Review of UK Home Office Country Information and Guidance – 'Eritrea: National (incl. Military) Service' (version 2.0e, September 2015) and 'Eritrea: Illegal Exit' (Version 2.0e, September 2015.

Prepared for the Chief Inspector of Borders and Immigration and the Independent Advisory Group on Country Information (IAGCI).

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Introduction

Purpose of the Review

This review assesses Country Information and Guidance (CIG) for 'Eritrea: Illegal Exit' (2015a) and 'Eritrea: Military (incl. National) Service' (2015b) produced by the Home Office in September 2015. The review is commissioned by the Independent Advisory Group on Country Information and is drafted in line with instructions received through the IAGCI Chair, Dr Laura Hammond.

This review aims to assess the Country Information in terms of its accuracy and balance, with the objective of ensuring that it offers an up-to-date and comprehensive summary of the most relevant available source material reflecting the human rights situation in Eritrea and about key issues raised in asylum claims made by Eritrean nationals. To achieve this objective I have checked the citations in the two COGs and I have examined the sources/documents from which information is drawn. I have also evaluated the continued relevance of the information provided in the CIGs, identified additional and more recent sources which are available and which will usefully supplement the substantive content of each CIG.

The scope of the review also includes an assessment of the report's coherence and format, the methods used to compile and report information, and it offers suggestions regarding how the structure and/or organisation of the CIGs might be improved to deliver the content more effectively in the context of the report's goals.

Overall comments on both CIG Reports

The Country of Origin Information Unit in the Home Office was created in the late 1990s and was tasked with creating 'objective' country information relating to the countries which produced the bulk of refugees entering the United Kingdom. It took some time before it was able to produce reports that were generally assessed as 'objective'. In particular some country information reports were heavily criticized on methodological grounds and for potential political bias because they were perceived to reflect political concerns rather than merely provide accurate data and information on a specific country. Nevertheless the COI Unit was only able to produce a good 'product' when its work was clearly differentiated from the Policy Unit which produced Operational Guidance Notes.

Unfortunately in 2008 the two units were merged and CIG reports have increasingly blurred the distinction between objective evidence and Home Office policy, a situation which undermines the standing and reliability of British COI reports used in Refugee Status Determination in the UK and elsewhere (for criticism of this blurring, see Pettit et.al. 2008, Immigration Advisory Services 2009a &b). This blurring of policy and 'facts' is clearly evident in current Home Office policy on Eritrea.

It is important to acknowledge that independent bodies, including the European Asylum Support Office and the International Association of Refugee Law Judges have established clear criteria setting out how to produce and how to assess COI, respectively.

The European Asylum Support Organization (2012), which is concerned about the quality and reliability of COI that is submitted in the Refugee Status Determination systems of Europe, identify the following criteria as essential for COI: neutrality and objectivity, usability, validity, transparency and publicity, and quality control.

Similarly Storey and Mackie (2006: 3), who are UK Refugee Law Judges, have set out the following criteria for assessing COI:

> *'Relevance and adequacy of the Information*
>
> i) How relevant is the COI to the case in hand? ii) Does the COI source adequately cover the relevant issue(s)? iii) How current or temporally relevant is the COI? Source of the Information iv) Is the COI material satisfactorily sourced? v) Is the COI based on publicly available and accessible sources? vi) Has the COI been prepared on an empirical basis using sound methodology? Nature / Type of the Information vii) Does the COI exhibit impartiality and independence? viii) Is the COI balanced and not overly selective? Prior Judicial Scrutiny ix) Has there been judicial scrutiny by other national courts of the COI in question?'

It is against these standards that I intend to review current Home Office policy on Eritrea. I adopt this approach for three reasons. First, in version 1 of 'Eritrea: Illegal Exit' (March, 2015) the Home Office omitted important COI which, at the very least, would have qualified their policy recommendations. The CIG also sought to instruct Immigration Judges to set aside existing case law and rely instead upon the evidence in the CIG. Thus in the March 2015 CIG 'Eritrea – Illegal Exit' the Home Office argued:

> '1.3.4 However, MO was promulgated in 2011. 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 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.

Second, the reports issued in March and the current versions issued in September rely heavily on the Danish Immigration Service report 'Eritrea: Drivers and Root Causes of Emigration, National Service and the Possibility of Return (2014). The Danish report has been attacked and discredited for its cavalier and highly selective use of the information provided to the fact-finding team by UNHCR, other organizations and by Professor Gaim Kebreab. Professor Kebreab makes it very clear that the Danish team: (a) deliberately misquoted and misrepresented his comments; (b) that the 'well known Eritrean intellectual in Asmara' whom they quote must have been affiliated to the ruling political party; (c) that in the climate of fear and mistrust in Eritrea, open conversations/discussions about politics necessarily limits the information provided to foreigners ; (d) no apparent effort was made by the team, or in the report, to question the partiality and vested interests of Eritrean-based informants;

(e) the quoted information from organizations supposedly based in Eritrea is contradictory, and (f) there are no independent NGOs in Eritrea (in 2011 all international NGOs were forced to leave the country; see: Kebreab 2014a, b, c and 2015; HRW 2014a, 2015; and UNHCR 2014a). Despite the controversy surrounding the Danish Report which predates publication of both CIGs[1], both CIGs rely heavily on this document while at the same time they fail to include an adequate range of publicly available sources of objective country information.

A careful assessment of the Danish report reveals that: (a) the primary sources of information relied upon are anonymized, which means that none of the information provided can be independently corroborated; (b) two named sources – Yemane Gebreab and Osman Saleh, both senior officials in the ruling People's Front for Democracy and Justice party – are relied upon as providing truthful statements that the government will limit national/military service to 18 months; however (c) no policy statements of this nature have been made, and there is no evidence available that such changes have taken place; (d) much of the information contained in the report was provided in late 2014 and is now out of date; (e) the report ascribes statements to informants/sources which cannot be traced in the notes of the organizations or individuals it consulted. Finally (f) the information provided to the Danes by UNHCR and Prof. Gaim Kebreab was selectively cited in a manner which distorted what they said. It is also notable that the evidence cited in both CIGs is completely at odds with current UK Foreign & Commonwealth Office (2015) reports on Eritrea.

In 2014 LIFOS[2], the migration unit of the Swedish government, stated its view of the Danish report:

> 'The report is difficult to read. Recurrent are statements taken out of context, compressed summaries of several sources, and conceptual summary. Lifos believes that the way the country information presented to allow the reader to easily get a distorted picture if in addition to reading the accompanying interview notes.
>
> The question of source credibility in the Eritrean context is complex. Lifos mean that the country information available, mainly from people outside Eritrea or players with limited opportunities for unbiased information gathering inside the country. The report lacks this dimension. The selection of sources is limited and it has not made a clear assessment of the sources used.
>
> Lifos notes that the report in parts a more positive outlook on the situation in Eritrea. It may be noted that there are conflicting data in different country information

[1] See: **'**Two Danish officials resign over Eritrea fact finding report' (*Caperi*, 21 March 2015) at: **http://www.caperi.com/two-danish-officials-resign-over-eritrea-fact-finding-report/;** 'Denmark admits 'doubts' over Eritrean report' (10 December 2014) at: **http://www.thelocal.dk/20141210/denmark-doubts-controversial-eritrea-report; and** 'Understand the Eritrea case' (31 March 2015) at: **http://www.politiko.dk/nyheder/understand-the-eritrea-case.**

[2] See: http://lifos.migrationsverket.se/dokument?documentSummaryId=34579.

and in particular to length of service in the national service and Punishment of deserters and people who have kept themselves from domestic service.'

One of the consultants who undertook the research on the Danish report, Jens Weise Olsen, called the report a "mess" (Olsen 2014). He said, 'It is a torpedo directly into the work we have made over 20 years to build credibility and transparency'. Indeed, in early 2015 the Danish government withdrew its discredited policy and has granted status to Eritrean asylum seekers.[3]

For the above reasons the only conclusion which can be drawn is that criticism of the Danish report is justified. It therefore follows that the information contained in the Danish report is not credible. For this reason the Home Office cannot rely upon the Danish report and all reference, including all quotations, should be deleted.

Third, the Home Office's reply to the IAGCI's comment on its Eritrean CIG reports robustly defended its work by claiming that in preparing COI it has 'taken into account common standards' for processing and providing COI and that it considers the Danish report to be a 'good example' of 'the use of a transparent and robust' methodology (Home Office 2015c).

A further general observation is in order: at nearly 110 pages in length the two CIGs are too long, too poorly organized and provide too little objective evidence to be of use to Home Office case workers, decision-makers and others involved the Refugee Determination System. The two reports should be consolidated into one concise report and organized in a more useful and transparent manner such as that followed by much earlier Home Office reports and by 'Still Human, Still Here' in their COI report on Eritrea (2015).

In light of the evidential problems involved in relying upon the Danish report and the specific issues I identify below, the only possible way forward for the Home Office is to completely rewrite both CIG reports in a manner which conforms to the guidelines set out by EASO (2012). A failure to undertake this task will ensure that both CIG reports, and the Home Office unit that produces them, will be viewed as totally lacking in credibility.

I. Summary of findings on 'Eritrea: National (incl. Military) Service' (September, 2015).

Disconcertingly, considerations of policy are completely divorced from, and left unconnected to, the objective evidence. Potential users of the report are left in a position where they must **either** accept the link between the COI provided in the CIG and Home Office policies **or** find different COI with which to assess Home Office policy asylum claims made by Eritreans. This is an unsatisfactory situation which can give rise to incorrect asylum decisions.

3 See: Michel Arseneault 'Rights groups fear EU policy shift on Eritrea' (2 April 2015) at: http://www.english.rfi.fr/africa/20150402-pariah-partner-eu-mulls-policy-change-eritrea.

A further problem arises from the manner in which the CIG are organized. Thus each begins with a 'consideration of the issues' (which blurs 'facts' with policy considerations), followed by a section entitled 'Guidance', which is followed by a section entitled 'policy summary'. Both the latter sections are divorced from a reliable range of objective evidence (indeed the CIG provides a problematic assessment of a very limited number of COI sources).

Comments on specific issues

'Guidance'

1. Sec. 2.3 addresses the issue 'Will the person be required to undertake national service on return'? In the report no new or existing evidence on this issue is cited. While it is appropriate to begin by citing existing case law, this is only the starting point in the assessment of asylum claims and further information must be provided.

2. Section 2.3 sets out the categories of persons who are required to undertake national/military service, **this section fails to cite/note** available objective evidence which indicates **that forcible indefinite conscription into military/national service now extends to underage children, to elderly people in their 70's and to Orthodox Christian clergy** (i.e. who are not Pentecostal Christians covered by a third CIG which is not reviewed here). The extension of conscription directly contributes to the flight of individuals out of the country. See my discussion of these issues:

    a. The conscription of children is addressed at (I. 20-22) below.
    b. The conscription of adults older than 57 is addressed at (I. 13) below but also see HRW (2014b).
    c. The conscription of Orthodox clergy/priests is addressed at (I. 12) below.

3. Sec.2.4.3 addresses the question as to whether individuals conscripted into military/ national service might become involved in acts contrary to the basic rules of human conduct (i.e. Art. 1F of the Refugee Convention). It fails to discuss,

    a. Evidence about how individuals are forcibly conscripted, i.e. via giffa's (military 'roundups' of civilians) and what the military does with the individuals it detains;

    b. No attempt is made to find evidence to support the conclusion that national/ military service may bar an individual from obtaining asylum. This does occur. For example the US the courts decided in the case of 'Negussie v Holder'[4] that

[4] For a summary of the case see: https://www.law.cornell.edu/supct/html/07-499.ZS.html

'The Immigration and Nationality Act (INA) bars an alien from obtaining refugee status in this country if he "assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion." 8 U. S. C. §1101(a)(42). This so-called "persecutor bar" applies to those seeking asylum or withholding of removal, but does not disqualify an alien from receiving a temporary deferral of removal under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). During the time petitioner, an Eritrean national, was forced to work as a prison guard in that country, the prisoners he guarded were persecuted on grounds protected under §1101(a)(42). After escaping to the United States, petitioner applied for asylum and withholding of removal. Concluding that he assisted in the persecution of prisoners by working as an armed guard, the Immigration Judge denied relief on the basis of the persecutor bar, but granted deferral of removal under CAT because petitioner was likely to be tortured if returned to Eritrea. The Board of Immigration Appeals (BIA) affirmed in all respects, holding, *inter alia*, that the persecutor bar applies even if the alien's assistance in persecution was coerced or otherwise the product of duress. The BIA followed its earlier decisions finding *Fedorenko* v. *United States*, 449 U. S. 490 , controlling. The Fifth Circuit affirmed, relying on its precedent following the same reasoning.'

