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The true human rights situation in Eritrea: the new UK Home Office Guidance as a political instrument for the prevention of migration

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ABSTRACT

This research paper aims at documenting the true situation in Eritrea, in order to refute the credibility of the content and of some of the sources of the new Guidance on Eritrea issued by the UK Home Office (HO); and of the related policies that are being implemented in some other countries, such as Israel. The HO country of origin Guidance surprisingly claims that there are alleged signs of improvement inside Eritrea for potential returnees. It is argued in this paper that the reasons for this are entirely politically influenced, with the purpose of preventing migration. The paper then brings to light the current circumstances in the country – supported *inter alia* by the testimonies gathered by the author, and the new findings of the UN Commission of Inquiry on Human Rights in Eritrea- that would make the forcible return of the Eritrean asylum-seekers and refugees unlawful.

Keywords:

Eritrea, Refugees, Asylum, humanitarian protection, UN Commission of Inquiry on Human Rights in Eritrea, human rights, *non-refoulement*, law, Home Office Guidance, Danish Immigration Service Fact-Finding Mission Report.

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INTRODUCTION

In March 2015, the UK Home Office (HO) issued two official country Guidance reports on Eritrea which disregard the gross human rights violations in the country and advise that Eritreans are no longer at risk of persecution.¹ The HO's Guidance omits recent information provided by reliable sources, and deems the flawed Danish Immigration Service (DIS) report on Eritrea² along with the statements of some Eritrean authorities, as the 'most up-to-date' information available on the country.³ The two official reports are used by Home Office decision-makers to determine the legitimacy of Eritrean asylum applications, and by legal aid providers. Outside the Council of Europe, other countries - for example Israel - have started referring to the new HO's Guidance on Eritrea as 'objective evidence,'⁴ with immediate and potentially tragic implications for thousands of Eritreans.

In order to challenge the credibility of HO's Guidance reports on Eritrea, this paper focuses on providing an overview of the current circumstances in the country, which lead over 5,000 people to leave Eritrea each month.⁵ As the UN Commission of Enquiry on Human Rights in Eritrea points out, 'the whole society is militarized' and forced military service is of 'indefinite nature.'⁶ Numerous sources attest that there has been no 'concrete and convincing evidence of any forms of improvement in Eritrea,'⁷ recently referred to as one of the 'most brutal regimes today, only paralleled by that of North Korea,'⁸ or as 'one of the worst dictatorships in the world,

¹ Home Office, 'Country Information and Guidance Eritrea: National (including Military) Service' (2015) <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/412715/CIG_-_Eritrea_-_National_incl_Military_Service_-_March_2015_-_v1_0.pdf> (hereinafter referred to as the HO Guidance: National (including military) service); See also Home Office, 'Country Information and Guidance Eritrea: Illegal Exit' (2015) <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/412716/CIG_-_Eritrea_-_Illegal_Exit_-_March_2015_-_v1_0.pdf>. (hereinafter referred to as the HO Guidance: Illegal exit).

² Danish Immigration Service, Fact-Finding Mission (FFM) Report, 'Eritrea – Drivers and Root Causes of Emigration, National Service and the Possibility of Return' (2014) <<https://www.nyidanmark.dk/NR/ronlyres/B28905F5-5C3F-409B-8A22-0DF0DACBDAEF/0/EritreareportEndeligversion.pdf>> (hereafter referred to as the Danish Report.)

³ The HO March 2015 Guidance on Eritrea include 48 references to the DIS Report.

⁴ Yonatan Yaakovovich of the Center for Israeli Immigration Policy said that the HO Guidance 'confirms what has been known for a long time – that the Eritrean deserters do not face danger.' See Gil Ronen, 'British Report Discredits Eritreans' Refugee Claim', *Arutz Sheva*, 7 April 2015 <http://www.israelnationalnews.com/News/News.aspx/193765#.VY-6G_1_Oko>. See also Ben-Dror Yemini, 'A Solution to Israel's Refugee Problem', *Breaking Israel News*, 13 April 2015 <<http://www.breakingisraelnews.com/35942/a-solution-to-israels-refugee-problem-opinion/#oP2BMGfslKZx2SUj.97>>; 'The Center for Israeli Migrant Policy [...] started to campaign to give the British report a high profile in Israel.' See Yonah Jeremy Bob, 'Are British Danish reports on Eritreans migrants a gamechanger?', *The Jerusalem Post*, 26 April 2015 <<http://www.jpost.com/International/Fighting-for-the-moral-high-ground-399046>>.

⁵ Human Rights Council, 'Report of the detailed findings of the Commission of Enquiry on human Rights in Eritrea' A/HCR/29/CRP.1 (4 June 2015) 42 <<http://www.ohchr.org/EN/HRBodies/HRC/CoIEritrea/Pages/ReportCoIEritrea.aspx>> (hereafter referred to as UN Report.)

⁶ Mike Smith, member of the Commission of Inquiry on Human Rights in Eritrea, intervention at the 30th Meeting - 28th Regular Session of Human Rights Council, 16 March 2015 <<http://webtv.un.org/search/id-coi-on-human-rights-in-eritrea-30th-meeting-28th-regular-session-of-human-rights-council/4114024967001?term=Eritrea#full-text>> (hereinafter referred to as intervention by Mike Smith.)

⁷ Dr. Samuel Ayele Bekalo, personal Communication with the author, 17 April 2015. See also Human Rights Watch, 'Denmark: Eritrea immigration report deeply flawed' (2014) <<http://www.hrw.org/news/2014/12/17/denmark-eritrea-immigration-report-deeply-flawed>>.

⁸ Dr. Samuel Ayele Bekalo, personal Communication with the author, 17 April 2015.

if not the worst.⁹ Some of the abuses – such as extrajudicial executions, torture, sexual abuses, national service and forced labour - may constitute crimes against humanity.¹⁰

In attempting to reveal the real situation inside Eritrea, the author conducted extensive interviews with Eritrean refugees in the UK, South Sudan, Saudi Arabia and Israel, between April and May 2015.¹¹ Among sources consulted were up-to-date UN reports, press releases, comments by experts, and the opinions of reputable human rights organisations – such as Amnesty International and Human Rights Watch. The recent discussion of the Subcommittee on Human Rights at the European Parliament,¹² as well as the interactive dialogue with the Commission of Inquiry on the Situation of Human Rights in Eritrea at the Human Rights Council, were also taken into account.¹³

This paper also aims at analysing the reasons that led the HO to change its policy on Eritrean asylum-seekers. This African country has become the fifth largest producer of asylum seekers in the world,¹⁴ and the number of Eritreans seeking asylum in Europe has tripled.¹⁵ The use of discredited sources by the HO seems to be based on the large number of people that the UK would be bound to host under international law, rather than on the factual situation which forces those people to flee and to put their lives at risk. The HO Guidance thus appears to be an attempt to curtail Eritrean migration in the UK.¹⁶

The analysis and findings of the information gathered by the author do not support those of the UK's new Guidance. Given the reality of the situation in Eritrea, following the recommendations of the British Home Office Guidance would completely disregard some international legal obligations, e.g. the international principle of *non-refoulement*, by which the Member States of the Council of Europe and Israel are bound. The present paper entails the need to change the latter document in accordance with the Report of the UN Commission of Inquiry on Eritrea, which was presented to the Human Rights Council on 6th June 2015.¹⁷

This paper does not include any personal details of the interviewees, as it would put their safety and lives at risk. Some of them acknowledged that it was the first time that they had talked about the abuses that they had faced and witnessed in Eritrea. The trauma that remembering causes them, the fear of reprisals against their relatives by the Eritrean authorities, and the

⁹ Comment by Marie-Christine Vergiat from , member of the European Parliament: Confederal Group of the European United Left – Nordic Green Left - at the meeting of the Subcommittee on Human Rights at the European Parliament on 17 March 2015 <<http://www.europarl.europa.eu/news/en/news-room/content/20150312IPR33949/html/Subcommittee-on-Human-Rights-meeting-17-03-2015-09001230>>.

¹⁰ See UN Report 449 (1507)

¹¹ A qualified interpreter was present in every interview and meeting and served as an interpreter when it was necessary. (Qualified as Public Service Community Interpreter Tigre, Tigrinya, Arabic to English and the vice versa by 'AIM Awards, Workers' Educational Association East Midlands.')

¹² Meeting of the Subcommittee on Human Rights at the European Parliament, 17th March 2015 <<http://www.europarl.europa.eu/news/en/news-room/content/20150312IPR33949/html/Subcommittee-on-Human-Rights-meeting-17-03-2015-09001230>> accessed 20 March 2015.

¹³ Dialogue with the Commission of enquiry on Human Rights in Eritrea, 30th Meeting - 28th Regular Session of Human Rights Council, 16 March 2015 <<http://webtv.un.org/search/id-coi-on-human-rights-in-eritrea-30th-meeting-28th-regular-session-of-human-rights-council/4114024967001?term=Eritrea#full-text>>.

¹⁴ UN Report (n5) 42.

¹⁵ See, for instance, UNHCR, 'Sharp increase in number of Eritrean refugees and asylum-seekers in Europe, Ethiopia and Sudan' (UNHCR, 2014) <<http://www.unhcr.org/5465fea1381.html>>.

¹⁶ See, for instance, Independent Advisory Group on Country Information, *Report by the Independent Advisory Group on Country Information on Eritrea Country Information and Guidance Reports produced by the HO* (2015) <<http://icinspector.independent.gov.uk/wp-content/uploads/2015/06/Eritrea-report-IAGCI-19-May-2015.pdf>>.

