

**Report by the Independent Advisory Group on Country Information
on
Eritrea Country Information and Guidance Reports
produced by the UK Home Office**

13 May 2015

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Introduction and Summary of Recommendations

This report considers the question of whether country of origin information (COI) contained in two recent Country Information and Guidance (CIG) reports on Eritrea produced by the Home Office's Country Policy and Information Team¹ is as accurate, balanced, relevant, impartial and up to date as possible, as per the mandate of the Independent Advisory Group on Country Information (IAGCI).²

The IAGCI Chair, who is a Horn of Africa specialist and is well acquainted with COI as it relates to Eritrea, prepared an initial draft of this report, which was shared with the full membership of the IAGCI prior to its meeting on 27 April 2015. Further revisions were made by IAGCI members subsequent to the meeting. It is the intention of the group that the report should be submitted to the new Independent Chief Inspector for Borders and Immigration, Mr David Bolt, on its behalf.

Please note that IAGCI member Judge Andrew Jordan has recused himself from this review due to his existing commitments to the Upper Tribunal that relate to Eritrea. He has asked that a statement explaining his position be included with this report (Please see Appendix 1). He has not been party to the discussions relating to this matter either at a meeting on this subject held on April 27, or in subsequent discussions.

In examining the available information, the IAGCI Chair conducted an interview with Professor Gaim Kibreab of London South Bank University, who is a leading expert on Eritrea and who has a long and distinguished career in refugee studies.³ Relevant information available in the public domain was also collected. These documents are listed at the end of this report. Appendices to this report include two statements from Professor Kibreab, a statement from Human Rights Watch, and a statement from UNHCR.

It is the view of the IAGCI that the two CIG reports are marred by serious methodological concerns. In particular, where they refer to illegal exit, conditions on return and national military service, the two CIG reports rely heavily on a Fact-Finding Mission report by the Danish Immigration Service (hereafter referred to as the Danish FFM report). The Danish FFM report has itself been widely criticized in terms of its methodology. As a result, statements cited in the Danish FFM report should be treated with appropriate care and should not be taken as undisputable facts relating to the current situation in Eritrea. In the view of the IAGCI, the two CIG reports on Eritrea attribute unwarranted weight to the Danish FFM report, while failing to provide

¹ *Eritrea: Illegal Exit* (March 2015), [https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/412716/CIG - Eritrea - Illegal Exit - March 2015 - v1 0.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/412716/CIG_-_Eritrea_-_Illegal_Exit_-_March_2015_-_v1_0.pdf); *Eritrea: National (including Military) Service* (March 2015), [https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/412715/CIG - Eritrea - National incl Military Service - March 2015 - v1 0.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/412715/CIG_-_Eritrea_-_National_incl_Military_Service_-_March_2015_-_v1_0.pdf).

² See <http://icinspector.independent.gov.uk/country-information-reviews/>.

³ See <https://www.lsbu.ac.uk/about-us/people-finder/prof-gaim-kibreab>.

additional independent and credible sources of information to corroborate the statements made by the sources quoted in the Danish FFM report. In light of these observations, the IAGCI recommends that the Home Office review the two recent CIG reports on Eritrea, specifically in terms of their reliance on the Danish FFM report; and that pending such review the two CIG reports be removed from the Home Office's website. Furthermore, the IAGCI recommends that the Home Office make a statement to the effect that pending the review of the March 2015 CIG reports, these reports should not be used in deciding applications for international protection from Eritrean nationals.

Background

The original document that is the focus of concern is a Fact-Finding Mission report by the Danish Immigration Service, *'Eritrea – Drivers and Root Causes of Emigration, National Service and the Possibility of Return: Country of Origin Information for Use in the Asylum Determination Process'* (November 2014; reissued as an "Appendix edition" in December 2014). The report is based on interviews conducted during visits to Ethiopia and Eritrea undertaken in August and October 2014. All of the Eritrea-based sources of information quoted in the Danish FFM report are anonymous; they include representatives of international organisations, a number of embassies of western countries, the Eritrean Foreign Ministry, a "well-known intellectual", and a "regional NGO". Sources based in Ethiopia are generally named (at least in terms of the organisations or institutions represented by the sources); they include a number of international NGOs, UNHCR, IOM, and embassies of western countries. The November 2014 version of the report also included references to an interview with Professor Gaim Kibreab.

As explained in Section 1.3 of the December 2014 version of the Danish FFM report, following the publication of the November 2014 FFM report Professor Kibreab issued a complaint, saying that his testimony had been taken out of context. A statement by Professor Kibreab is appended to this report as Appendix 2.

Beyond the specific issues relating to the statements attributed to Professor Kibreab in the November 2014 version of the Danish FFM report, the Danish report has also been the subject of widespread criticisms in relation to other aspects of its methodology, notably by Human Rights Watch, Amnesty International and UNHCR, among others (see below and Appendices 4 and 5).

While the November 2014 version of the Danish FFM report formed the basis of a policy change in relation to asylum claims by Eritrean nationals in Denmark, the Danish Immigration Service announced a reversal of this policy change following the criticisms levelled against the November version of the report and the publication of the revised December 2014 version.⁴

⁴ The announcement by the Danish Immigration Service is available at https://www.nyidanmark.dk/da-dk/nyheder/pressemeddelelser/udlaendingeservice/2012/december/udlaendingestyrelsens_vurdering_af_visse_generelle_forhold_vedroerende_asylansoegere_fra_eritrea.htm. The relevant

Despite the widespread criticisms of the Danish FFM report, it is extensively cited in the two March 2015 CIG reports on Eritrea. Indeed, the Danish FFM report is an important element of the purported justification for policy changes set out in the two CIG reports in relation to claims for international protection from Eritrean asylum-seekers in the UK. In particular, the CIG reports conclude that Eritreans who have evaded or deserted from the national service in Eritrea and/or who left the country illegally are no longer considered to be at risk of harm or mistreatment if they are returned to Eritrea. While the IAGCI's mandate does not extend to country-specific policy, the IAGCI wishes to express its concerns about the quality of the COI in the March 2015 CIGs on Eritrea that underpins these policy conclusions.

CIG Report on Illegal Exit

The CIG report on Illegal Exit (March 2015) makes reference to the Danish FFM report seven times. Most crucially, it states:

The most up-to-date information available from inside Eritrea – notably the Danish Immigration Service 2014 Fact-Finding Mission Report ('the Danish FFM Report') – indicates that those who refuse to undertake or abscond from military/national service are not viewed as traitors or political opponents (see Penalties for Leaving Illegally and Treatment on Return in the country information section). As a result, Eritreans who left illegally are no longer considered per se to be at risk of harm or mistreatment amounting to persecution on return (1.3.4).

It should be noted that the relevant section of the "Information" part of the CIG (section 2.3, Penalties for Leaving Illegally and Treatment on Return), which is referred to here to underpin the policy conclusion in section 1.3.4, relies *exclusively* on the Danish FFM report; no other sources are referred to in this section.

passage states: "Udlændingestyrelsen finder derfor, at der efter en konkret og individuel vurdering kan være grundlag for at meddele asyl til personer med dette asylmotiv. Udlændingestyrelsen vil således som i andre asylsager lade enhver rimelig tvivl komme ansøgeren til gode. Udlændingestyrelsen fortsætter sagsbehandlingen, og hvis det kan lægges til grund, at ansøgerne er fra Eritrea, forventer Udlændingestyrelsen på dette grundlag at meddele asyl i mange sager." An informal translation of this passage reads: "The Danish Immigration Service therefore finds, that after a concrete and individual assessment there can be grounds for recognizing the asylum claims for persons with these [illegal exit and desertion from national service] motivations. The Danish Immigration Service will as in other asylum cases provide the benefit of doubt to the asylum-seeker. The Danish Immigration Service will continue processing, and if it can be assumed that asylum-seekers are from Eritrea, the Danish Immigration Service expects on this ground to recognize the asylum claim in many cases." See also The Local (Denmark). 10 Dec. 2014. *Denmark Admits 'Doubts' about Eritrea Report*, <http://www.thelocal.dk/20141210/denmark-doubts-controversial-eritrea-report>. According to a statement by Professor Kibreab, "two out of the three officials who visited Eritrea to gather information for the report distanced themselves from it and as a result of their dissatisfaction over the methodology and how the information was used resigned their positions." Gaim Kibreab, 25 Mar. 2015. *Some Reflections on the UK Home Office's Country Information Guidance "Eritrea: National (incl. Military) Service & Illegal Exit, March 2015"* (The full text of this statement is appended to this report.)