4. Sec. 2.5.2-ff. 'Physical Conditions and potential for mistreatment' during national and military service.

    a. The language used is vague and no links to specific sources are provided. It simply will not due to state, as occurs at 2.5.4 that 'some sources' report varying conditions.

    b. The UN Commission of Inquiry on Human Rights in Eritrea (2015) provides extensive evidence on this and related issues which is better sourced, more extensive and more reliable than was provided by the diplomatic missions undertaken by the Danish, Norwegian or British government to Eritrea which were unable to examine military service or the detention of conscripts etc. first hand.

    c. It would be better to make specific references to a range of sources including the UN report.

5. Sec. 2.5.10 'Length of (military and national) service.

    a. Sec. 2.5.13 states that national service will be limited to 18 months. This 'fact' comes from the discredited Danish Report and private communications with Eritrean officials. **This section needs to be deleted.**

b. At sec. 2.5.16-19 the Home Office refers to the case of 'Silidin v France'[5] on the issue of forced labour (cf. European Court of Human Rights, 2014). **The case concerns French domestic law and the mistreatment of a domestic worker; it is not relevant to the issue of forced labour in Eritrea and should be deleted from the CIG**.

c. **Sec. 2.6.4-5 relies on the discredited Danish report and should be deleted**.

d. Sec. 2.7 'Are draft evaders/deserters regarded as traitors?'

   i. At 2.7.3 the source cited is the discredited Danish Report.

   ii. Secondary sources on this issue might include Muller (2012a) but the authorities approach to military deserters/evaders is clearly linked by her to a growing securitization of the state and growing internal repression.

   iii. The important issue is not what term is used by the Eritrean authorities to describe individuals who evade/desert military service, but rather how such individuals are treated when they are forcibly returned to Eritrea. There is abundant COI on this issue at (I. 33-35) below and in the UN Commission of Inquiry report.

   iv. The entire section needs to be revised to reflect an assessment of a balanced mix of relevant COI.

6. Sec. 2.8 'Are those at risk able to seek effective protection'. This issue needs to be clearly linked/cross referenced to (I. 28-29) below which discusses the absence of rule of law.

'Policy Summary'

7. The issues summarized here are divorced from a consideration of relevant COI.

   a. Specifically 3.1.2 should cross-refer to COI on conditions of detention, torture, and the treatment of draft evaders and military deserters which raises the issue of 'persecution, inhuman or degrading treatment'.

'Country Information'

8. Sec. 5 'The Legal Framework' (p.15). This section provides long excerpts from Proclamation no. 82 of 1995 (Proclamation of National Service) which is publically accessible and does not need to be cited at length.

[5] See: http://hudoc.echr.coe.int/eng?i=001-69891#{"itemid":["001-69891"]}.

a. More importantly, **the fact that the Proclamation has clearly been superseded in practice and cannot be relied upon as an accurate or reliable guide in assessing asylum claims is not clearly indicated**.

b. The excerpts taken from the Proclamation suggest that only the stated exemptions are in effect, namely with regard to the age of conscription, students, etc. This is clearly not the case.

c. The report needs to cite COI about the Warsai Yekaello programme created in 2002 by President Afeworki which established indefinite conscription in to the military/national service. Adequately addressing this issue would include citing the following material:

    i. Human Rights Watch (2009) sets out the background to the policy and its implications. They argue that 'at the time of writing, most of the able-bodied adult population is on active, indefinite, compulsory national service or on reserve duty. The only exceptions are on health grounds, or, for women, pregnancy. In discussions with visiting members of the European Parliament, Eritrean government officials, "admitted that military service, although formally to last 18 months, often extends over decades, reducing both the active workforce and the individual freedom and choices of the citizens." (p. 44)

    […]

    For a country to enforce conscription laws may not be a violation of human rights. However, the way this is done in Eritrea—the violent methods used, the lack of any right to conscientious objection, and the lack of any mechanism to enable a challenge to the arbitrary enforcement of conscription constitutes abuse. Furthermore, although national service and conscription at times of genuine national emergency may be permitted as a limited exception to the prohibition on forced labor, the indefinite nature of national service in Eritrea, the threat of penalty (and collective punishment of families of those who desert), the use of recruits for forced labor, and the abuses associated with punishing those who do not participate violate Eritreans' basic human rights, various provisions of the Eritrean constitution, and international human rights law' (p. 45) [my emphasis]

    ii. UNHCR (2011) states that

    'In May 2002, the Government officially introduced the Warsai Yekalo Development Campaign (WDYC), a national social and economic development effort, which effectively rendered the national service open-ended and indefinite. As a result, national service conscripts, not in active military service, are required to undertake "national development"

activities, including in the agricultural and construction sectors, for indefinite periods of time and survival wages. The Government reportedly uses human resources as a nationalized asset, utilizing the labour of military conscripts under the guise of development programmes. There is evidence to suggest that most manual labour in emerging mining projects in Eritrea is provided by military conscripts'. (p. 12-13)

iii. To date the government has not rescinded Warsai Yakallo.

9. Sec. 5 should reference further information on national service/conscription including, but not limited to: (a) Human Rights Watch (2009); (b) Gaim Kebreab (2009) and (2013).

10. Sec. 7 'Exemptions and alternatives'

a. **Sec. 7.1.2 relies on an out-of-date information from the British Embassy** (2010) **which can no longer be relied upon**. Today, given the extension of conscription to the young and the old, <u>in effect there are no exemptions from military/national service</u> except for PFDJ officials and wealthy supporters of the PFDJ.

i. Based on a very short visit to Eritrea in 2011, Muller (2012b: 457) identified what she believed to be a 'shadowy network' of well-off young men ostensibly connected to the ruling party who were involved in 'facilitating escape' for cash, i.e. they were smugglers.

b. The discussion regarding how military officers decide whether a conscript is medically fit for national/military service seems to reflect current realities and the arbitrary way in which the military exercises it authority over civilians (there is no other COI on this issue).

c. In relation to the nature and objectives of national service, Gaim Kebreab (2014c) argues that:

'In Eritrea, there are no citizens that are excepted from the duty of performing national service in terms of being outside the purview of the ENS at all. This concept is foreign to the Eritrean reality. The principle of conscientious objection is also equally foreign to the ENS. Although the proclamation on the ENS specifies the different categories that can receive exemption, with few exceptions, exemptions are granted on temporary basis until the condition of the individual concerned change…'

11. Sec. 7.3 ‘Women’.

a. Sec. 7.3.5 relies on evidence provided by Dr. Bozzini but h**is comments are selectively cited and as such are misleading**.

i. It is not clear from the notes on his presentation what a ‘clandestine situation’ is? Is it pregnancy while in national service, is it marriage, is it an unrecognized ‘union’ other than ‘marriage’? How and why is this particular issue important with respect to asylum claims?

ii. Bozzini cites cases of the rape of female conscripts by officers and male conscripts, but this information is not referred to in the CIG.

iii. The section needs to cite better material including:

1. Published work on government surveillance by Bozzini (2011).
2. The UN Commission of Inquiry (2015) on
    a. Persecution of Muslims at para 665.
    b. Violence, including rape and intimidation by officers and in detention, at paras 706-709 and 1074-76,
    c. Giffas and the conscription of women at paras 1215-1219.
3. For a recent evaluation of the situation of women in Eritrea, including rape and other forms of violence, see: ODI (2011).
4. For a historical analysis of Eritrean women see: Muller (2005).

12. Sec. 7.4 ‘Religious Grounds’.

i. **Sec. 7.4.1 summarizes information from the British Embassy (April 2010) and is out of date**. Eritrea began forcibly conscripting priests and *debtera* (assistant priests) in 2006. The following sources should be added to the COI:

- ‘Eritrea's forced military service drains Church manpower’ (*Catholic News Agency*, 4 December 2012) at: http://www.catholicnewsagency.com/news/conscription-in-eritrea-drains-church-manpower/
- ‘Eritrean Orthodox Churches Closing Their Doors at an Alarming Rate’ (18 March 2010, *Asmarino.com*) at: http://asmarino.com/articles/606-eritrean-orthodox-churches-closing-their-doors-at-an-alarming-rate
- ‘Eritrea Forcing Christian Ministers into Military Camps’ (24 April 2008, *The Christian Post World*) at:

http://www.christianpost.com/news/eritrea-forcing-christian-ministers-into-military-camps-32094/

- Further material about the conscription of Orthodox priests and the mistreatment of other religious groups can be found in the reports provided by Christian Solidarity Worldwide.

13. Sec. 7.6 'Recall for Reserve Duties' **omits discussion of the 2012 policy to create *Hizbawi Serawit*** (literally 'population soldiers') an armed reserve guard sometimes referred to as the 'people's army'.

    a. Discussion should link/cross refer to sec. 10. 3 of the CIG.

    b. The UN Commission of Inquiry provides extensive information on this unit. In relation to the issue of military recall, the UN reports that

    1450. Everyone who is not actually serving in the army is a potential recruit for the People's Army, including those who are currently in the national service. People who have been released from national service due to health problems or their age are nevertheless obliged to join the People's Army. Although several witnesses noted that women are exempted from serving in the People's Army, the Commission has heard testimonies about women having had to join.
    1451. Reportedly, there are people in their 40s who have to join the People's Army. However, the majority are people in their 50s and older, some even up to the age of 70. [my emphasis]

14. Sec. 9.13 refers to a paper – in fact an introduction to a journal issue which examines contemporary Eritrean politics – written by Tekle M. Woldemichael. **The quotation cited by the Home Office is a miss-statement/miss-representation of the author's views and should be deleted**. See my discussion of the authors' arguments at (I. 19) below.

15. Sec. 9.1.9 quotes the Danish Immigration report at length (pp. 27-29). However **the key sources are not revealed, the reliability of much of the information in the report is disputed and the publication is out of date. Because the Danish report cannot be relied upon this section should be deleted**.

16. Sec. 9.1.12 cites EASO (2015) regarding the length of national service as being 5.8 years. However EASOs source is Gaim Kebreab (2013) who reported that his data comes from individuals who deserted the military or fled national service after having served about 5.8 years of service (5 years for women). **Gaim Kebreab's research clearly states that military service is indefinite. The quote is misleading and should either be revised or deleted.**

17. Sec. 9.2 ‘Discharge and Dismissal’. This section provides a partial quote from the UN Commission of Inquiry regarding release from service. For completeness para 1253 should also be included:

> 1253. The Commission documented requests for release which were systematically refused, without any explanation or indication of the length of the remaining time someone was expected to continue performing national service. There also appears to be no mechanism available to challenge the refusal. Almost all witnesses the Commission heard from emphasised how having to live facing an uncertain future and without being given any choice about what they would make of their own lives has affected an entire generation in Eritrea.

   i. Sec. 9.2.1 quotes the EASO (2015) report. The final paragraph quoted in this section runs counter to all COI except the Danish Report.