¹⁷ UN Report (n5). See also Commission of Inquiry on Human Rights in Eritrea, 'Report of the Commission of Enquiry on human rights in Eritrea' A/HCR/29/42 (2015) <<http://www.ohchr.org/EN/HRBodies/HRC/CoIEritrea/Pages/ReportCoIEritrea.aspx>>.

possibility of being spied on by the government¹⁸ has kept them silent: ‘everybody is scared to talk, it is painful [...] but I am tired of being silent about it.’¹⁹ The Eritrean refugees interviewed also described extensive breaches of the International Covenant on Civil and Political Rights (ICCPR) and of the International Covenant on Economic, Social and Cultural Rights (ICESCR)²⁰ for example, violations of the right to property and the rights to freedom of expression, assembly and association; as well as violations of freedom of thought, conscience and religion. Although these violations are not explained in detail in this paper, they must be taken into consideration in other contexts.²¹

1. INCONSISTENCIES BETWEEN THE NEW HO POLICY ON ERITREA AND THE TRUE SITUATION IN THE COUNTRY

1.1. Grounds for being granted asylum

As a result of a visit to Eritrea by officials of the UK Foreign and Commonwealth Office and of the HO in December 2014, the HO confirmed that the DIS’ Fact-Finding Mission (FFM) Report on Eritrea reflects the current situation in the country. The latter claims signs of improvement inside Eritrea, and conclude that national service and illegal exit will not on themselves amount to persecution or to grounds for being granted international protection.²² Nevertheless, the DIS announced that the conclusions of the aforesaid report are no longer used by the Danish authorities. Accordingly, Denmark will maintain both illegal exit and Eritrean National Service (ENS) desertion as grounds for being granted asylum, which will ensure asylum to Eritreans ‘in many cases.’²³

In March 2015, the HO published two official country reports on Eritrea, namely ‘Country Information and Guidance Eritrea: National (including Military) Service,’²⁴ and ‘Country Information and Guidance Eritrea: Illegal Exit.’²⁵ As opposed to the latest DIS announcement, these Guidelines drastically reduced the grounds for asylum being granted to Eritrean asylum-seekers. It only considers to be at risk of mistreatment those who have been ‘politically active in their opposition to the Eritrean government and would be readily identifiable as such;’ as well as those conscientious objectors who were not able to perform the military service on account of their religious beliefs.²⁶

On 25th April 2015, the new Eritrean ambassador to the UK, Estifanos Habtemariam, intended to hold an unofficial meeting with Eritreans in Nottingham, which was cancelled at the last minute as the Nottingham authorities had not been informed. In any case, Eritrean in the Diaspora who do not take any visible action to support the government of Eritrea were not allowed to attend this meeting. As they later explained, ‘bodyguards appointed by the Eritrean Embassy stood at the main door of the place where the meeting was expected to be held. They did not allow us to enter since they considered us political opponents to the Government. The ambassador’s intention is not to hold a meeting with us, but with those Eritreans that collaborate with the government of Eritrea and spy on us. Furthermore, they took pictures of us, which we are sure

¹⁸ Spying is a widely common practice used by the Government to control the Eritrean population in Diaspora. See UN Report. 94-96.

¹⁹ Email received from a 23-year-old Eritrean woman living in Saudi Arabia, 13 April 2015.

²⁰ Interviews, 1 April 2015, 11 April 2015, 18 April 2015, 10 May 2015.

²¹ The UN Commission of Enquiry on Human Rights in Eritrea has collected information regarding the economic, social and cultural rights, which is included in its Report (n5) 5.

²² Danish Report (n2) 16-17.

²³ See, for instance, The Local, ‘Denmark admits ‘doubts’ about Eritrean report’ <<http://www.thelocal.dk/20141210/denmark-doubts-controversial-eritrea-report>>.

²⁴ HO Guidance: national (including military) service (n1); HO Guidance: illegal exit (n1).

²⁵ HO Guidance: Illegal Exit (n1)

²⁶ HO Guidance: National (including Military) Service (n1) 6.

were sent to the Government.’²⁷ The Eritrean refugees who gave this testimony felt discriminated against.²⁸ Holding political opinions different from those of the government is not in itself a ground for claiming refugee status.²⁹ Nevertheless, Eritreans in the Diaspora who do not express their political opinion also comes to the attention of the Eritrean authorities. They are seen as opposition and dismissed and persecuted on this ground. Applicants subject to discriminatory measures combined with other factors, such the government control, the unauthorized use of pictures and the general situation of insecurity in Eritrea, if taken together, can legitimately claim fear of persecution and should be granted asylum, according to the UNHCR.³⁰

According to the findings of the UN Commission of Enquiry on Human Rights in Eritrea, a current policy in the country ‘includes an absolute ban on religious activities during military training’; this is the case at Sawa and at other Military Training Camps, and during military service.³¹ Those conscripts who were caught practicing their respective religions or in possessions of reading religious materials were arrested or imprisoned.³² The Commission also documented cases of severe punishments and extrajudicial killings for the same reasons.³³ Restrictions on the right to practice religion amount to measures of discrimination. Furthermore, conscripts live under a threat to life, which together with the lack of freedom of religion, constitute persecution. This impedes trainees and conscripts to perform the military service on account of their religious beliefs and justifies a claim to well-founded fear of persecution.³⁴

Until the two HO Guidance reports are amended, the Home Office decision-makers should bear in mind that the scope of asylum, as stipulated by the HO Guidance,³⁵ should also encompass those Eritrean asylum-seekers who do not actively support the government as they are also readily identified as ‘active in the opposition’ to the government of Eritrea. The same is true for any religious person, as they are prevented from practicing their religions and severely punished on the same ground.

1.2. Duration of the Eritrean National Service (ENS) and exemptions

As stipulated by Eritrean domestic law - ‘Proclamation of National Service’- Active National Service consists of six months of training at a National Service Training Centre and twelve months of active military service.³⁶ Nevertheless, due to the so-called ‘no war–no peace’ context³⁷ that Eritrea has adopted following the war between Eritrea and Ethiopia (1998-2000,)

²⁷ Interview, 25 April 2015.

²⁸ Interview, 25 April 2015. Interview, 27 April 2015. Interview, 28 April 2015.

²⁹ Article 1(A)(2) of the Convention Relating to the Status of Refugees states that refugee is a person who has a well founded-fear of being persecuted for reasons such as of political opinion. See UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees HCR/IP/4/Eng/REV.1* (UNCHR revised edition 2011) B. Interpretation of terms, (f) Political opinion. <https://www.unhcr.org/hk/files/useful_resources/Important_documents/Handbook_on_Procedures_and_Criteria_for_RSD.pdf>.

³⁰ Ibid B: Interpretation of terms, (b) Persecution, (c) Discrimination.

³¹ UN Report (n5) 172 (668).

³² Ibid 173 (669).

³³ Ibid 172 (668); 173 (669); 173 (669).

³⁴ Article 1(A)(2) of the Convention Relating to the Status of Refugees states that refugee is a person who has a ‘well founded-fear of being persecuted for reasons’ such as...’religion.’

³⁵ HO Guidance: National (including Military) Service (n1) 6.

³⁶ Article 8 of the Proclamation of National Service No. 82/1995 [Eritrea] 1995 <<http://www.refworld.org/docid/3dd8d3af4.html>> (hereafter referred to as Proclamation of National Service) states ‘[...] Active National Service consists of six months of training in the National Service Training Center and 12 months of active military service and development tasks in military forces for a total of 18 months. [...]’

³⁷ For further information about the ‘no war, no peace’ relations with Ethiopia, see UN Report (n5) 46-47.

the government of Eritrea adopted the ‘Warsai Yikealo Development Campaign’ (WYDC),³⁸ which transformed the national/military service³⁹ into an indefinite conscription.⁴⁰ The UK Foreign and Commonwealth Office (FCO,) after visiting Eritrea in December 2014, confirmed that the government of Eritrea still fails to make any progress regarding the indefinite nature of the ENS.⁴¹

However, the HO Guidance report on ENS claims that according to ‘the most up-to-date information available from inside Eritrea,’ notably the Danish Report, ‘in general, military/national service lasts for around four years.’⁴² It further refers to unofficial statements made by the Eritrean President’s Adviser Yemane Gebreab and the Eritrean Foreign Minister Osman Saleh, who ‘promised’ that from November 2014, National Service was to be subject to an 18 month limit.⁴³ In response to such assertions, Gaim Kibreab⁴⁴ claimed that there is no evidence whatsoever to make us think that the duration of ENS has changed in recent times.⁴⁵ According to the testimonies gathered by the Commission of Inquiry on Human Rights in Eritrea, there are no changes in this respect on the ground.⁴⁶ Similarly, refugees interviewed for this paper confirmed that ENS remains indefinite. One of the interviewees highlighted that his uncle is still serving in the military, for what amounts to a total of eighteen years.⁴⁷ Another interviewee added that his brother, who is 24 years old, ‘has been serving in the military service for five years already.’⁴⁸

The ‘Proclamation of National Service’ stipulates the age limits for conscription. Eritrean citizens between ages 18 and 50, have the duty to perform military training and further ENS.⁴⁹ Nevertheless, contrary to what is stipulated by domestic law, minors and people over 50 years of age are also forced into conscription. Students attending 12th grade, many of whom are children below the age of 18, are forced into military training at Sawa Military Training Camp.⁵⁰ In addition to that, students who fail the compulsory general exam at the end of 8th grade, most of whom are between 14 and 15 years of age, are forced to undergo military training at Military

³⁸ Ibid 1, 35.

³⁹ Term used by the HO Guidance to refer to the Eritrean National Service, which comprises military training, followed by military service or national service.

⁴⁰ See United States Department of State, ‘Trafficking in Persons Report 2014’ (2014) <<http://www.state.gov/documents/organization/226846.pdf>>; Human Rights Watch, ‘World Report 2014: Eritrea’ (2014) 113 <http://www.hrw.org/sites/default/files/wr2014_web_0.pdf>; Freedom House, ‘Freedom in the World – Eritrea – 2014’ (2014) Section G <<https://freedomhouse.org/report/freedom-world/2014/eritrea-0#.VMBfcEesV8E>>.

⁴¹ Foreign & Commonwealth Office, ‘Eritrea, Country of Concern’ (2015) <<https://www.gov.uk/government/publications/eritrea-country-of-concern/eritrea-country-of-concern>>.

⁴² HO Guidance: National (including Military) Service (n1) 6.

⁴³ Ibid 6-7.

⁴⁴ Professor Gaim Kibreab is a Research Professor and Course Director of the MSc Refugee Studies at London South Bank University, School of Law and Social Sciences in the Department of Social Science.

⁴⁵ Gaim Kibreab, ‘Some Reflections on the UK HO’s Country Information Guidance Eritrea: National (including Military) Service & Illegal Exit’ (2015) <<http://hrc-eritrea.org/some-reflections-on-the-uk-home-offices-country-information-guidance-eritrea-national-incl-military-service-illegal-exit-march-2015/>> accessed 2 May 2015.

⁴⁶ Intervention by Mike Smith (n6).

