage_e.aspx?c=61&su=69; War Resisters' International, *Women Conscientious Objectors - An Anthology*, April 2010, published online December 2010, <http://wri-irg.org/pubs/womenscos>; Human Rights Watch, *Service for Life: State Repression and Indefinite Conscription in Eritrea*, 16 April 2009, <http://www.unhcr.org/refworld/docid/49e6dcc60.html>; Conscience and Peace Tax International, *Eritrea: Submissions to the 6th Session of the UPR Working Group, December 2009*, April 2009, http://www.cpti.ws/cpti_docs/unhrcouncil/09/CPTI_UPR_Submission_Eritrea_December_2009.doc; War Resisters' International, *Eritrea: teenagers trying to flee the country killed by Eritrean military*, CO-Update No. 45, February-March 2009, 2 March 2009, <http://www.wri-irg.org/node/6785>.

⁷² Human Rights Watch, *World Report 2011 - Eritrea*, 24 January 2011, <http://www.unhcr.org/refworld/docid/4d3e801bc.html>; and Human Rights Watch, *Service for Life: State Repression and Indefinite Conscription in Eritrea*, 16 April 2009, <http://www.unhcr.org/refworld/docid/49e6dcc60.html>;

⁷³ Amnesty International, *Amnesty International Report 2010 - Eritrea*, 28 May 2010, <http://www.unhcr.org/refworld/docid/4c03a82d23.html>.

⁷⁴ See, for example, US Department of State, *2010 Country Reports on Human Rights Practices – Eritrea*, 8 April 2011, <http://www.unhcr.org/refworld/docid/4da56dcc.html>; and Human Rights Watch, *Service for Life: State Repression and Indefinite Conscription in Eritrea*, 16 April 2009, <http://www.unhcr.org/refworld/docid/49e6dcc60.html>.

⁷⁵ Human Rights Watch, *Service for Life: State Repression and Indefinite Conscription in Eritrea*, 16 April 2009, <http://www.unhcr.org/refworld/docid/49e6dcc60.html>.

⁷⁶ UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*, 1 January 1992, paras. 37-41, <http://www.unhcr.org/refworld/docid/3ae6b3314.html>.

⁷⁷ UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*, 1 January 1992, paras. 170-173, <http://www.unhcr.org/refworld/docid/3ae6b3314.html>.

⁷⁸ The US Court of Appeals for the Ninth Circuit held that choosing to remain neutral, by refusing to undertake military service for reasons of conscience, is no less an expression of political opinion than is the decision to affiliate with an organized political faction;

objectors, or some particular class of them, could constitute a particular social group.⁷⁹ While a State has a justifiable interest in ensuring national security, the measures taken to that end must be “reasonably necessary in a democratic society”.⁸⁰ In the absence of substitute or alternative military service, as is the case in Eritrea, the likelihood of prosecution and/or the severity of punishment must be examined in order to determine whether they amount to persecution. To this effect, disproportionate, excessive or arbitrary punishment may well amount to persecution.⁸¹ In the context of Eritrea, conscientious objectors, particularly Jehovah’s Witnesses, may thus be at risk on the basis of their religion, (imputed) political opinion and/or membership of a particular social group, for draft evasion or desertion.

In assessing reasons for refusal to perform military service, and how they relate to the refugee definition criteria, the extent of the forced labour imposed on conscripts, the unpaid nature of their work and the length of the military conscription imposed⁸² should also be taken into account. In May 2002, the Government officially introduced the Warsai Yekalo Development Campaign (WDYC), a national social and economic development effort, which effectively rendered the national service open-ended and indefinite.⁸³ As a result, national service conscripts, not in active military service, are required to undertake “national development” activities,⁸⁴ including in the agricultural and construction sectors,⁸⁵ for indefinite periods of time and survival wages.⁸⁶ The Government

⁷⁹ see, *Jose Roberto Canas-Segovia, Oscar Iban Canas-Segovia v. Immigration and Naturalization Service*, 902 F.2d 717, 24 April 1990 (United States Court of Appeals for the Ninth Circuit), <http://www.unhcr.org/refworld/docid/3ffd6f7e4.html>.

⁸⁰ The Federal Court of Australia adopted this view in *SZAOG v. Minister for Immigration & Multicultural & Indigenous Affairs* [2004] FCAFC 316, 29 November 2004, <http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/cth/FCAFC/2004/316.html>; and *Erduran v. Minister for Immigration & Multicultural Affairs* [2002] FCA 814, 27 June 2002 (Federal Court of Australia), <http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/cth/FCA/2002/814.html>.

⁸¹ Guy S. Goodwin-Gill and Jane McAdam, *The Refugee in International Law*, Oxford, 3rd edition, 2007, p. 111. The European Court of Human Rights interprets this phrase as meaning “*justified by a pressing social need and, in particular, proportionate to the legitimate aim pursued*”. See, for instance, *Beldjoudi v. France*, 12083/86, 26 February 1992, <http://www.unhcr.org/refworld/docid/4029f4bc4.html>. In *Yeo-Bum Yoon and Myung-Jin Choi v. Republic of Korea*, CCPR/C/88/D/1321-1322/2004, 23 January 2007, <http://www.unhcr.org/refworld/docid/48abd57dd.html>, the UN Human Rights Committee held that restrictions on one’s right to manifest religious beliefs “*must be prescribed by law and be necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others*”. Whether an objection to performing military service for reasons of conscience can give rise to a valid claim to refugee status should also be considered in light of developments in this field, including the fact that an increasing number of States have introduced alternatives to compulsory military service. See UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*, 1 January 1992, paras. 170-173, <http://www.unhcr.org/refworld/docid/3ae6b3314.html>.

⁸² UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*, 1 January 1992, paras. 169, <http://www.unhcr.org/refworld/docid/3ae6b3314.html>. See also Guy S. Goodwin-Gill and Jane McAdam, *The Refugee in International Law*, Oxford, 3rd edition, 2007, p. 112. The Refugee Review Tribunal of Australia held that a Jehovah’s Witness who objected to military service in Lebanon on account of his religious beliefs and who, as a result, had been detained and ill-treated, had suffered serious harm amounting to persecution on the ground of his religion. See *RRT Case No. 071370063* [2007] RRTA 118, 27 June 2007, <http://www.unhcr.org/refworld/docid/47f396722.html>.

⁸³ Some observers have referred to the open-ended nature of national service as a modern form of slave labour; see Bertelsmann Transformation Index, *BTI 2010 – Eritrea Country Report*, 2010, <http://www.bertelsmann-transformation-index.de/bti/laendergutachten/laendergutachten/oestliches-und-suedliches-afrika/eritrea/>. Kibreab, Gaim, *Forced labour in Eritrea*, J. of Modern African Studies, 47, 1 (2009), pp. 41–72, <http://www.ehrea.org/force.pdf>; and Human Rights Watch, *Service for Life: State Repression and Indefinite Conscription in Eritrea*, 16 April 2009, Part 4, <http://www.unhcr.org/refworld/docid/49e6dcc60.html>.

⁸⁴ The campaign was reportedly intended as a national effort to build the nation. See, for example, International Crisis Group, *Eritrea: The Siege State*, 21 September 2010, pp.9-10, <http://www.unhcr.org/refworld/docid/4c9c65eb2.html>; Human Rights Watch, *Service for Life: State Repression and Indefinite Conscription in Eritrea*, 16 April 2009, p. 43, <http://www.unhcr.org/refworld/docid/49e6dcc60.html>; and Kibreab, Gaim, *Forced labour in Eritrea*, J. of Modern African Studies, 47, 1 (2009), pp. 41–72, <http://www.ehrea.org/force.pdf>.

⁸⁵ Joint Submission for the Universal Periodic Review 6th Working Group Session 30 November – 11 December 2009 by Eritrean Global Solidarity, Network of Eritrea Civil Societies-Europe, Suwera Center for Human Rights – Sudan, The Eritrean community in Australia Inc, and Eritrean Australian Mercy Association Inc., *Universal Periodic Review – Eritrea*, April 2009, para. 34, http://lib.ohchr.org/HRBodies/UPR/Documents/Session6/ER/JS1_ERI_UPR_S06_2009_JointSubmission1.pdf.

⁸⁶ According to the latest Eritrean Government report to the International Labour Organization, under the WYDC, the population has engaged in development programmes such as reforestation, soil and water conservation, as well as reconstruction activities; see International Labour Organization, Committee of Experts on the Application of Conventions and Recommendations (CEACR), CEACR: *Individual Direct Request concerning Forced Labour Convention, 1930 (No. 29) Eritrea (ratification: 2000)*, 2010, <http://www.ilo.org/ilolex/cgi-lex/pdconv.pl?host=status01&textbase=iloeng&document=23897&chapter=9&query=Eritrea%40ref&highlight=&querytype=bool&context=0>.

⁸⁷ Human Rights Watch, *World Report 2011 - Eritrea*, 24 January 2011, <http://www.unhcr.org/refworld/docid/4d3e801bc.html>; Human Rights Watch, *Service for Life: State Repression and Indefinite Conscription in Eritrea*, 16 April 2009, <http://www.unhcr.org/refworld/docid/49e6dcc60.html>; Kibreab, Gaim, *The Eritrean National Service: A Missed Opportunity*, 11 January 2009, http://www.shakat.com/index.php?option=com_content&task=view&id=147&Itemid=18; and Kibreab, Gaim, *Forced labour in Eritrea*, J. of Modern African Studies, 47, 1 (2009), pp. 41–72, <http://www.ehrea.org/force.pdf>. According to letter dated 1 April 2010, from the British Embassy in Asmara, there is no entitlement to leave in the military service. Leave may, however, be

reportedly uses human resources as a nationalized asset,⁸⁷ utilizing the labour of military conscripts under the guise of development programmes.⁸⁸ There is evidence to suggest that most manual labour in emerging mining projects in Eritrea is provided by military conscripts.⁸⁹ It is reported that some Eritrean conscripts are used for building private homes for army officers, as well as to perform agricultural labour on farms and construction activities for firms owned by the State, PFDJ members, senior army officers, or private investors.⁹⁰ Construction companies belonging to the ruling party are reportedly the main property developers throughout the country, and the large majority of manual workers on these developments are military conscripts.⁹¹ Incidents of torture have been reported in cases where conscripts working on farms owned by military commanders have left their posts without permission.⁹²

Pursuant to international human rights law, the prohibition of “forced or compulsory labour”⁹³ should not include military or alternative service,⁹⁴ provided that work required in this context is of “a purely military character”.⁹⁵ According to the International Labour Organization, the condition of a “purely military character” is aimed specifically at preventing the call-up of conscripts for public works. It has its corollary in Article 1(b) of the Abolition of Forced Labour Convention, 1957 (No. 105), which prohibits the use of forced or compulsory labour “as a method of mobilizing and using labour for purposes of economic development”.⁹⁶ In situations of emergency, which would endanger the existence or well-being of the whole or part of the population, conscripts (alongside other citizens) may nevertheless be called upon to undertake non-military work.⁹⁷ The duration and extent of

⁸⁷ granted arbitrarily by local commanding officers, in which case documents stipulating that the person in their possession may travel for a specified duration (usually no longer than one month); see UK Home Office, *Country of Origin Information Report - Eritrea*, 15 April 2011, para. 9.37, <http://www.unhcr.org/refworld/docid/4dabf33c2.html>

⁸⁸ Human Rights Watch, *World Report 2011 - Eritrea*, 24 January 2011, <http://www.unhcr.org/refworld/docid/4d3e801bc.html>.

⁸⁹ Christian Solidarity Worldwide and Human Rights Concern , *Joint Submission for the Universal Periodic Review 6th Working Group Session 30 November – 11 December 2009 by Christian Solidarity Worldwide and Human Rights Concern (Eritrea)*, April 2009, http://lib.ohchr.org/HRBodies/UPR/Documents/Session6/ER/CSW-HRCE_ERI_UPR_S06_2009.pdf.

⁹⁰ Christian Solidarity Worldwide and Human Rights Concern , *Joint Submission for the Universal Periodic Review 6th Working Group Session 30 November – 11 December 2009 by Christian Solidarity Worldwide and Human Rights Concern (Eritrea)*, April 2009, http://lib.ohchr.org/HRBodies/UPR/Documents/Session6/ER/CSW-HRCE_ERI_UPR_S06_2009.pdf.

⁹¹ US Department of State, *Trafficking in Persons Report 2010 – Eritrea*, 14 June 2010, <http://www.unhcr.org/refworld/docid/4c1883f62d.html>.

⁹² Kibreab, Gaim, *Forced labour in Eritrea*, J. of Modern African Studies, 47, 1 (2009), pp. 41–72, <http://www.ehra.org/force.pdf>. Since April 2006, only PFDJ construction firms are allowed to engage in construction activities after private firms and individual entrepreneurs were banned from the construction industry. Conscripts are reportedly unable to resign from these jobs or take up other employment, and they receive no promotions or salary increases, nor are they able to leave the country; see US Department of State, *Trafficking in Persons Report 2010 - Eritrea*, 14 June 2010, <http://www.unhcr.org/refworld/docid/4c1883f62d.html>.

⁹³ Kibreab, Gaim, *Forced labour in Eritrea*, J. of Modern African Studies, 47, 1 (2009), p. 58, <http://www.ehra.org/force.pdf>.

⁹⁴ The prohibition of “forced or compulsory labour” is entrenched in several international and regional instruments, including under: Article 8(3)(a) of the *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, <http://www.unhcr.org/refworld/docid/3ae6b3aa0.html>, to which Eritrea acceded on 22 January 2002; Article 1(1) of the *Forced Labour Convention*, C29, 28 June 1930, C29, <http://www.unhcr.org/refworld/docid/3ddb621f2a.html>, which Eritrea ratified on 22 February 2000; and Article 4(2) of the *European Convention for the Protection of Human Rights and Fundamental Freedoms*, 4 November 1950, ETS 5, <http://www.unhcr.org/refworld/docid/3ae6b3b04.html>. Article 2(1) of the Forced Labour Convention defines “forced or compulsory labour” as “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.”

⁹⁵ Article 8(3)(c)(ii) of the *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, <http://www.unhcr.org/refworld/docid/3ae6b3aa0.html>; Article 2(2)(a) of the International Labour Organization, *Forced Labour Convention*, C29, 28 June 1930, C29, <http://www.unhcr.org/refworld/docid/3ddb621f2a.html>; and Article 4(3)(b) of the Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms*, 4 November 1950, ETS 5, <http://www.unhcr.org/refworld/docid/3ae6b3b04.html>. See also Guy S. Goodwin-Gill and Jane McAdam, *The Refugee in International Law*, Oxford, 3rd edition, 2007, pp. 106-107. It should also be noted, that pursuant to Article 3(17) of the *Labour Proclamation of Eritrea*, No. 118/2001, 15 November 2001, <http://www.unhcr.org/refworld/docid/4d4a9e192.html>, compulsory national service, normal civic obligations, and services rendered during emergency, etc. may not be regarded as forced labour.

⁹⁶ Article 2(2)(a) of the *Forced Labour Convention*, C29, 28 June 1930, C29, <http://www.unhcr.org/refworld/docid/3ddb621f2a.html>.

⁹⁷ Article 1(b) of the *Abolition of Forced Labour Convention*, C105, 25 June 1957, C105, <http://www.unhcr.org/refworld/docid/43fdeb602.html>, which Eritrea ratified on 22 February 2000. See also International Labour Organization, *Eradication of forced labour - General Survey concerning the Forced Labour Convention, 1930 (No. 29), and the Abolition of Forced Labour Convention, 1957 (No. 105)* - (2007), 15 February 2007, paras. 43-46, http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@relconf/documents/meetingdocument/wcms_089199.pdf.

⁹⁸ See Article 8(3)(c)(iii) of the *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, <http://www.unhcr.org/refworld/docid/3ae6b3aa0.html>; Article 2(2)(d) of the *Forced Labour Convention*, C29, 28 June 1930, C29, <http://www.unhcr.org/refworld/docid/3ddb621f2a.html>; and Article 4(3)(c) of the *European Convention for the Protection of Human Rights and Fundamental Freedoms*, 4 November 1950, ETS 5, <http://www.unhcr.org/refworld/docid/3ae6b3b04.html>. “Emergency” is defined as “war or [...] a calamity or threatened calamity, such as fire, flood, famine, earthquake, violent epidemic or epizootic diseases, invasion by animal, insect or vegetable pests, and in

compulsory service, as well as the purposes for which it is used, should be confined to what is strictly required in the given situation.⁹⁸ Where it can be established that compulsory military service is being used to force conscripts to execute public works, and these works are not exacted in the case of an emergency, and do not constitute a necessity for national defence or a normal civic obligation, such work constitutes forced labour.⁹⁹ According to the ILO Committee of Experts on the Application of Conventions and Recommendations, the “no war no peace” situation in Eritrea does not amount to a genuine situation of emergency and, as such, recourse to compulsory labour cannot be justified.¹⁰⁰ The Committee recently held that the current large-scale and systematic Government practices of imposing compulsory labour within the framework of national service in Eritrea are incompatible with both the 1930 Forced Labour Convention and the 1957 Abolition of Forced Labour Convention.¹⁰¹

UNHCR considers that, with reference to military/national service, persons with the specific profiles outlined in the sections below¹⁰² may be at risk based on their (imputed) political opinion,¹⁰³ religion or membership of a particular social group, depending on the individual circumstances of the case.¹⁰⁴

general any circumstance that would endanger the existence or the well-being of the whole or part of the population” under Article Article 2(2)(d) of the *Forced Labour Convention*.

⁹⁸ International Labour Organization, Committee of Experts on the Application of Conventions and Recommendations (CEACR), CEACR: *Individual Direct Request concerning Forced Labour Convention, 1930* (No. 29) Eritrea (ratification: 2000), 2010, <http://www.ilo.org/ilolex/cgi-lex/pdconv.pl?host=status01&textbase=iloeng&document=23897&chapter=9&query=Eritrea%40ref&highlight=&querytype=bool&context=0>. See also International labour Organization, *Eradication of forced labour - General Survey concerning the Forced Labour Convention, 1930* (No. 29), and the *Abolition of Forced Labour Convention, 1957* (No. 105) - (2007), 15 February 2007, paras. 43-46, http://www.ilo.org/wcms5/groups/public/@ed_norm/@relconf/documents/meeting_document/wcms_089199.pdf.

⁹⁹ International Labour Organization, Committee of Experts on the Application of Conventions and Recommendations (CEACR), CEACR: *Individual Direct Request concerning Forced Labour Convention, 1930* (No. 29) Eritrea (ratification: 2000), 2010, <http://www.ilo.org/ilolex/cgi-lex/pdconv.pl?host=status01&textbase=iloeng&document=23897&chapter=9&query=Eritrea%40ref&highlight=&querytype=bool&context=0>.

¹⁰⁰ Article 2(2)(d) of the International Labour Organization, *Forced Labour Convention*, C29, 28 June 1930, C29, <http://www.unhcr.org/refworld/docid/3ddb621f2a.html>, provides for an exception to the prohibition of forced/compulsory labour in situations of emergency. See also, ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR), CEACR: *Individual Direct Request concerning Forced Labour Convention, 1930* (No. 29) Eritrea (ratification: 2000), 2010, <http://www.ilo.org/ilolex/cgi-lex/pdconv.pl?host=status01&textbase=iloeng&document=23897&chapter=9&query=Eritrea%40ref&highlight=&querytype=bool&context=0>.

¹⁰¹ ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR), CEACR: *Individual Direct Request concerning Forced Labour Convention, 1930* (No. 29) Eritrea (ratification: 2000), 2010, <http://www.ilo.org/ilolex/cgi-lex/pdconv.pl?host=status01&textbase=iloeng&document=23897&chapter=9&query=Eritrea%40ref&highlight=&querytype=bool&context=0>.

¹⁰² Further information regarding the treatment of draft evaders, conscientious objectors, deserters, and their family members, child conscripts and children approaching draft age, as well as women victims of sexual and gender-based violence in the context of military service, is provided in the following subsections.

¹⁰³ “Military service and objection thereto, seen from the point of view of the State, are also issues which go to the heart of the body politic. Refusal to bear arms, however motivated, reflects an essentially political opinion regarding the permissible limits of State authority; it is a political act.”; see Guy S. Goodwin-Gill and Jane McAdam, *The Refugee in International Law*, Oxford, 3rd edition, 2007, p. 111. See also *Refugee Appeal No. 75378*, 19 October 2005 (New Zealand Refugee Status Appeals Authority), para. 116, <http://www.unhcr.org/refworld/docid/477cfc20.html>. J.C. Hathaway, *The Law of Refugee Status*, Butterworths, 1991, at p. 154 similarly writes: “Essentially any action which is perceived to be a challenge to governmental authority is therefore appropriately considered to be the expression of a political opinion”. See also, *Erduran v. Minister for Immigration & Multicultural Affairs* [2002] FCA 814, 27 June 2002 (Federal Court of Australia), <http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/cth/FCA/2002/814.html>, identifying conscientious objection as stemming from a political opinion or religious conviction or as to be regarded as a form of political opinion. Refusal to serve could conceivably not be seen as political in situations where this is done by individuals to support their families or by a subsection of society such as the priesthood recognized as having other priorities. See also *MA (Draft Evaders – Illegal Departures – Risk) Eritrea CG* [2007] UKAIT 00059, 26 June 2007, <http://www.unhcr.org/refworld/docid/46822c3f2.html>.