18. Sec. 9.3 ‘Moves to time-limit national service’.

   a. **This section relies on the discredited Danish report and a private meeting between visiting Danish and British officials and Presidential adviser Yemane Gebreab** at which the visitors were informed that ‘from November 2014 national service would revert to duration of 18 months’, and that this would come into effect with the 27th round of recruitment.

   b. Sec. 9.3.4 states that Foreign Minister Osman Saleh reiterated this statement to the British delegation.

   c. Sec. 9.3.6 points to private statements made by Yemane Gebreab to the same effect which were uploaded to ‘YouTube’ on a visit to Europe.

   d. It is on the basis of private communiqués that the Home Office has determined that national service will no longer be indefinite and that indefinite conscription will end.

   e. It should be noted that the evidence given to UN Commission of Inquiry into Human Rights in Eritrea (2015) was <u>that the government had previously made statements that people who fled the country would not be subjected to harm if they returned voluntarily, and that these promises had not been kept</u>. For instance:

> *(iii) Voluntary repatriation*
> 438. A witness reported to the Commission his and other children’s repatriation to Eritrea which was facilitated by an international organization. Allegedly, some of them were forced to enrol in the military service upon return, as explained in a submission by one of them, who was 13 years old at the time:

"*My own military experience began when I was almost 13 years old. I was sent with some of the other younger members of the group who had returned from [country F] … to fill out paperwork as a guarantee of our freedom. However, when we arrived [in Eritrea] our permit of freedom and supporting letter … were taken from us. We were thrown into prison for three days. When we were released we were sent to [another] place, [where] we were accused of spying for [country F] soldiers. The guards tortured us, beat us, and punished us for five days. Afterwards, they moved us to several different prisons that were famous for holding faith-based and border crossing prisoners. Though we were promised freedom, they took us instead to … a military training centre."*

(iii) Opportunities to return to Eritrea for members of the diaspora
439. Most witnesses who spoke to the Commission had left Eritrea illegally. Those who departed with an exit visa and remained abroad are considered as defectors. Some witnesses have also been involved in activist activities abroad denouncing wrongdoings by the Government. Therefore, almost all witnesses who spoke with the Commission believed that they would not be able to return to Eritrea, or that they would be punished if they do. Others fear that they might not be able to leave again, should they be arrested.

1263. The Commission collected testimonies from Eritreans who left the country, as recently as February 2015, but only two of them had heard that conscripts of the 27th round had been informed in November 2014 about the Government's intention to respect the statutory 18-months maximum duration of national service when they were assigned to their military units. None of the other witnesses who had left the country recently, were aware of such an announcement. There is a lot of scepticism as to whether the Government will this time fulfil its promise, as it has made similar announcements in the past that were never followed through'. [my emphasis]

f. I am aware of one statement allegedly made on Eritrean TV by President Afeworki in January 2012 which was picked up in the Ethiopian media.[6] The President is reported to have said that 'he will guarantee the safety of tens of thousands of young people who fled the country to avoid forced conscription in the military, should they chose to return to the East African nation'.

g. However, **to date there is no evidence that a decision to limit national service to 18 months has been decided, implemented or announced**:

   i. The International Labour Organisation met with the Government of Eritrea in 2014 to discuss the issue of indefinite national service. After

[6] See: Tesfa-Alem Tekle 'Isaias Afewerki gives amnesty to Eritreans who escaped conscription' (10 January 2012) at: http://:ethiopianreview.com/forum/viewtopic.php?f=2&t=34943.

hearing submissions by the Government of Eritrea on this issue, which followed repeated attempts by the ILO to take up the issue with the Government and repeated assurances made by the Government, the ILO (2014) concluded that:

'… the large-scale and systematic practice of imposing compulsory labour on the population for an indefinite period of time within the framework of the national service programme goes well beyond the exceptions provided for in the [ILO] Convention'

Furthermore,

'… the Committee urges the Government to take the necessary steps to amend or repeal the Proclamation on National Service, no. 82 of 1995 and the WYDC Declaration of 2002, in order to remove the legislative basis for the exaction of compulsory labour in the context of national service …'.(p.9).

ii. Eritrea cited the arbitration decision made by the Eritrea-Ethiopia Boundary Commission (The Hague) as its justification for continuing indefinite conscription.[7] Eritrea argued that if the international community were able to change that decision, then Eritrea would end indefinite conscription.

iii. However the decision of the Eritrea-Ethiopia Boundary Commission is final and binding on both countries. It is not possible to appeal against or overturn the Commission's decision which means that there will not be a change of government policy on national service.

iv. Despite the assurances given to the ILO, **the Government has not amended or removed the relevant legislation.** National Service continues to be implemented.

g. Regarding the promises given by Yemane Gebreab to the Danish mission, it was the view of Human Rights Watch (2014a) that,

> "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."

[7] For information on this decision, see the Commissions website at: http://www.haguejusticeportal.net/index.php?id=6162. I have discussed the issues involved in some detail, see Campbell (2014: chapter. 2).

h. In July 2015 Yemane Gebreab was interviewed on Channel 4 news about indefinite national service and he refused to answer questions as to whether indefinite national/military service would end.[8]

i. A search of the government English media produced by the Eritrean Ministry of Information (http://www.shabait.com/) reveals that the government has not made any public announcements in national media about reforms to national service.

j. Announcements about policy changes affecting conscription/national service would have been carried on the websites of Eritrea embassies/ consulates.[9] To date no such announcements have appeared on embassy/consulate websites.

k. In July 2015 the 29th round of national service was inaugurated at Sawa military camp, at which time the authorities did **not** announce that conscription would be limited to 18 months.[10]

l. In October 2015 Ms. Federica Mogherini, the European Union Commission's High Representative for Foreign Affairs and Security Policy and Vice-President of the Commission, made her first visit to Ethiopia and the African Union Commission. Among the issues discussed was Eritrea. A major issue on the agenda was 'migration' and the need for Africa-EU migration partnerships.[11]

> "… Ms Mogherini also called on Tuesday for greater respect for human rights in Eritrea, a major source country of refugees. The UNHCR says 5,000 people flee Eritrea each month many claiming to have fled to escape indefinite military conscription and other human rights abuses. She told journalists: "In Eritrea there is a relevant need for important reforms inside the country, to improve on the one side the human rights record and on the other the living conditions of the population. She said "An Eritrea that is reformed from within would be very beneficial not only when it comes to the issues related to migration flows but also to the overall stability and security of the region."

[8] See: https://www.youtube.com/watch?v=JjF7QDlpqY8

[9] See the Eritrea embassy website in the US at: http://www.embassyeritrea.org/index.htm and the Eritrea embassy in London at: http://eritrea.embassyhomepage.com/index.htm.

[10] See: '29th round National Service Program gets underway' reported on the official Eritrea website at: http://www.shabait.com/news/local-news/20243-29th-round-national-service-program-gets-underway.

[11] Source: Her comments and associated discussions on migration were reported in the Ethiopian Ministry of Foreign Affairs weekly bulletin, *A Week in the Horn of Africa*, 23 October 2015. At: http://www.mfa.gov.et/weekHornAfrica/morewha.php?wi=1970#1970

m. On November 9th 2015, in a debate on Eritrea held in the House of Commons[12], the Minister for Europe (Mr. David Lidington) stated that:

> 'Alongside the very real concerns shared by everyone in the House this evening, we should not ignore any signs of progress, even small ones. I welcome the fact that Eritrea took part in the UN universal periodic review process at the Human Rights Council and in article 8 dialogue with the EU. Last year, Eritrea ratified the convention against torture and other cruel, inhuman or degrading treatment or punishment, and voted in favour of a global moratorium on the use of the death penalty. I also welcome its co-operation in efforts to tackle the human trafficking and smuggling that puts people's lives at risk. These are indeed small steps, but they are steps in the right direction. The test now is for the Eritrean Government to follow through on their commitments with concrete action to improve the human rights situation on the ground, and the onus is on them to demonstrate progress.
>
> A key part of that action should be to amend Eritrea's system of indefinite national service. A system without a clear end date drives many young people to leave the country, and this needs to change. I welcome the fact that earlier this year the Eritrean Government made a public pledge to limit national service to 18 months, but Ministers here have been very clear when talking to the Government in Asmara that it is not enough for Eritrean officials or Ministers simply to make that pledge in Europe—the commitment needs to be publicised widely within Eritrea itself, and it should apply to all conscripts and not just those who have been enlisted recently.' [my emphasis]

n. All the information cited above should be made available in the CIG.

19. Sec. 10. 'National Service: roles and assignments'

a. Sec. 10.1.2. **This is based on a substantial mis-representation and mis-interpretation of Tekle Woldemikael's introduction to an edited volume** on contemporary politics in Eritrea (published in the journal *Africa Today* vol. 62, no. 2, 2013).

i. In the paper the author makes it clear that his view, and that of the contributors to the volume (which should be cited in the report), is that:

> 'The Eritrean state made policy choices that stifled economic growth and political stability and made the nation uninhabitable for its growing youthful population (p. viii).
> […]
> The ensuing policy, designed to expand the sovereignty of the state over the population, is the immediate cause of the current economic, political,

[12] See: http://www.publications.parliament.uk/pa/cm201516/cmhansrd/cm151109/debtext/151109-0005.htm#15111011000001.

and citizenship crisis as well as the refugee crisis it has spawned. The more Eritrea pursues a stringent policy to protect its national sovereignty and control the economic and political sphere, the more it generates continuous economic failure, political instability, and social upheaval, including new refugees, who join the Eritrean diaspora communities around the world. All the articles in this present volume examine, directly or indirectly, the disastrous consequences of this misguided policy. (p. viii)

[…]

National service began in 1995, drafting teenagers over the age of sixteen and adults under the age of forty. It initially entailed six months of training and one year of service; however, it soon developed into two years or more in military service. Since the border war with Ethiopia, it has turned into unending military service (p. xiv.)[my emphasis]

[…]

Since 2002 the military national service has been tied to a development program campaign called Warsai-Yikealo in which the youth are required to perform their national service as forced labor for an indefinite time period. This glaring difference of life chances, rights, and privileges among preferred citizens, diasporic citizens, and locals has triggered an insatiable desire for most working-age young people to seek better opportunities and rights in exile. They are leaving in droves, through every country that borders Eritrea. They are abandoned by the Eritrean state; they are, to use Hannah Arendt's words about refugees, stateless people. (p. xiv)

ii. In light of the mis-representation a revised CIG should insert the above quotations to make it clear what Tekle Woldmemikael actually said.

20. Sec. 10.1.5-7 'From School to Sawa'. The Home Office quotes extensively from the EASO (2015) COI report on Eritrea. At (sec. 10.1.8) the CIG reports that Sawa military camp/school is 'now primarily an educational institution'. However this information derives from a Norwegian report by Landinfo, *Temanotat Eritrea: Nasjonaltjeneste* (23 March 2015, p. 9) which is published in Norwegian.

    a. An English version of this report is available and should have been consulted and listed as the source (not EASO).

    b. **Careful reading of the English version reveals numerous problems with the Norwegian report which make it an unreliable source**.

        i. The Norwegians' honestly admit the limitations of their study. For instance at p. 5, they state that

‘The majority of our sources are anonymous at their request. The disadvantage of anonymous sources is unfortunately that readers cannot verify whether or not the source and information are reliable. In some countries, such as Eritrea, few citizens will speak out if their identity is made public, due to fear of reprisals from the government or difficulties in their work.’ [my emphasis]

ii. The Norwegian report also states that

‘In winter 2013, Landinfo's sources in Asmara claimed that while Sawa has undoubtedly had a bad reputation in the past, it had improved in recent years. According to the source, Sawa has primarily become an educational institution, rivalling the size of a city. It can reportedly house an estimated 30,000 people. The camp is located near the Sudanese border, in the Gash Barka region by the river Sawa, in the western part of the country. Sawa was built in the 1990s as a military training camp. Initially recruits lived in simple bamboo huts. Over time houses and dormitories were constructed by the camp's residents. Sawa is divided into two areas: an educational area and a military training area. There are also several small stores which sell groceries and other necessities. Parents can visit their children in Sawa and there is lodging provided on site ([source:] local Eritrean source, conversation in Asmara 29 January 2013; international representative (2), conversation in Asmara 30 January 2013; representative of NUEYS, conversation in Asmara 06 February 2013; diplomatic source (5), conversation in Asmara 14 January 2015). Boys and girls have separate dormitories, but interact freely the rest of the day (p. 10).’ [my emphasis]
[…]
‘The school system in Sawa is ostensibly separate from the military training in the camp, which is part of National Service. Schools are governed by the Ministry of Education, while National Service is governed by the Ministry of Defence. As of the winter of 2013, several of Landinfo's sources in Asmara claim that the twelfth school year in Sawa ends with six to eight weeks of military training.’ [my emphasis]

c. The information in the Norwegian report does not appear to be based on an actual visit to Sawa but rather on information provided by Eritreans and/or officials in private communiqués.

d. As with the Danish report, reliance on such sources is highly problematic. While this type of information may shed some light on the situation at Sawa or in Eritrea, it cannot be relied upon as the basis for assessing asylum claims. To

their credit the Norwegians admit this difficulty, but **the Home Office CIG fails to address the problematic nature of the sources**.

e. The UN Commission of Inquiry on Human Rights in Eritrea contains an annex with aerial photographs of Sawa Camp taken in 2012 which indicate that it was a walled, closed security base and that it hosts a military detention facility for the 6th Brigade.[13] While such photographs cannot be entirely relied upon, they do call into question statements that Sawa is 'now primarily an educational institution'. The point is that without direct and unmediated access to Eritrean institutions, schools, places of detention etc. it is not possible to come to clear conclusions about institutions such as Sawa.

f. In a brief visit to Eritrea in 2011, Muller (2012b: 455-456) visited Mai Nefhi college near Asmara. She found that the college was well governed and that students studied diligently using a well-resourced library and access to the internet. Graduates from the college were frequently assigned and/or volunteered to teach at Sawa school/military camp (because they could easily to Sudan from Sawa).