The CIG goes on:

The Danish FFM Report also indicates that a person is able to return to Eritrea legally provided they pay the Diaspora tax and sign a “letter of apology” at an Eritrean embassy. This includes those who evaded or deserted National Service. Once this has been done, a passport application can be made (see Penalties for Leaving Illegally and Treatment on Return and Diaspora Tax in the country information section) (1.3.5).

As will be discussed below, this passage may be misleading if it is taken to refer to the ability of those who have left Eritrea illegally and/or who have evaded or deserted national service.

CIG Report on National (Including Military) Service

The CIG report on National (Including Military) Service (March 2015) makes reference to the Danish FFM report 23 times. The CIG report also indicates that Eritrean Presidential Advisor Yemane Gebreab assured a team from the UK Foreign and Commonwealth Office and Home Office that a policy change had taken place and that

from November 2014 national service is reverting to a duration of 18 months. This will now be all based in the military ... This has started with the 27th round and people have been informed. We have had meetings with students and families at Sawa. We do not want to publicise this by a presidential announcement – this is not how we wish to do things.⁵

This information was apparently corroborated to the team by the Eritrean Minister of Foreign Affairs in December 2014. However, no evidence was given in the CIG document that the reported change in policy had been communicated to those in a position to release people from military service; indeed the passage quoted above seems to indicate that this information has not been communicated to those who would implement it. The CIG report does not reflect on the particular interest that both the Presidential spokesman and the Minister of Foreign Affairs may have had in presenting Eritrea’s policy in relation to national service in this manner or on the reliability of this statement (see also the observations made by Landinfo in this regard, p. 6 below). Professor Kibreab indicates that his sources suggest that no policy change has been communicated to the public inside Eritrea, or to the conscripts themselves.⁶

The Danish FFM report cites a western Embassy official who asserts that national service evaders or deserters are not automatically viewed as traitors and political opponents and are therefore not likely to be detained or imprisoned. While the Danish FFM report takes this statement at face value, in

⁵ See sections 2.5.8 and 2.5.9 of *Eritrea: National (including Military) Service* (March 2015), [https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/412715/CIG - Eritrea - National incl Military Service - March 2015 - v1 0.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/412715/CIG_-_Eritrea_-_National_incl_Military_Service_-_March_2015_-_v1_0.pdf).

⁶ See Appendices 1 and 2.

his response to the report Professor Kibreab questions the reliability of this statement, suggesting that the person who provided it, given their professional role as an embassy official, was likely not in a position to know this kind of information. Indeed, this statement directly contradicts information gathered by Human Rights Watch,⁷ based on interviews with deserters, which indicates that they had been treated as political opponents as a result of their desertion or evasion of national service. Moreover it contradicts the findings of the UN Commission of Inquiry on Human Rights in Eritrea which reported in March 2015 that

In particular, Article 4 of the International Covenant on Civil and Political Rights stipulates that some of the human rights guaranteed by the Covenant are “non-derogable” and should be respected at all times. They include – even in times of public emergency: the right to life; the prohibition of torture or cruel, inhuman or degrading punishment; the prohibition of slavery (forced labour); the right to be recognized as a person before the law, and the freedom of thought, conscience and religion. Yet, based on its findings so far, the Commission can assert that all these rights and freedoms are being violated in Eritrea and this since the independence of the country.⁸

Also problematic is the fact that the full statement provided by this particular source to the Danish FFM has itself been only partially quoted in the Home Office’s CIG report. The full statement provided by this source to the Danish FFM makes clear that even this source indicates that detention does at times take place, since the next paragraph of the testimony reads:

Ordinary people who evade the National Service or desert from the service are not being prosecuted and imprisoned and they are not at risk of disappearances. That kind of treatment is reserved for people who have had some kind of oppositional activities i.e. political prisoners.

This statement seems to suggest that it is possible to evade or desert from national service without being seen to have committed an act of political opposition. However, as noted by Professor Kibreab, the balance of information suggests that this is a false distinction and that the very act of evasion or desertion may itself be perceived by the Eritrean authorities to be a statement of political opposition.

⁷ See Human Rights Watch, Feb. 2014. ‘I Wanted to Lie Down and Die: Trafficking and Torture of Eritreans in Sudan and Egypt,’ p. 16.

http://www.hrw.org/sites/default/files/reports/egypt0214_ForUpload_1_0.pdf

⁸ UN Commission of Inquiry on Human Rights in Eritrea, March 16, 2015. ‘Questions and Answers on the Commission of Inquiry on Human Rights in Eritrea,’ Prepared for the oral update to the Human Rights Council.

<http://www.ohchr.org/EN/HRBodies/HRC/CoIEritrea/Pages/commissioninquiryonhrinEritrea.aspx>

The Danish Fact-Finding Mission Report as a Source of COI

Source assessment

The CIG reports do not include any reflection or assessment of the reliability and credibility of its sources, including in particular the sources from the Danish FFM report. This is in contrast to recent reports on Eritrea by the Norwegian COI centre, Landinfo, among them a thematic report on National Service in Eritrea released (in Norwegian) in March 2015.⁹ This report includes a critical assessment of sources available inside Eritrea. It notes that information tends to be “recycled” within the relatively small international community in Eritrea. As a result, similar statements from two or more members of the international community should not be taken to be statements that corroborate each other, but as information that derives from the same underlying source. Furthermore, Landinfo notes that representatives of the international community in Eritrea in meetings have themselves observed that much of the information they are able to provide is based on opinion and sometimes speculation, rather than verifiable facts.¹⁰

The type of source assessment carried out by Landinfo is an example of good practice, which is especially important in relation to a restricted environment such as the one presented by Eritrea. Had such an assessment been taken into consideration in the CIG reports, sections in the Information part of the CIGs that rely primarily on statements from Western Embassies and International Organizations (particularly ‘2.3 Penalties for Leaving Illegally and Treatment on Return’ in ‘Eritrea: Illegal Exit’ and ‘2.9 Desertion and Evasion in Practice’ in ‘Eritrea: National (including Military) Service’) would be seen to rely on a very limited evidentiary base.

Furthermore, the CIG reports do not reflect on other information provided by Eritrean authorities. The assurance by Eritrean government officials that National Service is no longer indefinite should be assessed against the record of previous statements by Eritrean authorities to this effect. The Landinfo report referenced above notes that Eritrean government officials and representatives of the international community told Landinfo first in the winter of 2013 and again

⁹ Landinfo, 23 March 2015, *Eritrea: Nasjonaltjeneste*, http://landinfo.no/asset/3097/1/3097_1.pdf.

¹⁰ The original text in Norwegian is: “Et annet problem som Landinfo opplever i Eritrea, er trolig «rundløyper» eller falske bekreftelser, det vil si at to kilder sier det samme og tilsynelatende bekrefter ulike saksforhold, mens de i virkeligheten refererer til én og samme kilde. Dette kan skje fordi det knapt nok er internasjonale kilder som er uavhengige av hverandre i Eritrea. Det internasjonale miljøet i landet er lite, og ingen av representantene Landinfo har møtt gjennom årene, har lagt skjul på at størstedelen av informasjonen de formidler, ikke er faktabasert, men er synspunkter og til dels spekulasjoner.” Landinfo, 23 March 2015, p. 5. An informal translation of this paragraph is: “Another issue that Landinfo experiences in Eritrea is probably “loops” or “false confirmations”, i.e. where two sources say the same thing and seemingly confirm various issues, while in reality this refers to a single source. This may happen because there are hardly any international sources that are independent from each other in Eritrea. The international community in the country is small, and none of the representatives Landinfo have met over the years have hidden the fact that the major part of the information they convey are not factual statements but views and sometimes speculation.”

in the spring of 2014 that the terms of National Service had now 'normalized'.¹¹ This has, however, not been observed in practice.

The use of the Danish FFM in the CIG reports

For the IAGCI, the central question relating to COI in relation to the two March 2015 CIG reports on Eritrea is whether the totality of the statements provided by the informants of the Danish FFM can be assessed to constitute accurate, reliable and unbiased COI.

In this respect, it should be noted that the COI contained in the Danish FFM report has been criticised publicly by several prominent human rights organisations, as well as by UNHCR. In a December 2014 commentary on the November 2014 version of the Danish FFM report, UNHCR noted that

The report does not include any reflections on the reliability of specific sources of information. No information is provided in the report about the regulatory framework for the media, NGOs, research institutes and other actors in Eritrea, nor does the report contain an assessment of the impact of these regulatory frameworks on the independence of certain sources and the reliability of information provided by these sources.¹²

The two March 2015 CIG reports do not include any such reflection or assessment either.