⁴⁷ Interview, 10 May 2015.

⁴⁸ Interview, 1 April 2015.

⁴⁹ Article 6 of the Proclamation of National Service (n46) states ‘[u]nder this Proclamation any Eritrean citizen from 18 to 50 years of age has the obligation of carrying out national service.’ Article 8 states that ‘[u]nder this Proclamation all Eritreans citizens from the age of 18 to 40 years have the compulsory duty of performing Active National Service. [...]’

⁵⁰ ‘Sawa’ is a military camp located at southern west of Eritrea where the ‘Warsai Yikealo Secondary School’ is located. Upon completing the 11th grade, students are obliged to go to ‘Warsai Yikealo Secondary School’ to complete 12th grade while receiving military training.

Training Camps.⁵¹ Although the government of Eritrea denies that Students at Military Camps are soldiers; they ‘have military status and are under the jurisdiction of the Ministry of Defence and subject to military discipline.’⁵² The Human Rights Committee recommended that states parties to the ICCPR, including Eritrea, ‘eliminate the forced recruitment of minors into the armed forces,’ which it interprets as a violation of Article 8 ICCPR - prohibition of slavery and forced labour.’⁵³ The author considers that more emphasis on the conscription of minors should be expected from the HO’s Guidance, which barely refers to it.⁵⁴

From the wording of HO’s Guidance, it is assumed that elderly people are no longer serving in the military.⁵⁵ Nevertheless, the testimonies collected for this paper, along with the UN Commission of Inquiry’s findings⁵⁶ and a recent report issued by the United States’ State Department,⁵⁷ note that at the present time Eritreans who had been demobilized from military service, may be at any time called to join additional military training – the so-called Militia. It consists of military units formed out of civilian elders - up to 70 years of age- who undergo exactly the same tasks as to under military service. One of the refugees interviewed pointed out: ‘My father, a 64-year-old man, was forced to join the militia this year. He had to leave my mum and the job at his shop, and perform military training for two months.’⁵⁸

The ‘Proclamation of National Service’ specifies the categories of people who may be exempted from or unable to perform military service. These comprise unfit people⁵⁹ and students enrolled in a higher education programme.⁶⁰ Aside from domestic law, there are additional policy exemptions which cover married women and women with children.⁶¹ Part 2 of the Section 2 of

⁵¹ For more information about underage recruitment, see UN Report (n5) 343-344. See also Sheila B. Keetharuth, ‘Report of the Special Rapporteur on the situation of human rights in Eritrea’ (2014) 9 <http://reliefweb.int/sites/reliefweb.int/files/resources/A_HRC_26_45_ENG.pdf>; see also the intervention by Mike Smith (n6).

⁵² See, for instance, Child Soldiers International, ‘Louder than words - Case Study: Eritrea: Widespread conscription of children goes unchecked’ (2012) 41 <http://www.child-soldiers.org/user_uploads/pdf/louderthanwordsseptember20124903558.pdf>.

⁵³ Human Rights Committee (HRC,) ‘Consideration of reports submitted by states parties under article 40 of the Covenant’ CCPR/C/COD/CO/3 (HRC, 2006) para. 18 <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/COD/CO/3&Lang=Sp>.

⁵⁴ Only one reference is found in HO Guidance: National (including Military) Service (n1) 22.

⁵⁵ Ibid 11.

⁵⁶ Commission of Inquiry on Human Rights in Eritrea (n17): ‘Elderly Eritreans are subject to forced labour in the context of their forced recruitment in the militia.’

⁵⁷ United States Department of State (n40) 8.

⁵⁸ Interview, 18 April 2015. See, for instance, Elsa Chyrum (Director of the Human Rights concern Eritrea) 9. ‘For those who hoped to be demobilized and finally go back to their families, the prospect of continuing service under the people’s militia makes their life equal to that of a slave with no say in their future.’

⁵⁹ Article 15 (1) of the Proclamation of National Service (n36) states ‘[t]he Board gives decisions on exemption from National Service to citizens who suffer from disability such as invalidity, blindness, psychological derangement.’

⁶⁰ Ibid article 14 (2) states that ‘[a] student in a regular daily course may be exempted from Active National Service for a limited period a) If he is continuing his studies from Middle up to Secondary Grade; b) If he is following his course of studies in a Professional or Technical School; c) If after passing a University examination he has been accepted by the University and is following his studies; d) If he has been authorized as a special case to continue higher studies by the Technical School or by the University; e) If at any school level he has been required by the Government to attend a special course or to be sent on scholarship.’

⁶¹ See UN Report (n5) 346 (1201): ‘Proclamation No.11/1991, which regulated the national service prior to the promulgation of the National Service Proclamation (No. 82/1995), provided for married women and single mothers to be exempt from national service. Although the 1995 National Service Proclamation removed these exemptions *de jure* for married women and mothers, many married women and single mothers continue to be *de facto* exempted, at the discretion of recruiting officers.’ See also Gaim Kibreab, ‘The Open-Ended Eritrean National Service: The Driver of Forced Migration,’ Paper for the European

the HO's Guidance on ENS⁶² outlines the concerned provisions enshrined in the 'Proclamation,' but notoriously omits Article 14, which exempts students. The Guidance further incorporates information provided by the British Embassy in Asmara - dated on April 2010 - with the aim of supporting the alleged compliance with these legal exemptions by the Eritrean government.⁶³ Nevertheless, recent information obtained from Eritrea in 2015 – detailed below - indicates that, in practice, students, unfit people and married women are arbitrarily recruited to conscription, in contravention of Eritrean domestic law.

At Sawa Military Camp, students undergo military training during their last year of secondary school.⁶⁴ Due to the harsh conditions - which include corporal punishment and other forms of inhuman and degrading treatment,⁶⁵ only a minority of students successfully passes the 'matriculation exam' that enables them to undertake higher education. The undergraduate programmes, which take place in the so-called 'Institutes,' also include military training.⁶⁶ Upon finishing higher education, graduates are bound by domestic law to complete the 'Active National Service' in order to be awarded their diploma.⁶⁷ Nevertheless, the testimonies assembled by the author indicate that, due to the indefinite ENS, diplomas have never been issued.⁶⁸ The conclusion that arises is that education is combined with compulsory military training, followed by indefinite national service.

Not all those who fall within the category of unfit people get the required exemption certificate⁶⁹ that exempts them from military service, or the authorisation⁷⁰ by military authorities to get this certificate.⁷¹ One of the Eritrean interviewees explained that, despite the fact that he had lost his eye during the war and was seriously injured in his left leg, which impeded him from walking properly, he was never officially declared unfit. Hence, he was forced into conscription for 15 years (1994 - 2009).⁷² Moreover, some of those who had already been declared medical unfit are now being called up to join military service. One of the interviewees said that his brother, who falls within this category, 'was called up in March for conscription.'⁷³ Information from inside Eritrea shows that, according to recent announcements made by the government in some cities, women are expected to be called up to join military training in the coming weeks.⁷⁴ Indeed, Eritreans living in the city of Keren⁷⁵ confirmed that people – including married women - have been forced into conscription in early May 2015.⁷⁶

The wording of the HO Guidelines clearly avoids the fact that not only ENS remains indefinite, but also it has been extended in recent years to include elderly people and civilians

Asylum Support Office Practical Cooperation Meeting on Eritrea (Gaim Kibreab 2014) 2 <http://www.ecoi.net/file_upload/90_1416473628_gaim-kibreab-the-open-ended-eritrean-national-service-the-driver-of-forced-migration.pdf>.

⁶² HO Guidance: National (including Military) Service (n1) 2.2. Exemptions from National Service. 11-13.

⁶³ Ibid 11-13.

⁶⁴ See (n50) 9.

⁶⁵ Interviews, 11 April 2015; Interviews, 10 May 2015.

⁶⁶ Interview, 10 May 2015.

⁶⁷ Article 14 (4) of the Proclamation of National Service (n36) states that '[t]he student will be awarded with a Certificate, Diploma or Degree only upon completion of Active National Service.'

⁶⁸ The testimonies gathered by the UN Commission of Enquiry, similarly to the findings of the author of the present paper, explain students do not receive any certificate. See UN Report (n5) 346.

⁶⁹ Article 15 (2) of the Proclamation of National Service (n46) states that '[t]he citizens who [...] are declared exempted from National Service by the Board will receive from the Ministry of Defence a certificate of exemption.'

⁷⁰ Ibid Article 15 (1) states that '[t]he Board gives decisions on exemption from National Service to citizens who suffer from disability such as invalidity, blindness, psychological derangement.'

⁷¹ See UN Report (n5) 345-346.

⁷² Interview, 10 May 2015.

⁷³ Interview, 18 April 2015.

⁷⁴ Ibid.

⁷⁵ Keren is the second-largest city in Eritrea, located around 91 kilometres northwest of Asmara.

⁷⁶ Phone call from the city of Keren, dated 13 May 2015.

who are exempted from national service by domestic law and additional policies. All these facts considered, it can be argued that the ENS clearly amounts to deprivation of liberty as enshrined in the provision of Article 9 of the ICCPR.^{77 78}

1.3. National service as forced labour

In January 2015, the UK Foreign and Commonwealth Office, after visiting Eritrea, updated its report 'Eritrea, Country of Concern'⁷⁹ – which was first published on 10th April 2014-⁸⁰ in which it considered the indefinite national service as forced labour. Conversely, the Home Office Guidance, which was published only two months later, indicates that the national service is no longer regarded as forced labour. It cites a quotation from the Danish Report, which alleges that conscripts 'are not overworked or working under slave-like conditions [...]'.⁸¹ In this sense, the Guidance concludes that the requirement to undergo compulsory national or military service does not itself amount to persecution.⁸²

The Special Rapporteur on the Situation of Human Rights in Eritrea, Sheila B. Keetharuth, pointed out that conscription to military service should normally last a reasonable period of time, from one to three years.⁸³ In light of the above paragraphs, the ENS exceeds the recommended length. Due to the indefinite nature of the ENS, Eritreans are deprived of their basic needs. Those serving in the military are only entitled to have a month's vacation every one year or two years in other cases; furthermore, there is no stipulated working hours' limit.⁸⁴ Dr. Samuel Ayele Bekalo noted that the prolonged forced military service 'takes citizens away from family and normal social life opportunities indefinitely.'⁸⁵ Families are never informed about the place where their relatives are serving, which moreover, constantly changes.⁸⁶ Conscripts are prevented from having visitors, even from attending the funerals of their closest relatives.⁸⁷ The low remuneration, less than £6 per month⁸⁸ – so-called 'pocket money' by domestic law,⁸⁹ does not enable them to ensure 'an existence worthy of human dignity' for them and their families.⁹⁰ Consequently, owing to the high number of men who are serving in national/military service or imprisoned, women are in many cases unable to economically support their children. All things

⁷⁷ Article 9 (1) of the International Covenant on Civil and Political Rights, 16 December 1966, 999 UNTS 171 (ICCPR) states that '[e]veryone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.'