21. Sec. 10.1.10 briefly cites the 2015 UN Commission report, but **the quote is selective and refers only to events in 2003**. The UN Commission provides extensive evidence regarding the conscription of children, including underage children, from 2003 to the present which should be cited.

22. This is the appropriate place in the CIG to discuss and present **objective evidence on the conscription of underage children which is missing from the CIG.** Among the sources which should be cited are:

    a. The US Department of Labour (2014) which states that,

> 'In 2014, Eritrea made efforts to eliminate the worst forms of child labor, but was also complicit in the use of forced child labor and forced military recruitment of children. While the Government ratified the Palermo Protocol on Trafficking in Persons, Eritrea is receiving this assessment of no advancement because it continued to require children to participate in a national program called Maetot, under which children in grades 9 to 11 engage in agricultural, environmental, or hygiene-related public works projects for varying amounts of time during their annual summer holidays from school. In addition, although Eritrean law prohibits the recruitment of children under age 18 into the armed forces, there may be children enrolled in the Government's compulsory military training program. Gaps in the legal

[13] The first FOI request/reply submitted by the Home Office for me to assess clearly states that the 6th Brigade prison is in Sawa, the report cites an account of a former detainee which is worth noting.

framework exist, including a lack of specific penalties for employers of children in hazardous work and employers of children under the minimum age for work'. [my emphasis]

b. Describing the militarization of education in recent years, Human Rights Concern – Eritrea (2013) state that

'If students refuse to participate in military training, they are not allowed to sit their leaving examination or receive the school-leaving certificate; they are denied access to further education and their student ID is taken off them. Further punishment may ensue. Children of this age, in or out of school, are liable to be rounded up from the streets (round-ups are known as *Giffa*) and taken away to prisons and later to military camps for training, followed by deployment into full military service.

Children who have been arrested and have no guarantor or person to bail them out of prison - who were in prison in the first place because of their destitution, poverty, homelessness and sleeping rough outdoors – are forced into military training and later full military conscription. In these detention centres they are physically and mentally tortured. They become victims of physical, psychological and sexual abuses and exploitation by the detention personnel and even sometimes by fellow-prisoners too. Children and adults are not held separately in these prisons'.

c. The HRC-Eritrea report also provides 10 case studies of underage children who were forcibly conscripted into the military, including a 15 year old 6th grade student, a student in the 8th grade, and 15 year olds caught attempting to flee the country. All were imprisoned, mistreated/beaten and forced into military service.

d. The UN Commission of Inquiry (2015) found that,

"1189. Contrary to the lower age limit for national service of 18 as stipulated by national law, Eritrea's current system of conscription results in the drafting of minors, including children below the age of 15. Almost all of these children are recruited involuntarily. Children were among those conscripts who had to participate in the 1998-2000 war against Ethiopia. Several witnesses reported that they had to participate actively in the hostilities, when they were still below the age of 18. Many remembered friends who were sent to the front line as child soldiers and died during the battle.
A witness recalled: "*There were many underage boys in Sawa. One of them remains in my memory. He was trained like us and was sent to the front. He must have been between 16 and 17. He was trained to shoot and he was a full soldier.*"
A former child soldier who participated at the age of 17 as a regular soldier during the first round of the war in 1998, notably in the attack of the Ethiopian town of Bure, underlined that he and many of his friends were not given a choice. He remembered that there were many under-age soldiers who were deployed and died in the battle.

Another witness who was recruited at the age of 16 but not sent to the war zone himself remembered three of his friends, all 16 years old, who were sent to the war zone. Testimonies collected by the Commission show that children below the age of 15 have been recruited into active national service, notably prior to the 1998-2000 war with Ethiopia but also afterwards." [my emphasis]

e. In a section on the conscription of underage children it is important to reference UNHCR (2014) 'Guidelines on International Protection no. 10' which states:

> **"C. Prohibition on Underage Recruitment and Participation in Hostilities**
> 12. Explicit safeguards exist to prevent the exposure of children to military service. All recruitment [both compulsory and voluntary] in State armed forces and the participation in hostilities of those under 15 years of age is prohibited under international treaty law. Such recruitment amounts to a war crime. Whether conducted by governments or by non-State armed groups, compulsory recruitment of persons under 18 years of age is also prohibited pursuant to the 2000 Optional Protocol to the 1989 Convention on the Rights of the Child ["CRC"] on the involvement of children in armed conflict ["Optional Protocol to the CRC"]. A similar restriction is found in the 1999 International Labour Organization Convention on Worst Forms of Child Labour. The 2000 Optional Protocol to the CRC requires States to "take all feasible measures" to prevent children under the age of 18 taking a "direct part in hostilities" whether as members of its armed forces or other armed groups and prohibits outright any voluntary recruitment of children under 18 years into non-State armed groups. Whilst voluntary enlistment of children of 16 years and above is permitted for State armed forces, the State is obliged to put in place safeguards to ensure, inter alia, that any such recruitment is genuinely voluntary. Despite the different age limits set by international law, it is UNHCR's view that forced recruitment and/or direct participation in hostilities of a child below the age of 18 years in the armed forces of the State or by a non-State armed group would amount to persecution. Regional instruments also contain prohibitions on the recruitment and direct participation of children in hostilities." (p. 3) [my emphasis]

23. Sec. 10.2 'After military training at Sawa'

a. Given the importance of assessing the conditions in which national service and military conscripts work, it is important to provide accurate information from the UN Commission of Inquiry (2015) which reports that,

> 1407. Furthermore, it seems conscripts are frequently used to build private houses and buildings for the exclusive benefit of private individuals, often high-ranking military officers…
> […]
> c. Forced labour in agriculture
> 1413. The use of conscript labour is also prevalent in the agricultural sector; according to a number of testimonies, it is often carried out for private interests. Conscripts are frequently sent to work with their

> military unit in fields and farms, which are owned by the Government, high ranking military officers or private individuals. Each year, they spend several weeks or months in a row working in the fields. While the conscripts are working hard to grow vegetables and crops, they are not entitled to use a portion to augment their own meagre food rations of tea, bread and lentils. All of the produce is taken by the owner of the farm.
> […]
> 1431. All conscripts in the army are paid between 150 and 500 Nakfas per month. Conscripts assigned to physical tasks do not get additional emuneration for their work, including when the work is undertaken for the benefit of a private individual, or a foreign company that pays the Government for providing manpower. The exact terms for the use of conscripts provided by the Government to foreign companies or other private entities are not known. However, the Commission collected testimonies showing that the amounts disbursed by foreign companies through the Government to remunerate workers are kept by the Government, which continues paying low wages to conscripts.

b. References to Gaim Kebreab (2009, 2013) should be included here.

24. Sec. 10.2.8 discusses the employment practices of the Canadian mining company Nevsun – though it is not clear why this information should be in the CIG – and approvingly cites a 2014 human rights impact assessment conducted on behalf of the firm.

    a. However the Home Office does not actually cite information from the report.

    b. The report was discussed with me at the School of Oriental and African Studies prior to the Chatham House meeting (see below). I met with the Vice President of Nevsun and the consultant who undertook the Human Rights Impact Assessment, Mr. Lloyd Lipset. We discussed human rights concerns at Nevsun, strategies Nevsun might pursue to improve the quality of information it collects on Corporate Social Responsibility at the mine and how it might improve its human rights impact assessments, i.e. by hiring skilled Eritrean researchers/consultants, speaking to educational institutions in Eritrea which train social scientists and engineers etc.

    c. The allegations made against Nevsun are summarized by the UN Commission at paras. 1407 to 1412 and should be referenced in the Home Office report.

    d. Sec. 10.2.9 approvingly cites a discussion at Chatham House on 15 June 2015 at which Nevsun's operations in Ethiopia were discussed. The statement in the CIG that Nevsun 'do not use workers who are still in national service' was made by its vice president in direct response to a specific question asked by a Home Office official who was sitting beside me.

e. **The quote fails to convey the tenor of the entire discussion which was to the effect that while the government provided labour to the mines, and even though the Government had given an assurance to Nevsun that conscripts were not used, the assurances could not be thoroughly investigated by Nevsun or by its human rights investigator.**

f. In this regard a careful reading of the HRIA report on Bisha mine (IKL 2014) reveals that:

> "… the assessments findings are limited to what was possible to be researched and observed … It was not possible to gather conclusive information about past practices at the mine' (p. 1)
>
> […]
>
> "Based on document review and interviews with Segen Construction managers at the Bisha camp and at headquarters in Asmara, there is currently a strong awareness of BMSC's policy against the use of national service employees at the Bisha mine and the screening procedures for ensuring workers are discharged from national service. Interviews with Segen Construction workers at camp and mine site confirmed that they had been discharged from national service; and spot checks of employment files at headquarters confirmed that discharge papers had been obtained for current workers at the Bisha mine.
>
> The assessment of other suppliers, contractors and subcontractors examined whether national service workers were being used. The scope of the HRIA did not permit for a comprehensive assessment of these other suppliers, contractors and subcontractors, but it did ascertain that contractual provisions against the use of national service provisions are inserted into the main contracts …" (p. 20). [my emphasis]

g. The information provided in the CIG is thus incomplete and should be revised to reflect the actual discussions at Chatham House and the human rights report on Bisha mine.

h. In the CIG, discussion of Nevsun and the allegation that it used conscripts stops at this point. The reader only finds out at Sec. 11.4.4 that a legal case against Nevsun for employing national service conscripts at the mine is proceeding in the Canadian courts and is scheduled for a hearing in 2016.[14] **A clear link between these two sections is required.**

[14] For a summary of evidence provided to a Parliamentary Committee in Ottawa, see: http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=5992623&Language=E&Mode=1 and

25. **Sec. 10.2.13-17** quotes extensively from the discredited Danish report (pp. 39-41) and **should be deleted**.

26. Sec. 10.3 'People's Army' should be clearly linked to the discussion about indefinite military/national service in Sec. 7.6 'Recall to reserve duties'.

27. Sec. 11 'Conditions during national service/Treatment during military training'.

    a. **Sec. 11.2.4-5 relies entirely on the discredited Danish report which is out of date and is contradicted by other objective evidence. This section should be deleted**.

28. Sec. 11.7 'Redress for mistreatment'

    a. This section needs to link to the information about Nevsun, about mistreatment in the military and to issues discussed at (I. 29) below more clearly and effectively.

29. Sec. 11 'Conditions during national service'. **There is a serious gap in the objective evidence regarding the absence of an independent judiciary/courts and of an independent police force**. This means that **rule of law, and recourse to redress for mistreatment by government and military officials does not exist**. Evidence on this point needs to be provided and should include:

        i. Dan Connell, a US journalist with extensive knowledge of Eritrea including of past and present government officials, has stated (2011) that,

        'The present government was established by decree on May 19th 1993 with three branches [jc. the legislative, the judiciary and the executive] to oversee a four year transition to constitutional rule … [at this time] power over the party and all branches of government was concentrated in the hands of President Isaias.

