

JULY 1, 2015

Letter to the UK Independent Chief Inspector of Borders and Immigration on Flawed UK Country Information and Guidance Reports on Eritrea

July 2, 2015

David Bolt

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RE: UK Country Information and Guidance Reports on Eritrea

Dear Mr Bolt,

We are writing to express our concern that two recent United Kingdom (UK) Country Information and Guidance reports on Eritrea rely exclusively on a recent discredited Danish Immigration Service report to justify key shifts in guidance

for UK asylum adjudicators on how to decide Eritrean asylum cases.

The new guidance could lead decision-makers to erroneously dismiss genuine refugee-law-based claims based on a fear of persecution on account of imputed political opinion resulting from draft evasion or desertion combined with leaving Eritrea without permission, and to dismiss genuine human rights-law-based claims for subsidiary protection based on the harsh conditions of prolonged national service or punishment for leaving the country without permission.

The deportation of such claimants to Eritrea would run the risk of the UK committing refoulement, the forced return of a person to a place where they would face a real risk of persecution or other serious harm.

We believe the Home Office should issue new Country Information and Guidance reports on Eritrea that reflect the continued risk of persecution and/or serious harm faced by such claimants and that specifically underline that decision-makers should give careful consideration to granting subsidiary protected status to anyone refused refugee status.

The preponderance of evidence from other sources, including the June 8, 2015 UN Commission of Inquiry report on Eritrea and 2015 Human Rights Watch research, indicates that there has been no change in the pattern of serious abuses in Eritrea. We kindly request you take these concerns into account during your current review of the reports.

The UK's 2014 and 2015 reports on Eritrean asylum claims

On March 13, 2015, the UK's Home Office published two reports entitled "Country Information and Guidance, Eritrea: Illegal Exit" ("[report](#)") and [Country Information and Guidance: Eritrea: National \(incl. Military\) Service](#)" ("[report](#)"). Both reports aim to guide Home Office decision-makers on what to consider when reviewing Eritrean asylum claims.

The two March 2015 reports reverse the key findings of the [February 2014 Home Office Guidance Note](#) on Eritrea.

Citing a wide range of sources—including the UN Special Rapporteur on Eritrea, the US State Department, Human Rights Watch, Amnesty International, the International Crisis Group and two leading UK Immigration Tribunal decisions—the 2014 Guidance Note concluded that:

- i. the Eritrean government “views as political opponents those who evade military service or desert from the military” and that “the treatment of such individuals is likely to amount to persecution;”
- ii. Eritreans forcibly returned to their country after leaving without permission “will be subjected to arrest without charge, detention, torture and other forms of ill-treatment;” and
- iii. national/military service may involve abuses such as indefinite forced labour, inadequate food and medical care, arbitrary arrest and detention for minor infractions and, in the case of women, sexual violence.

In contrast, the March 2015 reports conclude the opposite on each of these points:

- i. “those who refuse to undertake or abscond from military/national service are not viewed as traitors or political opponents;”
- ii. Eritreans fleeing national service “who left illegally are no longer considered per se to be at risk of harm or mistreatment amounting to persecution on return” and anyone “who left Eritrea illegally [is] not at risk of harm provided they have paid [expatriate] income tax ... and have signed a ‘letter of apology’ at an Eritrean Embassy” before returning home; and
- iii. “although a person *may be able to demonstrate* that they would be at real risk of mistreatment or inhuman and degrading treatment as a result of the conditions of military service, it cannot be said that every single person undertaking some form of military training as part of their national service

requirement would face such risk” [emphasis added].

As set out below, these three changes are based exclusively on a December 18, 2014 Danish Immigration Service [report](#) (“the Danish report”). A separate section below provides an overview of the Danish report.

In concluding that people evading or deserting from national service are “not viewed as traitors or political opponents,” paragraph 1.3.22 of the 2015 *National Service* report refers to “the most up-to-date information available from inside Eritrea.” The only new information in the *National Service* report on this point is in paragraph 2.9.5 which cites at length the Danish report authors’ interviews with “an international organisation, a UN agency, a regional NGO, a well-known Eritrean intellectual,” and four “western embass[ies].”

This new conclusion effectively directs decision-makers to dismiss asylum claims based on a fear of persecution on grounds of the applicant’s imputed political opinion because, according to the reports, the Eritrean authorities no longer view draft evaders and deserters as political opponents or traitors. By saying such claims should be dismissed, the March 2015 reports’ repeated references to the requirement that each asylum case include an individual fact-specific consideration are rendered meaningless.