⁷⁸ Human Rights Committee, Communication No. 256/1987, *Vuolanne v. Finland*, Views adopted on 7 April 1989, para. 9.4, quoted by Sheila B. Keetharuth (n51) 8.

⁷⁹ See UK Foreign and Commonwealth Office (n41) 8.

⁸⁰ See all the updates of the report taken from the Foreign and Commonwealth Office (FCO) at <<https://www.gov.uk/government/publications/eritrea-country-of-concern>>.

⁸¹ HO Guidance: National (including Military) Service, p 22.

⁸² *Ibid* 5-7.

⁸³ See Sheila B. Keetharuth (n51) 9.

⁸⁴ Interviews, 18 April 2015.

⁸⁵ Dr. Samuel Ayele Bekalo, Personal Communication with the author, 17 April 2015.

⁸⁶ Interviews, 1 April 2015.

⁸⁷ *Ibid*.

⁸⁸ Interviews, 1 April 2015. One of the interviewees said from 1995 until 2001 was paid less than £1 per month. Other interviewee said, while serving in the military service from 2010 to 2013, he was paid £5 per month.

⁸⁹ Article 22(1) of the Proclamation of National Service (n36) states that '[t]he citizen who upon termination of military training enters into a 12 months of Active National Service is entitled to pocket money.'

⁹⁰ Article 23 (3) of the Universal Declaration of Human Rights, 10 December 1948, states that '[e]veryone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.'

considered, most Eritreans are prevented from founding a family, which clearly contravenes the country's international obligations.⁹¹

Furthermore, the military service in Eritrea is not purely military. Amnesty International recently reported that conscripts are assigned to a 'wide variety of roles, without any choice as to the nature of the work they are assigned to.' A significant portion of them are bound to remain soldiers after the military training.⁹² Although some of the conscripts are assigned solely military tasks, some of them are reported as working in farms or construction sites. An Eritrean refugee told how he was forced to build the houses of military commanders: 'I would have not minded building either schools or hospitals, but not houses for commanders.'⁹³ The remaining conscripts⁹⁴ perform jobs in the civil service; however, they are all the same considered soldiers. This implies that they are forced to remain at the work site without any choice,⁹⁵ and prevented from enjoying the right to work as stipulated by international law.⁹⁶ Moreover, they can be mobilized to serve in the army at any time.⁹⁷

Eritrean domestic law recognises neither conscientious objection to military service nor alternative activities.⁹⁸ Additionally, recent reports by human rights organisations - such as Amnesty International and Freedom House - noted that Eritrea fails, in practice, to recognise conscientious-objector status.⁹⁹ As a result, many Eritreans have been imprisoned – without time

⁹¹ Article 23 (1) of the ICCPR states that '[t]he family is the natural and fundamental group unit of society and is entitled to protection by society and the State.' Article 10 of the International Covenant on Economic, Social and Cultural Rights, 16 December 1966, 999 UNTS 3 (ICESCR) states that '[t]he widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.' - Both instruments have been ratified by Eritrea'.

⁹² Amnesty International, 'Eritrea - 20 years of Independence but still no freedom' (*Amnesty International*, 2013) 25-26 <<http://www.amnesty.org/fr/library/asset/AFR64/001/2013/en/64b58cdf-a431-499c-9830-f4d66542c8da/afr640012013en.pdf>>.

⁹³ Interview, 18 April 2015.

⁹⁴ See UN report (n5) 98 (357): 'The civil service is largely composed of former military officers from the liberation struggle and national service conscripts, providing a training ground for unskilled conscripts assigned government ministries and departments.'

⁹⁵ See Human Rights Watch (n40) 8.

⁹⁶ Article 6 of the ICESCR states that '(1) [t]he States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right; (2) [t]he steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.'

⁹⁷ See, for further information, Chapter III of the Proclamation of National Service (n36).

⁹⁸ Alternative civil service is a special kind of work in the interests of the society and state, carried by citizens instead of military service. 'The Human Rights Committee has frequently referred to the fact that States may establish alternative service in place of compulsory military service.' According to the Committee of Ministers of the Council of Europe, '[a]lternative service [...] shall be in principle civilian and in the public interest. Nevertheless, in addition to civilian service, the State may also provide for unarmed military service, assigning to it only those conscientious objectors whose objections are restricted to the personal use of arm' (*Recommendation No. R (87) 8 of the Committee of Ministers to member States regarding conscientious objection to compulsory military service.*) Alternative service to those conscientious objectors whose objection is to personally bearing arms, but who are not opposed to unarmed military service, non-combatant service in the military is acceptable (Office of the High commissioner (OHCHR) *Conscientious objection to Military Service*. For those whose objection is to any participation in the armed forces, alternative service should be of a civilian character. (*Recommendation of the Committee of Ministers of the Council of Europe No. R (87) 8.*) The Soviet Union, along with the UK and Denmark, became some of the first countries in the twentieth century to recognise the right of its citizens to refuse from military service for reasons of conscience.

⁹⁹ Amnesty International (n92) 12 Section G.

limit on imprisonment - on grounds of conscientious objection based on religion or belief.¹⁰⁰ In regard to this, the HO's Guidance refers to a ruling of the House of Lords (2003)¹⁰¹ in order to point out that there is no internationally recognised right to conscientious objection. Nevertheless, most recently the Human Rights Committee concluded that the right of conscientious objection to military service is part of Article 18 - the right to freedom of thought, conscience and religion - of the ICCPR, to which Eritrea is party.¹⁰² Moreover, the Commission on Human Rights encourages states to consider granting asylum to those conscientious objectors compelled to leave their country of origin because they fear persecution owing to their refusal to perform military service when there is no provision [...] for conscientious objection to military service.'¹⁰³

In conclusion, although conscription *per se* does not constitute forced labour as pointed out by the new HO's Guidance,¹⁰⁴ if the circumstances mentioned are all put together, the ENS is considered by the author to effectively amount to forced labour, and hence violates some legal obligations that Eritrea has undertaken.¹⁰⁵ In similar vein, the ENS has been widely reported as forced labour by the recent report of the UN Commission of Enquiry on Human Rights in Eritrea,¹⁰⁶ by the Special Rapporteur¹⁰⁷ and many academics and also by Estifanos Hailemariam – Dean of the Eritrean Halhale College - in a recent video from inside Eritrea. He refers to the ENS as forced labour, which he considers essential for the sustainable development of the country.¹⁰⁸

1.4. Conditions under military service

According to the HO's Guidance, 'those required to perform military service are unlikely to be at real risk of inhuman and degrading treatment.'¹⁰⁹ To support this assertion, it refers to a

¹⁰⁰ See, for instance, Godreports, '1000 Christians imprisoned in Eritrea for their faith' (*Godreports*, 2014) <<http://blog.godreports.com/2014/05/1000-christians-imprisoned-in-eritrea-for-their-faith/>>; See also Human Rights Council (UNHRC,) 'Analytical report on conscientious objection to military service, Report of the High Commissioner for Human Rights' A/HRC/23/22 (2013) paras. 54-55 <http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.22_AU_V.pdf>.

¹⁰¹ *Sepet (FC) and another (FC) (Appellants) v. SSHD (Respondent)* <<http://www.publications.parliament.uk/pa/ld200203/ldjudgmt/jd030320/sep1-1.htm>>.

¹⁰² *Yoon et al. v. Republic of Korea*, Communications Nos. 1321/2004 and 1322/2004, views adopted on 3 November 2006. For more information, see Office of the High Commissioner, *Conscientious objection to Military Service* (2012) <http://www.ohchr.org/Documents/Publications/ConscientiousObjection_en.pdf>. The Commission of Enquiry also concludes that 'the absence of alternative forms of national service for conscientious objectors is a violation of the right to freedom of thought, conscience and religion.' UN Report (n5) 407 (1387).

¹⁰³ Commission on Human Rights, Resolution No 1998/77 on Conscientious Objection to Military Service [7]. See, for more information about refugee law provisions, UNHCR *Handbook* (n29). See also, United Nations High Commissioner for Refugees (UNHCR), *Guidelines on international protection: religion-based refugee claims under article 1A(2) of the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees (HCR/GIP/04/06)* <<http://www.refworld.org/docid/4090f9794.html>>.

¹⁰⁴ HO Guidance: National (including Military) Service (n1) 5-7.

¹⁰⁵ Article 8 of the ICCPR states that '(1) [n]o one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited; (2) [n]o one shall be held in servitude; (3) (a) [n]o one shall be required to perform forced or compulsory labour.' See also ICESCR article 6.

¹⁰⁶ UN Report (n5) 448 (1498): 'During their service, most of them are compelled to perform permanently or temporarily non-military work and "development-oriented" work, and thus are subjected to forced labour for an open-ended period of time. The Commission is concerned 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.'

¹⁰⁷ Prof. Gaim Kibreab and Dr Samuel Ayele Bekalo refer to the ENS as modern form of slavery. See also Sheila B. Keetharuth (n51) 9, 14-15.

¹⁰⁸ Eritrea Embassy Media, 'Eritrea, The Other Narrative' (*Eritrea Embassy Media*, 2015) <<https://www.youtube.com/watch?v=i4LgsHMaV38>>.