        Since then … these institutions have functioned not as counterbalancing powers that create policy or hold individuals accountable for their actions, but as enforcers of executive will. The president maintains a structure parallel to the Council of Ministers, with advisers who gather in closed meetings with Isaias to make policy decisions outside of the formal governing structure… The PFDJ [jc. the ruling political party] Secretariat and the top echelon of the Eritrean Defence Forces report directly to the president and each group has

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http://www.parl.gc.ca/HousePublications/Publication.aspx?Language=E&Mode=1&DocId=7880351&File=0 (given on 14 February 2012 and 12 March 2012, respectively).

responsibilities parallel to those of appointed government officials. It is these informal channels linked to Isaias, rather than formal institutions, that have genuine governing power in Eritrea. (p.2)'

[…]

'The Eritrean judiciary[15] has long functioned as an arm of executive authority, and the president appoints and dismisses all judges at his own discretion. Initially divided between civilian and military courts and later complicated by the addition of special courts, the judiciary suffers from shortages of trained personnel and inadequate funding, as well as frequent executive interference. In some cases, panels of military and police officers sentence offenders in secret proceedings in which detainees are not informed of the accusations against them, have no right to legal counsel or to defend themselves, have no recourse to challenge official abuses, and are denied the right to appeal to the High Court, which is nominally Eritrea's highest judicial authority.

Special courts, Eritrea's system of secret military tribunals, were created in 1996 to hear cases of corruption and other abuses by government and party officials. These courts are directly accountable to the president's office and are presided over by military officers with no formal training in the law. The attorney general determines what cases are sent to the special courts, which are not governed by habeas corpus. There is no presumption of innocence on the part of the defendant, who has no right to counsel or to appeal. There is no limitation on the punishment that can be meted out by special court judges, who also serve as prosecutors and are expected to rule not on law but on conscience. With the outbreak of the Border War in 1998, referrals to the courts expanded from cases of embezzlement and tax evasion to a wide range of felonies and misdemeanours and national security cases, a broad designation that has come to embrace all forms of protest and dissent. Today, the special courts issue directives to civilian and military courts on administrative matters and can, at the discretion of the attorney general, retry cases already heard by these courts. The abolition of the special courts was a key demand of the G-15 reformists prior to their detention in 2001. Although there has never been official confirmation, it is widely believed that their cases were heard and their sentences determined by a secret special court.' (p. 6-7) [my emphasis]

ii. Tronvoll's (2009) assessment of the legal situation in Eritrea is that:

'Frustrating any overview or analysis of effective Eritrean laws is the fact that even the validity of the transitional codes, as well as other

[15] Further information on how the special courts relate to the judiciary can be found in US 2000, 2003).

proclamations issued by the transitional government, technically ceased with the ratification of the Constitution in May 1997, as this marked the end of the government's transition period. Since then, the Eritrean judicial system has been in a de jure legal limbo, since the Constitution is not yet in force … Thus, in practice, law-making in Eritrea today is not a formal and technical legislative process evolving in accordance with established and transparent procedures. The President, in the name of the government, issues most of the laws, more or less by personal decree' (p.28; my emphasis).

Interference in the rule of law and in work of the civil courts began in 1996 when, following a public statement by the President, he announced Proclamation no. 85/1996 creating the 'Special Court, initially to have exclusive jurisdiction on offences related to corruption, theft and embezzlement' (Teame 2001: 8). The special courts – which were given the power to reverse decisions by all Eritrean courts, to retry criminal matters, and which refused the right of appellants to be legally represented and to appeal against its decisions – were staffed by military officers.'[16] [my emphasis]

iii. Tronvoll says of the military/special court that it

'… is an executive-controlled separate jurisdiction, not under the authority of the President of the High Court. The Office of the Attorney-General decides which cases are to be tried by a Special Court. The Court primarily has jurisdiction over criminal cases involving capital offences, theft, embezzlement, and corruption, and other unspecified abuses by government and party officials. The Special Court also issues directives to other courts regarding administrative matters. Allegedly, the Special Court has also tried cases of a political nature; and reportedly supporters of the Islamist movement, Eritrean Islamic Jihad, and other opposition activists abducted by Eritrean security services from the Sudan and Ethiopia have been tried by the Court.'

iv. Tronvoll (pp. 42-3) reinforces criticisms made by the former Eritrean Chief Justice, Teame Beyene (2001/2010) who observed that

'The Special Court is not bound by the Code of Criminal Procedure or the Penal Code, nor precedents set by earlier court decisions. Judges generally base their decisions on 'conscience' – in relation to the particular history of the Eritrean struggle and EPLF fighter culture –

[16] When the Eritrean Chief Justice protested about this measure he was subjected to 'freezing' (*midiskal*) a political practice used by the EPLF to punish dissidents. He was prevented from carrying out his official responsibilities and placed in an indefinite political-legal limbo to reconsider his position. (Teame Beyene 2010: 1)

without reference to the law. The Special Court also has the power to re-open and adjudicate cases that have already been processed through the civil courts. The Special Court can also overrule existing court decisions and increase without limit the penalties for existing relevant offences the government regards as being inadequately prosecuted and punished , thereby subjecting defendants to double jeopardy.

A number of formal and operational elements put the Special Court in stark contradiction with the Eritrean Constitution and laws, and international standards of fair trial. Of particular concern is the fact that the trials are conducted in secret and do not allow for any legal representation for the defendants. The judges serve as the prosecutors and may request the individuals involved in the cases to represent themselves in person. Individuals arrested under the Special Court are kept in detention incommunicado, usually in a secret location, and there is no time limit on pre-trial detention. After the Court has decided upon a case, the detainee is transferred to an official prison or one of the many detention camps scattered throughout Eritrea. All decisions passed by the court are final and binding, as there is no appellate court. However, reportedly, in rare instances, appeals made to the Office of the President have resulted in Special Courts rehearing certain cases.'[my emphasis]

v. Gaim Kebreab (2014: 12c) states that,

'In addition to the penalties imposed under the Proclamation on National Service, the penalties stipulated in the Eritrean Transitional Penal Code (ETPC) also cover military violations, including failure to enlist, or reenlist, seeking fraudulent exemptions, desertion, absence without leave, refusal to perform military service and infliction of unfitness (injury to avoid service). The punishment ranges from six months' to 10 years' imprisonment depending on the gravity of the act. During emergencies or mobilizations, the penalties are significantly more severe. Desertion is the most severely sanctioned and entails imprisonment for up to five years, but in times of mobilization or emergency this can increase from five years to life, or, in the gravest cases, death, for desertion from a unit, post or military duties or for failure to return to them after an authorized period of absence. Since military courts are not operative, punishment for military offences is carried out extrajudicially …'[my emphasis]

30. **Sec. 11.6.5 is taken from the discredited Danish Report and should be deleted**.

31. Sec. 13. 'Law on Desertion and Evasion'

a. **Sec. 13.1.4-8 is based entirely on the discredited Danish Report and should be deleted**.

b. Sec. 13.1.7. The wording at the beginning of the section needs to be revised to clearly indicate that the source is the Danish Report **not** the UN Commission of Inquiry.

c. Sec. 13.2.9. The wording at the beginning of the section needs to be revised to clearly indicate that the source is the Danish Report **not** the US State Department.

32. **Sec. 13.2.9-22 extensively quotes the discredited Danish Report and should be deleted**.

a. Sec. 13.2.17 reference is made to 'a UN agency' as the source of this information. It light of a subsequent statement by UNHCR about the Danish report, it should be made clear that UNHCR was not the source.

33. Sec. 13.2.23-24 . The long quote is from EASO (2015) and **needs to be linked with findings from the UN Commission of Inquiry** (2015) regarding the treatment of deserters and the experience of failed asylum seekers who were forcibly returned to Eritrea.

a. The UN report provides evidence on the treatment of deserters as follows:
   i. 'Deserters and the treatment of third persons/families of deserters' at paras 746-751;
   ii. 'Registration of detainees' at paras 798-800;
   iii. 'Military and civilian detention facilities' at paras 855-865;
   iv. 'Incommunicado detention' at paras 865-871. Etc.

34. Regarding the experience of failed asylum seekers who are forcibly returned, the UN Commission clearly addresses this issue and found that

> 431. Individuals forcefully repatriated are inevitably considered as having left the country unlawfully, and are consequently regarded as serious offenders, but also as "traitors." A common pattern of treatment of returnees is their arrest upon arrival in Eritrea. They are questioned about the circumstances of their escape, whether they received help to leave the country, how the flight was funded, whether they contact with opposition groups based abroad, etc. Returnees are systematically ill-treated to the point of torture during the interrogation phase.
>
> 432. After interrogation, they are detained in particularly harsh conditions, often to ensure that they will not escape again. Returnees who spoke to the Commission were held in prison between eight months to three years. Male returnees from [country A] were held on Dhalak Island after a few months of

detention at Adi Abeito. Deportees from other countries were held in prisons such as Prima Country and Wi'a.

433. Witnesses who spoke to the Commission noted the severe conditions during their detention. They were made to undertake forced labour and were frequently punished by prison guards for inconsequential matters [Country A] returnees recounted that, on one occasion, they had been reportedly even denied drinking water where they were detained at Dhalak Island where temperatures often soared to 50 degrees Celsius. As a consequence, many fell sick after drinking unsafe water.

434. Women and accompanied children are also held in detention centres, though they are reportedly treated less harshly. However, the Commission found that unaccompanied children are subjected to treatment and conditions of detention comparable to those of adults. For instance, under-age male returnees from [country A] were detained with the other adults at Adi Abeito and on Dhalak Island. [my emphasis]

i. The UN Commission also found that

> 436. The Commission found however two exceptions to the rule that returnees are arrested detained and forced to enlist in the national service upon their arrival in Eritrea. A group of Eritreans was returned from [country D] with a letter certifying that they had paid the 2 per cent Rehabilitation Tax and had already been detained several years in [country D]. The witness had himself been imprisoned for three years in [country D]. He was given a permit to return to his hometown, but which had to be renewed every two months. He left Eritrea again shortly after being deported. The other case concerned forced repatriations to Eritrea in 2014, where seven older men were reportedly freed while the younger men who were returned in Eritrea at the same time were not released.
> […]
> 438. A witness reported to the Commission his and other children's repatriation to Eritrea which was facilitated by an international organization. Allegedly, some of them were forced to enroll in the military service upon return, as explained in a submission by one of them, who was 13 years old at the time:
> "*My own military experience began when I was almost 13 years old. I was sent with some of the other younger members of the group who had returned from [country F]… to fill out paperwork as a guarantee of our freedom. However, when we arrived [in Eritrea] our permit of freedom and supporting letter … were taken from us. We were thrown into prison for three days. When we were released we were sent to [another] place, [where] we were accused of spying for [country F] soldiers. The guards tortured us, beat us, and punished us for five days. Afterwards, they moved us to several different*

prisons that were famous for holding faith-based and border crossing prisoners. Though we were promised freedom, they took us instead to … a military training centre." [my emphasis]

ii. Regarding opportunities to return to Eritrea for members of the diaspora:

> 439. Most witnesses who spoke to the Commission had left Eritrea illegally. Those who departed with an exit visa and remained abroad are considered as defectors. Some witnesses have also been involved in activist activities abroad denouncing wrongdoings by the Government. Therefore, almost all witnesses who spoke with the Commission believed that they would not be able to return to Eritrea, or that they would be punished if they do. Others fear that they might not be able to leave again, should they be arrested.
> *"If I went back to Eritrea, I will either be executed or jailed. I can only return if the Government changes."*
> *"I cannot return to Eritrea because I have been a critic of the Government's policies and I have been talking about the human rights violations in Eritrea since 2005.*"
> "*If I return to Eritrea, I will be killed. Because my offense was political in nature as I questioned the army's systematic forced labor, and because I escaped prison, I know that I would not be given a second chance*."
>
> 440. Many Eritreans no longer have an Eritrean passport which is delivered only after payment of the 2 per cent Rehabilitation Tax, collected through Eritrea's diplomatic representations abroad. The Government has established the Tax levied on the revenues earned abroad by its citizens, arguing that it falls under its sovereign right to levy taxes on its citizens. However, in order to ensure the payment of the Tax, the Eritrean Government uses methods which have been considered illicit by the United Nations Security Council. The Security Council decided that *"*Eritrea shall cease using extortion, threats of violence, fraud and other illicit means to collect taxes outside of Eritrea from its nationals or other individuals of Eritrean descent*."*
>
> 441. The Commission obtained information that one of the methods of coercion that is used by the Eritrean Government to force members of the diaspora to pay the 2 per tax Percentage Tax is the denial of access to basic consular services which largely impacts their enjoyment of the right to freedom of movement. While Eritreans living abroad are required to provide proof of payment of the 2 per cent Rehabilitation Tax to have their passports and travel documents renewed, the non-payment of the Tax presents a risk for arrest and detention for those who travel back to Eritrea. A person who was resident in

a country of the Middle East told the Commission that: "*I have never paid the 2 per cent Rehabilitation Tax before. Living in [a foreign country]- you cannot live there if your passport has expired. So you have to pay the 2 per cent Rehabilitation Tax. I used to lower my salary in order to pay less money. But now they are asking people to bring their company papers.*" Another person told the Commission that: "*I know people who pay the 2 per cent rehabilitation Tax. They have no choice, if they want to visit their family in Eritrea, they have to pay it… My sister in [a foreign country] pays the 2 per cent tax. Eritreans living in the Middle-East have no choice but to pay it. They have a work permit and they need to pay the tax for it to be renewed under their passports. The embassy is there and is controlling you…When you go the Embassy, you have to show your pay slips or other proof of income for the entire period you have lived there*".