In a December 2014 statement, Human Rights Watch called the Danish FFM report 'deeply flawed'.¹³ It stated:

The November report from the Danish Immigration Service, largely based on interviews with anonymous diplomatic and other sources in Eritrea, contains contradictory and speculative statements about Eritrea's human rights situation. The sources also often qualify their statements, noting that there is no independent access to detention centers, that the fate of people returned to Eritrea is unclear, and that government reforms of the national service conscription are rumored, but not confirmed. There is no

¹¹ "Landinfo vil peke på at både myndighetspersoner og representanter for det internasjonale miljøet i Asmara allerede vinteren 2013 – og igjen våren 2014 – hevdet at tjenestetiden var normalisert (diplomatisk kilde (3), samtale i Asmara mars/april 2014; diplomatisk kilde (2), samtale i Asmara 31. januar 2013)." An informal translation is: "Landinfo would like to point out that both government officials and representatives of the international community in Asmara already in the winter of 2013 – and again in the spring of 2014 – claimed that the length of national service was normalized (diplomatic source (3), conversation in Asmara March/April 2014; diplomatic source (2), conversation in Asmara 31 January 2013)." Landinfo, 23 March 2015, p. 8.

¹² UNHCR. December 2014. *Fact-Finding Mission of the Danish Immigration Service, 'Eritrea – Drivers and Root Causes of Emigration, National Service and the Possibility of Return, Country Information for Use in the Asylum Determination Process,' UNHCR's Perspective*, <http://www.ft.dk/samling/20141/almdel/uui/bilag/41/1435206.pdf>.

¹³ Human Rights Watch. Dec. 17, 2014. *Denmark: Eritrea Immigration Report Deeply Flawed*, <http://www.hrw.org/news/2014/12/17/denmark-eritrea-immigration-report-deeply-flawed>. Accessed 23 April 2015.

indication that the authors of the report interviewed victims or witnesses of human rights violations in Eritrea, and a prominent Eritrean academic consulted for the report has publicly criticized it.

The IAGCI is concerned that the concerns expressed about the reliability of the COI contained in the Danish FFM have not been taken into account in the decision to use it in the CIG report. Additionally, in its consideration of 'Penalties for leaving illegally and treatment on return'¹⁴ the CIG report relies exclusively on the Danish FFM report and does not corroborate this information with any other source.

COI in relation to differently-situated Eritreans

One of the most relevant issues that the Danish FFM report fails to address is the question of the specific COI in relation to differently situated Eritreans who have evaded or deserted from national service and/or who have left the country illegally, should they return to Eritrea. The Danish FFM report refers to all returning Eritreans – members of the diaspora who hold foreign passports, refugees living abroad, asylum seekers and undocumented persons – as if they belong to a homogenous group who could be expected to be treated in the same, or at least a similar, manner should they return, or be returned, to Eritrea. However, those who return to Eritrea while holding a foreign passport are more likely to be protected by having citizenship in another country. In contrast, those who have applied for refugee status (including those whose applications have been accepted, those whose applications have not yet been decided, and those whose applications have been rejected) have indicated their opposition to the regime through their declaration of their inability to receive protection from the Eritrean authorities. The Danish FFM report fails to adequately consider the evidence (or lack of evidence) that individuals who are refugees, asylum seekers or failed asylum-seekers are unable to report to an Eritrean embassy to pay the diaspora tax or to sign a letter of repentance and subsequently return to Eritrea on the same basis as individuals who hold a passport of their current country of residence. It should be noted that the Danish FFM report contains no information obtained from returned/deported Eritreans and therefore any information contained in the report concerning these issues should be taken as speculation rather than fact.

Conclusion

In the view of the IAGCI, the information contained in the Danish FFM, and referred to in the UK Home Office's CIG reports, is of dubious quality and should not be relied upon as accurate, reliable and unbiased country of origin information.

¹⁴ See pp. 9-10 of *Eritrea: Illegal Exit* (March 2015), [https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/412716/CIG - Eritrea - Illegal Exit - March 2015 - v1_0.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/412716/CIG_-_Eritrea_-_Illegal_Exit_-_March_2015_-_v1_0.pdf)

Accordingly, in the view of the IAGCI the Independent Chief Inspector of Borders and Immigration should make the following recommendations to the Home Office:

1. The two March 2015 CIG reports on Eritrea should be reviewed, in particular insofar as these reports rely on the Danish Fact-Finding Mission report;
2. Pending such review the two March 2015 CIG reports should be removed from the Home Office's website, and a statement should be issued to the effect that the reports should not be used in the assessment of applications for international protection by Eritrean nationals.

The IAGCI intends to commission a full and detailed review of both Eritrea CIG reports for its next meeting (to be held in September 2015). This review will consider the use of all COI in the report (irrespective of the source), and will provide the Independent Chief Inspector with complete analysis of the country of origin information contained in these two reports at that time.

Documents cited in this Report

Danish Immigration Service. Nov. 2014. *Eritrea – Drivers and Root Causes of Emigration, National Service and the Possibility of Return: Country of Origin Information for Use in the Asylum Determination Process*, <http://www.nyidanmark.dk/NR/rdonlyres/B28905F5-5C3F-409B-8A22-0DF0DACBDAEF/0/EritreareportEndeligversion.pdf>.

Danish Immigration Service. Dec. 2014. *Eritrea – Drivers and Root Causes of Emigration, National Service and the Possibility of Return: Country of Origin Information for Use in the Asylum Determination Process. Appendix edition*, <http://www.nyidanmark.dk/NR/rdonlyres/B28905F5-5C3F-409B-8A22-0DF0DACBDAEF/0/EritreareportEndeligversion.pdf>.

Human Rights Watch. 17 Dec. 2014. *Denmark: Eritrea Immigration Report Deeply Flawed*, <http://www.hrw.org/news/2014/12/17/denmark-eritrea-immigration-report-deeply-flawed>. (See Appendix 3)

Gaim Kibreab. Dec. 2014. *Critical Observation on the Report of the Danish Immigration Service's Alleged Fact finding Missions to Ethiopia and Eritrea (August and October 2014)*. (See Appendix 1)

Gaim Kibreab. March 2015. *Some Reflections on the UK Home Office's Country Information Guidance Eritrea: National (incl. Military) Service & Illegal Exit*. (See Appendix 2)

Landinfo, 23 March 2015, *Eritrea: Nasjonaltjeneste*, http://landinfo.no/asset/3097/1/3097_1.pdf.

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UN Commission of Inquiry on Human Rights in Eritrea, 16 March 2015. 'Questions and Answers on the Commission of Inquiry on Human Rights in Eritrea,' Prepared for the oral update to the Human Rights Council.

<http://www.ohchr.org/EN/HRBodies/HRC/ColEritrea/Pages/commissioninquiryonhrinEritrea.aspx>

UNHCR. December 2014. *Fact-Finding Mission of the Danish Immigration Service, 'Eritrea – Drivers and Root Causes of Emigration, National Service and the Possibility of Return, Country Information for Use in the Asylum Determination Process,' UNHCR's Perspective,* <http://www.ft.dk/samling/20141/almdelel/uuu/bilag/41/1435206.pdf>. (See Appendix 4

Appendix 1 - Declaration of Interest by Judge Andrew Jordan

I declare my interest in this item on the agenda. It only came to my attention during the course of the morning [of 27 April 2015]; the meeting being scheduled for 2 pm.

As the country convener for the group of countries of which Eritrea is one, I am involved in the selection of cases which may potentially be useful in the provision of country guidance affecting the risk of return to Eritrea. The Upper Tribunal's country guidance on Eritrea is contained in *MO (illegal exit-risk on return) Eritrea CG [2011] UKUT 190 (IAC)*.

As the issues raised in this item may well have to be determined by the Tribunal and, on appeal, by the Upper Tribunal, I must maintain neutrality on matters which I may be required to determine in a judicial capacity and cannot therefore participate in the Advisory Group's deliberations.

The Advisory Group's chairman has expressed the view that the country information contained within the Danish fact-finding mission's report is inaccurate and misleading and is supported in this by Professor Kibreab whose comments are said to have been inaccurately conveyed in the Danish report. The report has found its way into Country Information used by the Home Office.

The Home Office has not yet been able to give proper consideration to or comment upon these matters. They raise serious concerns about the reliability of the material provided in the Danish fact-finding mission's report and the reliance, arguably, that can properly be placed upon its conclusions. These will have to be resolved elsewhere but the Home Office is now on notice that they will need to be addressed.