¹⁰⁹ HO Guidance: National (including Military) Service (n1) 8.

quote from the Danish Report, which states that '[t]he information in human rights reports about ill-treatment whilst in national/military service is more often than not exaggerated [...] [Conscripts] are not beaten, subjected to torture [...]'.¹¹⁰

Testimonies from refugees reflect an opposite reality. They note that those serving in the military service are usually subject to violations of their most basic human rights. An Eritrean refugee explained that they live under dramatic and inhuman conditions: 'We live completely outside - under the trees, in open air.'¹¹¹ The HO's Guidance further inserts a quotation from the Danish Report to argue that during the national service Eritreans do not suffer from malnutrition.¹¹² The testimonies gathered for the present paper describe how they get only one meal per day, 'which consists of a portion of lentils and a piece of bread. The only way to get water is to walk until we find a river.'¹¹³ Malnutrition during military service has been interpreted as a factor leading to mistreatment.¹¹⁴

Moreover, the security and the lives of conscripts are usually put at risk. One of the refugees interviewed affirmed that on many occasions, unnecessary and extremely tough trainings – which are disproportionate to the physical and psychological capability of the trainees - are required from conscripts, often under extreme climatic conditions: 'commanders wake you up at night; they order you to carry heavy things, whose weight is around 25 kilograms. They force you to walk through the desert for periods up to four days, without the option to stop, or even sleep.' Interviewees confirm that many people do not resist this 'training' and as a result die.¹¹⁵ According to human rights bodies, people serving in the military 'should not be exposed to situations where their lives would be avoidably put at risk without a clear and legitimate military purpose.'¹¹⁶

Female recruits are particularly vulnerable. They are at risk of facing sexual abuses by, among others, military commanders.¹¹⁷ It is noteworthy to mention that rape has been interpreted as a form of torture.¹¹⁸ Moreover, women are punished for resisting abuses by being heavily beaten, or assigned many harsh tasks.¹¹⁹ Only a very small reference to it is included within the HO's Guidance,¹²⁰ which nevertheless has not been taken into consideration in the HO's final assessment of the country situation. The Eritrean refugees interviewed added that underage women are forced into marriage, mostly by their families, as a means of avoiding the abuses and sexual violence that military training or further military service may involve.¹²¹

The 'Proclamation of National Service' sets out a penalty of two or five years of imprisonment for military violations.¹²² Nevertheless, Eritreans are reportedly imprisoned for

¹¹⁰ Ibid 22.

¹¹¹ Interview, 10 May 2015.

¹¹² HO Guidance: National (including Military) Service (n1) 22.

¹¹³ Interview, 1 April 2015. See also UN Report (n5) 397-398 (1357): '[...] soldiers receive only little and bad quality food. The diet mostly consists of bread, lentils and tea [...]'

¹¹⁴ Organisation for Security and Cooperation in Europe/ Office for Democratic Institutions and Human Rights, *Handbook on Human Rights and Fundamental Freedoms of Armed Forces Personnel*, (2008) 163 <<http://www.osce.org/odihr/31393?download=true>>.

¹¹⁵ Interview, 1 April 2015.

¹¹⁶ Council of Europe, 'Recommendation CM/Rec(2010)4 of the Committee of Ministers to member states on human rights of members of the armed forces' (CoE, 2010) A. Members of the armed forces have the right to life (6) <[http://www.ebco-beoc.org/files/CMRec\(2010\)4E.pdf](http://www.ebco-beoc.org/files/CMRec(2010)4E.pdf)>.

¹¹⁷ Interview 18 April 2015; See, for instance, UM Report. (186) (187). See also Human Rights Watch (n40) 8, 113.

¹¹⁸ *Aydin v. Turkey*, 25 September 1997, Reports of Judgments and Decisions 1997-VI, paras. 83-86 <[http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-58371#{"itemid":\["001-58371"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-58371#{)> accessed 14 May 2015.

¹¹⁹ Interviews, 18 April 2014. See also intervention by Mike Smith (n6).

¹²⁰ HO Guidance: National (including Military) Service (n1) 22.

¹²¹ Interview, May 2015. See also UN Report (n5) 1, 190 (718).

¹²² See Article 37 of the Proclamation of National Service (n36).

longer periods of time, which in some cases are unlimited. The unacknowledged locations of prisons and secret and prolonged incommunicado detention are notorious common practices.¹²³ ‘Family members are not officially informed when a person is arrested and detained.’¹²⁴ A former ambassador of Eritrea, Andebrhan Welde Giorgis, pointed out that people in prison are not allowed to have any contact with the outside.¹²⁵ Furthermore, detainees are neither formally charged nor brought before a court, and cannot submit complaints to judicial authorities.¹²⁶ All these facts considered together amount to unlawful and arbitrary detention,¹²⁷ which is prohibited by Article 9 ICCPR.¹²⁸

Despite the fact that the HO’s Guidance refers to the Danish Report to claim that currently it ‘is not possible to judge whether the prisons are bad or not as conditions are undocumented,’¹²⁹ Eritreans in the Diaspora note that imprisonment takes place in inhuman prison conditions, which additionally goes along with corporal punishment, and sexual abuse in the case of women.¹³⁰ ‘There are prisons underground where the temperature rises up to 40°C’. ‘Cells are sometimes shared by fifteen people, all sleeping on the floor. Food is inadequate, and access to drinking water is restricted to once per day. All guards hold a long stick which they regularly use to beat us up. Many of the detainees face brutal forms of torture. Moreover, some people imprisoned die as a result of lack of medical care in prisons.’¹³¹

Besides the violations of military duties stipulated by the ‘Proclamation of National Service,’ all the interviewees confirm that, in practice, reasons such as overstaying permitted leave, disobeying or answering back to commanders and praying or reading Holy Scriptures¹³² will result in imprisonment, but also in corporal punishment – such as beating, whipping, stoning, being tied up - and extrajudicial killings.¹³³

¹²³ See, for more information about incommunicado detention in Eritrea, UN Report (n5) 243-247.

¹²⁴ Ibid 197 (736.)

¹²⁵ Intervention by Andebrhan Welde Giorgis, former ambassador of Eritrea to Belgium, the EU, Luxembourg, Portugal and Spain, also former member of the Eritrean National Assembly (Government of Eritrea) at the meeting of the Subcommittee on Human Rights at the European Parliament on 17th March 2015 <<http://www.europarl.europa.eu/news/en/news-room/content/20150312IPR33949/html/Subcommittee-on-Human-Rights-meeting-17-03-2015-09001230>> (hereafter referred to as Intervention by Andebrhan Welde Giorgis.)

¹²⁶ UN Report (n5)195-199.

¹²⁷ Ibid 192 (725): ‘arrests and the deprivation of liberty should not be inappropriate, unjust, unreasonable and unnecessary, or lack predictability or due process [...] Any substantive grounds for arrest or detention, therefore, need to be prescribed by national law, which needs to be defined with sufficient precision to avoid overly broad or arbitrary interpretation or application.’

¹²⁸ See, for instance, Amnesty International, ‘The Human Rights Committee’s new general comment on the right to liberty and security of person’ (*Amnesty International*, 2012) <<http://www.ohchr.org/Documents/HRBodies/CCPR/GConArticle9/AmnestyInternational.pdf>>.

¹²⁹ HO Guidance: National (including Military) Service (n1) 23.

¹³⁰ Interviews, 10 May 2015. See, for more information about conscripts in detention, UN Report (n5) 301-304.

¹³¹ Interviews, 1 April 2015, 11 April 2015, 10 May 2015. According to the testimonies gathered by the UN Commission of Enquiry, ‘detainees endure sordid hygienic conditions that facilitate the transmission of diseases. Access to water to wash is extremely limited [...] As a result of the lack of personal hygiene and the squalid conditions of detention, detainees are infested with lice and other parasites and suffer from various infections and other diseases that may lead to death.’ (UN Report (n5) 257 (918)) For more information regarding the lack of adequate food and the lack of health care and medication, see *ibid* 260-263.

¹³² See, for a detailed description of reasons leading to torture and ill-treatment in the military service, *ibid* 304-308.

¹³³ The testimonies gathered by the UN Commission of Enquiry described many different methods of torture as types of punishment. For further information, see *ibid* 285-291. For information regarding extrajudicial killings of conscripts, see *ibid* 314-316.

For all these reasons, although the HO's Guidance argues that people serving in military are unlikely to be at real risk of inhuman and degrading treatment,¹³⁴ the information provided leads the author to conclude that ENS itself constitutes inhuman and degrading treatment. Conscripts are forced to live in servitude for extended periods of time and under threat of violence, which amounts – as interpreted by human rights bodies and other organisations - to degrading treatment.¹³⁵ The UN Commission of Enquiry also finds that the human rights violations in the area of service and forced labour may constitute crimes against humanity.¹³⁶

1.5. Widespread human rights violations in Eritrea

The Eritrean government has turned out to be the source of all serious harms against its citizens. The Eritreans interviewed report that there is no independent judicial system. The High Court, which serves as the appeal court of the regional courts' decisions, has jurisdiction on criminal matters.¹³⁷ Crimes perpetrated by military personnel are solely persecuted by Military Courts – where judges are military officers.¹³⁸ In addition to these courts, there is one court with special jurisdiction on criminal matters – the so-called 'Special Court.'¹³⁹ The latter court is not part of the ordinary judicial system. Judges are senior military officers; the right to appeal is not available and there is no right to have a legal representative.¹⁴⁰ Consequently, the rights to due process and fair trial are not granted.¹⁴¹ Moreover, the Constitution of Eritrea, which was approved by referendum in 1997, to date remains unimplemented.¹⁴² As a result, Eritrea lacks the basic legal framework to ensure accountability of the government.¹⁴³ The state is not bound by its domestic law to protect its individuals, a fact that the HO's Guidance acknowledges, as it explicitly refers to the lack of 'effective state protection.'¹⁴⁴

However, the HO's Guidance disregards the widespread and systematic human rights violations in the country that lead millions of citizens to live in constant fear. It contains a quotation of the Danish Report which suggests that 'the human rights situation in Eritrea is not as bad as it has been described.'¹⁴⁵ Kibreab recently declared that '[t]he Eritrean government made no visible progress on key human rights concerns.'¹⁴⁶ Similarly, the findings of the author and of the UN Commission on Enquiry – detailed below – confirm that the widespread situation of insecurity and fear rules the country.

As recently pointed out by the Commission of Enquiry, enforced disappearances are still largely common in Eritrea.¹⁴⁷ A clear example is a recent testimony of a 23-year-old Eritrean

¹³⁴ HO Guidance: National (including Military) Service (n1) 8.

¹³⁵ See Human Rights Watch, 'The Wrongs of Passage: Inhuman and Degrading Treatment of New Recruits in the Russian Armed Forces' (2004) 27-28 <<http://pantheon.hrw.org/reports/2004/russia1004/>; See also OSCE/ODIHR (n114) 14, 163.