442. Moreover, in addition to paying the Tax, Eritreans who have left the country unlawfully have to sign an "Immigration and Citizenship Services Request Form" to regularise their situation before they can request consular services. By signing the Form, individuals admit that they "regret having committed an offence by not completing the national service" and are "ready to accept appropriate punishment in due course." Such procedure seems to provide a blank cheque to the Government to punish persons outside of judicial proceedings and safeguards. For all those reasons, many who are in the diaspora do not take the risk to travel to Eritrea.

(d) Principal findings

443. The Commission finds that the Government of Eritrea strictly aims to control any displacement inside and from the country, in particular to ensure that individuals fulfill their national service obligations. To do so, it has established a complex system of travel permits and ID cards, which are required at checkpoints and during identity checks to verify individuals' status with regard to the compulsory national service and that they are duly authorized to travel. This system disproportionately affects the movement of underage children and women who have not been officially discharged from the national service since they are not provided necessary documentation to travel.

444. The Government officially controls who can leave Eritrea through the granting or denial of exit visas. To prevent those who want to avoid national service from leaving the country unlawfully, the Government has also restricted movements towards the border areas and severely punishes anyone found crossing the border. The Commission finds that, with a few exceptions, **those who have been forced to return** to the

> country have been arrested, detained and subjected to ill-treatment and torture. Other Eritreans voluntarily returning to their country may face arbitrary arrest, in particular if they are perceived as having associated with opposition movements abroad. Eritreans in the diaspora can access consular services by paying a 2 per cent Rehabilitation Tax, which is a disproportionate cost for obtaining a travel document. Moreover, in addition to the payment of the Tax, Eritreans who have left the country unlawfully can regularize their situation only by signing a "regret form." [my emphasis]

iii. It should be clear that the UN report states that only Eritreans who return voluntarily – i.e. who are not being forcibly returned as a failed asylum seeker – and who hold the nationality of another country are allowed back into Eritrea without facing sanctions such as imprisonment or compulsory military conscription.

iv. The statement that deserters can now return to Eritrea without fear of retribution comes from the Danish report, which is relied upon in the CIG, and arises because of the way that the Danish team distorted the evidence provided by Prof. Gaim Kebreab (2014b). His precise comments to the Danish team were as follows:

> '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.'
> […]
> '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**.' [author's emphasis]

35. Sec. 13.3 'Perceptions as Traitors'

a. 13.3.1, second paragraph, relies on the discredited Danish Report.
b. See (I. 34) above.

c. See Muller (2012a), Kebreab (2013, 2014b).

36. In Sec. 13.4'Punishment of family members'

a. 13. 4.1 This **quote is from the discredited Danish report and should be deleted**. Elsewhere I have indicated some of the evidence on this issue which runs completely counter to the information in the Danish report and in the CIG.

b. Other published COI on this issue should be provided, see for instance:

i. Human Rights Watch (2014b) state that:

> 'Family members of some draft evaders or national service deserters have been punished by fines of Nakfa 50,000 (US$3,333) and by detention, in a country with, according to the World Bank, per capita income in 2012 of $560.
>
> Families are also punished when relatives living abroad fail to pay a 2 percent tax on foreign income, retroactive to 1992, or to contribute "national defence" fees. Punishments include revocation of resident families' business licenses, confiscation of houses and other property, and refusal to issue passports to allow reunification of children and spouses with overseas parents or spouses.'

ii. Other sources on this issue include: Canada (2012), Human Rights Concern – Eritrea (2013a & b), US 2010 ['Security forces also continued to detain and arrest the parents and spouses of individuals who evaded national service or fled the country'] etc.

iii. Also see discussion at (33) above and (12) below.

c. **Sec. 13.4.4-8 quotes the discredited Danish report and should be deleted**.

37. Quality and balance of sources and other problems with 'Eritrea: National (incl. military) Service':

i. The policy recommendations bear little relation to available objective evidence and should be brought into line with all objective evidence;

ii. The CIG needs to be better organized around linked themes/issues; clear links in the text should be made between related sections.

iii. There are many gaps in the COI provided. Much of the available but un-cited COI contradicts or, at the very least, complicates the picture conveyed in the CIG.

iv. In view of the problems with and criticism of the Danish report, the Home Office cannot rely on it.

v. Some cited COI is clearly out of date and is no longer reliable.

vi. Some of the COI is selectively quoted and misleadingly stated to support a particular policy position.

vii. The Home Office cannot rely on private communications from Eritrean officials: clear and verifiable evidence of policy change and of changing policy practices on the ground in Eritrea are required before the Home Office can legitimately conclude that draft evaders and those who have fled the country without an exit visa can safely be returned.

viii. In conclusion, the CIG does not comply with EASO criteria regarding the production of COI because: the information is selectively chosen, reporting is biased, citations do not adequately cover relevant issues, inadequate information is provided and not all sources cited are publically available. In short the CIG does not exhibit impartiality, nor is it balanced, objective, or useful.

II. Summary of findings regarding CIG 'Eritrea – Illegal Exit'

The policy recommendations are completely divorced from, and unconnected to, relevant objective evidence. Potential users of the report are left in a position where they must **either** accept the link between the COI provided in the CIG and the policy statements **or** find and assess new COI to assess claims made by Eritrean asylum seekers. This is an unsatisfactory situation which can give rise to incorrect asylum decisions.

A further problem arises from the manner in which the CIG begins with a 'consideration of the issues' which blurs the 'facts' with recommended policies. Guidance is followed by a section entitled 'policy summary', and both are divorced from a reliable range of objective evidence (indeed the CIG provides a problematic assessment of a very limited number of COI sources).

The annexes with correspondence from the British embassy are out of date and misleading; all three annexes should be deleted.

Comments on specific issues

<u>'Guidance'</u>

1. Sec. 2.2.6 questions whether existing case law 'MO (Illegal exit – risk on return) Eritrea CG [2011] UKUT 190 (IAC) (27 May 2011)' is still relevant and should be applied. Specifically:

    a. Sec. 2.2.7 wrongly argues that 'the most up to date information available from inside Eritrea' is the discredited Danish report (2014), the Norwegian Landinfo report (2015), and a Swiss Technical Mission report (2013).

    b. As argued at the beginning of the report, **the Danish and the Norwegian reports cannot be relied upon as a source of credible information.**

    c. The **Swiss Technical report** (2013) **is not a publically available document and should be excluded** because it violates the basic principles of transparency in producing COI as set out by EASO (2012).

    d. For the reasons stated above, the **comments set out in Sec. 2.2.7 (a-d) should be deleted**.

        a. Contrary to what is stated in this section, there is very good objective evidence – identified in part at (I. 33-34) – that individuals who are forcibly returned to Eritrea are subject to serious violations of their human and civil rights.

2. Sec. 2.2.8 discusses the ability of 'the Eritrean diaspora' to return to Eritrea without facing any sanctions. The evidence on this issue was identified and discussed above at

(I. 33- 34), and the CIG should be revised to clearly indicate that **Eritreans in the diaspora who possess a foreign passport are able to return to Eritrea without facing arrest.**

3. Sec. 2.2.9 relies on the discredited Danish report to confirm that 'some persons are able to return to Eritrea without punishment' provided that they pay the 'Diaspora tax' and sign a 'letter of apology' at an Eritrean embassy. This issue is discussed above at (I. 33) and below at below at (II. 12) below. Guidance should be revised accordingly.

4. Sec. 2.2.10 cites the Constitution – but does not provide a reference to it[17] – regarding the obligation of nationals to perform national service. **The assertion cannot stand and should be deleted** because:

   a. The constitution was never implemented by the Government of Eritrea, therefore its provisions are invalid:

      'The Constitutional Commission submitted a draft constitution to a Constituent Assembly for ratification. Proclamation 92/1996 established the Constituent Assembly – consisting of members of the National Assembly, members of the six Regional Assemblies, and 75 representatives of the Eritrean Diaspora - to ratify the draft constitution. The Proclamation mandated the Assembly to take necessary legal measures to bring the Constitution into effect. The Constituent Assembly ratified the Draft Constitution on May 23, 1997. The Ratified Constitution (the Constitution) has not come into effect thus far' (Luwam Dirar and Kibrom Tesfagabir Teweldebirhan 2015).

   b. The constitution did not come into effect because in 2001/2 President Afeworki instituted marshal law, refused to convene the National Assembly to meet and he refused to ratify the Constitution.

5. Sec. 2.2.11 discusses the diaspora tax and states that it is not illegal. **This is a mis-statement of the current international legal position** which is that,

   a. The UK Foreign & Commonwealth Office has warned the Eritrean embassy in London on at least 4 occasions that aspects of the diaspora tax may be illegal.[18]

   b. In 2015 an Eritrean filed a complaint with the Metropolitan police (London) that the embassy had ordered him to pay the diaspora tax in order to receive

[17] The constitution is available at: http://www.refworld.org/docid/3dd8aa904.html.
[18] See: 'Diaspora tax for Eritreans living in the UK investigated by Metropolitan Police' (*Guardian*, 9 June 2015) at: http://www.theguardian.com/global-development/2015/jun/09/eritrea-diaspora-tax-uk-investigated-metropolitan-police.

consular services. The British police 'decided to take no further action' because 'no laws had been broken' (para 86). The decision by the police does not preclude other complaints or legal action from being taking against Eritrea embassy officials regarding the tax/payments.

c. As the latest UN Security Council report (19 October 2015) makes clear, sanctions continue to apply to Eritrea regarding the payment of this tax because Eritrea relies on 'extortion, threats of violence, fraud and other illicit means to collect taxes outside Eritrea from its nationals or from nationals of Eritrean descent' (para. 79).

d. In 2013 Canada expelled an Eritrean diplomat for collecting the Diaspora tax.[19]

e. It should also be noted that on 23 October 2015, the UN Security Council[20]

'Adopting resolution 2244 (2015) under Chapter VII of the United Nations Charter — by a vote of 14 in favour and 1 abstention (Venezuela) — the Council also extended the mandate of the Somalia and Eritrea Monitoring Group until 15 December 2016, and reiterated its expectation that the Government of Eritrea would facilitate the Group's entry into that country.'

'Policy Summary'

6. Sec. 3.1 asserts that the evidence provided by the Danish Report and in this CIG suggest that current country guidance on illegal exit from Eritrea is out of date and is 'too prescriptive' (sec. 3.1.6) because 'not everyone who left illegally is detained on return' (sec. 3.1.3). It further asserts that 'many people return to Eritrea each year' (sec. 3.1.4) and that 'a person who has left Eritrea illegally, even a draft evader, can return to Eritrea provided they sign a "letter of regret" and pay any outstanding (2%) diaspora tax at an embassy (sec. 3.1.5).

   a. **A careful consideration of all the objective evidence available on the issue of whether individuals, especially those who left illegally and/or who evaded national service or deserted the military, shows that this assertion lacks validity and should be deleted**.

   b. Further evidence on this issue is discussed below at point (II. 12) below.