¹⁰⁴ For further guidance, see UNHCR, *Guidelines on International Protection No. 6: Religion-Based Refugee Claims under Article 1A(2) of the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees*, HCR/GIP/04/06, 28 April 2004, <http://www.unhcr.org/refworld/docid/4090f9794.html>; UNHCR, *Guidelines on International Protection No. 2: “Membership of a Particular Social Group” Within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees*, HCR/GIP/02/02, 7 May 2002, <http://www.unhcr.org/refworld/docid/3d36f23f4.html>; and UNHCR, *Guidelines on International Protection No. 1: Gender-Related Persecution Within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees*, HCR/GIP/02/01, 7 May 2002, <http://www.unhcr.org/refworld/docid/3d36f1c64.html>. Many jurisdictions have granted asylum to Eritrean draft evaders and deserters on this basis. See *Ukash Nuru, aka Ukasha Nuru v. Alberto R. Gonzales, Attorney General*, 03-71391; A77-954-387, 21 April 2005 (United States Court of Appeals for the Ninth Circuit), <http://www.unhcr.org/refworld/docid/428482de4.html>, where the Court held, *inter alia*, that “torture is per se disproportionately harsh; it is inherently and impermissibly severe; and it is a fortiori conduct that reaches the level of persecution”; *MA (Draft Evaders – Illegal Departures – Risk) Eritrea CG* [2007] UKAIT 00059, 26 June 2007, <http://www.unhcr.org/refworld/docid/46822c3f2.html>; *Refugee Appeal No. 75668*, 25 May 2006 (Refugee Status Appeals Authority New Zealand), <http://www.unhcr.org/refworld/docid/48abd57cd.html>; *L.H. Erytrean*, JICRA 2006/3, 20 December 2005 (Commission suisse de recours en matière d’asile), <http://www.ark-cra.ch/emark/2006/03.htm>; and *IN (Draft Evaders – Evidence of Risk) Eritrea CG* [2005] UKIAT 00106, 24 May 2005 (UK Immigration Appeal Tribunal), <http://www.unhcr.org/refworld/docid/46836aa5d.html>. See also *Said v. The Netherlands*, Application No. 2345/02, 5 July 2005 (European Court of Human Rights),

In these cases, unlawful/unauthorized departure from Eritrea may be perceived by the authorities as having attempted to avoid military service. On the other hand, this presumption may not arise for persons who left the country with proper authorization.

i. Draft Evaders and Deserters

Refusal to perform national service may be regarded by the Eritrean authorities as an expression of political opposition to the Government.¹⁰⁵

Following their arrest, draft evaders and deserters are often reported to be subjected to torture.¹⁰⁶ Persons who evade or desert military service may be regarded as disloyal and treasonous towards the Government,¹⁰⁷ and therefore punished for their perceived disloyalty. Once arrested, many detainees reportedly “disappear”.¹⁰⁸ Furthermore there are reports of death in custody as a result of ill-treatment, torture, denial of access to medical treatment and other harsh prison conditions.¹⁰⁹

Conscription is reportedly enforced through routine “round-ups” (*giffa*). These are conducted by police or the Eritrean Defence Forces through work-place and house searches, street abductions and identity document checks, including at military road blocks on major roads.¹¹⁰ However, some individuals are reportedly able to buy false exemption papers or to pay bribes to security officials to evade military service and/or obtain assistance in crossing the border.¹¹¹

Eritreans are reportedly subjected to repeated periods of military service far exceeding the statutory limit of 18 months.¹¹² Furthermore, the authorities reportedly do not grant exit visas¹¹³ to those of

<http://www.unhcr.org/refworld/docid/42ce6edf4.html>. Asylum claims made by children need to be assessed carefully and in accordance with the UNHCR Guidance on child asylum claims; see UNHCR, *Guidelines on International Protection No. 8: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees*, HCR/GIP/09/08, 22 December 2009, <http://www.unhcr.org/refworld/docid/4b2f4f6d2.html>.

¹⁰⁵ On the politicization of the military service see, for example, Human Rights Watch, *Service for Life: State Repression and Indefinite Conscription in Eritrea*, 16 April 2009, <http://www.unhcr.org/refworld/docid/49e6dcc60.html>. See also GM (Eritrea); YT (Eritrea); MY (Eritrea) v. Secretary of State for the Home Department [2008] EWCA Civ 833, 17 July 2008 (England and Wales Court of Appeal), <http://www.unhcr.org/refworld/docid/4880598b2.html>, and Refugee Appeal No. 75668, 25 May 2006 (Refugee Status Appeals Authority New Zealand), <http://www.unhcr.org/refworld/docid/48abd57cd.html>.

¹⁰⁶ See Amnesty International, *Amnesty International Report 2010 – Eritrea*, 28 May 2010, <http://www.unhcr.org/refworld/docid/4c03a82d23.html>; Human Rights Watch, *Service for Life: State Repression and Indefinite Conscription in Eritrea*, 16 April 2009, <http://www.unhcr.org/refworld/docid/49e6dcc60.html>; Conscience and Peace Tax International, *Eritrea: Submissions to the 6th Session of the UPR Working Group, December 2009*, April 2009, http://www.cpti.ws/cpti_docs/unhrcouncil/09/CPTI_UPR_Submission_Eritrea_December_2009.doc; Amnesty International, *Eritrea: ‘You have no right to ask’ – Government resists scrutiny on human rights*, AFR 64/003/2004, 19 May 2004, p. 24, <http://www.unhcr.org/refworld/docid/4129dcf54.html>. Deserters and draft evaders are reportedly subjected to, *inter alia*, prolonged sun exposure in high temperatures, binding of hands, elbows and feet for extended periods of time, suspension from trees with hands tied behind back (i.e. the “almaz” or diamond technique), tying of hands to the feet (i.e. the “helicopter” technique).

¹⁰⁷ In 2008, President Afewerki claimed that international reports of an increasing number of Eritrean refugees were deliberate distortions and that defections were caused by an “orchestrated, organized operation financed by the CIA.” See Human Rights Watch, *World Report 2009 – Eritrea*, 14 January 2009, <http://www.unhcr.org/refworld/docid/49705fa350.html>; see also Jack Kimball and Andrew Cawthorne, *Eritrean leader blames CIA plot for youth exodus*, Reuters, 13 May 2008, <http://www.reuters.com/article/latestCrisis/idUSL13745161>.

¹⁰⁸ Human Rights Watch, *Service for Life: State Repression and Indefinite Conscription in Eritrea*, 16 April 2009, <http://www.unhcr.org/refworld/docid/49e6dcc60.html>.

¹⁰⁹ Human Rights Watch, *Service for Life: State Repression and Indefinite Conscription in Eritrea*, 16 April 2009, <http://www.unhcr.org/refworld/docid/49e6dcc60.html>.

¹¹⁰ Those resisting conscription are reportedly shot pursuant to a ‘shoot to kill’ orders; see Human Rights Watch, *World Report 2011 – Eritrea*, 24 January 2011, <http://www.unhcr.org/refworld/docid/4d3e801bc.html>.

¹¹¹ US Department of State, *2010 Country Reports on Human Rights Practices – Eritrea*, 8 April 2011, <http://www.unhcr.org/refworld/docid/4da56dcce.html>; and Bertelsmann Transformation Index, *BTI 2010 – Eritrea Country Report*, <http://www.bertelsmann-transformation-index.de/bti/laendergutachten/laendergutachten/oestliches-und-suedliches-africa/eritrea/>. In 2009, Eritrea was ranked 126 out of 180 states on the Transparency International corruption perception index; see Transparency International, *Corruption Perception Index 2010*, undated (accessed on 18 April 2011), http://www.transparency.org/policy_research/surveys_indices/cpi/2010/results.

¹¹² The Government reportedly justifies its open-ended draft on the basis of the undemarcated border with Ethiopia. International Crisis Group, *Eritrea: The Siege State*, 21 September 2010, <http://www.unhcr.org/refworld/docid/4c9c65eb2.html>. See also US Department of State, *2010 Country Reports on Human Rights Practices – Eritrea*, 8 April 2011, <http://www.unhcr.org/refworld/docid/4da56dcce.html>.

¹¹³ *Proclamation No. 24/1992 issued to regulate the issuing of travel documents, entry and exit visa from Eritrea, and to control residence permits of foreigners in Eritrea*, 1992, <http://www.unhcr.org/refworld/docid/3ae6b4e014.html>, strictly prohibits departure from Eritrea without an exit visa (Article 12). Violation of the exit provisions can lead to sentencing upon conviction of up to five years imprisonment or a fine of up to 10,000 Bir (now ca. 15.000 Nakfa) or to both imprisonment and a fine (Article 29.2). According to a letter from the British Embassy in Asmara dated 1 April 2010, individuals working in Government ministries or agencies must obtain ministerial permission before applying for a passport. Other individuals must obtain authorization from a local Government

draft age, although payment of bribes to obtain visas has been reported.¹¹⁴ Among those routinely denied exit visas are men up to the age of 54, regardless of whether they have completed national service or have been demobilized, and women under the age of 47,¹¹⁵ as well as students wanting to study abroad.¹¹⁶ Individuals of draft age, who left Eritrea illegally, may be perceived as draft evader upon return, irrespective of whether they have completed active national service or have been demobilized.¹¹⁷

ii. Child Recruitment

Although the minimum age for military conscription is 18, forced underage recruitment, particularly of boys, as well as detention and ill-treatment of children have been reported.¹¹⁸ A militarization of education has also been noted.¹¹⁹ Since 2003, a mandatory final year (12th grade) has been added to the secondary school curriculum, which students must attend at Sawa military training centre under military authority and which includes military-type training.¹²⁰ Children, including those in schools,

administrator and present a birth certificate, any military/national service medical exemption documents, and an ID card. It is reported that, in practice, it is very difficult to obtain first-issue passports and that the majority of Eritreans are not issued with exit visas. Government officials traveling on official business, persons needing medical treatment abroad, businessmen over the age of 57, as well as religious ministers and clerics of one of the officially recognized faiths, are reportedly more likely to obtain exit visas; see UK Home Office, *Country of Origin Information Report - Eritrea*, 15 April 2011, paras. 32.01-32.10, <http://www.unhcr.org/refworld/docid/4dabf33c2.html>. See also Awate, *Back to Eritrea: Eight Million Nakfas Missing; Thousands of Youth Rounded Up*, 23 May 2009, <http://www.awate.com/portal/content/view/5160/3/>; and Awate, *A Nation of Fleeing Masses*, 21 May 2008, <http://www.awate.com/portal/content/view/4853/5>.

¹¹⁴ US Department of State, 2010 *Country Reports on Human Rights Practices – Eritrea*, 8 April 2011, <http://www.unhcr.org/refworld/docid/4da56dcc.html>; Bertelsmann Transformation Index, *BTI 2010 – Eritrea Country Report: Rule of Law*, 2010, <http://www.bertelsmann-transformation-index.de/bti/laendergutachten/laendergutachten/oestliches-und-suedliches-afrika/eritrea/>; and ES Standard Forum, *Country Brief Eritrea*, 15 September 2009. This is also confirmed through credible and consistent reports obtained through refugee status determination interviews conducted by UNHCR field offices.

¹¹⁵ US Department of State, 2010 *Country Reports on Human Rights Practices – Eritrea*, 8 April 2011, <http://www.unhcr.org/refworld/docid/4da56dcc.html>. Mail & Guardian Online, *In Eritrea, youth frustrated by long service*, 18 July 2008, <http://www.mg.co.za/article/2008-07-18-in-eritrea-youth-frustrated-by-long-service>. See also United Kingdom decision relating to exit visas for soldiers: *IN (Draft Evaders – Evidence of Risk) Eritrea CG [2005]* UKIAT 00106, 24 May 2005 (UK Immigration Appeal Tribunal), <http://www.unhcr.org/refworld/docid/46836aa5d.html>. Note the ages of those denied visas do not coincide with the maximum age limits for compulsory service and are much higher particularly for women. In 2006, the authorities began refusing exit visas to children as young as 11, and in some instances as young as 5, on the grounds that they were approaching the age of eligibility for national service or because their expatriate parents had not paid the two percent income tax required of all citizens residing abroad.

¹¹⁶ US Department of State, 2010 *Country Reports on Human Rights Practices – Eritrea*, 8 April 2011, <http://www.unhcr.org/refworld/docid/4da56dcc.html>.

¹¹⁷ In the country guidance case of *MA (Draft Evaders – Illegal Departures – Risk) Eritrea CG [2007]* UKIAT 00059, 26 June 2007, <http://www.unhcr.org/refworld/docid/46822c3f2.html>, the UK Asylum and Immigration Tribunal, held that: “[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 [...]. 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.”

¹¹⁸ For reports of forced underage recruitment, detention and ill-treatment of children, particularly boys, see: US Department of State, 2010 *Country Reports on Human Rights Practices – Eritrea*, 8 April 2011, <http://www.unhcr.org/refworld/docid/4da56dcc.html>; Child Rights Information Network, *Eritrea: Child Rights References in the Universal Periodic Review*, 30 November 2009, para. 15, <http://www.crin.org/resources/infodetail.asp?id=21838>; Society for Threatened Peoples, *Submission by Society for Threatened Peoples*, 14 April 2009, http://lib.ohchr.org/HRBodies/UPR/Documents/Session6/ER/STP_ERI_UPR_S06_2009.pdf; Human Rights Watch, *UPR Submission – Eritrea*, April 2009, http://lib.ohchr.org/HRBodies/UPR/Documents/Session6/ER/HRW_ERI_UPR_S06_2009.pdf; UN Committee on the Rights of the Child, *Consideration of reports submitted by States parties under article 44 of the Convention: Convention on the Rights of the Child: concluding observations: Eritrea*, CRC/C/ERI/CO/3, 23 June 2008, paras. 40 and 70, <http://www.unhcr.org/refworld/docid/4885cfaad.html>; and Coalition to Stop the Use of Child Soldiers, *Child Soldiers Global Report 2008 – Eritrea*, 20 May 2008, <http://www.unhcr.org/refworld/docid/486cb0fdc.html>. In Eritrea birth registration is used to identify children for forced conscription. See UNICEF, Innocenti Research Group, *Birth Registration and Armed Conflict*, 2007, p. 10, http://www.unicef.at/fileadmin/medien/pdf/birth_registration_and_armed_conflict.pdf. In February 2006, a round-up in the Anseba region reportedly included a sweep of all high schools in the region. All students in grades 10 and 11, who were 17 years or older, were put on buses and sent to a remote military location in Wia, in the north of the country; see US Department of State, 2009 *Country Reports on Human Rights Practices – Eritrea*, 11 March 2010, <http://www.unhcr.org/refworld/docid/4b9e52f978.html>. Information obtained through RSD interviews by UNHCR in Kenya, Sudan and Ethiopia confirm instances of children as young as 16 deserting after being taken for military training.

¹¹⁹ For information on children in 9th grade and above being sent to work camps during school holidays, see Human Rights Watch, *Service for Life: State Repression and Indefinite Conscription in Eritrea*, 16 April 2009, <http://www.unhcr.org/refworld/docid/49e6dcc60.html>.

¹²⁰ See US Department of State, 2010 *Country Reports on Human Rights Practices – Eritrea*, 8 April 2011, <http://www.unhcr.org/refworld/docid/4da56dcc.html>; and Human Rights Watch, *Service for Life: State Repression and Indefinite Conscription in Eritrea*, 16 April 2009, <http://www.unhcr.org/refworld/docid/49e6dcc60.html>. According to a letter dated 1 April

are reportedly victims of torture, cruel and degrading treatment by the police and military, when seeking to avoid military service.¹²¹ Students approaching conscription age have reportedly fled the country in the thousands or have gone into hiding.¹²² Consequently, children as young as 14 are reportedly refused exit visas on the ground that they were approaching the age of eligibility for national service.¹²³

iii. Conscientious Objectors

Conscientious objectors are not exempt from military service,¹²⁴ despite Constitutional guarantees for freedom of thought, conscience and belief.¹²⁵ No alternative or substitute service is available to those objecting for reasons of conscience, including members of the Jehovah's Witness movement who cannot, in accordance with their faith, carry arms.¹²⁶ Those who object can face extreme physical punishment as a means of forcing them to perform military service.¹²⁷ Although members of other religious groups, including Muslims, have reportedly been imprisoned for failure to undertake military service, Jehovah's Witnesses continue reportedly to be subject to harsher treatment, such as dismissal from the civil service, revocation of business licenses, eviction from Government housing, and denial of identity cards, passports or exit visas.¹²⁸

iv. Family Members of Draft Evaders and Deserters

Since 2005, the Government has instituted measures to address the widespread evasion of and desertion from military service. Although not systematically applied, such measures target the family members of draft evaders and deserters, and include: (i) arrest of family members, mostly parents, of young men and women who have not completed national service or of children who have not reported to the military training camp at Sawa for their final year of high school or have not reported for national service;¹²⁹ (ii) imposition of fines on families of draft evaders;¹³⁰ (iii) forced conscription of

2010, from the British Embassy in Asmara, after finishing school at the Sawa military/school camp, students are automatically assigned to either active military service, another time of national service or further education; see UK Home Office, *Country of Origin Information Report - Eritrea*, 15 April 2011, para. 9.18, <http://www.unhcr.org/refworld/docid/4dabf33c2.html>

¹²¹ UN Committee on the Rights of the Child, *Consideration of reports submitted by States parties under article 44 of the Convention: Convention on the Rights of the Child: concluding observations: Eritrea*, CRC/C/ERI/CO/3, 23 June 2008, paras. 40-41, <http://www.unhcr.org/refworld/docid/4885cfad.html>.

¹²² According to credible and consistent reports obtained through refugee status determination interviews conducted by UNHCR field offices, some parents send children as young as 13 into neighbouring countries to avoid conscription. See also US Department of State, *2010 Country Reports on Human Rights Practices – Eritrea*, 8 April 2011, <http://www.unhcr.org/refworld/docid/4da56dccc.html>.

¹²³ For further information on refusal to grant exit visa to children on the grounds that they were approaching the age of eligibility for national service or because their expatriate parents had not paid the two percent income tax required of all citizens residing abroad, see US Department of State, *2010 Country Reports on Human Rights Practices – Eritrea*, 8 April 2011, <http://www.unhcr.org/refworld/docid/4da56dccc.html>.

¹²⁴ Amnesty International, *Amnesty International Report 2010 – Eritrea*, 28 May 2010, <http://www.unhcr.org/refworld/docid/4c03a82d23.html>.

¹²⁵ Articles 14 and 19 of the Constitution of Eritrea, 23 May 1997, <http://www.unhcr.org/refworld/docid/3dd8aa904.html>. Pursuant to Article 14(2), no one should be discriminated against on the ground of religion. Article 19 guarantees the freedom of conscience and religion.

¹²⁶ *Proclamation on National Service No. 82/1995*, 23 October 1995, <http://www.unhcr.org/refworld/docid/3dd8d3af4.html>. See also US Department of State, *2010 Country Reports on Human Rights Practices – Eritrea*, 8 April 2011, <http://www.unhcr.org/refworld/docid/4da56dccc.html>.

¹²⁷ US Department of State, *2010 Country Reports on Human Rights Practices – Eritrea*, 8 April 2011, <http://www.unhcr.org/refworld/docid/4da56dccc.html>; and US Department of State, *2010 Report on International Religious Freedom – Eritrea*, 17 November 2010, <http://www.unhcr.org/refworld/docid/4cf2d09ec.html>.

¹²⁸ US Department of State, *2010 Report on International Religious Freedom – Eritrea*, 17 November 2010, <http://www.unhcr.org/refworld/docid/4cf2d09ec.html>.

¹²⁹ US Department of State, *2010 Country Reports on Human Rights Practices – Eritrea*, 8 April 2011, <http://www.unhcr.org/refworld/docid/4da56dccc.html>; Amnesty International, *Amnesty International Report 2010 – Eritrea*, 2010, <http://www.amnesty.org/en/region/eritrea/report-2010>. See also Human Rights Watch, *Service for Life: State Repression and Indefinite Conscription in Eritrea*, 16 April 2009, <http://www.unhcr.org/refworld/docid/49e6dcc60.html>; Immigration and Refugee Board of Canada, *Eritrea: Military service, including age of recruitment, length of service, grounds for exemption, penalties for desertion from and evasion of military service and availability of alternative service (2005 – 2006)*, ERI102026.E, 28 February 2007, <http://www.unhcr.org/refworld/docid/469cd6b83.html>; and Amnesty International, *Eritrea: Over 500 parents of conscripts arrested*, 21 December 2006, <http://www.amnestyusa.org/document.php?lang=e&id=ENGAFR640152006>.