¹³⁶ UN Report (n5) 450 (1507).

¹³⁷ Ibid 87.

¹³⁸ See *ibid* 1, 87-88.

¹³⁹ Established by Proclamation No. 85/1996.

¹⁴⁰ Interview, April 2015. See also UN Report (n5) 88.

¹⁴¹ Interview, 11 April 2015. See also Intervention by Andebrhan Welde Giorgis (n125). See, for detailed information regarding violations of the rights to a fair trial, the lack of independence of the Judiciary, UN Report (n5) 175-185.

¹⁴² Human Rights Watch (n40) 8.

¹⁴³ The Constitution also includes, within Chapter III (articles 14-28,) a bill of rights entitled 'Fundamental rights, freedoms and duties.' For a more detailed explanation, see UN Report (n5) 78-80. Chapter VI describes the judicial system and the administration of justice.

¹⁴⁴ HO Guidance: National (including Military) Service (n1) 9; HO Guidance: Illegal Exit (n1) 6.

¹⁴⁵ HO Guidance: National (including Military) Service (n1) 23.

¹⁴⁶ See Gaim Kibreab (n45) 8.

¹⁴⁷ Interview, 10 May 2015. See also intervention by Sheila B. Keetharuth, at the meeting of the Subcommittee on Human Rights at the European Parliament on 17th March 2015 <<http://www.europarl.europa.eu/news/en/news-room/content/20150312IPR33949/html/Subcommittee->

living in Saudi Arabia: ‘My aunt and her son and young daughter have been taken from their house in the middle of the night without explaining them any reason. We do not know where they are.’ She asked for help to Eritreans in the Diaspora: ‘I hope you can help me.’¹⁴⁸ Lacking the possibility of having access to security services, individuals find themselves unsafe in Eritrea.¹⁴⁹ According to a ruling of the European Court of Human Rights, the lack of investigation by authorities in cases such as disappearances of close relatives amounts to inhuman and degrading treatment.¹⁵⁰ In addition, ‘the anxiety and distress that enforced disappearances cause to family members of a disappeared person may amount to torture or cruel and inhuman treatment.’¹⁵¹

Eritrean houses of citizens who are perceived as political opponents are currently being demolished by government authorities as a form of reprisal.¹⁵² Approximately 800 houses were recently demolished in towns located around Asmara - Adi Keih, Daero Kawlos and Adi Qala - refugees say.¹⁵³ An Eritrean interviewed by the author shows recent pictures that depict how the Eritrean government proceeds, and explains that ‘government’s authorities paint a red cross on the front of houses. Without any other notification, some days after, they proceed to demolish the house, leaving whole families homeless, without any other place to live.’¹⁵⁴ The Committee on Economic, Social and Cultural rights has interpreted that instances of forced eviction are *prima facie* incompatible with the requirements of the ICESCR.¹⁵⁵ Moreover, this practice, as interpreted by the European Court of Human Rights in similar cases, constitutes inhuman and degrading treatment.¹⁵⁶

Additionally, the freedom of movement is seriously compromised.¹⁵⁷ A refugee from Eritrea highlighted that many citizens have been prevented from visiting the capital for up to 10 years.¹⁵⁸ Most of the people are required to request a special permission in order to legally move throughout the country whilst serving in national/military service.¹⁵⁹ Dr. Samuel Ayele Bekalo noted that such permission is usually only issued to a tiny minority of privileged people connected

on-Human-Rights-meeting-17-03-2015-09001230>; See also Intervention by Mike Smith (n6); UN Report (n5) 1, 214 (772): ‘[a]n enforced disappearance is distinct from the abduction or kidnapping of a person by non-State actors. Enforced disappearance is a complex phenomenon during which numerous fundamental rights are violated in addition to the violations of the right to liberty occurring during an arbitrary detention. The right to life of persons detained in these conditions is usually at risk as well as their right not to be subjected to torture or other inhuman treatment and their right to be treated with dignity, which are guaranteed among others, by Articles 6, 7 and 10 (1) of the [ICCPR], respectively.’

¹⁴⁸ Email received from a 23-year-old Eritrean woman living in Saudi Arabia, on 13 April 2015.

¹⁴⁹ Interview, 10 May 2015.

¹⁵⁰ *Kurt v. Turkey*, 25 May 1998, Reports of Judgments and Decisions 1998-III, [134].

¹⁵¹ UN Report (n5) 214 (772).

¹⁵² UN Report (n5) 329 (1144): ‘[...]testimonies collected by the Commission show that, just as for seizures of property referred to above, Eritrean authorities utilise forced evictions as a form of reprisal. This can be against members of unauthorised religions such as Jehovah’s Witnesses, individuals perceived as opponents to the Government, or dissenters’ family members and relatives.’ See *ibid* 329-331.

¹⁵³ Interview 1 April 2015. See also Sheila B. Keetharuth, ‘Statement by the United Nations Special Rapporteur on the situation of human rights in Eritrea after her interactive dialogue at the 29th Session of the Human Rights Council (UN, 2015) <<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16142&LangID=E>>.

¹⁵⁴ *Ibid*, noting that ‘about 3,000 people were made homeless owing to the forced evictions and demolitions.’

¹⁵⁵ UN Committee on Economic, Social and Cultural Rights, *General Comment No. 4: The right to adequate housing (Art.11 (1) of the Covenant): E/1992/23* <<http://www.refworld.org/docid/47a7079a1.html>>.

¹⁵⁶ *Bilgin v. Turkey*, No. 23819/94, judgment of 16 November 2000, [100].

¹⁵⁷ UN Report (n5) 101 (370): ‘There should be no restrictions to the right to freedom of movement except if it is prescribed by law and necessary to protect national security, public order, public health or moral or the rights and freedoms of others, and if the restriction does not impair the enjoyment of the other human rights.’ See, for more information regarding the lack of Freedom of Movement in Eritrea, *ibid* 101-114.

¹⁵⁸ Human Rights Law Centre, University of Nottingham, *I Am A Migrant*, 6 March 2015 (speech given by an Eritrean refugee).

¹⁵⁹ See UN Report (n5) 96, 102-103.

to high officials of the regime.¹⁶⁰ In fact, Eritrea remains a ‘giant prison.’ Those of the age required to serve in the military service who wish to travel abroad are not provided with visas. According to the ‘Proclamation of National Service,’ Eritrean citizens may be allowed to travel abroad upon giving evidence that they have completed their service.¹⁶¹ However, ‘completion of national/military service Certificates’ are not provided,¹⁶² which then creates insurmountable difficulties to obtain exist visas or erases any real possibility for Eritreans to leave their own country.¹⁶³ According to the findings of the UN Commission of Enquiry, exist visas have been only issued to some individuals who have completed ENS for medical reasons or when the nature of their occupations requires them to travel abroad.¹⁶⁴

Whilst previously the country was full of checkpoints, not only at the borders, but also between different towns; now the checks on population have become more subtle.¹⁶⁵ Even the Danish Report acknowledged the ‘arbitrary nature of security apparatus’ and that ‘checks for ID and travel permit are sporadic.’ However, as noted by a specialised NGO, and confirmed by Eritrean testimonies, such sporadic checks are more effective than regular checks as people cannot know when and where to expect them, and thus cannot prepare for or plan to evade them.¹⁶⁶ Eritrean people, refugees say, live in constant fear of those checks and of surveillance by government undercover agents.¹⁶⁷

Lack of freedom of movement has serious consequences for the lives and safety of Eritreans citizens. Eritreans who attempt to ‘escape’ are reportedly detained. In detention, they are interrogated, which usually involves ill-treatment and torture.¹⁶⁸ They are also imprisoned for long periods of time.¹⁶⁹ An Eritrean child interviewed by the author explained that whilst attempting to flee in 2011, he was imprisoned together with his mother and his brother and sisters, whose ages were 3, 8 and 16, for a period of 6 months and under harsh conditions.¹⁷⁰ Moreover, whenever officers fail to catch evaders, ‘they just shoot and kill them’ – a refugee explained.¹⁷¹ This so-called ‘shoot-to-kill policy’ has also been mentioned by the UNHCR¹⁷² and by the UN Commission of Enquiry.¹⁷³ It clearly amounts to an arbitrary deprivation of life; leaving one’s country must never amount to a legal and just reason to be deprived of life. Testimonies gathered by the Commission of Enquiry also indicate that ‘many people are also arrested on suspicion that they plan to escape.’¹⁷⁴ The Commission has pointed out that the lack of freedom of movement

¹⁶⁰ Personal Communication, Dr. Samuel Ayele Bekalo with the author, 17 April 2015.

¹⁶¹ Article 17 (1) of the Proclamation of National Service (n36) states that ‘[a]ny Eritrean citizen under the obligation of National Service in compliance of this Proclamation may be allowed to travel abroad [u]pon giving evidence that he is exempted from National service or that he has completed his service by producing a Certificate of Service [...]’

¹⁶² Anex B: *Letter dated 1 April 2010 from the British Embassy in Asmara* cited in HO Guidance: Illegal Exit (n1) 16.

¹⁶³ UN Report (n5) 109 (405).

¹⁶⁴ Ibid 108 (404).

¹⁶⁵ Ibid 104-106.

¹⁶⁶ Elsa Chyrum (Director of the Human Rights concern Eritrea) (n58) 9.

¹⁶⁷ Interviews, 18 April 2015, 21 April 2015, 10 May 2015.

¹⁶⁸ See, for further information, UN Report (n5) 298-300.

¹⁶⁹ UN Report (n5) 113 (421).

¹⁷⁰ Interview, 10 May 2015.

¹⁷¹ Nottingham Local TV, Interview to an Eritrean asylum-seeker. June 2014.

¹⁷² UNHCR, *Eligibility guidelines for assessing the international protection needs of asylum-seekers from Eritrea* (2009) 73 < <http://www.refworld.org/docid/49de06122.html>>.

¹⁷³ This policy is explained in detail by the UN Report (n5) 317-320. ‘The Commission obtained conflicting testimonies from people who left between 2014 and early 2015, some of which attest to the fact that the border guards continue to shoot at people who attempt to cross the border, while other witnesses explained they crossed without any problems as it is reported that border guards no longer shoot at people’. Ibid 319-320 (1116).