19 See: 'Eritrean diplomat ordered out of Canada after 'tax' on ex-pats' (5 June) at: http://www.cbc.ca/news/politics/eritrean-diplomat-ordered-out-of-canada-after-tax-on-ex-pats-1.1309691.

20 See: http://www.un.org/press/en/2015/sc12094.doc.htm.

‘Country Information’

7. Sec. 4.3.3 on ‘exit visas’ provides a long quotation from the UN Commission of Inquiry; however the paragraph number is not cited.

8. Sec. 6. ‘Penalties for leaving illegally and treatment on return’

    a. Sec. 6.1.1-14 is **an extensive quote from the discredited Danish report and should be deleted**.

    b. Sec. 6.1.12 begins by referring to information provided by IOM – regarding their staff travelling in and out of Eritrea – without providing a source, but ends by citing the Danish report. **This section is misleading and should be deleted.**

    c. Sec. 6.1.15-17 is based upon the EASO CIG (2015) report. **The entire section is problematic and needs to be revised** because:

        i. Sec. 6.1.15 argues that ‘it is unclear if the punishment was meted out for the illegal exit of the person or due to other circumstances. There are no reports on the treatment of people who merely left the country illegally without having deserted or evaded conscription’.

        ii. The source of this statement is endnote (25) of the EASO report (2015, sec. 6.4.4). However the quotation is selective and misrepresents the general situation. Sec. 6.4.4 actually states,

            ‘Violations of the exit rules laid down in Proclamation 24/1992 or attempts to cross the border illegally or to help others to do so are — according to the law — punishable by prison sentences of up to five years and/or fines of up to 10,000 birr. In reality, however, punishment for illegal exits is generally imposed on an extrajudicial and arbitrary basis. Human rights organisations (see Chapter ‘Introduction and source assessment’) state that people who are caught attempting to leave the country illegally are detained without charge and without being told the grounds for, or duration of, their imprisonment. The reported detention periods vary, but are generally between one and two years according to Amnesty International, whereas Human Rights Watch states that they are between three and five years . Minors are sometimes also recruited for military service. The British embassy in Asmara reported in 2011 that returnees who had left the country illegally are recruited into military units, detained, fined or not punished at all. In the reported cases of punishment, it is generally unclear if the punishment was meted out for the illegal exit of the person or due to other circumstances. *There are no reports on the treatment of people who merely have left the country illegally without having deserted or evaded conscription. The Eritrean authorities claim*

that people who have left the country illegally may return without fear of punishment after they have paid the diaspora tax and signed the repentance form but they may be sent to a six-week training course to 'enforce their patriotic feelings" . Further information on the punishment of deserters and draft evaders who have left the country illegally can be found in Chapter 3.8.1.' [my emphasis]

iii. The entire paragraph cited above should be inserted into the CIG so as not to mislead readers of this CIG.

iv. Note that the source of information for the statement that people who left illegally can now return without fear' is found in footnote no. 471 of the 2015 EASO report which identifies the following sources:

'Home Office (United Kingdom), Country of Origin Information (COI) Report — Eritrea, 17 August 2012, p. 142; Udlændingestyrelsen (Danish Immigration Service), Eritrea — Drivers and Root Causes of Emigration, National Service and the Possibility of Return, Appendix edition, December 2014, pp. 25-26, 29, 32, 40; Ministerie van Buitenlandse Zaken (Ministry of Foreign Affairs, Netherlands), Algemeen Ambtsbericht Eritrea, 5 May 2014, p. 59; Schweizer Radio und Fernsehen, Rundschau: Homo-Segnungen, Eritrea-Flüchtlinge, D. Fiala, Sperma-Schmuggel [video], 11 March 2015; Landinfo, Respons Eritrea: Utstedelse av utreisetillatelse og ulovlig utreise, 15 April 2015, pp. 6-7.'

v. The 2012 Home Office CIG on Eritrea does <u>not</u> provide information on this issue; the Danish Report is discredited and cannot be relied upon and <u>all the other sources cite the discredited Danish report as the source on this issue</u>. This sleight of hand in referencing information that supports a particular policy position is a clear indication of bias, lack of impartiality and a failure to assess other COI. This entire section should be deleted.

vi. Finally, the UN Commission's (2015) evidence on this issue is up-to-date and conclusive: individuals who are forcibly returned to Eritrea and are subject to incommunicado detention, treatment amounting to torture, and they will be compelled to participate in indefinite military service if they survive their period in detention (see above at (I. 33-34).

vii. The end of the quote in sec. 6.1.16 (p. 18) refers to statements made in private to official delegations visiting Asmara that 'those returning to the country will not be punished …': As already discussed, <u>it should be apparent to the Home Office that given Eritrea's extensive of history human rights violations, that a reliable and independent human rights organization is required in Eritrea before nationals can be returned in</u>

order to effectively monitor government actions towards failed asylum seekers, conscripts, detainees etc.

9. At this point the CIG should provide a link/cross reference to information about the absence of rule of law in Eritrea raised above at (I. 29) before discussing prison conditions at sec. 6.1.7-8.

10. Sec. 6.1.26 refers to a 'Response to information request' prepared by the Canadian Immigration and Refugee Board (2014), but does not quote it. This is what the response said:

> 'Sources indicate that the arrest of Eritrean returnees can take place immediately upon their return (Berhane 1 Sept. 2014; AI May 2013, 30). Detainees may be held incommunicado (ibid.; UN 28 May 2013, para. 54). According to the UN Special Rapporteur, they are imprisoned without access to family members, lawyers, or doctors, and without legal procedure (ibid.). Detention conditions are characterized by unhygienic environment, poor food quality and water supply, and sometimes underground cells without the possibility to see the daylight (ibid. para. 52). Human Rights Watch indicates that former prisoners describe the existence of underground cells or shipping containers with "oppressive heat and insects" (20 June 2013).
>
> Speaking about the forced return of Eritreans from Sudan, the UNHCR spokesperson indicated that the UNHCR does not have monitors in the country (UN 4 July 2014). According to AI, "it is difficult to follow the cases and discover the fate of many forcibly returned asylum-seekers" due to the lack of transparency on, and the failure of authorities to inform families of, detentions (May 2013, 30). [my emphasis]

11. Sec. 6.2 'Number of Returnees'. Again the reference is the discredited Danish Report.

    a. Sec. 6.2.2-5 is a thinly disguised attempt to persuade readers that it is now safe for all Eritreans, but specifically individuals who left without an exit visa and/or those who evaded or deserted military service, to return to Eritrea without fear of sanction.
    b. This source is the Danish Report and private communications with Eritrean officials.
    c. **This section should be deleted**.

12. Sec. 7 'Diaspora Tax'

    a. Sec. 7.1-2 claims to identify the legal basis for the 2% diaspora tax as Eritrean Proclamation no. 17 (1991) and Proc. 67 (1995).

        i. The information used by the Home Office is taken from the declaration form for payment which itself is on an Eritrea embassy website in the US.

ii. By law a copy of all government proclamations should be published in the *Eritrea Proclamation Gazette* in Tigrinya and Arabic. However the vast majority of proclamations, including the ones establishing the rehabilitation tax and the 2% diaspora tax, are not published. Failure to publish, and the fact that all such Proclamations have been issued by unelected officials which has implications for the (il-) legality of such documents and government decisions which are reputedly based on them [see: I.8(a) and I.29 above].

iii. In September 2015 the UN Security Council, The Permanent Mission of the state of Eritrea to the UN wrote to the Security Council in response to the UN arms embargo. The letter, together with two documents written in Tigrinya, were posted to an Eritrean website.[21]

iv. I have had the documents in the letter translated and attach the translation as Appendix I. A careful reading of the two proclamations suggests that the manner in which the tax is currently being collected – payment is reputedly made direct to the ruling party and not to Inland Revenue (point II. 14(b) below) and the lack of transparency about how the tax is actually spent – suggests that the tax may well be illegal [see section paragraphs18-21 of Proclamation no. 17].

v. The '2% tax' originated as a voluntary payment made by Eritreans in the diaspora who supported the EPLF in the 1970s and 1980s which was formalized by the EPLF into a compulsory payment on or about the time Eritrea was liberated from Ethiopia in May 1991 (cf. Muller 2012a: 4-5).

vi. Styan (2007) sets out the background to the tax and its significance for the government. He notes that:

> 'Eritrea's monetised economy, its ability to earn foreign exchange, and thus import goods and services from abroad, rests almost entirely on cash sent by its diaspora.
>
> […]
>
> … secondly, the government's ability to control and channel what are - in almost all other cases in the world - private transfers is worthy of attention. The GoE is dependent on

[21] See: 'Eritrea's response to the queries presented by the Somalia-Eritrea Monitoring Group' at: http://www.madote.com/2015/10/eritreas-response-to-queries-presented.html. The Proclamations were attached to a letter submitted to the UN on 15 August 2015 (see the bottom of the post).

> remittances for survival. Thus its de-facto control and surveillance of its diaspora and the funds they remit appears unique.
>
> […]
>
> Thirdly there is evidence that the relationship between the diaspora, their remittances and the economy is shifting; a hardening of GoE economic control necessitates an even tighter monopoly over forex, at a time when outward migration is accelerating and the government's legitimacy is badly- many Eritreans would say terminally - tarnished.
>
> […]
>
> The Eritrean government does not publish economic data or budgets, thus even guesstimates of economic performance and structure over the past four years are hugely problematic. International economic reporting all but ceases after 2003.
>
> […]
>
> The importance of the diaspora for the public finances and foreign exchange is demonstrated by the fact that the level of bonds issued to the diaspora reached 3.1 percent of GDP in 1999 and grants amounted to 3.2 percent of GDP in 2000. On the external account, private transfers from the Diaspora are the largest single source of foreign currency inflows into the country, with the ratio of these transfers to GDP averaging 37 percent over the last ten years.
>
> This highlights an essential element, in that in Eritrea the role of remittances is rather more complicated than in many other countries. Given the critically weak nature of the economy, remittances are the source of a vast portion of formal sector expenditure. GoE finances rest upon it (e.g. figure from the IMF 'sustainability' report…), not simply in terms of direct taxes on the diaspora, through the '2%' contributions and control of the foreign exchange market, but also through much of the domestic taxation system, in which household expenditure rests on family remittances.

vii. According to Muller (2012a: 5) the diaspora tax and remittances, which are required to be channelled through the state, 'accounted for more than 30% of Eritrea's GDP in every year since independence'. She also notes that: (a) Eritreans pay this tax out because of 'feared repercussions such as targeting family members in Eritrea'; (b)

because payment is required for access to all consular services (e.g., the authorities charge nationals $2000 for an Eritrean passport); and (c) payment is an effective way the authorities use to control nationals and secure the flow of foreign exchange.

viii. Between 1997 and 2003, the diaspora tax generated from $1.2 to $10.4 million per year (Poole 2013: 75).

ix. Human Rights Watch (2009: 75-76) puts the diaspora tax into clearer perspective. Its research indicates that,

'There are a variety of ways in which the Eritrean government exerts pressure on exiles for both financial and political reasons. The government expects all Eritreans in the diaspora to pay a two percent tax on income. While taxing expatriates may be a legitimate state function, the manner in which the Eritrean government coerces individuals into paying this income presents serious human rights concerns. If refugees or other Eritrean expatriates do not pay the two percent tax then the government typically punishes family members in Eritrea by arbitrarily detaining them, extorting fines, and denying them the right to do business by revoking licenses or confiscating land. The two percent tax is not only a financial mechanism, however.

The government also uses it to consolidate its control over the diaspora population by denying politically suspect individuals essential documents such as passports and requiring those who live in Eritrea to provide 'clearance' documents for their relatives who live abroad—essentially coercion to ensure that their relatives have paid the two percent expatriate income tax demanded by the government.

The two percent tax

As well as being a unique method of social control, the expatriate fund-raising operations are a crucial source of revenue for the Eritrean government. In two months in 2003 the Eritrean Embassy in London reported US$3.2 million profit resulting from 'second round distribution of land' collected and remitted to Asmara. According to the documents, the annual income of the Embassy in 2003 was $6.2 million. Of this only $74,282 was derived from visa fees while the rest is described as 'Contribution to draught affected (sic),' 'Contribution to Relief Rehabilitation,' 'Contribution to National Defence,' Contribution for Martyrs Children and Disabled,' Contribution for Rehabilitation of ex-fighters,' 'Contribution to Recovery Tax.' Supporting documents showed payments from Eritreans into a UK bank account held by the Embassy.