Appendix 2 Statement from Prof. Gaim Kibreab on the Danish Immigration Service's FFM (Dec. 2014)

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December 2014

Critical Observation on the Report of the Danish Immigration Service's Alleged Fact finding Missions to Ethiopia and Eritrea (August and October 2014)

Important Caveat

Whoever reads these notes should do so bearing in mind the following principal **CAVEAT**. The question of asylum-seekers' and refugees' visit to Eritrea is grossly exaggerated in the report. I am not aware of any Eritrean asylum-seeker or refugee who returns to Eritrea prior to acquiring the citizenship of their countries of asylum. I assume they are intelligent enough to realize the potential risks involved at both ends. If discovered, the country of asylum may deny them re-entry and given the Eritrean government's arbitrary and unpredictable behavior, they may not be able to exit the country legally. Refugees are intrinsically risk averse and I can't imagine someone who survived the dangers throughout the journey would squander his or her opportunities voluntarily.

However, if there are Eritrean asylum-seekers and refugees who return to Eritrea, they should be automatically deprived of their refugee status. Not only is such a measure necessary but the country of asylum concerned is duty bound to take such a measure by virtue of the treaty of the 1951 Convention. There is no controversy about this issue. The reason countries grant asylum to refugees is because of the fact that they are presumed to have lost the protection of their state. The minute they step into the territory of their country of origin, they are presumed to have regained the protection of their own state. A person with a protection of his or her own state is not entitled to protection of another state. Denmark as any other party to the 1951 UN Convention has no responsibility to provide protection to people who have re-availed themselves to the protection of their own state. Refugee Status is a scarce resource and should be preserved to those who desperately need it. A person who voluntarily returns to their country while they hold refugee status have voluntarily relinquished such a status.

The DIS's team went on a fact-finding mission to Eritrea and Ethiopia and returned with "facts" as perceived or misrepresented by foreigners living in Asmara and Ethiopia. With one exception in Ethiopia and two insignificant exceptions in Eritrea, namely, the so-called "well-known Eritrean intellectual in Asmara," who is almost certainly a PFDJ member and the mendacious Ministry of Foreign Affairs, the mission returned with "facts" as perceived or misperceived by foreigners living in Asmara and Ethiopia. The unavoidable question that arises is: why would one go all the way to Africa using

taxpayers' scarce resources with high opportunity cost to return without interviewing the population that are most affected by the open-ended national service.

This can only be due to two reasons. Firstly, because of the generalized state of fear and absolute dearth of freedom of speech and rule of law, nobody would risk talking to them or the team might have not dared to talk to them. If this were the case, any honest fact-finder would openly acknowledge this in the report. Secondly, the reason why the team did not bother to interview Eritreans on the ground or those who fled from the ENS is because they thought that they are not trustworthy for the simplistic reason that they had either an "an ax to grind" as one of their ill-informed foreign informants told them or they were thought to have an incentive to lie about or dramatize the situation in order to maximize their opportunity for being granted asylum. The latter view emanates from a patronizing attitude or from poverty in methodological acumen. Scientists throughout history have been gathering data from populations that are directly affected by different government policies and who may have incentives to taint the information they provide in a manner that promotes their interests. However, for those who are familiar with it, science provides the means of counterchecking and rejecting information that is inconsistent with the truth.

The way the team went about gathering the data reminds me of an intelligent African saying, "Only a fool tests the depth of a river with both feet", i.e. one should avoid going into a situation without studying the background. One of the follies of the team was that they assumed that no empirical knowledge on Eritrea could be generated without visiting Eritrea. A visit to Eritrea regardless of the methods used and from whom the data are gathered is supposed to be more reliable than whatever is available in the public domain. The Team states that the available information on Eritrea is produced by "*stakeholders with no or little direct access to Eritrea...¹ the hitherto available reporting on the conditions in Eritrea to a large extent seems to be based on information obtained from sources that were not present in Eritrea or on interviews with Eritrean refugees abroad*" (p. 3). Just because neither the researcher nor the informant is in Eritrea, they are said to be unable to produce reliable data about the reality in Eritrea. The data on the situation in Eritrea are produced by highly reputable and dedicated human rights organizations, such as Amnesty International, Human Rights Watch, Journalists without Borders, etc. who have over time built formidable reputation through unimpeachable rigor and scrupulous scrutiny and seasoned academics whose publications are filtered through severe and thorough scrutiny.

With the exception of two informants, namely, Ato Tamrat Kebede, in Ethiopia and myself, the rest of the Team's informants are faceless anonymous individuals. In a situation where one's informants' safety may be compromised because of the concerned government's lack of respect for the sanctity of truth, rule of law, human life and dignity, it is common to anonymise one's sources. In view of the fact that the Team thinks that the Eritrean government is changing for the better in terms of its tolerance of its detractors, it is mindboggling why it didn't reveal its sources.

Is it because it lacks confidence in the veracity of its findings in terms of not wanting people to check and find out the truth? Or is it because the Eritrean government would endanger their safety for expressing their opinion? If the latter is the case, how can this

¹ The lack of access is due to restrictive government policy.

be reconciled with the Team's claim that the government's human rights performance is not as bad as its detractors make it to be. In view of the fact that the large majority of its informants are individuals with diplomatic immunity, does anonymising these sources indicate that the Eritrean government is not constrained by the Vienna Convention on Diplomatic Relations? In view of the fact that the diplomats interviewed by the Team went out of their way to whitewash the Eritrean government's poor human rights record by denying the reality of the conscripts, their relatives and the Eritrean people, it is not clear what their fear was about.

An equally fundamental question relates to the question of partiality and vested interests of the interviewees. In view of the fact that the large majority of the Team's informants were representatives of Western countries where the conscripts have been seeking asylum, they have clear vested interests in terms of stemming the flow and therefore the reliability of the information elicited from them cannot be taken for granted. Contrary to this, the Team has taken the information at its face value.

The Team claims that the individuals consulted are knowledgeable and "represent a broad spectrum of competent sources knowledgeable on the relevant issues in Eritrea." There is no evidence to show that any of the people interviewed has undertaken research on the national service or on Eritrea. It is not clear on what basis the Team considers the interviewees as competent and knowledgeable. IN view of the fact that there is no freedom of expression in the country and foreigners including the interviewed diplomats are prohibited from travelling outside of Asmara, their claimed knowledge is highly questionable and cannot be taken for granted.

Ethical Considerations

Some of the interviewees have not approved the information they provided. The question is whether it is ethical and reliable to use data that are not approved by those who provided them.

No discernible General Patterns Emerge from the Report

Not only is it difficult to identify discernible common patterns that run through the report, but the views expressed by the interviewees are contradictory. A few examples will be provided to demonstrate this. For example, embassies C and D in Eritrea stated that the government detains people for political reasons, but Embassy C stated that "there is no general climate of fear to detect in the population." But in the following para. the same Embassy stated that the rules and procedures are not applied uniformly and the security apparatus and the justice system work arbitrarily (p. 5). This suggests that the behavior of the government authorities is unpredictable and arbitrary and this is a recipe for generalized feeling of insecurity. How does one reconcile the two opposed views expressed by the same interviewee?

Travel permit

Several sources contrary to the reality in the country told the Team that "Eritreans do not need a travel permit to travel inside Eritrea." This is wrong. All Eritreans within the age of conscription (18-50) cannot move an inch without carrying *menqasaqesi*, i.e. travel permit issued by one's commander or employer. This information could have

been counterchecked easily. This was acknowledged by Embassy D (p. 5). One example, given to demonstrate freedom of movement in the country is the ability of those who attempted to stage a coup to travel unchecked about 120 kms. There is another explanation for that which I don't want to raise here.

Drivers of Emigration

The Team states that the drivers are “the prolonged national service, the social and economic situation in the country including the prospects for a better life in Europe or a combination hereof” (7). The Team includes my name in this, but I never said that Eritreans leave the country in search of a better life. Also it is important to point out that the worsening social and economic problems are inextricably linked to the open-ended national service. It is an open secret that Eritrea is one of the poorest countries. Because of this, the people have over time developed through trial and error a survival strategy to eke out a living in adversity. Key in this strategy was diversification of economic activities of family members and pulling together the meager amount of incomes derived by each family member. This has always been the means by which Eritreans in rural and urban areas made ends meet. The national service by depriving families of their single most important resource, family labour, has stifled the central thrust of the livelihood systems throughout the country. Hence the root cause of the social and economic hardship faced by citizens is because of the open-ended national service which over time has degenerated into forced labour exacted under the threat of force and against the will of conscripts. Forced labour is prohibited in international law and Denmark and as democratic state is a party to the Convention against Forced Labour.

The Team reports, “most people leave Eritrea ...for economic ...not because of political oppression” (Western Embassy D) (p.7). Firstly, as seen earlier, the economic problems are caused by the national service and secondly, how does the interviewee know this? Has the Embassy in question conducted research? When and where? An alleged UN agency also said, “hardly anyone leaves Eritrea for political reasons” (p. 7) The question that arises is how does this gentleman or woman know this? This cannot be taken seriously.