¹³⁰ US Department of State, *2010 Country Reports on Human Rights Practices – Eritrea*, 8 April 2011, <http://www.unhcr.org/refworld/docid/4da56dccc.html>. Since 2005, families of draft evaders have reportedly been fined at least 50,000 Nakfa (US \$3,300). This amount is more than 10 times the amount envisaged in the *Proclamation on National Service No. 82/1995*, 23 October 1995, <http://www.unhcr.org/refworld/docid/3dd8d3af4.html>, (3,000 Bir/4,600 Nakfa) as a sanction for draft evaders and

family members, particularly the father, of the draft evader,¹³¹ and (iv) withdrawal of trade licenses and closure of businesses held by members of the nuclear family of a deserter/draft evader.¹³²

v. Sexual and Gender Based Violence

Sexual violence against female conscripts within the military is being reported by human rights monitors.¹³³ Some female conscripts are reportedly subject to sexual harassment and violence, including rape, by their supervisors.¹³⁴ It is reported that female conscripts are coerced into having sex with commanders, including through threats of heavy military duties, harsh postings, and denial of home leave.¹³⁵ Refusal to submit to sexual exploitation and abuse is allegedly punished by detention, torture and ill-treatment, including exposure to extreme heat and limitation of food rations.¹³⁶ No effective mechanism for redress and protection exists within or outside the military, and perpetrators generally go unpunished.¹³⁷ Women, who become pregnant as a result, are decommissioned and likely to experience social ostracism from their families and communities as unmarried mothers.¹³⁸

2. Members of Political Opposition Groups and Government Critics

Although the Constitution guarantees the right to form political organizations,¹³⁹ 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 into power.¹⁴⁰ All opposition groups have

no provisions exist for vicarious liability in the Proclamation (Articles 6 and 9). International Crisis Group, *Eritrea: The Siege State*, 21 September 2010, p. 10, <http://www.unhcr.org/refworld/docid/4c9c65eb2.html>.

¹³¹ Christian Solidarity Worldwide and Human Rights Concern - Eritrea, *Universal Periodic Review – Joint Submission*, April 2009, http://lib.ohchr.org/HRBodies/UPR/Documents/Session6/ER/CSW-HRCE_ERI_UPR_S06_2009.pdf. See also Awate.com, *Thousands of Eritrean Parents Arrested in the Southern Region; Government Also Targets Young Females*, 17 July 2005, http://www.awate.com/artman/publish/article_4186.shtml.

¹³² Information obtained through UNHCR-conducted interviews.

¹³³ UNHCR has received, through refugee status determination interviews conducted by field offices, credible and consistent reports of rape during military service. See also Hirt, Nicole, "Dreams Don't Come True in Eritrea": Anomie and Family Disintegration Due to the Structural Militarization of Society, January 2010, pp. 23-24, http://repec.giga-hamburg.de/pdf/giga_10_wp119_hirt.pdf; Human Rights Watch, Service for Life: State Repression and Indefinite Conscription in Eritrea, 16 April 2009, Part 2, <http://www.unhcr.org/refworld/docid/49e6dcc60.html>. The most serious transgressions occur in the military context, often as a result of military conscription. See also Cecilia M. Bailliet, Examining Sexual Violence in the Military Within the Context of Eritrean Asylum Claims Presented in Norway", International Journal of Refugee Law, 2007, Vol. 19, Issue 3, p.12-14.

¹³⁴ According to the US Department of State, allegations of women being raped while attending mandatory military and educational training at the Sawa camp were common; see US Department of State, 2010 Country Reports on Human Rights Practices – Eritrea, 8 April 2011, <http://www.unhcr.org/refworld/docid/4da56dccc.html>. See also Hirt, Nicole, "Dreams Don't Come True in Eritrea": Anomie and Family Disintegration Due to the Structural Militarization of Society, January 2010, http://repec.giga-hamburg.de/pdf/giga_10_wp119_hirt.pdf; Human Rights Watch, Service for Life: State Repression and Indefinite Conscription in Eritrea, 16 April 2009, <http://www.unhcr.org/refworld/docid/49e6dcc60.html>; and Cecilia M. Bailliet, Examining Sexual Violence in the Military Within the Context of Eritrean Asylum Claims Presented in Norway", International Journal of Refugee Law, 2007, Vol. 19, Issue 3, pp. 471-510.

¹³⁵ Hirt, Nicole, "Dreams Don't Come True in Eritrea": Anomie and Family Disintegration Due to the Structural Militarization of Society, January 2010, http://repec.giga-hamburg.de/pdf/giga_10_wp119_hirt.pdf. Cecilia M. Bailliet, Examining Sexual Violence in the Military Within the Context of Eritrean Asylum Claims Presented in Norway", International Journal of Refugee Law, 2007, Vol. 19, Issue 3, pp. 471-510.

¹³⁶ Human Rights Watch, Service for Life: State Repression and Indefinite Conscription in Eritrea, 16 April 2009, <http://www.unhcr.org/refworld/docid/49e6dcc60.html>; Cecilia M. Bailliet, Examining Sexual Violence in the Military Within the Context of Eritrean Asylum Claims Presented in Norway", International Journal of Refugee Law, 2007, Vol. 19, Issue 3., pp. 471-510

¹³⁷ See, for example, US Department of State, 2010 Country Reports on Human Rights Practices – Eritrea, 8 April 2011, <http://www.unhcr.org/refworld/docid/4da56dccc.html>; Hirt, Nicole, "Dreams Don't Come True in Eritrea": Anomie and Family Disintegration Due to the Structural Militarization of Society, January 2010, pp. 23-24, http://repec.giga-hamburg.de/pdf/giga_10_wp119_hirt.pdf; Cecilia M. Bailliet, Examining Sexual Violence in the Military Within the Context of Eritrean Asylum Claims Presented in Norway", International Journal of Refugee Law, 2007, Vol. 19, Issue 3, pp. 471-510; and Amnesty International, Eritrea: 'You have no right to ask' – Government resists scrutiny on human rights, AFR 64/003/2004, 19 May 2004, p. 24, <http://www.unhcr.org/refworld/docid/4129dcf54.html>.

¹³⁸ Cecilia M. Bailliet, Examining Sexual Violence in the Military Within the Context of Eritrean Asylum Claims Presented in Norway", International Journal of Refugee Law, 2007, Vol. 19, Issue 3, pp. 471-510; and Amnesty International, Eritrea: 'You have no right to ask' – Government resists scrutiny on human rights, AFR 64/003/2004, 19 May 2004, p. 24, <http://www.unhcr.org/refworld/docid/4129dcf54.html>. Moreover, abortion is illegal in Eritrea. See Articles 528 and ff. of the *Eritrea Transition Penal Code (Proclamation No. 158 of 1957)*, 23 July 1957, <http://www.unhcr.org/refworld/docid/49216a0a2.html>.

¹³⁹ Article 19 of the *Constitution of Eritrea*, 23 May 1997, <http://www.unhcr.org/refworld/docid/3dd8aa904.html>. Furthermore, discrimination on account of political views is prohibited (Article 14).

¹⁴⁰ The Eritrean People's Liberation Front, which assumed power after the 1993 independence referendum, dissolved itself in 1994 to become the PFDJ; see US Department of State, 2010 Country Reports on Human Rights Practices – Eritrea, 8 April 2011, <http://www.unhcr.org/refworld/docid/4da56dccc.html>; and International Crisis Group, *Eritrea: The Siege State*, 21 September 2010, <http://www.unhcr.org/refworld/docid/4c9c65eb2.html>.

been driven out of the country and, since late 2004, operate only in exile, mainly in neighbouring countries.¹⁴¹

However, following the restoration of diplomatic ties between Sudan and Eritrea in 2006,¹⁴² the Sudanese Government has pledged to ban Eritrean opposition groups from operating on its territory.¹⁴³ Since then, Sudan has reportedly provided Eritrea with intelligence on the military bases of Eritrean opposition groups and activists.¹⁴⁴

The climate of intolerance of political dissent in Eritrea has reportedly led to frequent arrests of suspected Government critics. Those arrested are often held in *incommunicado* detention or “disappear” in secret detention facilities, where they are reportedly held in poor conditions and denied access to legal counsel or medical treatment. Severe punishments, torture, starvation and other ill-treatment are commonplace.¹⁴⁵ Relatives reportedly face reprisals from the authorities for inquiring about the arrest or detention of family members.¹⁴⁶ In the most high profile case to date, eleven former Government ministers and Eritrean liberation war veterans, who called for democratic reforms, including the implementation of the Constitution and the holding of elections, remain in secret detention since their arrest in September 2001. Known as the Group of 15 (G15),¹⁴⁷ they have never been charged or appeared in court to face trial.¹⁴⁸ Over half of those arrested have reportedly

¹⁴¹ The opposition in the diaspora ranges from former branches of the Eritrea Liberation Front, to former members of the Eritrean People’s Liberation Front and ethnocentric organizations – such as the Kunama and Afar organizations. The opposition remains largely divided and not considered to pose a threat to the Eritrean Government; see International Crisis Group, *Eritrea: The Siege State*, 21 September 2010, pp. 12-13, <http://www.unhcr.org/refworld/docid/4c9c65eb2.html>. In January 2011, the Eritrean People’s Democratic Party (EPDP) announced its withdrawal from the Eritrean Democratic Alliance (EDA), an opposition umbrella group based in Ethiopia, citing the EDA’s “internal crisis”. The EPDP also criticized the EDA leadership for its formation of a 53-member Commission for Democratic Change at a conference in Addis Ababa in August 2010; see Economist Intelligence Unit, *Country Report: Eritrea*, February 2011. See also BBC News, *Timeline: Eritrea*, 30 November 2010, <http://news.bbc.co.uk/2/hi/africa/1070861.stm>; and Afrik News, *Eritrean group set to overthrow government*, 12 August 2010, <http://www.afrik-news.com/article18099.html>. Further information on opposition and diaspora groups is available at: Eritrean Liberation Front-Revolutionary Council (ELF-RC), www.awate.com / <http://www.nharnet.com>; Eritrean Liberation Front (ELF), www.awate.com / <http://www.omaal.net>; Eritrean National Alliance, <http://www.erit-alliance.com/Info/organstruct.asp>.

¹⁴² See *Eastern Sudan Peace Agreement*, 19 June 2006, available through Sudan Tribune at http://www.sd.undp.org/doc/Eastern_States_Peace_Agreement.pdf.

¹⁴³ For a discussion of the strengthening of ties between the two nations, see, Reuters Africa, *Sudan's Bashir slams UN sanctions on Eritrea: media*, 6 March 2010, <http://af.reuters.com/article/topNews/idAFJOE62505Q20100306>. Sudan has also reportedly denied Eritrean opposition groups the possibility of conducting their meetings on Sudanese territory; see Sudan Tribune, *Eritrean opposition groups call on Sudan to lift imposed ban*, 9 June 2008, <http://www.sudantribune.com/spip.php?article27455>. The opposition radio station, Al Sharq, which was broadcasting from Khartoum, was also shut down; see Awate.com, *Restricting The Opposition's Influence*, 26 November 2006, <http://www.awate.com/portal/content/view/4398/19>.

¹⁴⁴ Uncorroborated reports suggest that the Sudanese authorities condone the abduction of Eritrean nationals from its territory by Eritrean intelligence operatives; see, for example, Sudan Tribune, *Eritrea reportedly abducting 4,000 Eritreans from Sudan*, 26 December 2007, <http://www.sudantribune.com/spip.php?article25321>. See also, Sudan Tribune, *Asmara and Khartoum accused of deporting Eritrean from Sudan*, 11 December 2007, <http://www.sudantribune.com/spip.php?article25120>.

¹⁴⁵ Torture and ill-treatment of critics of the Government in an attempt to deter dissenting opinion are reported; see US Department of State, *2010 Country Reports on Human Rights Practices – Eritrea*, 8 April 2011, <http://www.state.gov/documents/organization/160120.pdf>; Human Rights Watch, *World Report 2011 - Eritrea*, 24 January 2011, <http://www.unhcr.org/refworld/docid/4d3e801bc.html>; Amnesty International, *Amnesty International Report 2010 - Eritrea*, 28 May 2010, <http://www.unhcr.org/refworld/docid/4c03a82d23.html>; Amnesty International, *Eritrea: Submission to the UN Universal Periodic Review*, 13 April 2009, <http://www.amnesty.org/en/library/asset/AFR64/001/2009/en/c51f0e91-04cc-437e-bd9b-79a220021cf7/afr640012009en.html>. An Eritrean asylum-seeker in Israel reported that he was arrested and detained in a military camp for three years for taking part in a demonstration in 2006; BBC News, *Case studies: African migrants smuggled into Israel*, 16 December 2010, <http://www.bbc.co.uk/news/world-middle-east-11952012>. Detailed accounts of arrested or “disappeared” individuals can also be found on diaspora websites, such as www.awate.com, www.delina.org and www.ehrea.org. Careful consideration should be given to the credibility of such reports.

¹⁴⁶ Amnesty International, *Eritrea: Submission to the UN Universal Periodic Review*, 13 April 2009, <http://www.amnesty.org/en/library/asset/AFR64/001/2009/en/c51f0e91-04cc-437e-bd9b-79a220021cf7/afr640012009en.html>.

¹⁴⁷ Eleven of the 15 open letter signatories were arrested in September 2001. Three, who were outside the country, escaped detention, and one recanted; see International Crisis Group, *Eritrea: The Siege State*, 21 September 2010, p. 7, <http://www.unhcr.org/refworld/docid/4c9c65eb2.html>. Over 20 journalists and other high-ranking political activists were also arrested alongside the G15. Several have reportedly died since as a result of torture, lack of medical assistance, food deprivation and excessive heat in the Era-Ero and Embatkala prisons. In addition, nine have reportedly become physically or mentally disabled; see US Department of State, *2010 Country Reports on Human Rights Practices – Eritrea*, 8 April 2011, <http://www.unhcr.org/refworld/docid/4da56dcc.html>.

¹⁴⁸ US Department of State, *2010 Country Reports on Human Rights Practices – Eritrea*, 8 April 2011, <http://www.unhcr.org/refworld/docid/4da56dcc.html>; Human Rights Watch, *World Report 2011 - Eritrea*, 24 January 2011, <http://www.unhcr.org/refworld/docid/4d3e801bc.html>; and International Crisis Group, *Eritrea: The Siege State*, 21 September 2010, p. 7, <http://www.unhcr.org/refworld/docid/4c9c65eb2.html>.

died in custody.¹⁴⁹ Since 2001, thousands of politically-motivated arrests have been reported; most of those detained are yet to be charged or prosecuted.¹⁵⁰

Furthermore, Government officials reportedly monitor the political activities of the diaspora,¹⁵¹ allegedly harassing critics and intimidating exiled Eritreans into participating in pro-Government rallies and paying remittances – the two percent “income tax” required of all citizens residing abroad – for fear of reprisals against family members in Eritrea.¹⁵²

In light of the sustained climate of political intolerance, as evidenced by thousands of politically-motivated arrests, UNHCR considers that members of, or individuals associated with or perceived to be associated with, opposition political groups, as well as (perceived) Government critics, may be at risk on the basis of their (imputed) political opinion.¹⁵³

3. Journalists and Other Media Professionals

Freedom of speech and expression, including freedom of the press and other media, are guaranteed under the Constitution of Eritrea.¹⁵⁴ The dissemination of, *inter alia*, any material deemed to be contrary to the national and public interest, or that could be construed to cause societal divisions is,

¹⁴⁹ According to some reports, six of the Government officials arrested in 2001 have died in prison; see, for example, Reporters Without Borders, *Prominent journalist arrested, ex-prison guard reveals fate of other detained journalists*, 12 May 2010, <http://www.unhcr.org/refworld/docid/4bf0ee411a.html>. According to Amnesty International, General Ogbe Abraha died in custody due to the harsh conditions and lack of access to medical treatment; see Amnesty International, *Eritrea: Amnesty International Submission to the UN Universal Periodic Review, November-December 2009*, 13 April 2009, <http://www.amnesty.org/en/library/asset/AFR64/001/2009/en/c51f0e91-04cc-437e-bd9b-79a220021cf7/afr640012009en.html>.

¹⁵⁰ Politically-motivated arrests continued to be reported by international human rights monitors, as well as diaspora websites; see, for example, Human Rights Watch, *World Report 2011 - Eritrea*, 24 January 2011, <http://www.unhcr.org/refworld/docid/4d3e801bc.html>; International Crisis Group, *Eritrea: The Siege State*, 21 September 2010, p. 7, <http://www.unhcr.org/refworld/docid/4c9c65eb2.html>; Amnesty International, *Amnesty International Report 2010 - Eritrea*, 28 May 2010, <http://www.unhcr.org/refworld/docid/4c03a82d23.html>; and Human Rights House Network, *Stop Human Rights Violations In Eritrea*, 9 December 2009, <http://humanrightshouse.org/Articles/12803.html>.

¹⁵¹ Monitoring activities have been reported in several countries, including Norway, Sweden, Switzerland, the United Kingdom and the United States of America. Furthermore, Eritrean officials reportedly monitor refugee camps in neighboring countries, such as Kenya and Sudan, and discouraged refugees from engaging in political activity; see US Department of State, *2010 Country Reports on Human Rights Practices – Eritrea*, 8 April 2011, <http://www.unhcr.org/refworld/docid/4da56dcc.html>; Amnesty International, *Government Reformers, Journalists and Political Prisoners*, undated (accessed on 15 March 2011), <http://www.amnestyusa.org/all-countries/eritrea/more-on-eritrea/page.do?id=1551001>; and Immigration and Refugee Board of Canada, *Eritrea: Whether the Eritrean government has a surveillance system or agents of surveillance in the United States (US) to monitor Eritrean citizens who live in the United States and who are involved in activities, including demonstrations and meetings, against the Eritrean government*, 15 April 2009, <http://www.unhcr.org/refworld/docid/4b20f02d28.html>.

¹⁵² Security forces reportedly arrested family members of persons who did not pay their extraterritorial income tax of 2 percent of foreign earned income; see US Department of State, *2010 Country Reports on Human Rights Practices – Eritrea*, 8 April 2011, <http://www.unhcr.org/refworld/docid/4da56dcc.html>. See also Afrol News, *Eritrea "intimidates emigrants into paying tax"*, 26 May 2010, <http://www.afrol.com/articles/36196>. The existence of the two percent tax was also confirmed by credible and consistent reports obtained through refugee status determination interviews conducted by UNHCR field offices. Resistance against the diaspora ‘tax’ has recently been observed within Eritrean communities abroad; see Clara Schmitz-Pranghe, *Modes and Potential of Diaspora Engagement in Eritrea*, July 2010, Diaspeace, Working Paper No. 3, http://www.diaspeace.org/D12_WP3_Fischer_Final.pdf.

¹⁵³ Several national jurisdictions have recognized that actual or perceived political dissenters faced a real risk of persecution upon return to Eritrea. See, for instance, *RRT Case No. 0806040* [2008] RRTA 431, 20 November 2008 (Refugee Review Tribunal of Australia), <http://www.unhcr.org/refworld/docid/498c49aa2.html>. The Tribunal held that the applicant had a well-founded fear of persecution on the basis of her political opinion. The Tribunal found that the applicant’s unauthorized departure from Eritrea, her application for refugee status, her criticism of the Eritrean government, and her family background, had and would continue to attract the adverse interest of the Eritrean Government. The country of origin information clearly indicated that the Eritrean Government did not tolerate dissent (real or perceived) and citizens targeted by the authorities had no means of defending themselves. In *YB (Eritrea) v. Secretary of State for the Home Department*, [2008] EWCA Civ 360, 15 April 2008, <http://www.unhcr.org/refworld/docid/4805f3312.html>, an Eritrean asylum-seeker claimed fear of persecution, *inter alia*, on the basis of his political activities in the UK. The England and Wales Court of Appeal held that, given the evidence which demonstrated that the Eritrean government suppressed political opponents, it required little or no evidence to arrive at a strong possibility that its foreign operatives not only film or photograph their nationals who demonstrate in public against the Government but have informers among expatriate oppositionist organizations who can name the people who are filmed or photographed. The Court further held that it did not require affirmative evidence to establish a probability that the Eritrean intelligence services monitor the internet for information about oppositionist groups. The US Court of Appeal for the Eleventh Circuit recently held that a petitioner, who had complained about the mistreatment of former soldiers whose allegiance to the PFDJ was suspect, was qualified for asylum due to compelling evidence of past persecution on account of her political opinion – in the form of repeated detentions, harassing interrogations, and beatings – and a well-founded fear of future persecution should she return to Eritrea; see *Kiflemariam v. U.S. Attorney General*, No. 08-16423, 18 March 2010, <http://www.unhcr.org/refworld/docid/4d6cf4a2.html>.

¹⁵⁴ Article 19 of the Constitution of Eritrea, 23 May 1997, <http://www.unhcr.org/refworld/docid/3dd8aa904.html>.

however, prohibited under the 1996 Press Proclamation.¹⁵⁵ Notwithstanding the Constitutional provisions, the Government closed down all privately-owned press and media outlets in September 2001,¹⁵⁶ when at least 10 journalists from the private press were arrested¹⁵⁷ on national security grounds.¹⁵⁸ Currently only State-owned media operate.¹⁵⁹ In 2010, only one reporter representing a foreign news agency, Voice of America, was allowed to work in the country, although he does not permanently reside in the country.¹⁶⁰ According to the Eritrean delegate to the December 2009 Universal Periodic Review, the Government had been forced to take corrective measures against the privately-owned press as the latter had “started chipping away at the very fabric of the unity and harmony of the Eritrean society and the country”.¹⁶¹

In November 2006, the Government conducted a round-up of State journalists and media professionals for undisclosed reasons. At least nine State-owned media workers were reportedly arrested as a result.¹⁶² A fresh wave of arrests took place in February 2009, when the authorities raided the premises of Asmara-based Radio Bana and arrested its entire staff (*circa* 50 employees).¹⁶³ Although several of those journalists were quickly released thereafter, about 12 are reportedly still

¹⁵⁵ Article 12 of the Eritrean *Press Proclamation No. 90/1996*, 10 June 1996, <http://www.unhcr.org/refworld/docid/48512e992.html>. The Proclamation provides the legal framework for journalists and media operators.

