



UNHCR

United Nations High Commissioner for Refugees
Haut Commissariat des Nations Unies pour les réfugiés

UNHCR

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Our code: PRL23.1/Eritrea/RB/

Re: **Draft Evasion in Eritrea**

Dear Sir/Madam

We write to provide UNHCR's position with regard to draft evaders in Eritrea. Our comments below are derived from UNHCR Headquarters' advice on protection considerations pertaining to Eritrea. This information is currently valid. We would emphasise that our overarching objective in providing country of origin information is to contribute to fair decisions that correctly and in a humanitarian spirit determine the protection needs and essential interests of refugees. We should also emphasise at the outset the need for each case to be examined on its own merits, with due regard to relevant country information, and to the specific circumstances of the individual applicant.

Position of Draft Evaders in Eritrea

In Eritrea, the 1995 Proclamation on National Service is the key piece of legislation regulating national service. It provides that all Eritrean citizens aged 18-40 have a duty to perform 18 months "active" national service, consisting of six months military training and 12 months development service¹. This minimum period can be extended by the Government during a period of national emergency or general mobilisation and, in addition, military reserve obligations would be applied to all demobilised citizens in the said age range. In this context, it should be noted that a state of emergency or war was never formally declared during the 1998 - 2000 border conflict with Ethiopia. However, in practice, persons have been drafted into national service for periods exceeding the 18 months provided for in the proclamation.

Under the 1995 Proclamation on National Service, penalties imposed for violation of its provisions can consist of a fine, or a term of imprisonment of up to five years, or both. The maximum penalty of five years specifically applies to those who have escaped abroad in order to avoid national service².

However, notwithstanding the penalties imposed under the 1995 Proclamation on National Service, in times of emergency, general mobilisation and war, the penalties

¹ Article 8, Proclamation on National Service No. 82/1995. Available on Eritrea country page of UNHCR website, under the Legal documents section, <http://www.unhcr.ch/cgi-bin/texis/vtx/rsd?search=c&ISO=ERI>

² Ibid, Article 37

stipulated in the Eritrean Transitional Penal Code (ETPC) may apply to draft evasion and desertion. These provisions provide for (i) "*rigorous imprisonment of up to 10 years for draft evasion*"³, and (ii) "*rigorous imprisonment from five years to life, or, in the gravest cases, with death*" for desertion from a unit, post or military duties or for failure to return to them after an authorised period of absence⁴.

It must be noted that the practice surrounding the application of this legislation is not known to UNHCR. Military courts established to hear such cases have not been functioning for a considerable period of time. Persons accused of such offences appear to be returned to their units for their commanding officers to decide on the appropriate punishment. It is therefore not known to what extent the harsh penalties of the ETPC may actually be applied. However, it has been reported that punishments imposed against draft evaders in the past have included such measures as the tying of the hands and feet for extended periods of time and prolonged sun exposure at high temperatures⁵.

In terms of general practice it appears that extensive conscription continues, at times carried out by house, street and office searches. At the same time, large-scale demobilisation has been repeatedly postponed, which means that for many individuals their national service has already continued for several years. There exists growing resentment, and a rising number of draft evaders, some of whom are being arrested, while others find their way abroad. Without access to detention facilities by any independent source, the general conditions of detention and treatment of prisoners are difficult to assess.

Eritrea does not exempt conscientious objectors from military service, nor is any alternative to active military service offered. Therefore, in principle, persons falling under this category would be liable to the penalties stipulated in the National Service Proclamation and the ETPC and would, *de facto*, face the same treatment as any other draft evaders or deserters. Furthermore, as the Government does not allow exemption from military service nor provide alternative service for genuine conscientious objectors, the prosecution of persons who have valid reasons of conscience not to perform military service may be persecutory. Prominent amongst those refusing conscription on religious grounds are Jehovahs Witnesses.

For further information about the treatment of draft evaders in Eritrea, we would refer you to other sources such as the Amnesty International reports: *Arbitrary detention of government critics and journalists (AFR/64/008/2002)* and the Amnesty International Report on Eritrea; and also to the U.S. Department of State Country Report on Human Rights Practices 2003 – Eritrea – February 2004.

It would appear that the treatment a returnee could expect would significantly vary depending on the circumstances; for instance, whether the person actually deserted or evaded the draft, the profile of the person concerned, whether it happened during the time of war, whether it had come to the knowledge of the authorities etc. Therefore, each case should be determined upon its own merits, based on a thorough credibility assessment,

³ Text from the Penal Code of the Empire of Ethiopia (1957), which remains in effect in Eritrea. Chapter 1 Military Offences, Section I. Breaches of Liability to Serve, Art. 296. (2). Available on the UNHCR website, under the Legal documents section,

<http://www.unhcr.ch/cgi-bin/texis/vtx/rsd?search=c&ISO=ERI>

⁴ Ibid, Art 300 (2)

⁵ Amnesty International, Eritrea: Human rights appeal for 10th independence anniversary, 19 May 2003 <http://web.amnesty.org/library/index/ENGAFR640022003>

taking into account all the available information and applying the benefit of the doubt as appropriate.

As discussed in the UNHCR *Handbook on Procedures and Criteria for Determining Refugee Status*, it is necessary to distinguish ordinary prosecution of offences from persecution. For this purpose, it is necessary to take into account and analyse at least some of the following factors: whether persons charged under the law are denied due process of law for a reason under the 1951 Convention relating to the Status of Refugees; whether prosecution is discriminatory; whether punishment under the law amounts to persecution; and whether punishment is meted out on a discriminatory basis.

Returns to Eritrea

Based on various reports, it appears that the human rights situation in Eritrea has seriously deteriorated in the past two years. Human rights violations continue to be reported, *inter alia*, with regard to the treatment of opposition political groups and movements, freedom of expression, freedom of religion, arbitrary detention and detention conditions (including reports of torture, ill-treatment and forced labor), and treatment of draft evaders/deserters⁶.

This is especially so in light of reports that many persons deported from Malta to Eritrea between September 2002 and October 2002 were reportedly arrested immediately on arrival in Asmara and taken to detention incommunicado where they faced persecution including being subjected to forced labor, interrogated and torture⁷. Some detainees are believed to have died of diseases suffered as a result of the unsanitary conditions in which they were held and/or injuries sustained as a result of persecution and/or torture. At least one person was allegedly killed by shooting during an escape attempt. It seems that these individuals may have faced persecution owing to an imputed political opinion, conscientious objection or other reasons. It cannot be excluded that future deportees would face a similar risk.

In light of the above, UNHCR recommends that asylum claims submitted by Eritrean asylum seekers should undergo a careful assessment to determine their needs for international protection. It is also recommended that states refrain from all forced returns of rejected asylum seekers to Eritrea and grant them complementary forms of protection instead, until further notice.

We hope that this information is of use to you.

Yours faithfully



Christian Mahr
Acting Deputy Representative

⁶ Please refer to the conclusion of our January 2004 paper, UNHCR Position on the Return of Rejected Asylum Seekers to Eritrea, particularly sources listed at footnote 47.

⁷ Amnesty International, UA348/03, Eritrea 27 November 2003,