The Team wrongly refers to my work in footnote 4 that the national service began in 1991 and at that time conscripts were demobilized after serving 18 months (p. 8). What I said was that the first proclamation was enacted in 1991 but actual national service began in 1994.

The ignorance of some of the Team's informants can be indicated from the polar opposites of their views on the same question. For example, informants A, B, C and D correctly stated that students receive academic military training at Sawa six months (p. 9), the so-called regional NGO wrongly stated, “Sawa is not a military camp but is basically the final two years of high school” (p. 9). Students only take the final year of secondary education at Sawa and for those who want to know whether the students at Sawa take military training at the camp or not should watch the following link <https://www.youtube.com/watch?v=B6R9AGBkEvk>

On page 9, the Team wrongly state that I said, “it is possible to be exempted from the military training component but not from the national service as such” (p. 9). This is opportunistically quoted out of context by excluding the important qualifications. The

following was what I said and they had it in writing.

It is possible to be exempted from military training not from national service. A person who suffers from physical disability or mental infirmity can be exempted from the military training component but not from national service. This is also dependent subject to the approval of the military committee that certifies that the person concerned is so ill that he/she cannot undertake military training. However, the said person is required to perform national service in the civil sector. Only former combatants are formally exempt from national service. However, since the war broke out in 1998, this exemption has been forfeited.

Punishment

The so-called regional NGO based in Asmara is supposed to have told the Team, “the information in human rights reports about ill-treatment in the national service are more often than not exaggerated. ...people in the national service are not overworked or working under slave like conditions, not beaten, subjected to torture or suffering from malnutrition” (p. 10). Someone whose knowledge of the reality is either poor or flimsy can only make such a generalized statement. Conscripts are assigned to diverse tasks and places. Some are over worked, others are often idle. Depending on the character of their commanders and themselves, some conscripts are subjected to inhuman treatment and others never experience such treatment. In 2012 I conducted an extensive survey among former conscripts in the UK, Switzerland, Norway, Sweden, South Africa, Kenya and Sudan. The respondents fled Eritrea after serving on average six years in the national service. One of the striking findings of the study was that the respondents do not speak with a single voice. Their experiences and their attitudes towards the national service and the Eritrean government are varied. Some were tortured inhumanely and held in underground cells from many months and a few for many years. Others who towed the line were never imprisoned or tortured. Some were extremely over worked and others were “bored to death” as there was nothing to do. Only a person with an ulterior motive or an ignorant person would look at the conscripts as undifferentiated homogenous mass of people. By taking everything they heard from their interviewees unquestioningly, the Team has damaged the credibility and integrity of the report.

Apropos the so-called regional NGO: the Eritrean government’s hostility to any kind of autonomous civil society organization, including national and international NGOs is well documented. The six remaining international NGOs that worked in Eritrea were forced to leave in 2011 in conjunction with the government’s imposition of strict controls on UN organizations including prohibiting their staff to leave the capital. There are also no national NGOs in the country except the fake ones that are affiliated to the PFDJ and the government, namely the NUEW, the NUES and the NUEW. There are also no regional NGOs in the country except the so-called Peace Building Centre for the Horn of Africa (PCHA) owned by a Sudanese who is not only very close to the Eritrean government and the ruling party, but also reportedly holds an Eritrean passport. The question is to what extent can a person in his situation be a credible witness to the reality on the ground?

Duration of the National Service

The data the Team gathered on this are contradictory. Whilst the Ministry of Foreign Affairs and others said that the NS “either is open-ended or could be open-ended,” informant C blatantly said that the NS “is not really indefinite, but when it ends is arbitrary.” (p. 10). It is either open-ended or not. It can’t be both. Informant B and the so-called Eritrean intellectual said that the national service could last for ten or even longer (p. 10). But the same intellectual in the following page said, “...the duration of service is usually between three and five years.” (p11). Notwithstanding this observation, informant D said that it is easier now for young people to be released and states contrary to all available data, ‘national service seems to be limited to a couple of years’ (p. 10)

People’s Militia/Army

The claim that the people’s militia comprises people “demobilized from the national service” is wrong. There are no people who are demobilized from the NS and the militia comprises people between 54 and 70 years old.

Consequences for evasion/desertion

The findings of my study among deserters show that draft evasion and desertion are punished severely because the commanders wanted to deter others and to inflict pain and suffering in those who breached military discipline. The severity of the punishment varied depending on the particular commander, but generally the degree of punishment was severe. The data collected by the Team in this regard are unreliable.

A typical example in which the Team quotes me out of context in a manner that serves its interest is on page 13 in which it is stated:

Information provided by Kibreab, suggests that until a few years ago evaders and deserters were routinely subjected to severe punishment including torture and detention under severe conditions over a prolonged period of time. It was further added that those refusing or failing to participate in National Service would risk to lose a number of his or her citizen’s rights and, in exception cases, risk indefinite incarceration (p. 13)

This implies as if I said that that draft evaders and deserters are no longer routinely subjected to severe punishment. But this is absolutely wrong. In the edited document I sent to the DIS, I stated under the sub-heading of Penalties in National Service evasion/desertion:

Persons who have left Eritrea illegally and who have evaded or deserted from National Service are considered to have committed treason and are liable to a severe punishment. Draft evaders/deserters are routinely subjected to torture and detention under severe conditions over a prolonged period. In reality, punishment for desertion or draft evasion is extremely severe. Whoever refuses or fails to participate in National Service loses citizen’s rights, such as the right to own or cultivate land, to work or be self-employed, and gain access to travel documents

and exit visa. In other words, whoever does not perform national service is stripped off all forms of citizenship rights. In fact, over time, refusal or failure to perform national service can result in indefinite incarceration and in exceptional cases to loss of life.

The Team distorted this to imply as if I said this was no longer the case. But as can be seen from the tense I use in the sentences, I am referring to the present rather than the past.

In another distortion of what I said, the Team left out the series of preconditions I stated in the case of the few who may return to Eritrea. The Team stated:

Kibreab stated that over the past two to three years, the government's attitude towards national service seems to be more relaxed. It is now possible for evaders and deserters who have left Eritrea illegally to return if they pay the two percent tax and sign the apology letter at an Eritrean embassy (P. 13)

The preconditions the Team left out from what I said were:

Those who may return are:

*Persons who did not participate in oppositional political activities abroad, people who are connected by family bonds or in other ways with government officials or members of the ruling party would be more inclined to return to Eritrea on visits... **These are invariably people who have been naturalized in their countries of asylum.***

Return to Eritrea

There is a gross distortion of what I said in this regard. The Team included my name to the anonymous interviewees who told the Team "...Eritreans that have left the country illegally have the option of regularizing their relationship with the authorities by paying a two percent income tax at an Eritrean embassy and signing an apology letter." P. 15

I never said this. I said instead, "*Persons who have left Eritrea illegally and who have evaded or deserted from National Service are considered to have committed treason and are liable to a severe punishment.*"

Passports

Passports are not obtained as a means to regularize one's relationship with the government, but rather as a means of exiting Sudan in search of meaningful protection elsewhere. An asylum-seeker cannot return using Eritrean passport because the country of asylum would not allow the person to reenter after s/he has been in Eritrea.

Border Crossing

The Team states that “people are no longer being shot at just because they try to cross the border to Ethiopia.’ (24)

This is wrong. I have interviewed people whose friends were shot at and killed at both sides of the Eritrean border. As late as 22 August 2014, Samuel Gedion, who survived a fatal shooting at the Eritrea-Ethiopia border crossing said that he was among a group of 18 Eritreans who were trying to flee to Ethiopia two weeks ago. He said, “Ten of them were killed, while three of us made it to Ethiopia. I am not sure on the fate of the remaining five.” He further said that the border guards opened fire without prior warning. One of the victims was a woman who served in the national service for 18 months.²

Demobilisation

A member of an international organization told the Team, “Anyone may be demobilized ...and free to take up whatever jobs available to them.’ (P. 26)

This is utter nonsense. Why are hundreds of thousands languishing then?

Eritrean government’s understanding of Human rights

The so-called owner of the bogus NGO told the Team that “The Eritrean government’s understanding of human rights is broader than the narrow perception of limiting human right to only political and civil rights.” P. 32

Is that why it detains its citizens and lets them languish in jail without trial and without visitation rights indefinitely?