Similarly, the 2015 *Illegal Exit* report’s conclusion that draft evaders, deserters and others who left without authorization no longer face persecution or other harm on return is based on “the most up-to-date information available from inside Eritrea – notably the Danish ... Report.” Yet on closer inspection, the only new information cited in the *Illegal Exit* report – at paragraph 2.3.1 – is the Danish report. The *Illegal Exit* report refers to the exact same sources as those cited in relation to how the authorities view draft evaders and deserters.

The *Illegal Exit* report, like the Danish report, also fails to distinguish between the way the Eritrean authorities might view Eritreans holding foreign passports when they return to Eritrea and how they might view failed Eritrean asylum seekers on

return, who are likely to be viewed as opponents of the regime for having left the country and claimed protection abroad. The Danish report contains no information from deported failed Eritrean asylum seekers.

Finally, in introducing a requirement that Eritrean asylum seekers must show they specifically risk harm because of harsh national service conditions, the *National Service* report—in paragraphs 2.7.4, 2.7.5 and 2.7.8—again relies entirely on the Danish report. The *National Service* report also relies almost entirely on the Danish report to conclude that “the most up-to-date information available from inside Eritrea suggests, in general, military/national service lasts for around four years” (paragraphs 1.3.16, 2.5.5 and 2.5.6) and “national service is generally between 18 months and 4 years” (paragraph 1.4). The *National Service* report bolsters its reliance on the Danish report by referring to two statements by Eritrean government officials that national service in Eritrea will be limited to 18 months (paragraphs 2.5.8 and 2.5.9).

While some Eritrean government officials claim that there are plans to limit national service to 18 months, there is no evidence that these commitments have been implemented or translated in actual changes on the ground for Eritrean national service conscripts.

As noted below, in December 2014 the Danish authorities republished their November report having excised all passages from the “well-known Eritrean intellectual.” Among the testimony cited in the UK reports relating to the above policy changes, only the intellectual’s testimony was critical of the Eritrean authorities. This makes the UK reports’ exclusive reliance on the revised Danish report even more questionable.

It is also worth noting that the March reports flatly contradict the January 2015 conclusions of the Foreign and Commonwealth Office in [a report](#) entitled “*Eritrea - Country of Concern*,” which concluded that “the Eritrean government made no visible progress on key human rights concerns ... continued to violate its international obligations and domestic law, including in the areas of arbitrary and inhumane detention, indefinite national service, and lack of religious freedom, freedom of the media and freedom of speech. The government continued to cite

‘no war, no peace’ with Ethiopia as justification for its failure to implement the 1997 constitution, which provides for democratic government and fundamental rights and freedoms.”

The flawed Danish report

On November 25, 2014, the Danish Immigration Service published **a 15-page report** called “Eritrea – Drivers and Root Causes of Emigration, National Service and the Possibility of Return: Country of Origin Information for Use in the Asylum Determination Process” (“the Danish report”). The report is based on three 2014 fact-finding visits by Danish officials in London, Ethiopia and Eritrea and includes Annexes with 60 pages of interview transcripts. Sources based in Eritrea used in the report are all anonymous and include representatives of international organizations, a number of western embassies, the Eritrean Ministry of Foreign Affairs, a “regional NGO” and a “well-known intellectual.”

On November 25, the Danish Immigration Service also **announced** (<http://www.justitsministeriet.dk/nyt-og-presse/pressemeddelelser/2014/udl%C3%A6ndingestyrelsen-offentligg%C3%B8r-fact-finding-rapport-om>) that “on account of the updated information,” it was changing its policy relating to Eritrean asylum claims so that “national service and illegal exit will not in itself amount to persecution or grant the right to international protection.”

The report’s main conclusions are reflected in the UK’s March 2015 reports, as summarized above.

In early December 10, 2014, UNHCR **criticised** (<http://www.ft.dk/samling/20141/almdel/uui/bilag/41/1435206.pdf>) the report, saying

- it provides only very brief summaries of what interviewees told Danish officials which means “actual statements of, and nuances provided by” interviewees are not reflected in the main body of the report;
- comparing the main text of the report and the interview records Annexed to

the report shows that “information provided by [interviewees] has often been used selectively in the report” and “the report ascribes statements to [interviewees] that cannot .. be traced to the[ir] ... statements as reviewed and cleared by them and contained in ... meeting notes” attached to the report;

- it “does not include any reflections on the reliability of specific sources of information” including no reflection on “the regulatory framework for the media, NGOs, research institutes and other[s] in Eritrea” or on how that framework affects “the independence of ... sources and the reliability of [their] information.”