¹⁵⁶ See for example Freedom House, *Freedom of the Press 2010 - Eritrea*, 30 September 2010, <http://www.unhcr.org/refworld/docid/4ca44d971e.html>; and Committee to Protect Journalists, *Reluctant activist: A brother's struggle to free Dawit Isaak*, 25 May 2010, <http://cpi.org/blog/2010/05/the-reluctant-activist-a-brothers-struggle-to-free.php>. The closures of privately owned press and media continue to be in place as of January 2011; see Human Rights Watch, *World Report 2011 - Eritrea*, 24 January 2011, <http://www.unhcr.org/refworld/docid/4d3e801bc.html>.

¹⁵⁷ It is believed that at least five of the arrested journalists remain imprisoned in secret locations, *incommunicado*, and without formal charge or trial. Four others have reportedly died in custody between 2005 and 2007; see Committee to Protect Journalists, *Iran, China drive prison tally to 14-year high*, 8 December 2010, <http://cpi.org/reports/2010/12/cpi-journalist-prison-census-iran-china-highest-14-years.php>; Reporters Without Borders, *Prominent journalist arrested, ex-prison guard reveals fate of other detained journalists*, 12 May 2010, <http://www.unhcr.org/refworld/docid/4bf0ee411a.html>; and International Pen, *Contribution to the Universal Periodic Review Mechanism 6th session of the Working Group of the Universal Periodic Review 30 November – 9 December*, 9 April 2009, http://lib.ohchr.org/HRBodies/UPR/Documents/Session6/ER/IP_ERI_UPR_S06_2009.pdf. Amongst those detained was Dawit Isaak, a dual Eritrean-Swedish citizen and one of the founders of Eritrea's first independent newspaper, Setit. He was detained without charge in September 2001, after his paper published letters demanding democratic reforms and reportedly remains in solitary confinement in a 12-square-metre windowless cell. According to the Head of Political Affairs for the PFDJ, Yemane Ghebreab, Isaak is held on national security grounds. At the end of 2010, the Eritrean Government had not yet responded to calls from the Swedish Government for the release of the journalist. Believed to be in poor health, he is reportedly denied access to medical treatment; see US Department of State, *2010 Country Reports on Human Rights Practices – Eritrea*, 8 April 2011, <http://www.unhcr.org/refworld/docid/4da56dcc.html>; BBC News, *Jailed Eritrean journalist wins press freedom award*, 27 October 2010, <http://www.bbc.co.uk/news/world-africa-11637144>; Committee to Protect Journalists, *Reluctant activist: A brother's struggle to free Dawit Isaak*, 25 May 2010, <http://cpi.org/blog/2010/05/the-reluctant-activist-a-brothers-struggle-to-free.php>; and Reporters Without Borders, *Prominent journalist arrested, ex-prison guard reveals fate of other detained journalists*, 12 May 2010, <http://www.unhcr.org/refworld/docid/4bf0ee411a.html>.

¹⁵⁸ Eritrean officials have provided inconsistent explanations for the effective closure of the private press and the ensuing arrests; see Committee to Protect Journalists, *Eritrean official says jailed journalists were security threat*, 6 August 2010, <http://cpi.org/blog/2010/08/eritrean-official-says-jailed-journalists-were-sec.php>; Committee to Protect Journalists, *Truth about Journalists is locked away in Eritrea*, 9 April 2010, <http://cpi.org/blog/2010/04/truth-about-jailed-journalists-is-locked-away-in-e.php>; and International Pen, *Contribution to the Universal Periodic Review Mechanism 6th session of the Working Group of the Universal Periodic Review 30 November – 9 December, 9 April 2009*, http://lib.ohchr.org/HRBodies/UPR/Documents/Session6/ER/IP_ERI_UPR_S06_2009.pdf.

¹⁵⁹ See, for instance, BBC, *Country Profile Eritrea*, 30 November 2010, http://news.bbc.co.uk/2/hi/africa/country_profiles/1070813.stm. Eritrea is reportedly the only African country with no privately owned news media; see BBC News, *Jailed Eritrean journalist wins press freedom award*, 27 October 2010, <http://www.bbc.co.uk/news/world-africa-11637144>; and International Crisis Group, *Eritrea: The Siege State*, 21 September 2010, <http://www.unhcr.org/refworld/docid/4c9c65eb2.html>. It was also the last African country to enable Internet access, with Internet connections reported to be limited, unreliable or monitored by the authorities; see US Department of State, *2010 Country Reports on Human Rights Practices – Eritrea*, 8 April 2011, <http://www.unhcr.org/refworld/docid/4da56dcc.html>; and Freedom House, *Freedom of the Press 2010 - Eritrea*, 30 September 2010, <http://www.unhcr.org/refworld/docid/4ca44d971e.html>.

¹⁶⁰ The last Reuters correspondent reportedly left the country in 2009, while, in 2008, administrative obstacles resulted in the departure of the Agence France Presse reporter; see US Department of State, *2010 Country Reports on Human Rights Practices – Eritrea*, 8 April 2011, <http://www.unhcr.org/refworld/docid/4da56dcc.html>. During 2010, President Afwerki has, however, conducted several interviews with foreign broadcasters such as Swedish TV4 and the Qatar-based Al-Jazeera; see Freedom House, *Freedom of the Press 2010 - Eritrea*, 30 September 2010, <http://www.unhcr.org/refworld/docid/4ca44d971e.html>.

¹⁶¹ UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review on Eritrea*, A/HRC/13/2, 4 January 2010, para. 49, <http://www.unhcr.org/refworld/docid/4bde8f8d2.html>.

¹⁶² UN Human Rights Council, *The right to freedom of opinion and expression: report of the Special Rapporteur, Ambeyi Ligabo: addendum*, A/HRC/4/27/Add.1, 26 March 2007, para. 225, http://ap.ohchr.org/documents/dpage_e.aspx?c=61&su=69.

¹⁶³ Sponsored by the Ministry of Education, Radio Bana produces, *inter alia*, educational materials for the Government; see Reporters Without Borders, *Prominent journalist arrested, ex-prison guard reveals fate of other detained journalists*, 12 May 2010, <http://www.unhcr.org/refworld/docid/4bf0ee411a.html>; and Africa.com, *Eritrea rights and liberties report*, 2010, <http://www.africa.com/eritrea/report>.

being held *incommunicado*, without charges, and, at least some, in solitary confinement and military prisons.¹⁶⁴

Since the major police operations in 2001 and the following closure of the private press, freedom of the press has been seriously curtailed in Eritrea. In 2010, the country was ranked third in the world in terms of the number of imprisoned journalists (after Iran and China)¹⁶⁵ and is currently ranked last in Reporters Without Borders' world press freedom index.¹⁶⁶ Those detained are reportedly held in poor conditions and may be subject to torture and other forms of cruel, inhuman, and degrading treatment.¹⁶⁷

In light of the foregoing, UNHCR considers that journalists expressing, or perceived as holding, views critical of the Government, or merely reporting on opposition groups activities, may be at risk on the basis of (imputed) political opinion.

4. Trade Unionists and Labour Rights Activists

Freedom of association and assembly are guaranteed under the Constitution.¹⁶⁸ Workers have the right to form and join trade unions to protect their rights, including through collective bargaining and industrial action.¹⁶⁹ Trade unions are, however, not allowed within the civil service, military, police and other organizations providing essential services.¹⁷⁰ Groups of 20 or more persons seeking to form a union require prior approval from the Ministry of Labour and Human Welfare.¹⁷¹ All unions are

¹⁶⁴ See, for example, US Department of State, *2010 Country Reports on Human Rights Practices – Eritrea*, 8 April 2011, <http://www.unhcr.org/refworld/docid/4da56dccc.html>; Freedom House, *Freedom of the Press 2010 - Eritrea*, 30 September 2010, <http://www.unhcr.org/refworld/docid/4ca44d971e.html>; Reporters Without Borders, *Prominent journalist arrested, ex-prison guard reveals fate of other detained journalists*, 12 May 2010, <http://www.unhcr.org/refworld/docid/4bf0ee411a.html>; and IFEX, *One year after her arrest, Radio Bana journalist being held in solitary confinement*, 19 February 2010, http://www.ifex.org/eritrea/2010/02/19/fisseha_in_solitary/. According to one report, six Radio Bana journalists were allegedly arrested for having provided information to opposition organizations and websites operating abroad; see Reporters Without Borders, *Journalists still hunted down nine years after September 2001 purges*, 17 September 2010, <http://www.unhcr.org/refworld/docid/4c984645c.html>. It should also be noted that, as of February 2010, the Special Rapporteur on Human Rights Defenders had not received a response to her letter of allegations in relation to the arrests, detention and deaths of journalists in Eritrea since 2001; see UN Human Rights Council, *Report of the Special Rapporteur on the Situation of Human Rights Defenders, Margaret Sekagya: addendum*, A/HRC/13/22/Add.1, 24 February 2010, <http://www.unhcr.org/refworld/docid/4bd144d62.html>.

¹⁶⁵ As of 1 December 2010, 17 journalists had been imprisoned in 2010 alone; see Committee to Protect Journalists, *Iran, China drive prison tally to 14-year high*, 8 December 2010, <http://cpj.org/reports/2010/12/cpj-journalist-prison-census-iran-china-highest-14-years.php>; and Committee to Protect Journalists, *Annual Prison Census 2010 - Eritrea*, 8 December 2010, <http://www.unhcr.org/refworld/docid/4d4977e8c.html>. It was reported that, as of October 2010, there were at least 30 cases of Eritrean journalists being held in *incommunicado* detention; see UK Foreign and Commonwealth Office, *Human Rights and Democracy: The 2010 Foreign & Commonwealth Office Report - Eritrea*, 31 March 2011, <http://www.unhcr.org/refworld/docid/4d99aa836e.html>; and Reporters Without Borders, *2010 World Press Freedom Index*, 20 October 2010, http://www.rsf.org/IMG/CLASSEMENT_2011/GB/C_GENERAL_GB.pdf. Eyob Kessete, a journalist of state-owned radio Dintsi Hafash's Amharic-language service, was reportedly arrested during 2010 as he was trying to cross the border into Ethiopia and is detained at an unknown location. After his first arrest for trying to defect at the start of the summer of 2007, he was held in several prisons until relatives obtained his release in late 2008 or early 2009 by acting as guarantors; see Reporters without Borders, *Eritrea: Journalists Still Hunted Down Nine Years After September 2001 Purges*, 17 September 2010, <http://allafrica.com/stories/201009200830.html>. In March 2010, Said Abdulhai, a well-known journalist and employee of the Ministry of Foreign Affairs and former Head of the press department of the Ministry of Information, was reportedly arrested. The charges against him and his detention locations remain unknown: see Reporters Without Borders, *Prominent journalist arrested, ex prison guard reveals fate of other detained journalists*, 12 May 2010, http://en.rsf.org/eritrea-prominent-journalist-arrested-ex-12-05-2010_37459.html.

¹⁶⁶ Reporters Without Borders, *2010 World Press Freedom Index*, 20 October 2010, http://www.rsf.org/IMG/CLASSEMENT_2011/GB/C_GENERAL_GB.pdf.

¹⁶⁷ See, for example, Committee to Protect Journalists, *Iran, China drive prison tally to 14-year high*, 8 December 2010, <http://cpj.org/reports/2010/12/cpj-journalist-prison-census-iran-china-highest-14-years.php>; Reporters Without Borders, *2010 World Press Freedom Index*, 20 October 2010, http://www.rsf.org/IMG/CLASSEMENT_2011/GB/C_GENERAL_GB.pdf; and The Monitor, *Eritrea: Locked-Up And Tortured for Being a Journalist*, 14 February 2010, <http://allafrica.com/stories/201002151425.html>.

¹⁶⁸ Article 19(4) of the Constitution of Eritrea, 23 May 1997, <http://www.unhcr.org/refworld/docid/3dd8aa904.html>, guarantees everyone's right to assemble and to demonstrate peacefully together with others, as well as to form organizations for "political, social, economic and cultural ends."

¹⁶⁹ Labour rights are governed by the Labour Proclamation No. 118/2001, 15 November 2001, <http://www.unhcr.org/refworld/docid/4d4a9e192.html>.

¹⁷⁰ Article 3(1) of the Labour Proclamation No. 118/2001, 15 November 2001, <http://www.unhcr.org/refworld/docid/4d4a9e192.html>. See also International Trade Union Confederation, *2010 Annual Survey of violations of trade union rights - Eritrea*, 9 June 2010, <http://www.unhcr.org/refworld/docid/4c4fec7e5.html>.

¹⁷¹ Article 3(20) in conjunction with Articles 89(1) and 93(1) of the Labour Proclamation No. 118/2001, 15 November 2001, <http://www.unhcr.org/refworld/docid/4d4a9e192.html>. See also International Trade Union Confederation, *2010 Annual Survey of violations of trade union rights - Eritrea*, 9 June 2010, <http://www.unhcr.org/refworld/docid/4c4fec7e5.html>.

reportedly Government-run¹⁷² and their activities closely monitored.¹⁷³ Although union leaders are typically Government employees, and thus union activities are generally sanctioned, the Government did not approve the formation of any unions in 2009.¹⁷⁴ In light of the foregoing and given past arbitrary arrests and detention of prominent trade unionists and labour rights activists,¹⁷⁵ UNHCR considers that such individuals may be at risk based on their (imputed) political opinion, depending on the particular circumstances of the case.

5. Members of Minority Religious Groups

The Eritrean Constitution guarantees freedom of religion.¹⁷⁶ The situation of religious freedom in Eritrea is, however, widely considered to be amongst the worst in the world,¹⁷⁷ as these rights are severely restricted for all but the four officially recognized religions, i.e. Sunni Islam, the Eritrean Orthodox Church, the Roman Catholic Church and the Evangelical Lutheran Church.¹⁷⁸ All other faiths are regarded as “unpatriotic” and “foreign”,¹⁷⁹ and their followers are reportedly subject to harassment, imprisonment, torture, and in some instances, death, at the hands of the authorities.¹⁸⁰

Furthermore, the authorities are increasingly involved in controlling the religious activities of the four recognized religious groups. Most facets of religious life are under State control, including the construction of religious facilities, and the printing and distribution of religious materials, all of which require prior Government approval. Members of the four registered religions may also face

¹⁷² The Government runs, *inter alia*, the Teacher’s Union, Women’s Union, Youth’s Union, and Worker’s Union. Membership in these unions was reportedly compulsory; see US Department of State, *2010 Country Reports on Human Rights Practices – Eritrea*, 8 April 2011, <http://www.unhcr.org/refworld/docid/4da56dcc.html>. See also Human Rights Watch, *World Report 2011 - Eritrea*, 24 January 2011, <http://www.unhcr.org/refworld/docid/4d3e801bc.html>; and International Crisis Group, *Eritrea: The Siege State*, 21 September 2010, <http://www.unhcr.org/refworld/docid/4c9c65eb2.html>.

¹⁷³ According to some reports, the activities of the National Confederation of Eritrean Workers and some of its affiliates come under close scrutiny from the Government; see International Trade Union Confederation, *2010 Annual Survey of violations of trade union rights - Eritrea*, 9 June 2010, <http://www.unhcr.org/refworld/docid/4c4fec7e5.html>. It is also reported that union leaders are carefully vetted; see Human Rights Watch, *World Report 2011 - Eritrea*, 24 January 2011, <http://www.unhcr.org/refworld/docid/4d3e801bc.html>; and International Crisis Group, *Eritrea: The Siege State*, 21 September 2010, <http://www.unhcr.org/refworld/docid/4c9c65eb2.html>.

¹⁷⁴ US Department of State, *2010 Country Reports on Human Rights Practices – Eritrea*, 8 April 2011, <http://www.unhcr.org/refworld/docid/4da56dcc.html>.

¹⁷⁵ In early 2005, three high-profile union leaders were arrested and held *incommunicado*, reportedly because of their union activities. One of the three detainees had allegedly urged workers at a Coca-Cola plant to engage in industrial action to protest against the worsening of their living standards. All three were released in April 2008; see International Trade Union Confederation, *2008 Annual Survey of violations of trade union rights - Eritrea*, 20 November 2008, <http://www.unhcr.org/refworld/docid/4c52ca93c.html>. See also UN Human Rights Council, *Compilation Prepared by the Office of the High Commissioner for Human Rights, in accordance with paragraph 15(b) of the Annex to Human Rights Council Resolution 5/1 - Eritrea*, A/HRC/WG.6/6/ERI/2, 18 September 2009, para. 30, <http://www.unhcr.org/refworld/docid/4ac9fee20.html>; and UN Commission on Human Rights, *Addendum to the Report submitted by the Special Representative of the Secretary-General on the Situation of Human Rights Defenders: Compilation of Developments in the Area of Human Rights Defenders*, E/CN.4/2006/95/Add.5, 6 March 2006, paras. 555, 558 and 561, <http://www.unhcr.org/refworld/docid/45377b50.html>.

¹⁷⁶ Articles 14 and 19 of the Constitution of Eritrea, 23 May 1997, <http://www.unhcr.org/refworld/docid/3dd8aa904.html>. Pursuant to Article 14(2), no one should be discriminated against on the ground of religion. Article 19 guarantees the freedom of conscience and religion.

¹⁷⁷ See, for example, UN Human Rights Council, *Summary prepared by the Office of the High Commissioner for Human Rights, in accordance with paragraph 15(c) of the Annex to Human Rights Council Resolution 5/1 - Eritrea*, A/HRC/WG.6/6/ERI/3, 15 September 2009, para. 23, <http://www.unhcr.org/refworld/docid/4acc63fb2.html>. Eritrea continues to be designated as a “country of particular concern” by the US Commission on International Religious Freedom on account of its restrictions on religious freedom. See US Commission on International Religious Freedom, *USCIRF Annual Report 2010 - Countries of Particular Concern: Eritrea*, 29 April 2010, <http://www.unhcr.org/refworld/docid/4be284091a.html>.

¹⁷⁸ No confirmed figures on religious affiliation are available, but approximately half of the Eritrean population is Sunni Muslim, 30 percent is Orthodox Christian, and 13 percent Roman Catholic. The remainder includes Easter Rite, Protestants, Seventh Day Adventists and Jehovah’s Witnesses, Hindus and Baha’is. Approximately two percent of the population practices traditional indigenous religions. In the eastern and western lowlands the population is predominantly Muslim, and predominantly Christian in the highlands; see US Department of State, *2010 Report on International Religious Freedom - Eritrea*, 17 November 2010, <http://www.unhcr.org/refworld/docid/4cf2d09ec.html>.

¹⁷⁹ International Crisis Group, *Eritrea: The Siege State*, 21 September 2010, p. 12, <http://www.unhcr.org/refworld/docid/4c9c65eb2.html>.

¹⁸⁰ See, for example, US Department of State, *2010 Country Reports on Human Rights Practices – Eritrea*, 8 April 2011, <http://www.unhcr.org/refworld/docid/4da56dcc.html>; US Department of State, *2010 Report on International Religious Freedom - Eritrea*, 17 November 2010, <http://www.unhcr.org/refworld/docid/4cf2d09ec.html>; US Commission on International Religious Freedom, *USCIRF Annual Report 2010 - Countries of Particular Concern: Eritrea*, 29 April 2010, <http://www.unhcr.org/refworld/docid/4be284091a.html>; Amnesty International, *Amnesty International Report 2010 - Eritrea*, 28 May 2010, <http://www.unhcr.org/refworld/docid/4c03a82d23.html>; Freedom House, *Freedom in the World 2010 - Eritrea*, 3 May 2010, <http://www.unhcr.org/refworld/docid/4c0ceaf4c.html>; and Institute on Religion and Public Policy, *Report: Religious Freedom in Eritrea*, April 2009, http://lib.ohchr.org/HRBodies/UPR/Documents/Session6/ER/IRPP_ERI_UPR_S06_2009.pdf.

harassment and imprisonment, particularly where they publicly protest against Government action.¹⁸¹ Members of (unregistered) minority religious groups, as well as members and clergy of the State-sanctioned religions, continue to face arrest and protracted detention in harsh conditions for refusal to perform military service.¹⁸² Although in most cases religious affiliation is the main factor for persecutory measures, political opinion is increasingly linked to religious affiliation. For instance, some non-traditional Christian groups are perceived as threats to national security.¹⁸³

UNHCR considers that individuals with the specific profiles outlined below, particularly members of non-sanctioned minority religious groups, including the Pentecostal, Evangelical and Jehovah's Witnesses denominations, may be at risk on the basis of their religion and/or (imputed) political opinion, depending on the individual circumstances of the case.¹⁸⁴ The credibility of claims based on pre-flight or *sur place* conversion to a minority faith needs to be carefully assessed.

i. Unregistered Minority Religious Groups

In 2002, the Government required all religious groups, other than the four officially recognized, to close their places of worship and register prior to engaging in religious activities. The invitation to register was not extended to certain groups, including the Jehovah's Witnesses.¹⁸⁵ An additional requirement to publish membership lists has deterred some groups from applying for registration for fear of reprisals. Despite complying with the registration requirements since 2002, the Baha'i faith, the Faith Mission Church, the Meherte Jesus Evangelical Presbyterian Church and Seventh Day Adventists have yet to be approved and are, thus, not allowed to worship publicly.¹⁸⁶

Members of non-registered religions risk arrest and detention for worshiping publicly or in private, as well as confiscation of church property.¹⁸⁷ It is reported that the authorities frequently arrest followers of non-sanctioned minority faiths,¹⁸⁸ who are reportedly detained *incommunicado* in harsh conditions,

¹⁸¹ See, for example, US Department of State, *2010 Report on International Religious Freedom - Eritrea*, 17 November 2010, <http://www.unhcr.org/refworld/docid/4cf2d09ec.html>; US Commission on International Religious Freedom, *USCIRF Annual Report 2010 - Countries of Particular Concern: Eritrea*, 29 April 2010, <http://www.unhcr.org/refworld/docid/4be284091a.html>; and Institute on Religion and Public Policy, *Report: Religious Freedom in Eritrea*, April 2009, http://lib.ohchr.org/HRBodies/UPR/Documents/Session6/ER/IRPP_ERI_UPR_S06_2009.pdf.