¹⁷⁴ Ibid 207 (756).

in Eritrea ‘is not proportional and strictly necessary in the interests of the national defence.’¹⁷⁵ All things considered, the restriction on movement violates some legal obligations that Eritrea has undertaken.¹⁷⁶

1.6. Evaders and deserters upon return to Eritrea

A ruling issued by the Immigration and Asylum Chamber of the UK Upper Tribunal held that Eritreans who illegally left the country, face a real risk of persecution or serious harm upon return, because they are then regarded as a draft evader or political opponent.¹⁷⁷ Similarly, the UN Commission of Enquiry indicates that individuals forcefully repatriated are regarded as ‘serious offenders, but also as traitors.’¹⁷⁸ Conversely, the HO’s March 2015 Guidance refers to ‘the most up-to-date information available from inside Eritrea’ – notably the Danish Report- according to which, those who desert the ENS and leave the country illegally are no longer considered *per se* to be at risk of persecution upon return.¹⁷⁹ It quotes the Danish Report on 18 occasions to argue that evaders are not imprisoned for long periods of time and they are not exposed to physical harm.¹⁸⁰

However, several hundred Eritrean refugees who managed to escape and were forcibly returned to the country are reported to face detention, torture and other forms of inhuman treatment.¹⁸¹ ‘I was deported from ‘Country-x’ when my student visa expired in 2013. I was sent back to Eritrea with many other Eritreans deported from ‘Country-y.’ Officials were waiting for us at the airport, and immediately upon arrival they put us in detention. I was imprisoned for two months. Afterwards, I was forced into conscription. In detention, I was mistreated. But some others were really tortured...’ The refugee giving this testimony could not continue due to the distress that remembering caused him.¹⁸² After the period of detention, they are forced back into the military service, which implies, – as explained above – that they will be deprived indefinitely of their most fundamental rights and be subjected to corporal punishment and to other forms of inhuman treatment. The extinguished European Commission of Human Rights held that the mental anguish generated by the anticipation of the idea of returning to a place where the individual had already suffered torture or ill-treatment amounts to inhuman treatment.¹⁸³

The HO’s Guidance, by referring to the Danish Report, claims that reprisals by Eritrean authorities against relatives of evaders are no longer taking place.¹⁸⁴ However, testimonies gathered for the present paper, on the contrary show that families of draft evaders and deserters are still punished. ‘They are targeted to pay high fines of 50,000 Nafka- equivalent to £640 -, for each family member who has left the country.’¹⁸⁵ One of the refugees interviewed explained that after fleeing Eritrea in late 2013 his mother was imprisoned until his family could pay £1,280 for him and his brother – both refugees in Europe. ‘They usually imprison your father or mother to

¹⁷⁵ Ibid 11 (445).

¹⁷⁶ Article 12 of the ICCPR states that ‘(1)[e]veryone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence (2) [e]veryone shall be free to leave any country, including his own.’

¹⁷⁷ *MO (illegal exit – risk on return) Eritrea CG* [2011] UKUT 00190 (IAC), 27 May 2011.

¹⁷⁸ UN Report (n5) 114 (431.)

¹⁷⁹ HO Guidance: Illegal Exit (n1) 5.

¹⁸⁰ HO Guidance: National (including Military) Service (n1) 26-30; HO Guidance: Illegal Exit (n1) 9-10.

¹⁸¹ See UN Report (n5) 115 (433). See also UN Report (n5) 118 (444): ‘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.’

¹⁸² Interview, 23 April 2015.

¹⁸³ See *Soreing v UK*, Judgment of 7 July 1989, Series A, Vol. 161, [100].

¹⁸⁴ HO Guidance: National (including Military) Service (n1) 29-30.

¹⁸⁵ UN Report (n5) 204 (749).

put more pressure on you...'¹⁸⁶ It has been also reported that 'parents may be asked to take the place of their children who deserted' and failed to come back to Eritrea.¹⁸⁷ What the author finds even more worrying is that relatives of Eritreans who flee the country are allegedly deprived of access to medical care. The 8-year-old brother of a child that was interviewed died in 2011 after being denied health care at the hospital in Asmara as a result of his father leaving the country illegally.¹⁸⁸

The HO's Guidelines affirm that those who left Eritrea illegally are not at risk of harm provided that they have paid the 2% income tax – Diaspora tax - and have signed a 'letter of apology' – the so-called 'Immigration and Citizenship Services Request Form' - at an Eritrean embassy. It further considers that refusal or failure to comply with the said requirements will not, in itself, give rise to a well-founded fear of persecution or harm upon return.¹⁸⁹ However, the fact of being forced to pay the 2% income tax to a 'dictatorship' may amount to extortion. An Eritrean girl living in Saudi Arabia explained that ever since she started working she had to pay taxes 'to a dictatorship which does not give anything in return.'¹⁹⁰ The UN Security Council adopted Resolution 2023 (2011), which the British government supported,¹⁹¹ requiring Eritrea to cease using threats of violence, fraud and other illicit means to force its nationals to pay taxes to the Eritrean government. Nevertheless, the Eritrean embassy in London continues to extract a 2% tax from the Eritrean Diaspora living in the UK.¹⁹² The Home Office's Guidance suggests that the payment of the Diaspora tax can be made without illicit means, ignoring the fact that the payment itself may amount to extortion¹⁹³ and is, therefore, unlawful.¹⁹⁴

In addition, Eritreans in the Diaspora who request an Eritrean passport or who wish to go back to the country must sign a 'letter of apology' at the embassy. It consists of a statement of 'regret [for] having committed an offence by not completing the national service.' An Eritrean refugee in Ethiopia, who planned to travel to South Sudan, had to request an Eritrean passport at

¹⁸⁶ Interview, 23 April 2015. UN Report (n5) 202 (747): 'The Commission found that any member of the family can be arrested, irrespective of their age since 80 and 90 year olds were arrested or their relationships, ranging from parents to siblings.'

¹⁸⁷ UN Report (n5) 202 (748).

¹⁸⁸ Interview, 10 May 2015.

¹⁸⁹ HO Guidance: Illegal Exit (n1) 5.

¹⁹⁰ Email received on 19 April 2015.

¹⁹¹ See Security Council, *Resolution 2023 (2011)*, S/RES/2023 (2011), 5 December 2011.

¹⁹² 'Members of the Eritrean community living in Britain have filed a criminal complaint against the Eritrean Ambassador. The complaint provided clear evidence that the London embassy is continuing to illegally extract a 2% tax from the Eritrean Diaspora living in the UK.' See Martin Plaut, 'Eritreans in UK lay charges against Eritrean Ambassador' (*Martinplaut*, 2015) <<https://martinplaut.wordpress.com/2015/03/05/eritreans-in-uk-lay-charges-against-eritrean-ambassador/>>.

¹⁹³ Any Eritrean not in possession of the documents which proves the payment of the 2% Diaspora Tax 'cannot get any services in Eritrea. Some of the funds [are] for military use.' See Martin Plaut, 'Eritreans in UK lay charges against Eritrean Ambassador' (*Martinplaut*, 2015) <<https://martinplaut.wordpress.com/2015/03/05/eritreans-in-uk-lay-charges-against-eritrean-ambassador/>>.

¹⁹⁴ 'On 20 May 2011, the Government of the United Kingdom notified the Eritrean authorities that [...] aspects of the collection of the 2% income tax may be unlawful and in breach of the Vienna Convention on Diplomatic Relations.' See Security Council, *Letter dated 11 July 2012 from the Chair of the Security Council Committee pursuant to resolutions 751 (1992) and 1907 (2009) concerning Somalia and Eritrea addressed to the President of the Security Council S/2012/545 (2012)*, 13th July 2012. 22 (92) <<http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Somalia%20S%202012%20545.pdf>> accessed 30 June 2015. See also Martin Plaut, 'Eritrea: how the London embassy forces Eritreans to pay the illegal 2% tax – full report' (Martinplaut, 2014) <<https://martinplaut.wordpress.com/2014/02/16/eritre-how-the-london-embassy-forces-eritreans-to-pay-the-illegal-2-tax-full-report/>>.

the embassy for that purpose.¹⁹⁵ He confirmed that nobody is provided with a copy of the letter after signature, which is directly sent to the government in Eritrea. He explained the content: 'I regret having committed an offence by not completing the national service and am ready to accept appropriate punishment in due course.'¹⁹⁶ Refugees in the UK showed their concern regarding the fact that they are forced to sign a letter asking for forgiveness just because they sought protection outside their country. Moreover, the HO's Guidance is suggesting that Eritreans compromise themselves to be subject to any action that the government may decide to take upon return. Bearing in mind the most widely common forms of punishment used by the government, the interviewees consider that gesture as a signature on a death sentence.

2. SOURCES USED BY THE HOME OFFICE TO DRAFT THE CONCLUSIONS OF THE NEW GUIDANCE ON ERITREA AND TO JUSTIFY CHANGE OF POLICY ON ERITREA

2.1. DIS FFM Report, 'Eritrea – Drivers and Root Causes of Emigration, National Service and the Possibility of Return' (Danish Report)

The new HO's Guidance on Eritrea deems the Danish Report to be the 'most up-to-date' source of information available from inside Eritrea, and refers to it on 48 occasions. This clearly contrasts with the fact that the Danish Report has been widely criticized in terms of its methodology, and is not longer used by the DIS.¹⁹⁷ The report is largely based on anonymous testimonies, referred to as 'Westerns Embassies,' 'International organisations,' and 'Regional NGO,' whose quotations have also been incorporated within the HO's Guidelines.¹⁹⁸ As Human Rights Watch states, these 'Westerns Embassies' have limited 'access and ability to speak freely to people in Eritrea,' which hence limits the extent of their of knowledge of the situation on the ground.¹⁹⁹

The Danish Report has been discredited by its author, the DIS, and by its own material sources. Indeed, the DIS has recently admitted that its report on Eritrea 'raises doubts.'²⁰⁰ Moreover, the UNCHR and Gaim Kibreab have dissociated themselves from it. Kibreab, who was the only source mentioned by name, argued that his quotes were selectively and misleadingly used with the sole intention of backing up the report's point of view.²⁰¹ The UNHCR showed its concern regarding the lack of relevant information about the country as well as 'the reliability of specific sources of information.' It claims that 'no information is provided in the report about the

¹⁹⁵ Article 10 (1) of the National Legislative Bodies / National Authorities, Ethiopia: Issuance of Travel Documents and Visas Regulations 1971, states that '[a] refugee travel document shall be issued to refugees residing in Ethiopia with the consent of the Minister of Foreign Affairs.' The Convention Relating to the Status of Refugees states that travel documents '[are] issued solely with a view to providing the holder with a travel document which can serve in lieu of a national passport [and] without prejudice to and in no way affects the holder's nationality.' Nevertheless, as the interviewee explained (personal communication with a refugee in South Sudan, 19 April 2015) Ethiopia authorities are unable to issue such travel document for an Eritrean citizen to travel to South Sudan. Therefore, he had first to request the Ethiopian authorities a travel document for Sudan and then the Eritrean embassy in Sudan a passport in order to be able to reach South Sudan.