UN Agency

The so-called UN agency interviewed by the Team seems to be the most irrational cheerleader of the Eritrean government. Its views are extreme and unfitting of any agency that uses the name of the UN. The so-called UN agency told the Team that they had no first hand information on Eritrean prison conditions, but they had the audacity to say, “but the impression was that prison and detention conditions could match or be better than some other African countries. They may not be at the standard of the western countries because the whole country is generally poor.” (p. 33)

If they have no information, how do they know and why would the Team not dismiss this as being a piece of rubbish?

Religious Persecution

The persecution of the Pentecostals is not even mentioned in the whole report

² Sudan Tribune, Eritrean border guards shoot dead ten civilians trying to flee, 22 August 2014. Available at <http://www.sudantribune.com/spip/php?articles52134>

Appendix 3 – Statement from Prof Gaim Kibreab on the UKHO’s CIG Report on Eritrea (March 2015)

London 25 March 2015

Some Reflections on the UK Home Office’s Country Information Guidance Eritrea: National (incl. Military) Service & Illegal Exit, March 2015

Prof. Gaim Kibreab
London South Bank University

Introduction

The UK delegation from the Foreign and Commonwealth Office and the Home Office visited Asmara on 9-11 December 2014. In March 2015, the Home Office issued two documents, namely, **Country Information and Guidance Eritrea: National (incl. Military) Service** and **Country Information and Guidance Eritrea: Illegal Exit**. This Note draws attention to the serious flaws contained in the Guidelines and the source material used to reach the conclusions.

The UK has been one of several European countries that have been receiving and granting refugee status to many Eritreans who either fled the country to avoid conscription or to flee from the open-ended Eritrean National Service (ENS). The single most important reason the UK has been at the forefront of providing refuge and succour for Eritrean asylum-seekers is because it accepted the UNHCR’s and other reputable human rights organisations’ reports describing the indefinite ENS as constituting persecution. This was due to the ENS’ degeneration into modern form of slavery proscribed in international law and the inhumane and degrading treatments meted to conscripts as punishment for:

- overstaying permitted leave
- disobeying commanders
- attempting to escape from the ENS
- absconding to avoid conscription
- answering back to commanders, etc.

Many conscripts have sustained permanent injuries or died as a result of these punishments. These are amply documented by reputable human rights organisations, such as Amnesty International, Human Rights Watch, Freedom House, Reporters Without Borders, etc. The Country Guidance refers to and quotes from these reports extensively only to reach to conclusions that fundamentally contradict them.

The authors of the HO’s Guidance start by extensively quoting from the reports produced by Amnesty International, Human Rights Watch, US Department of State, etc. but instead of drawing conclusions based on the sources which they widely quote from, they instead use the Danish Immigration Service’s report—Eritrea—drivers and root causes of emigration, national service and the possibility of return (August and October 2014) to draw conclusions from,

without taking into account that the report was deeply flawed and hence subjected to a series of severe criticisms.

The Danish report referred to in the Home Office's Guidance as an "up-to-date information from inside Eritrea" was criticised fiercely by many organisations including UNHCR,¹ Amnesty International, Human Rights Watch, etc. for being baseless. For example, Leslie Lefkow, HRW deputy Africa director stated:

The Danish report seems more like a political effort to stem migration than an honest assessment of Eritrea's human rights situation. Instead of speculating on potential Eritrean government reforms, host governments should wait to see whether pledges actually translate into changes on the ground." (emphasis added).²

Most Danish newspapers and other media condemned the report as being ill-thought-out, poorly documented and politically motivated. In response, the Danish authorities admitted the report's flaws. For example, *The Local*, wrote:

The Danish Immigration Service's fact-finding report on Eritrea has been under heavy fire since its release and the agency now says that the feedback "raises doubts" and that Eritreans can expect to be "granted asylum in many cases" (emphasis in original). ³

Despite the large number of people and organisations that have criticised the report,⁴ the Home Office Team do not even mention these or the fact that as a result, of the criticisms against the report, the policy recommendations concerning desertion from the ENS and illegal exit which were the central thrust of the report were withdrawn by the Danish Immigration Service. Controversies surrounding the Danish report are such that even two out of the three officials who visited Eritrea to gather information for the report distanced themselves from it and as a result of their dissatisfaction over the methodology and how the information was used resigned their positions. It is therefore alarming to learn that the UK Home Office has decided to change its policy on Eritrean asylum-seekers who flee from the indefinite ENS based on a report whose validity was rejected even by the people who collected the information in Eritrea.

Regarding the bleak human rights situation in Eritrea, the UK Foreign and Commonwealth Office which ironically was part of the Home Office Mission that visited Eritrea, in its Corporate report—*Eritrea Country of Concern* issued on 21

¹ UNHCR criticizes Danish report on Eritrea, 17 December. Available at <http://www.noas.no/en/unhcr-criticizes-danish-report-on-eritrea/>.

² See HRW Open Letter to the Danish Immigration Service. Available at <http://hrc-eritrea.org/open-letter-to-danish-immigration-service/> see also <http://saharareporters.com/2014/12/18/human-rights-watch-faults-danish-immigration-report-eritrea-politically-motivated>.

³ Denmark admits 'doubts' about Eritrea report
Published: 10 Dec 2014. Available at <http://www.thelocal.dk/20141210/denmark-doubts-controversial-eritrea-report>.

⁴ See https://www.google.co.uk/search?q=danish+report+on+eritrea&hl=en&GB&gbv=2&prmd=ivns&ei=ZeUSVa7SIM6Aaa_egMgN&start=20&sa=N.

January 2015 (i.e. two months before the Home Office issued its Country Information and Guidance in March 2015), states:⁵

The Eritrean government made no visible progress on key human rights concerns ... continued to violate its international obligations and domestic law, including in the areas of arbitrary and inhumane detention, indefinite national service, and lack of religious freedom, freedom of the media and freedom of speech. The government continued to cite “no war, no peace” with Ethiopia as justification for its failure to implement the 1997 constitution, which provides for democratic government and fundamental rights and freedoms.

It is dumfounding that the Home Office has based its conclusions on a report which has been discredited in the country where it was supposed to constitute the basis of policy change. Had the HO, instead of relying on the discredited Danish report tried to consider insights from the far more accurate account of the British Embassy officials’ letter in Asmara (see annex to the Guidelines) and the report of the UK Foreign and Commonwealth Office, which was part of their mission, on the state of human rights in Eritrea, it would have reached more reliable and judicious conclusions that reflect the reality on the ground.

As far as we can judge from the contents of the Guidelines issued by the Home Office, no new material which could justify change of policy was collected by the Team during their visit to Eritrea except the questionable information provided by the president’s advisor, Yemane Gebreab, and the Minister of Foreign Affairs regarding the duration of the ENS.

The New UK Policy on Eritrean Asylum-Seekers

According to the new Guidelines:

- the Country Guidance case MO (illegal exit—risk on return) Eritrea CG [2011] UKUT 190 (IAC) (27 May 2011 issued by the UK Upper Tribunal Immigration and Asylum Chamber⁶ which hitherto provided guidance to decision-makers is obsolete and is superseded by “The most up-to-date information available from inside Eritrea—notably the Danish Immigration Service 2014 Fact-Finding Mission Report (‘the Danish FFM Report’).⁷
- the open-ended ENS no longer constitutes persecution or degrading or inhuman treatment hence people who flee to seek protection will not be granted refugee status in the UK
- the open-ended ENS does not constitute forced labour

⁵ UK Foreign Office and Commonwealth, Eritrea—Country of Concern, 21 January 2015. Available at <https://www.gov.uk/government/publications/eritrea-country-of-concern/eritrea-country-of-concern>

⁶ Available at <https://tribunalsdecisions.service.gov.uk/utiac/2011-ukut-190>

⁷ HO Country information Guidance..., 1.3.3 and 1.3.4

- The ENS is not indefinite—it is between 18 months and four years
- conscripts or draft evaders who exit illegally either to avoid conscription or to desert from the ENS will not be granted refugee status
- Eritreans who exit illegally to avoid conscription or to flee from national service face no risk of persecution upon return provided they make good the 2% diaspora tax and sign a repentance form
- Those who refuse to undertake or abscond from military/national service are not viewed as traitors or political opponents and as a result it is unlikely that such persons would be detained upon return
- The most likely outcome for evasion or desertion is the requirement to return to military/national service
- Only those who have been politically active in their opposition to the Eritrean government and are readily identifiable (high profile cases) are likely to be at risk

These new policies represent 100% reversal of previous UK court's decisions and policies based on the two most prominent Country Guidance based on Asylum and Immigration Tribunal decisions, namely, MA (Draft evaders – illegal departures – risk) Eritrea CG [2007] UKAIT 00059⁸ and Country Guidance case MO (illegal exit—risk on return) Eritrea CG [2011] UKUT 190 (IAC) (27 May 2011) in which I was the key expert witness.