¹⁸² For more information on the treatment of members of unregistered religious groups, see sub-section (i) below. For detailed guidance and information on the treatment of conscientious objectors, see Section III (A)(1) Military / National Service of these Guidelines.

¹⁸³ US Commission on International Religious Freedom, *USCIRF Annual Report 2010 - Countries of Particular Concern: Eritrea*, 29 April 2010, <http://www.unhcr.org/refworld/docid/4be284091a.html>. See also International Christian Concern, *Hall of Shame 2010 – Hall of Shame Report*, 5 December 2009, p.7, <http://www.persecution.org/suffering/pdfs/ICCTop10Report.pdf>.

¹⁸⁴ Religious-based discrimination may amount to persecution where it seriously restricts the applicant's enjoyment of fundamental human rights. Examples of discrimination amounting to persecution include, but are not limited to, discrimination with consequences of a substantially prejudicial nature for the person concerned, such as serious restrictions on the right to earn a livelihood, or to access normally available educational facilities and/or health services. For further guidance on religion-based asylum claims, see UNHCR, *Guidelines on International Protection No. 6: Religion-Based Refugee Claims under Article 1A(2) of the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees*, HCR/GIP/04/06, 28 April 2004, <http://www.unhcr.org/refworld/docid/4090f9794.html>. Several national jurisdictions have recognized that religious minorities in Eritrea face severe discrimination and continue to be targeted by the authorities. See, for example, *S.Y. & Anor v. Refugee Appeals Tribunal & Anor*, [2009] IEHC 18, High Court of Ireland, 13 January 2009, <http://www.unhcr.org/refworld/docid/4a2918242.html>; and *RRT Case No. 0806040*, [2008] RRTA 431, 20 November 2008 (Refugee Review Tribunal of Australia), <http://www.unhcr.org/refworld/docid/498c49aa2.html>.

¹⁸⁵ US Commission on International Religious Freedom, *USCIRF Annual Report 2010 - Countries of Particular Concern: Eritrea*, 29 April 2010, <http://www.unhcr.org/refworld/docid/4be284091a.html>.

¹⁸⁶ See, for example, US Department of State, *2010 Report on International Religious Freedom - Eritrea*, 17 November 2010, <http://www.unhcr.org/refworld/docid/4cf2d09ec.html>; and Institute on Religion and Public Policy, *Report: Religious Freedom in Eritrea*, April 2009, http://lib.ohchr.org/HRBodies/UPR/Documents/Session6/ER/IRPP_ERI_UPR_S06_2009.pdf.

¹⁸⁷ See, for example, US Department of State, *2010 Country Reports on Human Rights Practices – Eritrea*, 8 April 2011, <http://www.unhcr.org/refworld/docid/4da56dcce.html>; US Department of State, *2010 Report on International Religious Freedom - Eritrea*, 17 November 2010, <http://www.unhcr.org/refworld/docid/4cf2d09ec.html>; and Institute on Religion and Public Policy, *Report: Religious Freedom in Eritrea*, April 2009, http://lib.ohchr.org/HRBodies/UPR/Documents/Session6/ER/IRPP_ERI_UPR_S06_2009.pdf.

¹⁸⁸ For examples of recent arrests, see The Christian Post, *Eritrean Gov't Arrests 100 Christians in Major Crackdown*, 21 January 2011, <http://www.christianpost.com/article/20110121/eritrean-govt-arrests-100-christians-in-major-crackdown/>; Allvoices, *30 Eritrean Christians Arrested for Praying in Private Home*, 6 January 2011, <http://www.allvoices.com/contributed-news/7814931-30-eritrean-christians-arrested-for-praying-in-private-home>; Persecution.Org, *Eritrean officials arrest eleven Christians in the latest crackdown*, 27 October 2010, <http://www.persecution.org/2010/10/27/eritrean-officials-arrest-eleven-christians-in-the-latest-crackdown/>. Most of the detained belonged to the Full Gospel Church. See also BBC News, *Eritrea arrests 30 praying women, relatives say*, 11 December 2009, <http://news.bbc.co.uk/2/hi/africa/8407704.stm>.

often in army camps and police headquarters throughout the country, without charge or trial.¹⁸⁹ Children from families belonging to unregistered religious groups are allegedly arrested and held in the same detention facilities as adults.¹⁹⁰ It is estimated that between 2,000 and 3,000 individuals belonging to non-State sanctioned religions are being held in prison.¹⁹¹

Religious prisoners are reportedly often confined in overcrowded metal shipping containers and unventilated underground cement cells, without sanitation facilities and exposed to extreme temperature fluctuations. In addition, they are regularly denied adequate food and access to medical treatment.¹⁹² Security forces are reportedly using force, sometimes amounting to torture, to compel detainees to renounce their religious beliefs as a pre-condition of release.¹⁹³ Examples include religious prisoners who have reportedly been forced to walk barefoot on sharp rocks and thorns, beaten with hard plastic and metal rods in order to extract confessions, and threatened with death if they did not recant their faith.¹⁹⁴ It is reportedly not uncommon for detainees to die from torture and harsh conditions to which they are exposed.¹⁹⁵

Pentecostals and certain non-Lutheran Evangelicals continue to be systematically targeted. Admitting to being a Pentecostal Christian or being caught in possession of a Pentecostal Bible are reportedly

¹⁸⁹ See, for example, US Department of State, *2010 Report on International Religious Freedom - Eritrea*, 17 November 2010, <http://www.unhcr.org/refworld/docid/4cf2d09ec.html>; Persecution.org, *How Christians are being persecuted in Eritrea*, 4 June 2010, <http://www.persecution.org/suffering/newssummpopup.php?newscode=12488>; and Institute on Religion and Public Policy, *Report: Religious Freedom in Eritrea*, April 2009, http://lib.ohchr.org/HRBodies/UPR/Documents/Session6/ER/IRPP_ERI_UPR_S06_2009.pdf.

¹⁹⁰ It is reported that Ogbamichael Teklehaimot, a pastor of the Kale Hiwot Church, has been in detention since his arrest in October 2007; see UK Foreign and Commonwealth Office, *Human Rights and Democracy: The 2010 Foreign & Commonwealth Office Report - Eritrea*, 31 March 2011, <http://www.unhcr.org/refworld/docid/4d99aa836e.html>. As of November 2010, 35 men, women, and children, who belonged to the unregistered Faith Missions Church and were arrested on Christmas Eve 2007, continued to be detained. Two young children and their mothers belonging to the Jehovah's Witness movement also remained in detention since their arrest in June 2009; see US Department of State, *2010 Report on International Religious Freedom - Eritrea*, 17 November 2010, <http://www.unhcr.org/refworld/docid/4cf2d09ec.html>.

¹⁹¹ US Department of State put the number of members of unregistered religious groups in detention at between 2000 – 3000 and stated that Government restrictions made it difficult to determine the precise number of religious prisoners at any one time. Releases sometimes went unreported; however, the number of long-term religious prisoners continued to grow; see US Department of State, *2010 Country Reports on Human Rights Practices – Eritrea*, 8 April 2011, <http://www.unhcr.org/refworld/docid/4da56dccc.html>; and US Department of State, *2010 Report on International Religious Freedom - Eritrea*, 17 November 2010, <http://www.unhcr.org/refworld/docid/4cf2d09ec.html>. See also Amnesty International, *Amnesty International Report 2010 - Eritrea*, 28 May 2010, <http://www.unhcr.org/refworld/docid/4c03a82d23.html>.

¹⁹² See, for example, UK Foreign and Commonwealth Office, *Human Rights and Democracy: The 2010 Foreign & Commonwealth Office Report - Eritrea*, 31 March 2011, <http://www.unhcr.org/refworld/docid/4d99aa836e.html>; US Department of State, *2010 Report on International Religious Freedom - Eritrea*, 17 November 2010, <http://www.unhcr.org/refworld/docid/4cf2d09ec.html>; and Institute on Religion and Public Policy, *Report: Religious Freedom in Eritrea*, April 2009, http://lib.ohchr.org/HRBodies/UPR/Documents/Session6/ER/IRPP_ERI_UPR_S06_2009.pdf.

¹⁹³ See, for example, UN Human Rights Council, *Written statement submitted by the Jubilee Campaign, a non-governmental organization in special consultative status*, A/HRC/16/NGO/128, 1 March 2011, http://ap.ohchr.org/documents/dpage_e.aspx?c=61&su=69; US Department of State, *2010 Report on International Religious Freedom - Eritrea*, 17 November 2010, <http://www.unhcr.org/refworld/docid/4cf2d09ec.html>; US Commission on International Religious Freedom, *USCIRF Annual Report 2010 - Countries of Particular Concern: Eritrea*, 29 April 2010, <http://www.unhcr.org/refworld/docid/4be284091a.html>; Compass Direct, *Third Christian this year dies in military prison*, 27 July 2009, <http://www.compassdirect.org/english/country/eritrea/4414/>; and UN Human Rights Council, *Report of the Special Rapporteur on Freedom of Religion or Belief, Asma Jahangir: addendum*, A/HRC/7/10/Add.1, 28 February 2008, para. 89, http://ap.ohchr.org/documents/dpage_e.aspx?c=61&su=69.

¹⁹⁴ Long periods of restraint are reportedly common. The position known as the “helicopter”, whereby prisoners’ hands and feet are bound together behind their back, is used as a punishment and interrogation technique for religious and political prisoners in Eritrea; see US Department of State, *2010 Report on International Religious Freedom - Eritrea*, 17 November 2010, <http://www.unhcr.org/refworld/docid/4cf2d09ec.html>; and Institute on Religion and Public Policy, *Report: Religious Freedom in Eritrea*, April 2009, http://lib.ohchr.org/HRBodies/UPR/Documents/Session6/ER/IRPP_ERI_UPR_S06_2009.pdf. It is also reported that Christian women are often beaten on the soles of their feet and wombs, allegedly to prevent them from having children; UN Human Rights Council, *Written statement submitted by the Jubilee Campaign, a non-governmental organization in special consultative status*, A/HRC/16/NGO/128, 1 March 2011, http://ap.ohchr.org/documents/dpage_e.aspx?c=61&su=69.

¹⁹⁵ US Department of State, *2010 Report on International Religious Freedom - Eritrea*, 17 November 2010, <http://www.unhcr.org/refworld/docid/4cf2d09ec.html>; and Institute on Religion and Public Policy, *Report: Religious Freedom in Eritrea*, April 2009, http://lib.ohchr.org/HRBodies/UPR/Documents/Session6/ER/IRPP_ERI_UPR_S06_2009.pdf.

grounds for imprisonment and/or torture.¹⁹⁶ There are also reports of Pentacostal and Evangelical Christians being punished for practicing their faiths whilst in military service.¹⁹⁷

Jehovah's Witnesses have a long history of being targeted by the authorities. This stems in part from their non-participation in the 1993 independence referendum and from their continuous refusal to undertake military service.¹⁹⁸ As a result, some members have been detained for more than a decade.¹⁹⁹ Many face severe discrimination, reportedly being denied citizenship rights in Eritrea, including access to public services, issuance of passports, national identity cards, business licenses and exit visas.²⁰⁰

ii. Registered Religious Groups

Although there is no officially-designated State religion in Eritrea, the Government traditionally maintained close ties with the Orthodox Church. However, it is reported to be increasingly concerning itself with the affairs of the main religious faiths. In recent years, the Government has appointed both the head of the Islamic faith (*mufti*) and the patriarch of the Orthodox Church, as well as numerous lower level positions.²⁰¹ Members of recognized religious faiths who publicly protest against such Government action reportedly face imprisonment in harsh conditions.²⁰² Many of the Muslims detained, generally without charge, are non-violent critics of the Government-imposed leadership of the Muslim community or Government policies that discriminate against Muslims.²⁰³ The 2005 dismissal of the Patriarch Abune Antonios following public criticism of State interference in church

¹⁹⁶ Human Rights Watch, *Service for Life: State Repression and Indefinite Conscription in Eritrea*, 16 April 2009, <http://www.unhcr.org/refworld/docid/49e6dcc60.html>.

¹⁹⁷ US Commission on International Religious Freedom, *USCIRF Annual Report 2010 - Countries of Particular Concern: Eritrea*, 29 April 2010, <http://www.unhcr.org/refworld/docid/4be284091a.html>; and Human Rights Watch, *Service for Life: State Repression and Indefinite Conscription in Eritrea*, 16 April 2009, <http://www.unhcr.org/refworld/docid/49e6dcc60.html>.

¹⁹⁸ US Department of State, *2010 Report on International Religious Freedom - Eritrea*, 17 November 2010, <http://www.unhcr.org/refworld/docid/4cf2d09ec.html>. For detailed guidance and information on the treatment of conscientious objectors, see Section III (A)(1) Military / National Service of these Guidelines.

¹⁹⁹ Several Jehovah's Witnesses have reportedly been imprisoned since September 1994 in Sawa military camp on account of conscientious objection. As of March 2010, none had been released; see US Department of State, *2010 Report on International Religious Freedom - Eritrea*, 17 November 2010, <http://www.unhcr.org/refworld/docid/4cf2d09ec.html>. As of April 2009, 42 Jehovah's Witnesses are reportedly imprisoned for their religious beliefs in Eritrea; see European Association of Jehovah's Christian Witnesses, *Contribution to the Report of the UN High Commissioner for Human Rights on the implementation of the new review mechanism of the Human Rights Council*, 3 April 2009, http://lib.ohchr.org/HRBodies/UPR/Documents/Session6/ER/EAJCW_ERI_UPR_S06_2009.pdf. See also UN Human Rights Council, *Report of the Special Rapporteur on Freedom of Religion or Belief, Asma Jahangir: addendum*, A/HRC/7/10/Add.1, 28 February 2008, para. 94, <http://www2.ohchr.org/english/bodies/hrcouncil/7session/reports.htm>.

²⁰⁰ See, for example, US Department of State, *2010 Country Reports on Human Rights Practices - Eritrea*, 8 April 2011, <http://www.unhcr.org/refworld/docid/4da56dcc.html>; UN Human Rights Council, *Written statement submitted by the Jubilee Campaign, a non-governmental organization in special consultative status*, A/HRC/16/NGO/128, 1 March 2011, http://ap.ohchr.org/documents/dpage_e.aspx?c=61&su=69; Jehovah's Witnesses, *Minority faiths in Eritrea have few choices*, 19 April 2010, <http://www.jw-media.org/eri/20100419.htm>; and Christian Solidarity Worldwide and Human Rights Concern - Eritrea, *Universal Periodic Review - Joint Submission*, April 2009, http://lib.ohchr.org/HRBodies/UPR/Documents/Session6/ER/CSW-HRCE_ERI_UPR_S06_2009.pdf.

²⁰¹ Although the Government did not appoint the president of the Lutheran Church or the head of the Catholic Church, pressure on their activities is reported; see US Department of State, *2010 Report on International Religious Freedom - Eritrea*, 17 November 2010, <http://www.unhcr.org/refworld/docid/4cf2d09ec.html>.

²⁰² See, for example, US Department of State, *2010 Report on International Religious Freedom - Eritrea*, 17 November 2010, <http://www.unhcr.org/refworld/docid/4cf2d09ec.html>; and US Commission on International Religious Freedom, *USCIRF Annual Report 2010 - Countries of Particular Concern: Eritrea*, 29 April 2010, <http://www.unhcr.org/refworld/docid/4be284091a.html>.

²⁰³ A number of the religious teachers and others hostile to the *mufti* appointment were reportedly executed extra-judicially; see UN Human Rights Council, *Written statement submitted by the Jubilee Campaign, a non-governmental organization in special consultative status*, A/HRC/16/NGO/128, 1 March 2011, http://ap.ohchr.org/documents/dpage_e.aspx?c=61&su=69. As of November 2010, no information regarding 180 Muslims detained in 2008 for refusing to honour the presence of the *mufti* appointed by the government in 1993 was available, US Department of State, *2010 Report on International Religious Freedom - Eritrea*, 17 November 2010, <http://www.unhcr.org/refworld/docid/4cf2d09ec.html>. In January 2009, Government security forces arrested 30 alleged "radical" Muslims, who were subsequently released with warnings to cease their alleged radical activities and to keep their beards shaved; see US Commission on International Religious Freedom, *USCIRF Annual Report 2010 - Countries of Particular Concern: Eritrea*, 29 April 2010, <http://www.unhcr.org/refworld/docid/4be284091a.html>. Similarly in September 2008, a group of Muslim scholars, students and clerics were arrested and held *incommunicado*; see Amnesty International, *Eritrea Torture*, AFR 64/005/2008, 5 September 2008, <http://www.amnesty.org/en/library/info/AFR64/005/2008/en>.

activities and the arrest of three priests are other indications of the Government's intolerance of any dissent or criticism, even from the established religious groups.²⁰⁴

Serious violations of religious freedom are also reported in the context of military service. Conscripts and members of the armed forces of all denominations reportedly face detention and severe punishment for possession of religious literature.²⁰⁵ Furthermore, Eritrean Orthodox church leaders, previously exempt from military service, are now reportedly being sent to military camps.²⁰⁶ Similarly, the Government expropriated Catholic Church property in June 2008 and expelled several Catholic missionaries allegedly in response to the refusal of the Catholic Church to send its clergy to military service.²⁰⁷

6. Women and Children with Specific Profiles

Human rights abuses against women and children in Eritrea are reportedly widespread and stem mainly from harmful traditional practices, traditional power structures and societal discrimination. Failure to conform to conventional roles and the legal restrictions concerning women's sexual and reproductive rights may expose women and girls to violence, harassment or discrimination in Eritrea.²⁰⁸ UNHCR considers that women and children with the specific profiles outlined below, including victims of sexual and gender-based violence, and harmful traditional practices, as well as those perceived as contravening social mores, may be at risk based on their membership of a particular social group,²⁰⁹ religion and/or (imputed) political opinion depending on the individual

²⁰⁴ The deposed patriarch reportedly remains under house arrest with very limited contact with the outside world. It is also reported that he has been refused medical treatment; see Institute on Religion and Public Policy, *Report: Religious Freedom in Eritrea*, April 2009, http://lib.ohchr.org/HRBodies/UPR/Documents/Session6/ER/IRPP_ERI_UPR_S06_2009.pdf. See also UN Human Rights Council, *Report of the Special Rapporteur on Freedom of Religion or Belief*, Asma Jahangir: addendum, A/HRC/7/10/Add.1, para. 91, 28 February 2008, http://ap.ohchr.org/documents/dpage_e.aspx?c=61&su=69. In February 2008, it was reported that Mr. Antonios had been held *incommunicado* for five months and that his health was at serious risk as a result of being deprived of adequate medical assistance for his diabetes. Compass Direct News, *Government announces 'election' of new Orthodox patriarch*, 4 May 2007, <http://www.compassdirect.org/en/display.php?page=news&length=long&lang=en&idelement=4870>; and BBC, *Eritrea Christians tell of torture*, 27 September 2007, <http://news.bbc.co.uk/2/hi/africa/7015033.stm>.

²⁰⁵ See, for example, US Department of State, *2010 Report on International Religious Freedom - Eritrea*, 17 November 2010, <http://www.unhcr.org/refworld/docid/4cf2d09ec.html>; US Commission on International Religious Freedom, *USCIRF Annual Report 2010 - Countries of Particular Concern: Eritrea*, 29 April 2010, <http://www.unhcr.org/refworld/docid/4be284091a.html>; and Human Rights Watch, *Service for Life: State Repression and Indefinite Conscription in Eritrea*, 16 April 2009, <http://www.unhcr.org/refworld/docid/49e6dcc60.html>.

²⁰⁶ According to information obtained from the British Embassy in Asmara in April 2010; see UK Home Office, *Country of Origin Information Report - Eritrea*, 15 April 2011, para. 9.49, <http://www.unhcr.org/refworld/docid/4dabf33c2.html>. See also International Christian Concern, *Hall of Shame 2009*, 21 January 2010, p.5, <http://www.persecution.org/suffering/pdfs/ICCTop10Report.pdf>.