Human Rights Watch agrees with UNHCR’s assessment.

The Eritrean government operates with such an intense surveillance and security network that it is extremely difficult to interview people in-country in secure and appropriate conditions. This constraint is also reflected in the Danish report. The authors of the report did not interview a single victim or witness of human rights violations in Eritrea, including deported failed asylum seekers. Instead, interviews in Eritrea were focused on anonymous representatives of Western embassies and UN agencies in the Eritrean capital, Asmara, who all have travel and other constraints that seriously limit their access and ability to speak freely to people in Eritrea and which therefore limits their knowledge of the situation on the ground.

This is reflected in the fact that the interviewees make contradictory and speculative statements about Eritrea’s human rights situation. For example, a number of interviewees qualify their statements, noting that there is **no**

independent access to detention centers

(<http://www.nyidanmark.dk/NR/rdonlyres/B28905F5-5C3F-409B-8A22-0DF0DACBDAEF/0/EritreareportEndeligvehttp://www.nyidanmark.dk/NR/rdonlyres/B28905C3F-409B-8A22-0DF0DACBDAEF/0/EritreareportEndeligversion.pdf>),

that the fate of people returned to Eritrea is unclear, and that government reforms of the national service conscription are rumoured, but not confirmed.

On March 23, 2015, Norway's Country of Origin Information service, "Landinfo," published **a report** (http://landinfo.no/asset/3097/1/3097_1.pdf) on national service in Eritrea. The report emphasises that the international community in Asmara is small and that its members have never "hidden the fact that most of the information they convey are not factual statements but views and sometimes speculation."

The Danish report's apparent reliance on unsubstantiated assertions from Eritrean government officials regarding alleged changes of policy in Eritrea is deeply problematic.

Independently of subsequent criticism from the report's researchers and a prominent Eritrean academic interviewed for the report (see below), Human Rights Watch considers that these failings undermine the report's two key conclusions that (i) anyone leaving Eritrea illegally, including draft evaders, can safely return to their country if they pay a two percent diaspora tax and sign a letter of apology at any Eritrean Embassy worldwide for having left the country illegally, and that (ii) draft evaders and deserters are no longer considered by the Eritrean regime to be traitors/political opponents.

In **early December** (<http://release-eritrea.com/?p=636>) 2014, one of the report's key sources, Professor Gaim Kibreab, publicly disassociated himself from the report, saying his views had been misrepresented because the Danish authorities had "basically ignored a lot of facts and hand-picked a few that fit the conclusion."

On **December 9** (<http://www.politiko.dk/nyheder/embedsmand-staar-frem-vi-skulle-naa-et-bestemt-resultat>) 2014, two of the report's researchers from the Danish Immigration Service publicly criticised the report, saying that throughout the trip to Eritrea and the drafting of the report, it was their clear impression that their superiors were intent on reaching pre-determined conclusions. The researchers had also protested internally against the faulty methodology before the report was published, and went on sick-leave in early November after receiving warnings of insubordination.

On December 9, 2014, the Danish Immigration Service **announced** that “after a concrete and individual assessment,” Danish asylum adjudicators would continue to recognise as refugees Eritrean asylum seekers fearing persecution as a result of their illegal exit and/or desertion or draft evasion, “and that this might well involve “providing the benefit of doubt to the asylum-seeker.” The Danish Immigration Service added that it expected to recognize such asylum claims in “many cases.”

On December 18, 2014, the Danish Immigration Service published a **new version** of the November 25 report with all of Professor Kibreab’s contributions crossed out.

The UN’s June 2015 Commission of Inquiry report on Eritrea

On June 8, 2015, the UN’s Commission of Inquiry on Eritrea published its **report** (<http://www.ohchr.org/EN/HRBodies/HRC/CoIEritrea/Pages/ReportCoIEritrea.aspx>), based exclusively on interviews with 550 Eritreans outside their country because the Eritrean authorities repeatedly failed to respond to the Commission’s request for its researchers to visit Eritrea.

The report paints a bleak human rights picture and concludes that some of the abuses may amount to crimes against humanity. The report includes abuses as far back as the 1990s but also includes testimony on abuses occurring as recently as late 2014, including in relation to punishment of deserters, draft evaders, people leaving the country without permission and conditions of national service.