The Home Office do not deny that conditions in the Eritrean National Service (ENS) are harsh (p. 8) and make adequate references to reports that make such assertions. In spite of the diverse sources referred to in the Guidelines, the HO goes on to state that many Eritreans “complete military service without suffering mistreatment. As a result, those required to perform military service are unlikely to be at real risk of inhuman and degrading treatment but may be at such risk depending on their individual facts and specific circumstances” p. 8

There are many questions one can raise in connection to such an assertion. How do the HO know that those who “complete” the ENS had not been subjected to inhuman treatment when all the available evidence shows this to be the case? As the letter from the British Embassy in Asmara sent to the Home Office shows, there are no conscripts who complete national service and therefore, the HO's claim that those who complete the ENS have not been subjected to inhuman treatment is not evidence based. For example, when the HO asked the British Embassy in Asmara:

“Are individuals who have completed military/national service issued completion certificate? If so, who has the authority to issue them?”

⁸ Available at <http://www.refworld.org/docid/46822c3f2.html>.

The officials at the British Embassy wrote :

There is no such a thing as a “completion of National/Military Service Certificate.” In the absence of such documents, a person’s age gives an indication regarding whether they should be in military/national/service—under 57 for men, or under 47 for women who are unmarried.⁹

Since there are no male nationals who complete national service before they reach 57 (men) and single women 47, the HO’s assertion is not backed by evidence. There is no evidence in the Guidelines to show that the team during its visit interviewed Eritreans who completed national service without suffering inhuman treatment. The Home Office does not seem to consider serving in the Eritrean National Service without remuneration indefinitely does not constitute “inhuman treatment.” This contradicts in a fundamental manner its previous position and the positions of the UNHCR, Amnesty International, Human Rights Watch, Journalists without Borders, etc.

What we find incredible about the Home Office’s Guidelines is that the standard of proof underpinning the Guidelines is very low as compared to the extremely high standard of proof employed by their adjudicators to discredit accounts of Eritrean asylum-seekers. If the Home Office were to use such a low standard of credibility, practically all asylum-seekers would have been granted refugee status in the UK.

The Guidelines conclude in their Policy Summary, **“National service is generally between 18 months and four years”** (p. 9). There is no evidence whatsoever that backs this assertion. The indefinite nature of the ENS has not changed in practice or at a policy level. It is further stated in terms of whether the indefinite ENS constitutes “a form of slave labour, the most up-to-date information available from inside Eritrea suggests, in general” the ENS “lasts around four years” (6). The so-called “up-to-date information from inside Eritrea” is the discredited report of the Danish Immigration Service. Not surprisingly, this phrase is repeatedly used in the Danish report.

The Guidelines contain lots of inconsistent and contradictory information with regard to the duration of the ENS. On the one hand, it is stated that the UK mission were informed by the Eritrean Foreign Ministry that the issue was **“being discussed in the government but no specific information about whether or when it would undergo change was provided.”** It is further stated, “the Eritrean government and the EU and the embassies of the European countries are in an on going and constructive dialogue” (17).

Notwithstanding the fact that the team had been informed that no decision had been reached with regard to the duration of the ENS, the president’s advisor told

⁹ Annex B: Letter dated 1 April 2010 from British Embassy in Asmara.

them that the ENS is now limited to 18 months. The Guidelines state: “The Eritrean President’s Adviser Yemane Gebreab, told them that:

“from November 2014 national service is reverting to a duration of 18 months. This will now all be based in military ...This has started with the 27th round and people have been informed we have had meetings with students and families at Sawa. We do not want to publicise this by a presidential announcement—this is not how we wish to do things.”

It is surprising that the HO took his statement for granted when they were already told that no decision had been reached on the matter. Information obtained from Eritrea, including from the Sawa military camp indicate that no such information was disseminated to students or conscripts. Conscriptio is continuing as before. The 28th cohorts began their service at Sawa in August 2014 and those who did not pass their matriculation were assigned to the army and other ministries or departments, including the firms of the ruling party, the PFDJ.

If the government does not want to announce the “dramatic change” by presidential announcement, why have they not posted the information in their tens of media outlets? The only official to ever state the alleged change of policy regarding the duration of the ENS, was a junior member of staff at the Washington office of the Eritrean Embassy. If the Eritrean authorities had changed the duration of the ENS which like a cancerous growth has been devastating the Eritrean polity, the announcement would have been accompanied with massive accolade.

Additionally neither the Home Office nor Eritrean officials say anything about the hundreds of thousands who joined the ENS before November 2014, i.e. cohorts 1-26.

Finally the HO without any evidence concludes, “Evaders and deserters are unlikely to be considered traitors” (p. 9). It is further stated, “The most up-to-date information available from inside Eritrea suggests that those who refuse to undertake or abscond from military/national service are not viewed as traitors or political opponents. It is unlikely that a person would be detained/imprisoned on return as a result” (p. 7). This assertion is a verbatim copy from the discredited Danish report.

The indefinite ENS and the severe punishment regime have been driving tens of thousands of Eritreans to flee in search of international protection. Their number in the EU member states has been increasing dramatically in recent months. These rising numbers have sent shock waves through some EU member states. It seems that the sole purpose of the Home Office Guidelines is to stem this flow disregarding the consequences on those who desperately need protection against persecution—forced labour—accompanied with severe punishment regimes. Much of the conclusions of the Guidance are drawn from a deeply flawed source that has been discredited by those who worked on it and by many who are familiar with the situation in Eritrea. It is disturbing that the UK Home

Office is resorting to such unsafe practices that jeopardise the lives of many asylum seekers and the UK's obligations to them under the refugee convention and EU and UN treaties.

Appendix 4 – Statement from Human Rights Watch on the Danish Eritrea Immigration Report

Human Rights Watch. 17 Dec. 2014. 'Denmark: Eritrea Immigration Report Deeply Flawed,' <http://www.hrw.org/news/2014/12/17/denmark-eritrea-immigration-report-deeply-flawed>.

Denmark: Eritrea Immigration Report Deeply Flawed
European Governments Should Rely on UN Reports, Support UN Inquiry

DECEMBER 17, 2014

(Brussels, December 17, 2014) – A Danish immigration report on Eritrea that suggests changing refugee policy for Eritrean asylum seekers is deeply flawed. Denmark and other European governments should await the outcome of the United Nations Commission of Inquiry on Eritrea, established in June 2014, before considering any major policy changes concerning Eritrea.

The Danish report suggests that the Eritrean government may be carrying out reforms that would allow Eritrean asylum seekers fleeing Eritrea's abusive, indefinite national conscription program to be safely returned to the country. The number of Eritrean asylum seekers and migrants fleeing Eritrea and arriving in Europe has surged in recent years. A very high rate of Eritrean asylum seekers are granted refugee status or some other protected status in Europe, according to the UN High Commissioner for Refugees (UNHCR)'s statistics.

"The Danish report seems more like a political effort to stem migration than an honest assessment of Eritrea's human rights situation," said Leslie Lefkow, deputy Africa director. "Instead of speculating on potential Eritrean government reforms, host governments should wait to see whether pledges actually translate into changes on the ground."

According to UNHCR, the number of Eritreans arriving in Europe tripled in 2014 to nearly 37,000 in the first 10 months.

Eritrea is isolated politically, both regionally and internationally, and is under UN sanctions due to its alleged past support for the militant group Al-Shabaab in Somalia. Some observers suggest that interest by European governments in stemming migration from the Horn of Africa is the main impetus for a variety of changes in policy toward the country, including the assessment of refugee policy.

Eritrea was among the African governments that met with European Union member states in Rome on November 28 as part of the EU-Horn of Africa Migration Route Initiative (also known as the Khartoum Process). Its stated aim is to prevent human trafficking and smuggling of migrants from the Horn to Europe.

The November report from the Danish Immigration Service, largely based on interviews with anonymous diplomatic and other sources in Eritrea, contains contradictory and speculative statements about Eritrea's human rights situation. The sources also often qualify their statements, noting that there is no independent access to detention centers, that the fate of people returned to Eritrea is unclear, and that government reforms of the national service conscription are rumored, but not confirmed. There is no indication that the authors of the report interviewed victims or witnesses of human rights violations in Eritrea, and a prominent Eritrean academic consulted for the report has publicly criticized it.

Eritrea is one of the most closed countries in Africa, with no independent media, local nongovernmental organizations, or political opposition. The degree of government repression makes independent fact-finding in the country especially hard, including the difficulty of protecting interviewees from government reprisals. Eritrean refugee accounts are a primary source of information for international human rights investigators for this reason.