²⁰⁷ Institute on Religion and Public Policy, *Report: Religious Freedom in Eritrea*, April 2009, http://lib.ohchr.org/HRBodies/UPR/Documents/Session6/ER/IRPP_ERI_UPR_S06_2009.pdf; and Christian Solidarity Worldwide and Human Rights Concern, *Universal Periodic Review - Joint Submission*, April 2009, http://lib.ohchr.org/HRBodies/UPR/Documents/Session6/ER/CSW-HRCE_ERI_UPR_S06_2009.pdf.

²⁰⁸ US Department of State, *2010 Country Reports on Human Rights Practices - Eritrea*, 8 April 2011, <http://www.unhcr.org/refworld/docid/4da56dcc.html>; and Child Rights Information Network, *Eritrea: Child Rights References in the Universal Periodic Review*, 30 November 2009, para. 26, <http://www.crin.org/resources/infoDetail.asp?ID=21838&flag=report>. According to the Committee on the Rights of the Child (CRC), there continues to be discrimination against girls, children living in poverty, children affected by and/or infected with HIV/AIDS, orphans and children belonging to nomadic pastoralist minorities.

²⁰⁹ Rape and other forms of sexual and gender based violence, such as domestic violence and trafficking for sexual exploitation, may amount to persecution, particularly where the State is unwilling or unable to provide effective protection. For further guidance see UNHCR, *Guidelines on International Protection No. 1: Gender-Related Persecution Within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees*, HCR/GIP/02/01, 7 May 2002, <http://www.unhcr.org/refworld/docid/3d36f1c64.html>; and UNHCR, *Guidelines on International Protection No. 2: "Membership of a Particular Social Group" Within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees*, 7 May 2002, <http://www.unhcr.org/refworld/docid/3d36f23f4.html>. According to the UN Committee against Torture, the failure of the State to exercise due diligence to intervene to stop, sanction and provide remedies to victims of gender-based violence, such as rape, domestic violence and trafficking, facilitates and enables non-State actors to commit such acts with impunity, the State's indifference or inaction provides a form of encouragement and/or *de facto* permission; see UN Committee Against Torture, *General Comment No. 2: Implementation of Article 2 by States Parties*, CAT/C/GC/2, 24 January 2008, <http://www.unhcr.org/refworld/docid/47ac78ce2.html>. See also *Islam (A.P.) v. Secretary of State for the Home Department; R v. Immigration Appeal Tribunal and Another, Ex Parte Shah (A.P.)*, Session 1998-1999, 25 March 1999 (United Kingdom House of Lords), <http://www.unhcr.org/refworld/docid/3dec8abe4.html>, where women in Pakistan (at risk of domestic violence) were considered to constitute a particular social group. The Court found that State protection was not available as discrimination against women was partly tolerated and partly sanctioned by the authorities.

circumstances of the case.²¹⁰ Asylum claims made by children need to be assessed carefully and in accordance with the UNHCR Guidance on child asylum claims.²¹¹

i. Sexual and Gender-Based Violence

Violence against women and children, including domestic violence and rape, is reportedly widespread in Eritrea,²¹² despite criminalization of some of these practices.²¹³ Marital rape is, however, not considered a crime.²¹⁴ Incidents of rape are generally not discussed openly in Eritrea due to the cultural stigma attached to the victims and their families.²¹⁵ No information is available on the prevalence of rape or the investigation and prosecution of such crimes.²¹⁶ When rape is reported, the authorities allegedly encourage the perpetrator to marry the victim.²¹⁷ Furthermore, cases of domestic violence are rarely prosecuted and no specific legal penalties for such crimes are incorporated into law.²¹⁸ Abortion is illegal²¹⁹ in Eritrea and, in the past, it has been reported that pregnancy out-of-wedlock was strongly condemned by the community and could lead to physical and psychological violence and, in some instances, death.²²⁰

²¹⁰ Where non-conformity to traditional roles is perceived as opposing traditional power structures, the risk may be linked to the grounds of religion and/or (imputed) political opinion; see UNHCR, *Guidelines on International Protection No. 1: Gender-Related Persecution Within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees*, HCR/GIP/02/01, 7 May 2002, paras. 25-26, <http://www.unhcr.org/refworld/docid/3d36f1c64.html>. Examples of discrimination amounting to persecution include discrimination with consequences of a substantially prejudicial nature for the person concerned, such as serious restrictions on the right to earn a livelihood; see UNHCR, *Guidelines on International Protection No. 6: Religion-Based Refugee Claims under Article 1A(2) of the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees*, HCR/GIP/04/06, 28 April 2004, para. 17, <http://www.unhcr.org/refworld/docid/4090f9794.html>.

²¹¹ UNHCR, *Guidelines on International Protection No. 8: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees*, HCR/GIP/09/08, 22 December 2009, <http://www.unhcr.org/refworld/docid/4b2f4f6d2.html>.

²¹² US Department of State, *2010 Country Reports on Human Rights Practices – Eritrea*, 8 April 2011, <http://www.unhcr.org/refworld/docid/4da56dcc.html>. See also Social Institutions and Gender Index, *Gender Equality and Social Institutions in Eritrea*, undated (accessed on 18 April 2011), <http://genderindex.org/country/Eritrea>; and Mulabi.Org, *Report on Eritrea, 6th Round of the Universal Periodic Review*, December 2009, http://www.mulabi.org/epu/6ta%20ronda/Eritrea_Submission_-_UPR_6.pdf. UNHCR has found it difficult to verify the extent to which women face sexual and gender-based violence in Eritrea, as refugee status determination in the two main asylum countries for Eritreans (i.e. Sudan and Ethiopia) is conducted by the host Government male interviewers; it is, thus, likely that women would feel uncomfortable discussing personal violence in this environment. For guidance and information on the patterns of sexual violence encountered by women in the military, please refer to Section III(A)(1) Military / National Service of these Guidelines.

²¹³ Sexual violence is criminalized under Article 589 and ff. of the Eritrean Transitional Penal Code, Proclamation No. 158 of 1957, 23 July 1957, <http://www.unhcr.org/refworld/docid/49216a0a2.html>. Rape is punishable with rigorous imprisonment not exceeding ten years – and not exceeding 15 years in the case of a child under the age of 15 or “inmate of a hospital, alms-house or asylum, or any establishment of education, correction, internment or detention, who is under the supervision or control of or dependant upon the accused person” (Article 589). No corresponding criminal offence exists for domestic violence; see UN Committee on the Elimination of Discrimination Against Women, *Concluding Comments: Eritrea*, CEDAW/C/ERI/CO/3, 3 February 2006, <http://www.unhcr.org/refworld/type/CONCOBSERVATIONS,,ERI,44118344c1,0.html>. The CEDAW expressed concern about the absence of policies and programmes, including legislation, to address violence against women including marital rape as well as the lack of information and statistics on violence against women in the report provided by Eritrea.

²¹⁴ See, by analogy, Article 589 of the Eritrean Transitional Penal Code, Proclamation No. 158 of 1957, 23 July 1957, <http://www.unhcr.org/refworld/docid/49216a0a2.html>. Article 599 of the Transitional Penal Code specifically bars prosecution in the event of subsequent marriage to the perpetrator.

²¹⁵ Mulabi.Org, *Report on Eritrea, 6th Round of the Universal Periodic Review*, December 2009, http://www.mulabi.org/epu/6ta%20ronda/Eritrea_Submission_-_UPR_6.pdf.

²¹⁶ US Department of State, *2010 Country Reports on Human Rights Practices – Eritrea*, 8 April 2011, <http://www.unhcr.org/refworld/docid/4da56dcc.html>.

²¹⁷ US Department of State, *2010 Country Reports on Human Rights Practices – Eritrea*, 8 April 2011, <http://www.unhcr.org/refworld/docid/4da56dcc.html>. See also Mulabi.Org, *Report on Eritrea, 6th Round of the Universal Periodic Review*, December 2009, http://www.mulabi.org/epu/6ta%20ronda/Eritrea_Submission_-_UPR_6.pdf. UNHCR has also received credible and consistent reports of rape victims being coerced into marrying the perpetrator.

²¹⁸ US Department of State, *2010 Country Reports on Human Rights Practices – Eritrea*, 8 April 2011, <http://www.unhcr.org/refworld/docid/4da56dcc.html>.

²¹⁹ Pursuant to Articles 528 and ff. of the Eritrea Transition Penal Code, Proclamation No. 158 of 1957, 23 July 1957, <http://www.unhcr.org/refworld/docid/49216a0a2.html>, abortion is illegal even in cases of rape and incest. Intentional abortions can result in sentences of between three months to five years for the mother. Assisting in an abortion will receive more severe minimum sentences although the maximum is also five years.

²²⁰ See, for example, World Organisation Against Torture, *The World Organisation Against Torture (OMCT) expressed its concern regarding violence against girls in Eritrea at the 33rd session of the Committee on the Rights of the Child*, 20 May 2003, <http://www.omct.org/index.php?id=&lang=eng&actualPageNumber=1&articleId=4703&itemAdmin=article>. In 2005 Eritrea reported that due to the lack of data collection mechanisms in place in Eritrea, detailed information on the form and extent of violence against women was unavailable, CEDAW 34th Session, Responses, 24 October 2005, <http://www.un.org/womenwatch/daw/cedaw/34sess.htm>. In 2008 Eritrea failed to produce its Fourth Periodic Report to the Committee on the Elimination of All Forms of Discrimination Against Women; see UN Committee on the Elimination of

ii. Harmful Traditional Practices

Although banned in 2007,²²¹ female genital mutilation (FGM) continues to affect an estimated 90 percent of the female population.²²² Despite the ban, FGM is still prevalent amongst almost all ethnic and religious groups in rural areas.²²³ However, the practice has reportedly been largely eliminated in urban centres due to sustained Government efforts to eradicate the practice.²²⁴ In the absence of official figures on the current rate of FGM, the progress in enforcement of Proclamation No. 158/2007 abolishing the practice remains, nevertheless, difficult to ascertain.

The minimum age of marriage is set at 18 years old under the Constitution and the Eritrean Civil Code.²²⁵ This age is reportedly lower under customary laws. In practice, many children, especially girls, are married between the ages of 13 and 15.²²⁶ Furthermore, the incidence of child marriages is reportedly increasing.²²⁷

Discrimination against Women, *State of submission of reports by State Parties, under Article 18 of the Convention: Report by the Secretary-General*, CEDAW/C/2010/46/2, 15 May 2010, <http://www2.ohchr.org/english/bodies/cedaw/docs/CEDAW-C-2010-46-2.pdf>. See also Mulabi.Org, *Report on Eritrea*, 6th Round of the Universal Periodic Review, December 2009, http://www.mulabi.org/epu/6ta%20ronda/Eritrea_Submission_-_UPR_6.pdf. No recent information on pregnancy outside of wedlock was available at the time of writing.

²²¹ Proclamation 158/2007, A Proclamation to Abolish Female Circumcision, 20 March 2007, <http://www.unhcr.org/refworld/docid/48578c812.html>, entered into force on 20 March 2007. The penalties for those performing FGM range from two to three years' imprisonment coupled with a significant fine, and five to ten years imprisonment if the performance of such practices results in death (Article 4.1). Accessories to the perpetration of the procedure are subject to six months to one year imprisonment and a smaller fine (Article 4.2). Medical professionals who perform FGM face aggravated penalties imposed at the discretion of the court and may be banned from medical practice for up to two years (Article 4.3).

²²² See, for example, US Department of State, 2010 Country Reports on Human Rights Practices – Eritrea, 8 April 2011, <http://www.unhcr.org/refworld/docid/4da56dcc.html>, which estimates that 95 percent of minors are still affected by the practice. It is also reported that girls between the ages of 7 and 15 experience severe health problems as a result of FGM; see Mulabi.Org, *Report on Eritrea*, 6th Round of the Universal Periodic Review, December 2009, http://www.mulabi.org/epu/6ta%20ronda/Eritrea_Submission_-_UPR_6.pdf; UN Committee on the Rights of the Child, *Report on the 48th session*, Geneva, 19 May-6 June 2008: Committee on the Rights of the Child, CRC/C/48/3, 16 November 2009, para. 60, <http://www.unhcr.org/refworld/docid/4bfe1a8b2.html>; and Population Reference Bureau, Female Genital Mutilation / Cutting: Data and trends, 2008, <http://www.prb.org/pdf08/fgm-wallchart.pdf>. According to credible and consistent reports obtained through refugee status determination interviews conducted by UNHCR field offices, virtually all Afar women asylum-seekers registered by UNHCR in Ethiopia have undergone FGM.

²²³ It is reported that infibulation, the most severe form of FGM, is practiced in the lowlands; see US Department of State, 2010 Country Reports on Human Rights Practices – Eritrea, 8 April 2011, <http://www.unhcr.org/refworld/docid/4da56dcc.html>. See also UNICEF, Commemorating the ban on female genital mutilation in Eritrea, 22 February 2010, http://www.unicef.org/infobycountry/eritrea_52819.htm.

²²⁴ The Government and domestic NGOs reportedly sponsored a variety of education programmes aimed at discouraging the practice; see US Department of State, 2010 Country Reports on Human Rights Practices – Eritrea, 8 April 2011, <http://www.unhcr.org/refworld/docid/4da56dcc.html>; and UNICEF, Commemorating the ban on female genital mutilation in Eritrea, 22 February 2010, http://www.unicef.org/infobycountry/eritrea_52819.htm. Amongst the FGM awareness-raising measures, the Eritrean Government has reportedly distributed Proclamation No. 158/2007 to all administrative regions and 400 Anti-FGM/C committees, which were established in six regions; mobilized 400 religious leaders of all faiths – Muslim, Orthodox, Catholic, and Evangelical Lutheran churches to denounce the practice of FGM/C; developed and broadcast 20 radio slots on the abandonment of FGM/C in nine local languages to raise public awareness on the harmful effects of FGM/C; developed 5,000 FGM/C training manuals in two local languages and distributed them to the regions. See UN Committee on the Rights of the Child, *Written replies by the Government of Eritrea to the list of issues*, 18 July 2008, paras. 71-73, <http://tb.ohchr.org/default.aspx?country=er>; and UN Committee on the Rights of the Child, *Consideration of reports submitted by States parties under article 44 of the Convention: Convention on the Rights of the Child: concluding observations: Eritrea*, CRC/C/ERI/CO/3, 23 June 2008, para. 61, <http://www.unhcr.org/refworld/docid/4885cfaad.html>.

²²⁵ Article 22 of the Constitution of Eritrea, 23 May 1997, <http://www.unhcr.org/refworld/docid/3dd8aa904.html>.

²²⁶ It is reported that 46 percent of girls are married before the age of 18; see US Department of State, 2010 Country Reports on Human Rights Practices – Eritrea, 8 April 2011, <http://www.unhcr.org/refworld/docid/4da56dcc.html>. See also Child Rights Information Network, Eritrea: Child Rights References in the Universal Periodic Review, 30 November 2009, para. 26, <http://www.crin.org/resources/infoDetail.asp?ID=21838&flag=report>; UN Committee on the Rights of the Child, *Report on the 48th session*, Geneva, 19 May-6 June 2008: Committee on the Rights of the Child, CRC/C/48/3, 16 November 2009, para. 62, <http://www.unhcr.org/refworld/docid/4bfe1a8b2.html>; and UN Committee on the Rights of the Child, *Consideration of reports submitted by States parties under article 44 of the Convention: Convention on the Rights of the Child: concluding observations: Eritrea*, CRC/C/ERI/CO/3, 23 June 2008, paras. 40 and 70, <http://www.unhcr.org/refworld/docid/4885cfaad.html>. UNHCR has also received reports that some Afar girls are married as early as 12 years old.

²²⁷ UN Committee on the Rights of the Child, *Report on the 48th session*, Geneva, 19 May-6 June 2008: Committee on the Rights of the Child, CRC/C/48/3, 16 November 2009, para. 62, <http://www.unhcr.org/refworld/docid/4bfe1a8b2.html>.

7. Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) Individuals

Consensual same-sex conduct is criminalized under the Transitional Penal Code²²⁸ and punishable by imprisonment from ten days up to three years.²²⁹ Only rather limited information is available on the treatment of LGBTI individuals in Eritrea.²³⁰ It has nevertheless been reported that LGBTI individuals face severe societal discrimination and are also subjected to likewise severe abuse in the military.²³¹ It has also been reported that the authorities have carried out periodic round-ups of LGBTI individuals.²³² The Eritrean Government has recently rejected a recommendation by the Working Group on the Universal Periodic Review to legalize same-sex activity between consenting adults,²³³ deeming it “in direct contradiction with the values and traditions of the Eritrean people”.²³⁴ There are also reports of the Government openly accusing foreign governments of promoting LGBTI practices in order to undermine its authority.²³⁵

In light of the strong societal taboos, as well as the criminalization of “homosexual conduct”, UNHCR considers that LGBTI individuals may be at risk on account of their membership of a particular social group, i.e. their sexual orientation and/or gender identity, since they do not, or are perceived not to conform to prevailing legal, religious and social norms.²³⁶ It should be borne in mind that LGBTI individuals cannot be expected to change or conceal their identity in order to avoid persecution.²³⁷

²²⁸ See Article 600 (Unnatural carnal offences) of the Transitional Penal Code of Eritrea, Proclamation No. 158 of 1957, 23 July 1957, <http://www.unhcr.org/refworld/docid/49216a0a2.html>, which prohibits any “same sex act corresponding to the sexual act, or any other indecent act”. See also International Lesbian and Gay Association, *State-sponsored Homophobia – A world survey of laws prohibiting same sex activity between consenting adults*, May 2010, p. 10, http://old.ilga.org/Statehomophobia/ILGA_State_Sponsored_Homophobia_2010.pdf.

²²⁹ Article 105 (Simple imprisonment) of the Transitional Penal Code of Eritrea, Proclamation No. 158 of 1957, 23 July 1957, <http://www.unhcr.org/refworld/docid/49216a0a2.html>.

²³⁰ Little is known about the prohibition of “sexual deviations” as the State-controlled Eritrean press does not report about homosexuality and the issue is not publicly discussed in Eritrea. According to a report from the British Embassy in Asmara, people who participate in “such an act are prosecuted and punished whenever found guilty”; see AfrolNews, *Homosexuality “against Eritrean values”*, 26 March 2010, <http://www.afrol.com/articles/35788>. Furthermore, there are no known LGBTI organizations in the country; see US Department of State, *2010 Country Reports on Human Rights Practices – Eritrea*, 8 April 2011, <http://www.unhcr.org/refworld/docid/4da56dccc.html>.

²³¹ US Department of State, *2010 Country Reports on Human Rights Practices – Eritrea*, 8 April 2011, <http://www.unhcr.org/refworld/docid/4da56dccc.html>; and Immigration and Refugee Board of Canada, *Eritrea: Legislation and legal protection available to homosexuals; their treatment by society and government authorities*, ERI102153.E, 28 February 2007, <http://www.unhcr.org/refworld/docid/469cd6b815.html>. According to a letter from the UK Foreign and Commonwealth Office dated 9 September 2005, LGBTI individuals who have previously come to the attention of the authorities due to their sexual orientation, may be targeted; see UK Home Office, *Country of Origin Information Report - Eritrea*, 13 October 2009, <http://www.unhcr.org/refworld/docid/4adc1b972.html>:

“[...] homosexuality is dealt with severely in Eritrea and that anybody with a known history of this kind would find it very difficult to return and reside in the country. If the individual had previously come to the attention of the authorities in the context of his/her sexuality there could be problems in gaining entry to Eritrea and he/she would certainly be ‘ear-marked’.”

²³² US Department of State, *2010 Country Reports on Human Rights Practices – Eritrea*, 8 April 2011, <http://www.unhcr.org/refworld/docid/4da56dccc.html>.

²³³ See, for example, Canadian HIV/AIDS Legal Network, *United Nations Human Rights Council 13th Session, Geneva, 15th to 19th March 2010, UPR Eritrea*, 18 March 2010, http://www.upr-info.org/IMG/pdf/CanadianHIVAIDSlegalnetwork_oral_Eritrea_2010.pdf; and UN Human Rights Council, *Human Rights Council adopts Universal Periodic Review outcomes on Eritrea, Cyprus and Dominican Republic*, 17 March 2010, <http://www.re liefweb.int/rw/rwb.nsf/db900SID/EGUA-83MPK7>.

²³⁴ UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Eritrea*, A/HRC/13/2/Add.1, 8 March 2010, para 18, [http://www.re liefweb.int/rw/RWFiles2010.nsf/FilesByRWDocUnidFilename/EGUA-83FNA4-full_report.pdf/\\$File/full_report.pdf](http://www.re liefweb.int/rw/RWFiles2010.nsf/FilesByRWDocUnidFilename/EGUA-83FNA4-full_report.pdf/$File/full_report.pdf). See also AfrolNews, *Homosexuality “against Eritrean values”*, 26 March 2010, <http://www.afrol.com/articles/35788>.

²³⁵ US Department of State, *2010 Country Reports on Human Rights Practices – Eritrea*, 8 April 2011, <http://www.unhcr.org/refworld/docid/4da56dccc.html>.

²³⁶ For further guidance see UNHCR, *UNHCR Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity*, 21 November 2008, <http://www.unhcr.org/refworld/docid/48abd5660.html>; and UNHCR, *Guidelines on International Protection No. 2: "Membership of a Particular Social Group" Within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees*, 7 May 2002, <http://www.unhcr.org/refworld/docid/3d36f23f4.html>.