Concerning the three key issues in the UK reports, the UN report reaches the following conclusions:

i. Treatment of draft evaders/deserters

After an extensive review of appalling detention conditions in Eritrea (paragraphs 839 – 962), the UN report concludes that “conditions of detention in Eritrea constitute a form of inhuman, cruel and degrading treatment or punishment” (paragraph 963) and that “**the harshest conditions ...** and strictest

regimes ... of detention are deliberately employed to punish those considered as”, among others, “traitors and suspects of cross-border crimes” (paragraph 964, emphasis added). It later stresses that “treatment of apprehended draft evaders and deserters during detention often amounts to torture, cruel, inhumane or degrading punishment” (paragraph 1389).

ii. Treatment of anyone leaving the country without permission

The report concludes that people attempting to leave—or who have previously left—the country unlawfully are regarded as “serious offenders, but also as **traitors**” (paragraph 431, emphasis added) and who “with a few exceptions [are] ... arrested, detained and subjected to ill-treatment and torture” (paragraph 444). The report also concludes that people are detained for between ten weeks and five years in “harsh conditions” where they are “subject to torture and punishment and sometimes to forced labour” (paragraph 1070).

The Commission also presents evidence of cases as recent as early 2015 in which Eritrean soldiers along the borders shot at people trying to leave the country without permission (paragraphs 1115 and 1116).

iii. Conditions of national service

The Commission concludes that among other purposes, “torture is used as a means to subjugate national service conscripts” (paragraph 1007), that “national service conscripts may be detained for a variety of reasons, including for desertion, unauthorised movement or absence, insubordination or for asking questions” and that detention is “often accompanied by torture or ill-treatment” (paragraph 1072).

The Commission outlines Eritrea’s policy of indefinite national service (paragraphs 1178 – 1181 and 1250 – 1251) before noting that in 2014 the authorities indicated that future national service conscripts would be required to serve only for 18 months (paragraph 1262). However, when asked, only two of the Commission’s interviewees who left the country in 2014 and 2015 said they had heard of the announcement (paragraph 1263). Some of the interviewees voiced

scepticism about the government's commitment to implementing the announcement, noting that previous pledges had not been fulfilled (paragraph 1263).

The Commission outlines concerns over food, healthcare, restricted movement and sexual violence against national conscripts (paragraphs 1351 – 1382) and concludes that “conditions of national service characterised by conscripts lack of adequate food, access to water, access to hygienic facilities and adequate accommodation during military training and service constitute cruel, inhuman or degrading treatment” (paragraph 1391).

On national service conditions, the Commission states that “the indefinite duration of national service; its terrible conditions and treatment including arbitrary detention, torture, sexual and gender-based violence, forced labour, absence of leave and the ludicrous pay; the implications this has on the possibility of any individual to form a family, have a family life and to have favorable conditions of work, make national service an institution where slavery-like practices occur” (paragraph 1397).

The Commission concludes its analysis of national service by finding that the indefinite nature of national service, the low pay and the tasks involved (paragraphs 1398 – 1497) mean that “most ... national service [conscripts] are ... subjected to forced labour for an open-ended period of time” and that “most of the conscripts in the army and all the conscripts in civil service are subjected to forced labour and are exploited by the Government of Eritrea for years and even decades without any hope of an end to this abuse, except by deserting and/or escaping the country and putting themselves at risk of suffering additional human rights violations if they are caught by the Eritrean authorities” (paragraph 1498). As a result, it finds that “national service ... is an institution where slavery-like practices occur” (paragraph 1518).

Human Rights Watch interviews with Eritreans in May 2015

In May 2015, Human Rights Watch interviewed 85 Eritreans in Italy and Sweden, of whom 62 left Eritrea in 2014 or 2015.

16 Eritreans told Human Rights Watch about what happened to them when the Eritrean military caught them while trying to leave the country without permission. All said the authorities detained them in harsh conditions and then returned them to the military.

One person said: “I was caught by soldiers trying to cross the border. They put me in a shipping container for three weeks, it was unbearably hot. They would regularly hit us with sticks. After three weeks they sent me back to the military.”

Another man said: “I was arrested three times for trying to flee my country. Each time they put me in a military prison [at the border] for several weeks and then took me back to the army. The last time [May 2014] was the worst. They beat me so badly that time. One of the soldiers that last time said to me ‘Why do you keep trying to run away from us? You need to be here and be loyal to your country? If we catch you again we will just kill you.’”

Human Rights Watch interviewed 22 Eritreans who had been active members of the military during their national service. All described horrible conditions in the military and regular punishments for small infractions. One individual said: “It is horrible, you feel like you are being treated like an animal. The food is terrible, we walk long distances for no reason, and they pay us virtually nothing. We would be punished for the smallest things, for being late in the morning, or for looking at someone the wrong way. I was frequently tied and left in the sun all day. They would hit me on a regular basis. Then because I had been labelled a troublemaker they wouldn’t let me go home on leave to see my family. For three years I never saw them. I had just had a son and I didn’t see him until he was three. The military were scared I would leave if they let me go home.”