During the liberation struggle, most Eritreans in exile willingly contributed portions of their income to the EPLF. After independence, the government continued the practice in the name of national development. It is nominally a voluntary contribution. However, as

many Eritreans living abroad in Europe and North America explained to Human Rights Watch, payment or non-payment carries consequences for themselves and crucially, for their families who are still in Eritrea.' [my emphasis]

x. The way in which the embassy pressures members of the Eritrean diaspora to pay the tax have recently been made clear when an Eritrean, wearing a concealed camera and microphone, attended the London embassy. The record of his interview with an embassy official is provided by Plaut (2014) who argues that the tax is a form of extortion.

13. Mention of the 2% tax is incomplete without examining the actual tax form. I have attached a copy of the form in Tigrinya and a translation of the form into English in Appendix II and III.

14. Sec. 7.2.3-4 quotes the discredited Danish report to the effect that if the 2% tax is paid and an individual signs the 'letter of regret' s/he is able to return without sanction, i.e. the most that will occur to the individual is that 'they may be sent to a six-week training course to 'enforce their patriotic feelings'".

    a. Note that the source for this information is cited at footnote no. 472 and is Landinfo, *Respons Eritrea: Utstedelse av utreisetillatelse og ulovlig utreise*, 15 April 2015, p. 6.' However, **the source** used by the Norwegians **is the discredited Danish report**.

    b. Prior to the imposition of UN sanctions on Eritrea the tax, and other financial 'contributions' were paid to the embassy/consulate, but now funds are paid in Asmara directly to the office of the ruling PFDJ (Hirt 2013: 10).

    c. This section is completely at odds with other published COI, notably the UN Commission of Inquiry, and should be deleted.

15. Sec. 7.2.4 raises the issue of the 'letter of repentance' which, together with payment of the diaspora tax is said to allow individuals who have fled the country illegally and/or who have evaded national service or deserted the military to return without fear of reprisal by the Eritrean authorities.

    a. Note that **the source is the discredited Danish report**, in particular private communications with Eritrean officials.

    b. I have attached a copy of the official 'letter of repentance' in Tigrinya, taken from an Eritrean embassy website, and an English translation of the original as Appendix IV and V. In addition to providing complete information about

oneself to the Eritrean authorities, the form requires the applicant to sign a declaration which states:

'I, _____(whose name is written here), confirm that previously given personal information is true; and that I regret having committed an offence by not completing the national service and am ready to accept appropriate punishment in due course.'

c. Signing the form means that the individual repents his/her actions – evasion and desertion of national/military service is a criminal act – and submits to the Eritrean authorities for 'appropriate punishment. **Signing the form does not mean that the authorities forgive and forget the persons criminal offence**.

d. Information about the punishment of individuals forcibly returned to Eritrea is documented in the findings of the UN Commission of Inquiry (2015) discussed above at (32) and at (8).

e. Accordingly, this section should be revised to reflect reliable COI.

16. Sec. 7.2.4 regarding the supposed ability of exiled Eritreans, who have paid the tax and signed the 'letter of repentance', to enter the country 'without suffering any consequences' has already been discussed above. **This section should be deleted.**

<u>Annex A. Correspondence from British Embassy in Asmara, April 2010.</u>

The data contained in this correspondence is now very dated and simply wrong in light of information that has subsequently come to light. While I address some of the obvious issues below, **this Annex needs to be deleted.**

17. On page 27 the Annex states that documents relating to military or national service are 'difficult to forge'.

a. This is **not** the position taken by the Home Office when asylum applicants submit their original Eritrean documents. At this point Refusal Letters, and representations in the Immigration Tribunal, state unequivocally that such documents are forged and cannot be relied upon as evidence.

i. The source usually relied upon by the Home Office is a summary of a talk given by David Bozzini (2012; also see Canada 2014).

b. On page 27 the embassy replied to a question about whether family members of deserters are called up to serve in the armed forces. The embassy's response: 'We have no information to suggest or indicate that this occurs'**. Recent COI indicates that family members of a draft evader/deserter are**

conscripted. Relevant COI on this would include material identified above at (I. 36).

18. At the bottom of p.27 the issue is raised as to whether certain categories of people are exempt from national service/military. **The reply from the embassy is out of date and, in light of recent COI, is misleading. This section should be deleted**. New COI identified in this report needs to be cited.

19. On p. 29 the issue is whether women are treated differently to men in national/ military service. This issue has been addressed above at (I. 11). The answer clearly is that women are treated differently: some women are raped and sexually abused.

    a. It is not necessarily the case that all married women and women with children are exempt from national/military service, nor is it the case that single women who become pregnant are exempted.

    b. More recent COI on the treatment of women is available, notably in the UN Commission of Inquiry report.

    c. This section should be deleted.

20. On p. 30 the issue of obtaining exit visas is raised. **This section is out of date and should be deleted.**

    a. In addition to other COI cited and/or publicly available information, the US State Department (2015) summarizes the current position and identifies new exit visa restrictions. The new information should be made explicit in the CIG.

21. At the top of p. 31 the issue is raised about seeking medical treatment abroad.

    a. **The statement provided is most certainly wrong and needs to be deleted**.

    b. The key authority here is case law, namely 'MO (Illegal exit – risk on return) Eritrea CG [2011] UKUT 190 (IAC) (27 May 2011) and this should be cited/cross-referenced.

    c. Given what the embassy says earlier about obtaining exit visas, **the last line is most certainly wrong**: it is not the case that 'local medical opinion … carries weight in these matters', it is rather that the opinion of senior military officers who oversee medical exemptions is the deciding factor.

    d. As a 'country expert' who has provided evidence to the Immigration and Asylum Tribunal for 20 years, I have never seen an asylum claim which raises this issue. Before the creation of the 'Peoples Militia' there were occasional

cases where elderly Eritreans were allowed to leave/given exit visas to visit their children living overseas but I am not aware of anyone seeking to enter the UK to access medical care. Today legislation prevents 'medical tourism'.

22. If the Eritrean government had indeed revised its policies to limit national/military service to 18 months and to allow nationals who fled the country without an exit visa and/or who evaded or deserted national/military service, they forgot to tell the Eritrean public because the exodus of Eritreans has accelerated:

    a. On 16th October 2015 the head coach of the Eritrean national soccer team, together with most of his team, 'disappeared'[22] following a match in Botswana and have applied for asylum;
    b. In an article in the *Wall Street Journal* on 20 October 2015, the author estimates that in 2015 '1 in 50 Eritreans sought asylum in Europe.' He quotes Information Minister Yemane Ghebre who says 'Indefinite conscription and isolation are necessary ... because the country remains effectively at war with Ethiopia'.[23]

Annex B. Correspondence from British Embassy in Asmara, 11 October 2010

23. At the bottom of p. 32 the issue is raised concerning whether Ethiopians (presumably those who reside in Eritrea) are able to exit Eritrea legally. The response from the embassy is only partially correct and needs to be supplemented with COI:

    a. Background evidence on the presence of Ethiopians in Eritrea stems from the deportations conducted by Ethiopia during the Eritrea-Ethiopia border war 1998-2000. Information on deportations to Eritrea is documented in:

        i. The Eritrea-Ethiopia Claims Commission (2004); Allephone Abebe (2009: 838-f), International Law Update (2005), Campbell (2014, chaps. 1-2).

    b. The evidence regarding Eritrea's treatment of Ethiopian nationals displaced into Eritrea is that in 2009 an estimated 15,000 Ethiopians were resident in Eritrea and that the authorities refused to allow them access to Eritrean nationality, refused to consider their asylum claims, refused to let them work and in effect transformed Ethiopians into stateless persons who were dependent upon the ICRC or gifts from overseas relatives to survive. Sources on this include:

[22] See: 'Another Eritrean sports team 'disappear' – this time in Botswana' (Coastweek.com) at: http://www.coastweek.com/3841-Eritrean-national-football-head-coach-players-disappear-in-Botswana.htm (the link provides details of previous teams disappearing).
[23] See: 'African dictatorship fuels migrant crisis' (Wall Street Journal, 20 October) at: http://realtimenews.eu/us/an-african-dictatorship-fuels-migration-crisis_44020.html.

i. Open Society Justice Initiative (2009), International Committee of the Red Cross reports on Eritrea (2001-2008); Campbell (2014, chapters 2-3).

24. On p. 33 the issue is the treatment by Eritrean authorities of failed asylum seekers. I have cited COI on this issue above; **this section is completely out of date and should be deleted.**

25. At the top of p. 34 the issue is the length of training at Sawa. This is no longer 'a grey area' as extensive COI exists on this topic. **This section should be deleted**.

26. At p. 34 the issue is whether other military camps exist in Eritrea. In light of the extensive COI available on this issue, this section either needs to be deleted or links need to be made to more up to date to include HRW 2009. A list of military camps which is linked to specific COI is also available.[24]

27. Similarly, there is more recent and detailed COI on the punishment of conscripts and on exemptions from conscription. **These sections should be deleted**.

28. At the bottom of p. 35 the issue is whether homosexuals can avoid persecution or 'societal hostility' if they conduct themselves discretely. **Given current case law on this issue, this entire section on homosexuality should be deleted.**

Annex C. Correspondence from British Embassy in Asmara, 3 October 2011.

This annex is out of date and adds nothing that is important. **The annex should be deleted.**

Quality and balance of sources

29. The policy summary bears little relation to the available objective evidence and should be brought in line with the evidence. Assertions which lack a basis in evidence should be deleted.

30. This CIG should be incorporated into the first CIG; both CIGs need to be much better organized and sourced with COI.

31. The Home Office cannot rely on the Danish or the Norwegian reports.

24 See: 'Annex: A List of Known Detention Facilities in Eritrea' at: http://www.ehrea.org/12.htm.

32. The Home Office needs to assess the reliability and quality of the information is relies upon, especially if it comes from Eritrean officials or government websites.

33. Dated material, notably the three Annexes from the British embassy, should be deleted.

General comments on FOI Requests

Generally speaking, very little thought, time or effort has been given by staff to answer these requests.

1. Legal System, Judiciary. Sawa Prison (10/15/096)

   This is a very basic reply which could at least have provided the url link to the document cited. There is other, more detailed material available on the internet so the question is whether the Home Office has access to information other than what is available via the internet and how much time/effort is spent providing information. If the Home Office do not possess this information, perhaps it would be better to say so?

2. Eritrea/political affiliations/January 13th attempted coup (07/15/085)

   This is a reasonable answer.

3. IDPs/refugees, return of Eritrean refugee to Ethiopia (02/15-020)

   The reply does not answer all the questions. It would have been better to seek information from UNHCR Addis Ababa.

4. Political affiliation/political opposition/ PFDJ. Diaspora. Political prisoners (06/15-106)

   Wouldn't it have been better to say that the Home Office holds no information on this organization?

5. Non-state armed groups/Ansar Assuna Wahhabi in Eritrea/ Charity, Islamist, Sunni (06/15-011)

   A reasonable reply.

6. Legal system/judiciary/national service exemption 906/16-014)

   The reply does not address the question. You only provide recent information which does not answer the query. If you do not have historical data for 2000, you should make this clear.

7. Political affiliation/ Land expropriation and compensation (05/15-033)

The reply only addresses the question of land expropriation. There is COI available about the legal system in Eritrea which could address the question about redress. The final two questions are not clearly addressed.

8. Freedom of movement/ Facilitator of illegal exit (05/15-027)

   The response does not answer the questions. Q1 is clearly about current Home Office policy: does desertion/evasion constitute a crime: yes, it is a criminal offence. Is it dissent: yes, given that all disagreements with officials lead to problems. There is COI on the issue of sureties which could be used. The reply to the final two questions is adequate.

9. LGBTI persons/societal attitudes towards homosexuals (04/15-084)

   The response is adequate if basic.

10. Religion/ethnicity/Treatment of Jerberti ethnic group (07/15-104)

    The response is pretty basic.

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