²³⁷ See UNHCR, *UNHCR Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity*, 21 November 2008, paras. 25 & ff., <http://www.unhcr.org/refworld/docid/48abd5660.html>. The right to freedom of opinion and expression encompasses “the expression of identity or personhood through speech, deportment, dress, bodily characteristics, choice of name, or any other means, as well as the freedom to seek, receive and impart information and ideas of all kinds, including with regard to human rights, sexual orientation and gender identity, through any medium and regardless of frontiers”; see Principle 19 of the *Yogyakarta Principles - Principles on the application of international human rights law in relation to sexual orientation and gender identity*, March 2007, <http://www.unhcr.org/refworld/docid/48244e602.html>. As recognized by numerous national jurisdictions, persecution does not cease to be persecution for the purpose of the 1951 Convention because those persecuted can eliminate the harm by taking avoiding action within the country of nationality. See, for instance, the UK Supreme Court judgment in *HJ (Iran) and HT (Cameroon) v. Secretary of State for the Home Department*, [2010] UKSC 31, 7 July 2010, <http://www.unhcr.org/refworld/docid/4c3456752.html>; and *Appellant S395/2002 v. Minister for Immigration and Multicultural*

Furthermore, the existence of significant criminal sanctions for “homosexual conduct” is a bar to State protection, including where persecutory acts are perpetrated by non-State actors such as family or community members.²³⁸

8. Members of Certain Minority Ethnic Groups

Although the principle of non-discrimination and equality before the law is enshrined in the Eritrean Constitution,²³⁹ the Government’s ‘one nation, one people’ policy effectively promotes cultural homogenization and reportedly discriminates against the way of life of minority ethnic groups in Eritrea.²⁴⁰ Discriminatory measures against minority ethnic groups are historically motivated and rooted in socio-cultural bias. Perceived as having supported Ethiopia during the war of independence and a potential threat to the nationalistic policies of the Eritrean Government, the Kunama are reportedly subject to discrimination, harassment and other intimidation techniques.²⁴¹ Historically, the Afar people have also been perceived as ambivalent in their support for the Eritrean People Liberation Front.²⁴²

The land reform introduced by the Government after independence abolished all traditional land tenure forms and made all land the property of the State.²⁴³ As a result, the plains of Gash-Setit traditionally inhabited by the Kunama were used for resettlement and agricultural plantation schemes.²⁴⁴ The new land policy is seen as effectively undermining the clan-based traditional ownership rights of the Kunama.²⁴⁵ The encroachment on Kunama land rights and the targeting of their cultural sites and symbols²⁴⁶ have spawned resistance movements such as the Democratic

Affairs; Appellant S396/2002 v. Minister for Immigration and Multicultural Affairs, [2003] HCA 71, 9 December 2003 (High Court of Australia), para. 81, <http://www.unhcr.org/refworld/docid/3fd9eca84.html>.

²³⁸ Even in the absence of enforcement of the legal provisions criminalizing “homosexual conduct”, the pervading or generalized climate of homophobia, as evidenced by societal attitudes, etc., may be sufficient indication of the risks faced by LGBTI individuals in Eritrea. See UNHCR, *UNHCR Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity*, 21 November 2008, paras. 21-22, <http://www.unhcr.org/refworld/docid/48abd5660.html>.

²³⁹ Article 14(2) of the Constitution of Eritrea, 23 May 1997, <http://www.unhcr.org/refworld/docid/3dd8aa904.html>. The principle of non-discrimination and equality in relation to economic, social and cultural rights and responsibilities is also emphasized under Article 21(4).

²⁴⁰ UN Human Rights Council, *Summary prepared by the Office of the High Commissioner for Human Rights, in accordance with paragraph 15(c) of the Annex to Human Rights Council Resolution 5/1 - Eritrea*, A/HRC/WG.6/6/ERI/3, 15 September 2009, para. 46, <http://www.unhcr.org/refworld/docid/4acc63fb2.html>. According to 1996 official figures, there are nine ethnic groups in Eritrea: Tigrinya (50 percent), Tigre (31 percent), Afar (6 percent), Saho (5 percent), Hedareb (2.5 percent), Rashida (2.4 percent), Kunama (2 percent), Bilen (2 percent) and Nara (1.5 percent); see Oslo Centre for Peace and Human Rights, *The Lasting Struggle for Freedom in Eritrea: Human Rights and Political Development, 1991-2009*, 2009, p. 113, http://www.oslocenter.no/images/stories/eritrearapport_2_endelig_versjon.pdf. Other, more recent estimates of the demographic breakdown vary slightly; see US Central Intelligence Agency, *The World Factbook: Eritrea*, last updated 1 March 2011, <https://www.cia.gov/library/publications/the-world-factbook/geos/er.html>.

²⁴¹ See, for example, US Department of State, *2010 Country Reports on Human Rights Practices – Eritrea*, 8 April 2011, <http://www.unhcr.org/refworld/docid/4da56dcce.html>; Ethiopian Review, *The Kunamas of Eritrea*, 20 August 2009, <http://www.ethiopianreview.com/forum/viewtopic.php?f=2&t=14758&p=79511>; International Labour Organization, African Commission on Human and Peoples’ Rights and Centre for Human Rights (University of Pretoria), *Country Report of the Research Project by the International Labour Organization and the African Commission on Human and Peoples’ Rights on the constitutional and legislative protection of the rights of indigenous peoples: Eritrea*, 2009, <http://www.unhcr.org/refworld/docid/4d4aa7942.html>; Oslo Centre for Peace and Human Rights, *The Lasting Struggle for Freedom in Eritrea: Human Rights and Political Development, 1991-2009*, 2009, pp. 106-129, http://www.oslocenter.no/images/stories/eritrearapport_2_endelig_versjon.pdf; and Minority Rights Group International, *World Directory of Minorities and Indigenous People: Kunama and Nara*, undated (accessed on 1 February 2011), <http://www.minorityrights.org/3944/eritrea/kunama-and-nara.html>.

²⁴² See, for example, Minority Rights Group International, *World Directory of Minorities and Indigenous People: Afar*, undated (accessed on 1 February 2011), <http://www.minorityrights.org/3945/eritrea/afar.html>.

²⁴³ Land Proclamation No. 58/1994, No. 58/1994, 24 August 1994, <http://www.unhcr.org/refworld/docid/4d4a9ff42.html>.

²⁴⁴ For example, in the wake of the 1998-2000 Eritrean-Ethiopian war, internally displaced Tigrinya from the highlands were settled in the Kunama villages of Delle, Tolegamaja and Karkon; see Oslo Centre for Peace and Human Rights, *The Lasting Struggle for Freedom in Eritrea: Human Rights and Political Development, 1991-2009*, 2009, pp. 106-129, http://www.oslocenter.no/images/stories/eritrearapport_2_endelig_versjon.pdf.

²⁴⁵ See, for example, Oslo Centre for Peace and Human Rights, *The Lasting Struggle for Freedom in Eritrea: Human Rights and Political Development, 1991-2009*, 2009, pp. 106-129, http://www.oslocenter.no/images/stories/eritrearapport_2_endelig_versjon.pdf; and International Labour Organization, African Commission on Human and Peoples’ Rights and Centre for Human Rights (University of Pretoria), *Country Report of the Research Project by the International Labour Organization and the African Commission on Human and Peoples’ Rights on the constitutional and legislative protection of the rights of indigenous peoples: Eritrea*, 2009, <http://www.unhcr.org/refworld/docid/4d4aa7942.html>.

²⁴⁶ According to some reports, the Eritrean army is deliberately establishing bases in Kunama villages and on Kunama holy sites, thereby violating their cultural heritage; see Oslo Centre for Peace and Human Rights, *The Lasting Struggle for Freedom in Eritrea: Human Rights and Political Development, 1991-2009*, 2009, pp. 106-129, http://www.oslocenter.no/images/stories/eritrearapport_2_endelig_versjon.pdf. See also UK Foreign and Commonwealth Office,

Movement for the Liberation of the Eritrean Kunama (DMLEK) and the Eritrean Democratic Resistance Movement (EDRM).²⁴⁷ This resistance has only increased the perception by the Eritrean authorities of the Kunama as “Ethiopian collaborators and spies”.²⁴⁸ The Kunama are reportedly particularly vulnerable to arbitrary arrest and detention.²⁴⁹

Some discriminatory practices, including the encroachment on Kunama land rights, severely impact on the Kunama people’s livelihoods and, in certain cases, may be tantamount to persecution. In light of the foregoing, UNHCR considers that members of certain minority ethnic groups perceived as historically sympathetic to Ethiopia, particularly the Kunama, may be at risk on account of their ethnicity/race and/or (imputed) political opinion, depending on the individual circumstances of the case.²⁵⁰

9. *Victims of Trafficking*

Eritrean men, women and children are reportedly trafficked internally and internationally for forced labour and, to a lesser extent, sexual exploitation.²⁵¹ Furthermore, some Eritrean migrant workers in the Gulf States and Egypt are reported to be subject to forced labour, including domestic servitude, and forced prostitution.²⁵² Large numbers of Eritreans en route to Europe and the Middle East fall victim to human traffickers every year, and are reportedly subjected to torture, rape, forced labour and arbitrary detention by their captors.²⁵³

²⁴⁷ Human Rights and Democracy: The 2010 Foreign & Commonwealth Office Report - Eritrea, 31 March 2011, <http://www.unhcr.org/refworld/docid/4d99aa836e.html>.

²⁴⁸ Tronvoll, Kjetil, *The Lasting Struggle for Freedom in Eritrea – Human Rights and Political Development*, Oslo Centre for Peace and Human Rights, 1991-2009, 2009, pp. 119-129, http://www.oslocenter.no/images/stories/eritrearapport_2_endelig_versjon.pdf.

²⁴⁹ Tronvoll, Kjetil, *The Lasting Struggle for Freedom in Eritrea – Human Rights and Political Development*, Oslo Centre for Peace and Human Rights, 1991-2009, 2009, pp. 119-129, http://www.oslocenter.no/images/stories/eritrearapport_2_endelig_versjon.pdf.

²⁵⁰ Human Rights Watch, *Service for Life: State Repression and Indefinite Conscription in Eritrea*, 16 April 2009, <http://www.unhcr.org/refworld/docid/49e6dcc60.html>. In 2007 a special intelligence operation was reportedly ordered against the Kunama where a total of 300 Kunama, including children as young as 9, were detained. The prisoners were reportedly beaten, tortured and interrogated for no reason other than their ethnicity, while 26 were massacred using poisonous chemicals and buried in a hole they had been forced to dig. These killings were allegedly to intimidate the Kunama collectively; see Tronvoll, Kjetil, *The Lasting Struggle for Freedom in Eritrea – Human Rights and Political Development*, Oslo Centre for Peace and Human Rights, 1991-2009, 2009, pp. 119-129, http://www.oslocenter.no/images/stories/eritrearapport_2_endelig_versjon.pdf.

²⁵¹ Where economic measures destroy the economic existence of a particular section of the population, such as a specific ethnic or religious group, the victims may according to the circumstances become refugees on leaving the country; see UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*, January 1992, para. 54 and 63-64, <http://www.unhcr.org/refworld/docid/3ae6b3314.html>. National jurisdictions have also recognized that the deliberate imposition of severe economic disadvantage or the deprivation of liberty, food, housing, employment or other essentials of life could amount to persecution; see Dessi Mathew, *Claims of Political Asylum Based on Non-Physical Forms of Harm Such as Economic Sanctions and Deprivations*, 21 Pace Int'l L. Rev. 309 (2009), <http://digitalcommons.pace.edu/pilr/vol21/iss1/9>; *In re T-Z*, 24 I&N Dec. 163 (BIA 2007), United States Board of Immigration Appeals, 9 May 2007, <http://www.unhcr.org/refworld/docid/48abd58a0.html>; and *Matter of Acosta*, 19 I&N Dec. 211, 222 (BIA 1985), United States Board of Immigration Appeals, 1 March 1985, <http://www.unhcr.org/refworld/docid/3ae6b6b910.html>. The definition of “serious harm” under Australian asylum legislation encompasses the significant economic hardship, denial of access to basic services or of capacity to earn a livelihood of any kind that threatens the person’s capacity to subsist; see Section 91R of the *Migration Act 1958*, No. 62 (as amended up to Act No. 51 of 2010), Act No. 62 of 1958 as amended, 1 November 2010, <http://www.unhcr.org/refworld/docid/4cf3b60e2.html>.

²⁵² Eritrea was designated as “tier 3” country two years running (i.e. 2009 and 2010). According to the US Department of State ranking, Tier 3 countries neither satisfy the minimum standards for the elimination of trafficking nor demonstrate a significant effort to do so; see US Department of State, *Trafficking in Persons Report 2010 - Eritrea*, 14 June 2010, <http://www.unhcr.org/refworld/docid/4c1883f62d.html>; and US Department of State, *Trafficking in Persons Report 2009 – Eritrea*, 16 June 2009, <http://www.unhcr.org/refworld/docid/4a4214bd28.html>. There are also a few reports of children being trafficked to the Middle East to serve as camel jockeys, while in Asmara, children engaged in commercial sexual exploitation and street begging are reportedly vulnerable to criminal elements; see US Department of Labor, *2009 Findings on the Worst Forms of Child Labor - Eritrea*, 15 December 2010, <http://www.dol.gov/ilab/programs/octf/pdf/2009OCFTReport.pdf>; and Mussie Hadgu, *Eritrea, a Nation in Overall Crisis: Coping Strategies in Hard Times*, 16 April 2009, <http://asmarino.com/en/eyewitness-account/133-iii-eritrea-a-nation-in-overall-crisis-coping-strategies-in-hard-times->. Figures released by the UK Human Trafficking Centre indicated that between April 2009 and March 2010, eight Eritrean nationals were referred to the agency as victims of human trafficking; see UK Serious Organised Crime Agency, *NRM Data April 2009 - March 2010*, 2010, http://www.soca.gov.uk/about-soca/library/doc_download/236-nrm-data-april-2009-march-2010.

²⁵³ US Department of State, *Trafficking in Persons Report 2010 - Eritrea*, 14 June 2010, <http://www.unhcr.org/refworld/docid/4c1883f62d.html>.

²⁵⁴ According to credible reports, traffickers regularly hold hostage hundreds of sub-Saharan asylum-seekers and migrants, including children, in various locations in Egypt close to the Israel border for weeks or months until their relatives abroad pay thousands of dollars to secure their release. The Hotline for Migrant Workers, an Israeli advocacy organizations, reported that in 2010 *circa* 1,000

Although trafficking in women and children for sexual exploitation is prohibited under the Transitional Penal Code,²⁵⁴ no equivalent legal protection against trafficking for other purposes – such as forced labour – or against trafficking in men, currently exists.²⁵⁵ The Government has reportedly taken steps to address human trafficking, including through awareness-raising campaigns, and investigating and prosecuting human trafficking incidents.²⁵⁶ According to official statements, accurate statistics on the nature and prevalence of human trafficking are difficult to provide due to the covert nature of the crime, and many trafficking cases go unreported.²⁵⁷ So far, no information is available on traffic-related convictions or the support/assistance, if any, provided to identified victims of trafficking in Eritrea.²⁵⁸

In light of the foregoing, UNHCR considers that victims of trafficking and persons at risk of being trafficked or re-trafficked may be at risk on account of their membership of a particular social group, depending on the individual circumstances of the case.²⁵⁹

B. Internal Flight or Relocation Alternative (IFA/IRA)

A detailed analytical framework for assessing the availability of an internal flight alternative or internal relocation alternative is contained in UNHCR's 2003 "*Guidelines on International Protection: the "Internal Flight or Relocation Alternative" within the context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees*".²⁶⁰ Consideration of

sub-Saharan migrants, trying to cross the Sinai Desert from Egypt into Israel have been systematically beaten, raped and held captive for ransom by the Bedouin smugglers they hired to help them make the journey. It is reported that a network of torture camps in the part of the desert exists where the migrants, mostly Eritrean, are sometimes held for months in abusive conditions, while their Bedouin captors press their families abroad to send thousands of dollars in ransom money; see Hotline for Migrants, "*The Dead of the Wilderness*": *Testimonies from Sinai Desert*, 2010, February 2011, http://www.hotline.org.il/english/pdf/Testimonies_from_sinai_122010.pdf. In December 2010, a group of over 200 asylum-seekers, mostly from Eritrea were captured and held in the Sinai desert. See, for example, IRIN, Egypt: *Abuse of asylum-seekers in Sinai must stop, say activists*, 6 January 2011, <http://www.unhcr.org/refworld/docid/4d2c16f52.html>; Human Rights Watch, Egypt: *End Traffickers' Abuse of Migrants*, 9 December 2010, <http://www.unhcr.org/refworld/docid/4d071b5fc.html>; and UNHCR, *UNHCR urging Egypt to intervene to secure release of Eritreans held hostage*, 7 December 2010, <http://www.unhcr.org/refworld/docid/4d00a4f12.html>. In December 2010, Physicians for Human Rights-Israel reported a growing trend over the past few months of women, recently freed from detention, seeking abortions. Many of these women confessed to having been raped prior to entering Israel; see Physicians for Human Rights-Israel, *Hostages, Torture, and Rape in the Sinai Desert: A PHR-Israel update about recently arriving asylum seekers*, 13 December 2010, <http://phr.org.il/default.asp?PageID=100&ItemID=953>. Since 2007, 250 rapes by Bedouin smugglers cases have been reported, and it is estimated that many more go unreported; see Yonathan Paz, *Ordered disorder: African asylum seekers in Israel and discursive challenges to an emerging refugee regime*, UNHCR, Research Paper No. 205, 8 March 2011, p. 5, <http://www.unhcr.org/4d7a26ba9.html>. Eritrean asylum-seekers, including unaccompanied minors, are also vulnerable to extortion by traffickers upon arrival in Sudan; see UNHCR, *Ruthless smugglers prey on unaccompanied minors on Sudan border*, 20 September 2010, <http://www.unhcr.org/4c9762d16.html>.

²⁵⁴ Pursuant to the Transitional Penal Code, trafficking in women, infants and "young persons" is punishable with imprisonment for up to five years (Article 605), or from three to 10 years where aggravating circumstances are present (Article 606). In addition, Article 565 prohibits enslavement and prescribes 5-20 years' imprisonment. See Transitional Penal Code of Eritrea, Proclamation No. 158 of 1957, 23 July 1957, <http://www.unhcr.org/refworld/docid/49216a0a2.html>.

²⁵⁵ See, for example, US Department of Labor, *2009 Findings on the Worst Forms of Child Labor - Eritrea*, 15 December 2010, <http://www.dol.gov/ilab/programs/ocft/pdf/2009OCFTReport.pdf>; and US Department of State, *Trafficking in Persons Report 2010 - Eritrea*, 14 June 2010, <http://www.unhcr.org/refworld/docid/4c1883f62d.html>.

²⁵⁶ US Department of Labor, *2009 Findings on the Worst Forms of Child Labor - Eritrea*, 15 December 2010, <http://www.dol.gov/ilab/programs/ocft/pdf/2009OCFTReport.pdf>; and US Department of State, *Trafficking in Persons Report 2010 - Eritrea*, 14 June 2010, <http://www.unhcr.org/refworld/docid/4c1883f62d.html>.

²⁵⁷ According to the Government, access to information about trafficking routes, networks and practices is severely limited; see Embassy of the State of Eritrea (Washington, USA), *Eritrea rejects US Country Report on Human Trafficking*, 18 June 2009, http://dehai.org/archives/dehai_news_archive/apr-jun09/att-0686/01-Eritrea_rejects_US_Country_Report_on_Human_Trafficking.pdf.

²⁵⁸ See, for example, US Department of Labor, *2009 Findings on the Worst Forms of Child Labor - Eritrea*, 15 December 2010, <http://www.dol.gov/ilab/programs/ocft/pdf/2009OCFTReport.pdf>. According to the US Department of State, there are no known facilities dedicated to trafficking victims and no NGO-run anti-trafficking programmes in Eritrea; see US Department of State, *Trafficking in Persons Report 2010 - Eritrea*, 14 June 2010, <http://www.unhcr.org/refworld/docid/4c1883f62d.html>.

²⁵⁹ UNHCR, *Guidelines on International Protection No. 7: The Application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees to Victims of Trafficking and Persons At Risk of Being Trafficked*, HCR/GIP/06/07, 7 April 2006, <http://www.unhcr.org/refworld/docid/443679fa4.html>.

²⁶⁰ The assessment of the availability of an IFA/IRA requires two main sets of analysis, namely its (i) **relevance** and its (ii) **reasonableness**. In cases where a well-founded fear of persecution has been established in some localized part of the country of origin, the determination of whether the proposed internal flight or relocation area is an appropriate alternative for the individual concerned requires an assessment over time, taking into account not only the circumstances that gave rise to the risk feared, and that prompted flight from the area of origin, but also whether the proposed area provides a safe and meaningful alternative in the future. The personal circumstances of the individual applicant and the conditions in the area of relocation need to be considered; see UNHCR, *Guidelines on International Protection No. 4: "Internal Flight or Relocation Alternative" Within the Context of Article*

possible internal relocation areas is, however, not relevant for refugees coming under the purview of Article I(2) of the OAU Convention.²⁶¹

In order for an IFA/IRA to be a relevant consideration in any given case, the area must be found to be accessible and without factors that could constitute a well-founded fear of being persecuted.