Other recent reports on human rights conditions in Eritrea

Norway’s March 23, 2015 report, referred to above, does not refer to the Danish report. It emphasises how rights monitors have to rely on Eritreans outside their country to attempt to identify rights abuses in Eritrea. The report also stresses that it is too early to tell whether Eritrea’s reported change in policy limiting

national service to 18 months will in fact be implemented and notes that the authorities made similar announcements in the winter of 2013 and the spring of 2014 without any verifiable change in practice.

In May 2015, the European Asylum Support Office published its **latest** Country of Origin Information Report on Eritrea. The report assesses the basis of available information on the human rights situation in Eritrea and concludes that “access to relevant ... information ... is generally difficult” which is “mainly due to the fact that human rights monitors have no access to the country, research options for scholars are very restricted and there is no free press.” As a result “reports ... have to rely largely on sources outside Eritrea.” It stresses that “the few available reports based on research in Eritrea mainly draw on government statements and anecdotal knowledge of international representatives, and not on first-hand information” which “is a difficulty ...demonstrated in recent polemics regarding a Danish fact-finding report.”

The U.S. State Department’s *Country Reports on Human Rights Practices for 2014* chapter on Eritrea, published June 25, 2015, reported that “refusal to perform military or militia service, failure to enlist, fraudulent evasion of military service, and desertion were punished by lengthy imprisonment or other harsh arbitrary forms of punishment.” The report also notes that lawful exit from the country is not possible for most people of military service age. The report says that men under the age of 54 and women under the age of 47 are most commonly denied exit visas “regardless of whether they had completed the military portion of national service,” and that “a shoot-to-kill policy was in effect for those attempting to cross the border to exit the country without authorization.” The report also said that despite the supposed 18-month limit on national service, “the government did not demobilize many conscripts from the military as scheduled and forced some to serve indefinitely under threats of detention, torture, or punishment of their families.”

Recommendations

Key changes to the UK’s new policy guidance on Eritrea are based exclusively on the Danish report which does not contain reliable new information warranting

those changes. The new policy guidance refers to no additional sources of information to support the views and statements made by individuals interviewed for the Danish report.

The UK's two March 2015 reports effectively direct decision-makers to dismiss asylum claims based on a fear of persecution on grounds of the applicant's imputed political opinion because, according to the reports, the Eritrean authorities no longer view draft evaders and deserters as political opponents or traitors. The reports also pave the way for a possible refusal to grant Eritreans subsidiary protected status by concluding that Eritreans who left the country without permission can avoid punishment by formally apologising and paying a two percent diaspora tax, that national service will be limited to 18 months and that conditions of national service no longer amount to serious harm.

While some Eritrean government officials claim that there are plans to limit national service to 18 months, there is no evidence that these commitments have been implemented or translated in actual changes on the ground for Eritrean national service conscripts. Previous pledges along these lines have not been fulfilled. The recent UN Commission of Inquiry report, the US State Department human rights report of the government's continuing failure to demobilize conscripts after 18 months, and Eritrea's continued blocking of UN rights monitors from visiting the country, do not inspire confidence that the Eritrean authorities will in fact make good on their promise.

The preponderance of evidence summarised above indicates that there has been no change in Eritrea's treatment of draft evaders, deserters and people leaving the country without permission, as well as on the length and conditions of national service.

In our view, the UK and other countries should revert to their previous policies on Eritrean asylum claims until there is concrete evidence, substantiated by international human rights investigators, that Eritrea's national service policy and its treatment of conscripts has changed, both in policy and practice.

Furthermore there should be clear indications that the Eritrean authorities no longer regard draft evaders, deserters, and persons exiting without permission as traitors.

We therefore recommend that the UK Home Office issue a new Guidance Note on Eritrea which reflects the content of the Home Office's February 2014 Guidance Note, updated where appropriate with reference to the UN Commission of Inquiry report.

This would reflect the continued risk of persecution and/or serious harm faced by such claimants and would specifically underline that adjudicators should give careful consideration to granting subsidiary protected status to anyone refused refugee status.

Please feel free to contact us should you have any questions.

Sincerely,

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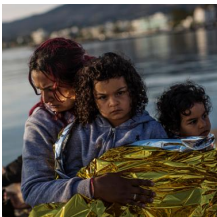
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