Eritrea's dire human rights situation has been widely reported, including by a UN special rapporteur on Eritrea who has published several authoritative and damning reports on conditions. Human Rights Watch has not found any significant improvement in the human rights conditions in the past year.

The most common patterns of abuse in Eritrea include indefinite military conscription; forced labor during conscription; arbitrary arrests, detentions, and disappearances; torture and other degrading treatment in detention; restrictions on freedoms of expression, conscience, and movement; and repression of religious freedom. Eritrea's policy of national service or military conscription is a significant reason for many young Eritreans to flee the country. By law each Eritrean is compelled to serve 18 months in national service starting at age 18, but in practice conscripts serve indefinitely; many for over a decade.

In June, the UN Human Rights Council condemned Eritrea's "continued widespread and systematic violations of human rights and fundamental freedoms," and adopted a resolution establishing a commission of inquiry to investigate abuses in Eritrea.

European governments should not make major policy changes toward Eritrea until they see the commission of inquiry findings, Human Rights Watch said.

"If the Eritrean government is really ready to carry out human rights reforms, it needs to give the UN commission of inquiry access so that it can make an objective assessment of progress," Lefkowitz said. "The Eritrean government's willingness to cooperate with the commission of inquiry will be the first test of whether it is ready to change course."

Appendix 5 – Statement from UNHCR on the Danish FFM

UNHCR. December 2014. Fact-Finding Mission of the Danish Immigration Service, 'Eritrea – Drivers and Root Causes of Emigration, National Service and the Possibility of Return, Country Information for Use in the Asylum Determination Process,' UNHCR's Perspective (See Appendix 4). <http://www.ft.dk/samling/20141/almindel/uuu/bilag/41/1435206.pdf>

Fact Finding Mission Report of the Danish Immigration Service, "Eritrea – Drivers and Root Causes of Emigration, National Service and the Possibility of Return. Country of Origin Information for Use in the Asylum Determination Process", UNHCR's perspective

1. In November 2014 the Danish Immigration Service (DIS) published a fact finding mission (FFM) report on its website, entitled "Eritrea – Drivers and Root Causes of Emigration, National Service and the Possibility of Return. Country of Origin Information for Use in the Asylum Determination Process" (hereafter: "the report").¹ The report summarizes information gathered by the FFM delegation in Ethiopia (20-27 August 2014), London (September 2014) and Eritrea (1-17 October 2014).

2. UNHCR welcomes efforts by State asylum services and others to ensure that States and other stakeholders in asylum procedures have access to high quality country-of-origin information (COI). Accurate, reliable COI that is also detailed and balanced is a precondition for high quality decision-making on applications for international protection. In addition, quality COI, available and accessible to all decision-makers, legal aid providers and others, has the potential to contribute to more harmonized adjudication of asylum claims.

3. Against this background, UNHCR welcomes the decision of DIS to produce a COI report in English on Eritrea, in light of the fact that asylum-seekers from Eritrea are amongst the top nationalities of asylum-seekers in Europe and elsewhere.² UNHCR does, however, have a number of concerns as regards the methodology used by DIS in the report. These concerns are outlined below.

4. The report contains references to "a UN agency" in Asmara, and meeting notes with a "UN Agency" are included in pp. 31-33 of the Annex to the report. For the sake of clarity and to avoid any confusion amongst readers of the FFM report, UNHCR wishes to emphasize that the information ascribed to a "UN Agency" is

¹ Danish Immigration Service, *Eritrea – Drivers and Root Causes of Emigration, National Service and the Possibility of Return Country of Origin Information for Use in the Asylum Determination Process Report*, 5/2014 ENG, November 2014, <http://www.nyidanmark.dk/NR/rdonlyres/B28905F5-5C3F-409B-8A22-0DF0DACBDAEF/0/EritreareportEndeligversion.pdf>.

² See e.g. UNHCR, *Sharp increase in number of Eritrean refugees and asylum-seekers in Europe, Ethiopia and Sudan*, 14 November 2014, <http://www.unhcr.org/5465fea1381.html>.

not information provided by UNHCR (despite the fact that the notes of the meeting with a “UN Agency” contain references to “UNHCR registered” refugees in Shire). UNHCR is not the (Asmara-based) “UN Agency” referred to throughout the report.

5. At the same time, notes of meetings between UNHCR in Addis Ababa and in Shire, Ethiopia, are contained in the Annex of the report (pp. 69-73). However, in the main text of the report (pp. 1-20 pages), the information provided by UNHCR in Addis Ababa is not used or referred to, and there is only one general reference to UNHCR Shire as a source of information. In UNHCR’s view, the main text of the report (pp. 1-20) could have benefited from inclusion of UNHCR’s Shire’s description of the procedures for Eritrean arrivals. This information is however not referred to in the report. Instead, the report relies on speculative statements of another interlocutor as regards nationality identification of UNHCR registered refugees in Shire.³

6. The main text of the report (pp. 1-20) makes frequent use of brief summaries of information provided by informants. Direct quotes are used only rarely. Moreover, on numerous occasions in the report, viewpoints of different interlocutors are grouped together in one summary paragraph. As a result, actual statements of, and nuances provided by, interlocutors are not reflected in the 20-page report.

7. A comparison between the main text of the report and the records of the meeting notes (which all interlocutors had an opportunity to review and clear; see Methodology Section 1.2) demonstrates that information provided by interlocutors has often been used selectively in the report. In other instances, the report ascribes statements to interlocutors that cannot, however, be traced to these interlocutors’ statements as reviewed and cleared by them and contained in the annexed meeting notes. The following examples refer:

- i. The report includes the following sentence (or variations of it), attributed to Prof. Kibreab, no less than three times: “It is now possible for evaders and deserters who have left Eritrea illegally to return if they pay the two percent tax and sign the apology letter at an Eritrean embassy. Kibreab was aware of a few deserters from the National Service who have visited Eritrea and safely left the country again.” However, the record of the conversation with Prof. Kibreab provided in the annex of the Danish report show that Prof. Kibreab followed this sentence with the qualification: “These are invariably people who have been naturalized in their countries of asylum.” This qualification is not included in the main text of the report on any of the three occasions that Prof. Kibreab’s statement is quoted.

³ The notes of the meeting with the “UN Agency” in Asmara on page 31 indicate that “It was acknowledged by a UN agency that **there is a possibility** that **maybe** one out of ten UNHCR registered refugees in the Shire camps in northern Ethiopia **could** be from other nationalities, including Somalis, Sudanese or any other tribes with similar features. (...)”. [Emphasis added].

ii. In another example (page 15), “International Organisation (B)” is said to have emphasized that “although it might be possible to return by paying the two percent tax and signing the apology letter, there is no information available on the specific profile of persons who are able to benefit from this practice”. According to the meeting notes, “International Organisation (B)” indicated also that “It was deemed very unlikely that those who have a fear of persecution would be approaching Eritrean Embassies to acquire a passport and consequently try to re-enter the country”. This second statement which qualifies the previous statement has, however, not been incorporated in the main text of the report.

iii. In a third example, “International Organisation (B)” is said (on page 19) to have considered that “the reasons for this shift in attitude was the government’s desire to encourage Eritreans to return to Eritrea”. It should be noted, however, that this statement cannot be traced to the meeting notes. What “International Organisation (B)” did consider (according to the meeting note and as referenced on page 19 of the report) is that “the Eritrean government is increasingly realizing that the exodus of mainly young men and women has reached a scale that threatens the development of Eritrea, as well as that the government is in the process of leaving its position of isolation and gradually opening up to the international community”.

iv. On pp. 19-20, the report states: “Many of the sources consulted in Eritrea (Western embassies A, B, E; a Western embassy based in Khartoum (met in Asmara); a UN agency; an International organization (A); a regional NGO based in Asmara; a well-known Eritrean intellectual) as well as a Western embassy (F) in Addis Ababa, Ethiopia, stated that most of the available reports on the human rights situation in Eritrea do not reflect the recent changes in Eritrea. According to these sources, such reports should therefore not be considered representative of an accurate image of the current situation in Eritrea regarding issues such as National Service, illegal exit and the general human rights situation.” This is the closing statement of the 20-page report and thus carries considerable weight. However, the part of the above statement reflected here in italics, cannot be traced back to any of the meeting notes with the interlocutors listed at the start of the quoted paragraph.

8. The report does not include any reflections on the reliability of specific sources of information. No information is provided in the report about the regulatory framework for the media, NGOs, research institutes and other actors in Eritrea, nor does the report contain an assessment of the impact of these regulatory frameworks on the independence of certain sources and the reliability of information provided by these sources.

UNHCR December 2014