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

For categories of claimants who fear persecution at the hands of non-State agents, the question whether an IFA/IRA is available would need to be given careful consideration. Given the widespread endorsement of harmful traditional practices and social norms of a persecutory nature – such as FGM – by large segments of the population, it is unlikely that an IFA/IRA would be available for individuals who fear harm as a result of such practices.

Whether an IFA/IRA is “reasonable” must be determined on a case-by-case basis, taking fully into account the human rights and humanitarian environment in the prospective area of relocation at the time of the decision. To this effect, the following elements are important: (i) the availability of basic infrastructure,²⁶² access to essential services and potable water,²⁶³ as well as food security²⁶⁴ in the area of prospective relocation; (ii) the availability of traditional support mechanisms, such as family and friends, in the area of prospective relocation; (iii) the ability of displaced individuals to sustain themselves, including livelihood opportunities;²⁶⁵ (iv) the presence of landmines and unexploded ordnance;²⁶⁶ and (v) restrictions on freedom of movement within the country, particularly along the

²⁶¹ *IA(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees*, HCR/GIP/03/04, 23 July 2003, <http://www.unhcr.org/refworld/docid/3f2791a44.html>.

²⁶² UNHCR, *Guidelines on International Protection No. 4: “Internal Flight or Relocation Alternative” Within the Context of Article IA(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees*, HCR/GIP/03/04, 23 July 2003, para. 5, <http://www.unhcr.org/refworld/docid/3f2791a44.html>. Article I(2) of the OAU Convention specifically clarifies the definition of a refugee as follows: “every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality” (emphasis added); see Convention Governing the Specific Aspects of Refugee Problems in Africa, 10 September 1969, 1001 U.N.T.S. 45, <http://www.unhcr.org/refworld/docid/3ae6b36018.html>.

²⁶³ It is also reported that the general condition of infrastructure in Eritrea is relatively poor following three decades of independence, war with Ethiopia and insufficient investment since independence; see, for example, European Commission, *Eritrea – European Union, Country Strategy Paper and National Indicative Programme for the period 2009-2013*, undated, http://ec.europa.eu/development/icenter/repository/scanned_er_csp10NEW_en.pdf.

²⁶⁴ Following the adoption of the Eritrean Water Proclamation No. 162/2010 in September 2010, the Eritrean Minister of Land, Water and Environment called on the general public to apply judicious and economical use of water, as the resource is declining in quality and amount throughout the country; see Shabait, *Proclamation Urging For Judicious Utilization Of Water Resources*, 1 October 2010, <http://www.shabait.com/articles/q-a-a/3199-proclamation-urging-for-judicious-utilization-of-water-resources->; and AllAfrica.com, *Eritrea: Government issues water proclamation*, 14 September 2010, <http://allafrika.com/stories/201009150698.html>. It is reported that in some areas outside Asmara there is no regular supply of potable water. Drinking water is distributed from water trucks, often at unfair costs; see Shabait, *Eritrea: Vigorous Efforts Underway to Ease Shortcomings in Potable Water Supply Distribution in Asmara*, 30 November 2010, <http://allafrika.com/stories/201012010147.html>.

²⁶⁵ Eritrea has a long history of food insecurity both at national and household levels. In a move to address food-aid dependency, the Government of Eritrea suspended food aid in favour of a food-for-work scheme and, eventually, in April 2006 introduced a cash-for-work policy; see, for example, World Food Programme, *Country - Eritrea*, undated (accessed on 25 January 2011), <http://www.wfp.org/countries/Eritrea>. It is reported that high levels of food insecurity persist due to economic constraints and large numbers of internally displaced persons; see European Union and Food and Agriculture Organization of the United Nations, *Price Monitoring and Analysis Country Brief: Eritrea, September-December 2010*, 31 December 2010, <http://www.reliefweb.int/rw/rwb.nsf/db900sid/SMDL-8DRK7Y>; and Food and Agriculture Organization, *Global Information and Early Warning System, Food and Agriculture Organization of the United Nations, Countries in Crisis Requiring External Assistance for Food*, December 2010, <http://www.fao.org/giews/english/hotspots/index.htm>.

²⁶⁶ In 2010, the GDP per capita was estimated at under USD 424; see Economy Watch, *2010 Eritrea GDP Per Capita (Current Prices, US Dollars) Statistics*, undated (accessed on 25 January 2011), http://www.economywatch.com/economic-statistics/Eritrea/GDP_Per_Capita_Current_Prices_US_Dollars/year-2010/. An estimated two thirds of the Eritrean population live under the national poverty line. The incidence of poverty is reportedly higher in rural areas, particularly in the pastoralist eastern and western lowlands. A large proportion of the available manpower is reportedly engaged in mandatory national service and employment opportunities remain limited; see European Commission, *Eritrea – European Union, Country Strategy Paper and National Indicative Programme for the period 2009-2013*, undated, http://ec.europa.eu/development/icenter/repository/scanned_er_csp10NEW_en.pdf.

²⁶⁷ Eritrea is affected by landmines, explosive remnants of war (ERW) and Unexploded Ordnances (UXO) dating back to the war for independence (1961-1991) and its armed conflict with Ethiopia from 1998–2000. Landmines were used to defend strongholds around

borders with Sudan and Ethiopia.²⁶⁷ Relocation to other tribal or ethnic areas may not be possible due to latent or overt conflicts between such groups, lack of acceptance, and other societal and cultural barriers. Employment opportunities in urban centres, including Asmara, remain limited.²⁶⁸

C. Exclusion from International Refugee Protection

In light of Eritrea's 30-year war for independence with Ethiopia, outstanding border disputes, as well as a record of serious human rights violations, exclusion considerations under Article 1F of the 1951 Convention and/or Article I(5) of the OAU Convention may arise in individual claims by Eritrean asylum-seekers. Exclusion considerations may be triggered in any individual case if there are elements in the applicant's claim that suggest that he or she may have been associated or involved in the commission of criminal acts that fall within the scope of Article 1F of the 1951 Convention and/or Article I(5) of the OAU Convention. Given the potential serious consequences of exclusion from international refugee protection, exclusion clauses need to be applied on the basis of a full assessment of the circumstances of the individual case.²⁶⁹

In the context of Eritrea, exclusion considerations may arise in the cases of asylum-seekers with certain backgrounds. Careful consideration needs to be given in particular to the following profiles: (i) members of the Eritrean military;²⁷⁰ (ii) Government officials in positions of authority, including Cabinet members;²⁷¹ (iii) prison wardens and guards; (iv) members of State security/intelligence apparatus, including the police forces and the National Security Service; (v) Government informants and agents; (vi) members of the judiciary; (vii) members of armed liberation movements during the war of independence with Ethiopia; (viii) members of opposition groups involved in armed attacks, including the Red Sea Afar Democratic Organization (RSADO) and the Democratic Movement for the Liberation of the Eritrean Kunamas (DMLEK);²⁷² and (ix) Islamic militant groups, such as the Eritrean Islamic Jihad Movement,²⁷³ suspected of having committed terrorist acts.

cities and populated areas, military camps and roads. The exact extent of mine contamination is unknown. A Landmine Impact Survey, conducted in 2002–2004, concluded that 481 of 4,176 communities in Eritrea (11.5 percent) were seriously affected by mines and/or ERW. Contamination in 914 suspected hazardous areas was estimated to cover a total of 129km² of land, including the surveyed areas in the Temporary Security Zone (TSZ) between Eritrea and Ethiopia. A further 113 UXO-contaminated sites requiring spot clearance were also identified and are located mostly in the TSZ; see Landmine and Cluster Munitions Monitor, *Eritrea: Mine Action*, 29 July 2010, http://www.the-monitor.org/custom/index.php/region_profiles/print_theme/350; and UN Development Fund, *Eritrea: Action Capacity Building Programme (MACBP), Background*, undated (accessed on 16 March 2011), <http://www.er.undp.org/recovery/MA.html>. The risk of injuries from landmines and UXO remains high, with children reportedly suffering over half of the fatalities and casualties; see UNICEF, *UNICEF Humanitarian Action 2010: Eritrea*, March 2011, http://www.unicef.org/hac2011/files/HAC2011_4pager_Eritrea.pdf. According to UNICEF, as of February 2010, some 655,000 persons were living in 481 areas impacted by mines and unexploded ordnance; see UNICEF, *UNICEF Humanitarian Action Report 2010*, February 2010, pp. 23-26, http://www.unicef.org/publications/files/UNICEF_HAR_2010_Full_Report_EN_020410.pdf.

²⁶⁷ In addition, Eritreans may reportedly be detained on suspicion of draft evasion or desertion if unable to present identification documents or movement papers showing permission to be in that area; see US Department of State, *2010 Country Reports on Human Rights Practices – Eritrea*, 8 April 2011, <http://www.unhcr.org/refworld/docid/4da56dccc.html>.

²⁶⁸ European Commission, *Eritrea – European Union, Country Strategy Paper and National Indicative Programme for the period 2009-2013*, undated, http://ec.europa.eu/development/icenter/repository/scanned_er_csp10NEW_en.pdf.

²⁶⁹ Detailed guidance on the interpretation and application of Article 1F of the 1951 Convention can be found in UNHCR, *Guidelines on International Protection No. 5: Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees*, HCR/GIP/03/05, 4 September 2003, <http://www.unhcr.org/refworld/docid/3f5857684.html>; and UNHCR, *Background Note on the Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees*, 4 September 2003, <http://www.unhcr.org/refworld/docid/3f5857d24.html>.

²⁷⁰ According to information available to UNHCR, rank within the Eritrean military is reportedly not decisive in this regard and it is therefore important to ascertain what a claimant's duties and instructions were while serving in the military.

²⁷¹ For a list of Cabinet members, see the Permanent Mission of Eritrea to the United Nations, <http://www.eritrea-unmission.org/government.asp> (accessed on 11 April 2011).

²⁷² Other (armed) opposition groups include the Eritrean Democratic Resistance Movement (EDRM) and the Alliance of Eritrean National Forces (AENF), subsequently renamed the Eritrean National Alliance (ENA). In 2010, RSADO and DMLEK reportedly created the Democratic Front of Eritrean Nationalities (DFEN). The front currently incorporates political organizations from Afar, Kunama and Saho ethnic groups; see Sudan Tribune, *Exiled Eritreans vow to launch Ethnic-based movement*, 4 July 2010, http://www.sudantribune.com/Exiled-Eritreans-vow-to-launch_35554. According to some reports, RSADO promised to step up military attacks against the Eritrean Government in 2011; see, for example, Sudan Tribune, *Eritrean opposition forces to launch a united attack in 2011 - rebel official*, 3 January 2011, http://www.sudantribune.com/Eritrean-opposition-forces-to_37477. Previously, in May 2010, RSADO and seven other Eritrean opposition groups (i.e. Eritrean Federal Democratic Movement, Eritrean Islamic Party for Justice and Development, Eritrean Liberation Front, Eritrean People's Congress, DMLEK, Eritrean National Salvation Front, and the Eritrean People's Democratic Front) reportedly signed a memorandum of understanding to unify their military wings under one command; see Awate, *Eight EDA Member Organization Agree To Unite Their Military Wings*, 9 May 2010, <http://www.awate.com/portal/content/view/5584/3/>. See also Agence France Presse, *Eritrean rebels say killed 18 soldiers in attack*,

Potential exclusion due to involvement in the commission of serious human rights violations and transgressions of international humanitarian law, pursuant to Article 1F(a) of the 1951 Convention and Article I(5)(a) of the OAU Convention, is of particular relevance in the context of the war for independence and the 1998-2000 Eritrea-Ethiopia war.²⁷⁴ Acts reportedly committed by the parties to these armed conflicts in Eritrea include, *inter alia*, enforced disappearances, internal displacement, mass expulsions, torture and other cruel, inhuman and degrading treatment, political assassinations, extrajudicial and summary executions, and forced recruitment into armed liberation movements, including recruitment of children.²⁷⁵

Members of military, police, security/intelligence services, prison wardens and guards, as well as Government officials in positions of authority, may have been involved in various acts which may give rise to the application of Article 1F of the 1951 Convention and Article I(5) of the OAU Convention. These acts include, but are not limited to, arbitrary arrest, *incommunicado* detention and detention without charge, torture and other cruel, inhuman and degrading treatment, disappearances and extrajudicial executions.

For exclusion to be justified, individual responsibility must be established in relation to a crime within the scope of Article 1F and/or Article I(5). Such responsibility flows from a person having committed or participated in the commission of a criminal act, or on the basis of command/superior responsibility for persons in positions of authority. Defenses to criminal responsibility, if any, as well as

24 April 2010, <http://www.reliefweb.int/rw/rwb.nsf/db900SID/SNAA-84U97V>; and the National Consortium for the Study of Terrorism and Responses to Terror, *Incidents over time*, undated, http://www.start.umd.edu/gtd/search/Results.aspx?chart=overtime&casualties_type=&casualties_max=&country=63, which records attacks by RSADO, DMLEK and other opposition groups up until 2008.

²⁷³ US Central Intelligence Agency, *The World Factbook: Eritrea*, last updated 1 March 2011, <https://www.cia.gov/library/publications/the-world-factbook/geos/er.html>. An armed opposition group largely based in Sudan, the Eritrean Islamic Jihad Movement (Harakat al Jihad al Islami) is credited, *inter alia*, with terrorist activities such as planting of land mines in Eritrean territory, especially in farming and pastoral areas; attacks on civilians; destruction of property. The movement is reported to continue to operate covertly in the western lowlands and the northern mountains; see International Crisis Group, *Eritrea: The Siege State*, 21 September 2010, p. 12, <http://www.unhcr.org/refworld/docid/4c9c65eb2.html>. For a detailed profile of the Eritrean Islamic Jihad Movement, see National Consortium for the Study of Terrorism and Responses to Terror (START), *Terrorist Organization Profile: Eritrean Islamic Jihad Movement (EIJM)*, undated (accessed on 24 January 2011), http://www.start.umd.edu/start/data_collections/tops/terrorist_organization_profile.asp?id=4535; Immigration and Refugee Board of Canada, *Eritrea: Al Jihad Al Islamiya*, ERT36701.E, 16 March 2001, <http://www.unhcr.org/refworld/docid/3df4be2e24.html>; and Human Rights Watch, *Global Trade Local Impact: Arms Transfers to all Sides in the Civil War in Sudan*, 1 August 1998, <http://www.unhcr.org/refworld/docid/3ae6a8500.html>.

²⁷⁴ War crimes are serious violations of international humanitarian law (IHL) committed during an armed conflict. Criminal liability for violations of international humanitarian law applicable during non-international armed conflicts, i.e. Common Article 3 of the 1949 Geneva Conventions, Additional Protocol II and customary international law, was however not established until the mid-1990s. In 1995, the International Criminal Tribunal for the former Yugoslavia decided that violations of international humanitarian law applicable to non-international armed conflicts could be criminal under customary international law; see *Prosecutor v. Dusko Tadic aka "Dule"*, *Decision on the Defense Motion for Interlocutory Appeal on Jurisdiction*, IT-94-1, 2 October 1995, para. 134, <http://www.unhcr.org/refworld/docid/47fdb520.html>. Hence, only those violations of IHL that occurred after 1995 would be considered “war crimes” within the scope of Article 1F(a). Violations of IHL committed by the parties to the 30-year war of independence from Ethiopia would need to be assessed under other provisions of Article 1F, most notably as serious non-political crimes under Article 1F(b) or crimes against humanity under Article 1F(a).

²⁷⁵ For more information on human rights violations and transgressions of international humanitarian law by the parties to the war of independence from Ethiopia, see, for example, D. Pool, *From Guerrillas to Government: the Eritrean People's Liberation Front*, Oxford, 2001, pp. 49-70; Coalition to Stop the Use of Child Soldiers, *Child Soldiers Global Report 2001 - Eritrea*, 2001, <http://www.unhcr.org/refworld/docid/498805fd5.html>; Human Rights Watch, *Ethiopia: Reckoning Under the Law*, 1 December 1994, <http://www.unhcr.org/refworld/docid/45cc5ece2.html>; Human Rights Watch, *Ethiopia: Human Rights Crisis as Central Power Crumbles: Killings, Detentions, Forceable Conscription and Obstruction of Relief*, 30 April 1991, <http://www.unhcr.org/refworld/docid/45cc5fb42.html>; R. Pateman, *The Eritrean War*, Armed Forces & Society Fall 1990 vol. 17 no. 1 81-98; Immigration and Refugee Board of Canada, *Ethiopia: Background information on the EPLF; Information on EPLF violence against the civilian population*, 1 June 1989, <http://www.unhcr.org/refworld/docid/3ae6ac9374.html>; and R. Lobban, *The Eritrean War: Issues and Implications*, Canadian Journal of African Studies, Vol.10, No. 2 (1976), pp. 335-346, <http://www.jstor.org/stable/pdfplus/483836.pdf>. The independence movements included Eritrean Liberation Movement (ELM), Eritrean Liberation Front (ELF) and Eritrean People's Liberation Front (EPLF). For an overview of various violations of international human rights and humanitarian law in the context of the Eritrea-Ethiopia border war, see, for example, International Crisis Group, *Beyond the Fragile Peace between Ethiopia and Eritrea: Averting New War*, 17 June 2008, <http://www.unhcr.org/refworld/docid/4857dcf2.html>; Human Rights Watch, *The Horn of Africa War: Mass Expulsions and the Nationality Issue*, 30 January 2003, <http://www.unhcr.org/refworld/docid/3f4f59523.html>; Ruth Iyob, *The Ethiopian-Eritrean conflict: diasporic vs. hegemonic states in the Horn of Africa, 1991-2000*, The Journal of Modern African Studies (2000), 38: 659-682, <http://journals.cambridge.org/action/displayAbstract?fromPage=online&aid=66339>; and Amnesty International, *Ethiopia and Eritrea: Human rights issues in a year of armed conflict*, 21 May 1999, <http://www.unhcr.org/refworld/docid/3ae6a9e36.html>.

considerations related to proportionality, apply.²⁷⁶ As such, membership in the Government security forces or armed opposition groups is not a sufficient basis in itself to exclude an individual from refugee status, particularly in light of the documented practices of forced recruitment, particularly of children.²⁷⁷ It is necessary to consider whether the individual concerned was personally involved in acts of violence or other excludable acts, or knowingly contributed in a substantial manner to such acts. A credible explanation regarding the individual's non-involvement with, or disassociation from, any excludable acts should, absent reliable evidence to the contrary, remove the individual from the scope of the exclusion clauses.

²⁷⁶ Several national jurisdictions have recognized the availability of the defense of duress in cases involving Article 1F (and by analogy I(5)). The issue of duress will often arise in the case of forcibly conscripted soldiers. In such cases, "the consequences of desertion plus the foreseeability of being put under pressure to commit certain acts are relevant factors"; see UNHCR, *Background Note on the Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees*, 4 September 2003, para. 70, <http://www.unhcr.org/refworld/docid/3f5857d24.html>. In a recent case, the US Supreme Court granted certiorari to address whether duress is relevant as a full or partial defense to the allegation that an asylum-seeker assisted in the persecution of others. The applicant, an Eritrean national, had been forcibly conscripted into the Eritrean military but refused to fight. After two years' imprisonment, he was forced to work as a prison guard in a military camp where the prisoners he guarded were persecuted on account of a 1951 Convention ground. Concluding that he assisted in the persecution of prisoners by working as an armed guard, the Immigration Judge denied relief on the basis of the persecutor bar, but granted deferral of removal under CAT because petitioner was likely to be tortured if returned to Eritrea. Both the Board of Immigration Appeals and the Court of Appeal for the Fifth Circuit affirmed the decision. See *Negusie v. Holder, Attorney General*, No. 07-499, 3 March 2009 (US Supreme Court), <http://www.unhcr.org/refworld/docid/49c254e72.html>. See also UNHCR, *Negusie v. Mukasey*, Brief Amicus Curiae, 23 June 2008, <http://www.unhcr.org/refworld/pfid/486230652.pdf>; and *Minister of Citizenship and Immigration v. Asghedom* [2001] FCT 972, 30 August 2001 (Federal Court of Canada), <http://www.unhcr.org/refworld/pfid/403dce354.pdf>.

²⁷⁷ On recruitment of children, see, for example, Sexual Rights Initiative, *Report on Eritrea 6th Round of the Universal Periodic Review*, December 2009, http://lib.ohchr.org/HRBodies/UPR/Documents/Session6/ER/SRI_ERI_UPR_S06_2009.pdf; UN Committee on the Rights of the Child, *Report on the 48th session, Geneva, 19 May-6 June 2008: Committee on the Rights of the Child*, CRC/C/48/3, 16 November 2009, para. 70, <http://www.unhcr.org/refworld/docid/4bfe1a8b2.html>; Coalition to Stop the Use of Child Soldiers, *Child Soldiers Global Report 2008 - Eritrea*, 20 May 2008, <http://www.unhcr.org/refworld/docid/486cb0fdc.html>; and Coalition to Stop the Use of Child Soldiers, *Child Soldiers Global Report 2001 - Eritrea*, 2001, <http://www.unhcr.org/refworld/docid/498805fd5.html>.