¹⁹⁶ Personal communication by a refugee in South Sudan with the author, April 2015. See also a copy of the 'Immigration and Citizenship Services Request Form in UN Report (n5) Annex VII. 478.

¹⁹⁷ See, for instance, The Local (n23) 6.

¹⁹⁸ Human Rights Watch (n7) 4.

¹⁹⁹ Human Rights Watch, 'Letter to the UK Independent Chief Inspector of Borders and Immigration on Flawed UK Country Information and Guidance Reports on Eritrea' (2015) <<https://www.hrw.org/news/2015/07/01/letter-uk-independent-chief-inspector-borders-and-immigration-flawed-uk-country>>.

²⁰⁰ See, for instance, The Local (n23) 6.

²⁰¹ Amnesty International, 'Eritrea-rapport tegner misvisende billede' (2014) available in the Danish version <<http://www.amnesty.dk/artikel/eritrea/eritrea-rapport-tegner-misvisende-billede>>.

regulatory framework for the media, NGOs, research institutes and other actors in Eritrea.’²⁰² It is noteworthy that two of the three officers from the Danish immigration mission to Eritrea – the 62-year-old chief consultant and the 43-year-old special consultant - left their workplace after having denounced the methodology and content of the report on Eritrea.²⁰³ According to Danish media, they were bribed to change it.²⁰⁴ This further refutes the credibility of any outcomes of this Guidance.

The DIS Report has been also discredited by several human rights organisations. Human Rights Watch points out that the authors of the Danish Report ‘did not interview a single victim or witness of human rights violations in Eritrea, including deported failed asylum seekers.’ In the same line, Amnesty International in Denmark concluded the report is based on ‘doubtful sources, and as a result, draws a misleading picture of the circumstances in the country.’²⁰⁵ Moreover, the Independent Advisory Group on Country Information (IAGCI) concludes that the findings of the Danish Report ‘should not be taken as undisputable facts relating to the current situation in Eritrea’²⁰⁶

2.2. Data provided by Eritrean authorities

Apart from referring to the Danish Report, the Home Office’s Guidance also base its final assessment on data provided by Eritrean authorities. It incorporates an unofficial statement made by the Eritrean President’s Advisor, Yemane Gebreab, to the UK delegation in its visit to Asmara in December 2014. He explained that people in Eritrea had been informed that ‘from November 2014 national service is reverting to a period of 18 months [...]’ Nevertheless, he clarified that the government did want to make such information public ‘by a presidential announcement’, and therefore the announcement was done through unofficial meetings with students and families at Sawa.²⁰⁷ The Guidance also refers to a private meeting with the Eritrean foreign Minister Osman Saleh, who confirmed that meetings had been held at Eritrean governorates in order to inform the population that the ENS was to be limited to 18 months.²⁰⁸ However, according to other sources obtained from inside the country, including from Sawa, ‘no such information was disseminated to students or conscripts.’²⁰⁹ Moreover, the HO’s puts itself in contradiction and adds that ‘[...] no specific information about whether or when it would undergo change was provided.’²¹⁰

As far as it is known, the UK delegation did not take further steps to corroborate the credibility of such statements. During the visit of UK Home officials to Eritrea, there are no records of any interviews with victims or witnesses of human rights violations, who at the moment are the primary source of information; nor any appropriate evaluation of the country. This fact clearly undermines the outcome of the UK mission. However, it is doubtful that the UK delegation in Eritrea had obtained permission to carry out any interviewees or a country assessment. Indeed, Eritrean authorities are not cooperating in an appropriate manner. The UN Commission of Inquiry on Eritrea has been denied access to the country,²¹¹ which has prevented a proper assessment of the situation – by means of access to detention centres, or to victims of abuses of human rights.

²⁰² UNHCR, ‘Fact Finding Mission Report of the Danish Immigration Service, *‘Eritrea – Drivers and Root Causes of Emigration, National Service and the Possibility of Return. Country of Origin Information for Use in the Asylum Determination Process,’* UNHCR’s perspective’ (2014) 3 <<http://www.ft.dk/samling/20141/almdel/uuu/bilag/41/1435206.pdf>>.

²⁰³ Gaim Kibreab (n45) 8.

²⁰⁴ See European External Policy Advisors, ‘Statement on EU Asylum and Aid Policy to Eritrea’ (2015)

²⁰⁵ Amnesty International (n201) 22.

²⁰⁶ Independent Advisory Group on Country Information (n16) 5.

²⁰⁷ HO Guidance: National (including Military) Service (n1) 17-18.

²⁰⁸ Ibid 18.

²⁰⁹ Gaim Kibreab (n45) 8.

²¹⁰ HO Guidance: National (including Military) Service (n1) 17.

²¹¹ See, for instance, EEPA News, ‘UN Human Rights Council Inquiry on Eritrea’ (2015) <<http://www.eepa.be/wcm/320-eeпа-news-and-activities/3715-un-human-rights-council-inquiry-on-eritrea.html>>.

Similarly, the BBC was unable to access people without the presence of the government's agents. All the individuals who were approached in Eritrea by the BBC reporter – on the sole occasion when he was not under the 'control' of the government - refused to answer any questions. Some of them declared – after making sure that the microphones were turned off – that they were frightened that someone was watching them, or that something might happen to them.²¹² Certainly, freedom of expression in Eritrea is seriously compromised. There is a lack of an alternative voice in the country. The government still owns the media and controls the messages spread. Most of the websites are blocked and international broadcasts are unavailable on television.²¹³ This further contributes to undermine the credibility of any assertion from the government of Eritrea, such their new propaganda video which aims at showing a scenario which does not correspond to reality.²¹⁴

Eritrean diplomats do not by any means constitute a reliable source. The European Parliament Subcommittee on human rights invited diplomats of the Eritrean Embassy in Brussels to attend one of its regular meetings to consider the human rights situation in the country. However, they did not show up, nor respond to the invitation.²¹⁵ This clearly calls into question the assertion that human rights concern them. There are other clear examples in support of such a claim. E.g., in December 2013 the Eritrean ambassador to the UK, Tesfamichael Gerahtu, responded to the question of why Eritreans died trying to cross the Mediterranean by saying: 'people sometimes look outside to go to heaven.'²¹⁶ As explained above, the new Eritrean ambassador to the UK, Estifanos Habtemariam, went to Nottingham to take part in an unofficial meeting. The announcement of it was published some days in advance in a couple of local Eritrean shops by a piece of paper written in the Tigrinya language, without any information regarding either the place or the time of meeting. Nottingham authorities were not informed. Moreover, admission was refused to Eritrean refugees who do not support the government, which is seen as a discriminatory practice.²¹⁷

2.3. Omission of reports by human rights organisations and by the UK Foreign and Commonwealth Office

It is obvious that, in order to draft a fair and comprehensive policy, governments need to take into consideration reliable and accurate sources. Nevertheless, the only new material used by the Home Office to draw up the conclusions of its Guidance on Eritrea is the content and sources of the DIS Report, along with doubtful testimonies from government officials inside Eritrea.²¹⁸

It is worth mentioning that the UK has been granting refugee status to many Eritreans who fled the country in order to avoid conscription or the unlimited ENS.²¹⁹ To that end, the UK relied

²¹² BBC World News, 'Our World Inside Eritrea' (2015) <<https://www.youtube.com/watch?v=alnKJtPAI8o>>.

²¹³ Ibid.

²¹⁴ Eritrea Embassy Media (n108.)

²¹⁵ See Meeting of the Subcommittee on Human Rights at the European Parliament, 17 March 2015 <<http://www.europarl.europa.eu/news/en/news-room/content/20150312IPR33949/html/Subcommittee-on-Human-Rights-meeting-17-03-2015-09001230>>.

²¹⁶ BBC, 'Eritrea's Ambassador Tesfamichael Gerahtu speaks to the BBC' (2013) <<https://www.youtube.com/watch?v=L7MvUp93OOo>>.

²¹⁷ Interview, May 2015.

²¹⁸ TesfaNews, 'UK HO changed Policy on Eritrea Asylum Seekers' (*TesfaNews*, 2015) <<http://www.tesfanews.net/uk-home-office-changed-policy-on-eritrean-asylum-seekers/>>.

²¹⁹ 'Since the early 1990s, increasing numbers of people have sought asylum from Eritrea in the circumstances of international concern over human rights within the country.' 'In the year ending September 2014, the largest number of applications for asylum came from nationals of Eritrea (2,932) [...]83% of the total decisions made for nationals of Eritrea were grants.' See HO, Immigrations Enforcement & UK visas and Immigration, 'Statistics – national statistics. Immigrations statistics, July to September 2014' (*GOV.UK*, 2014) <<https://www.gov.uk/government/publications/immigration-statistics-july-to-september-2014/immigration-statistics-july-to-september-2014>> accessed 30 June 2015

on reports issued by human rights organisations, as well as on UNHCR's Guidelines,²²⁰ which describe the indefinite ENS as constituting persecution. However, although the new HO's Guidance refers to and quotes reliable reports – also referred to in this paper – produced by Amnesty International, Human Rights Watch, Freedom House or Reporters Without Borders, *inter alia*, it completely disregards the information provided by them as a whole.

The HO's Guidance omits information provided by the UK Foreign and Commonwealth Office, which was part of the HO mission to Eritrea. The Guidelines do not mention the report updated in January 2015 by this UK department, which declared that 'the Eritrean government made no visible progress on key human rights concerns [...] including in the areas of arbitrary and inhumane detention, indefinite national service [...].' In its conclusions, it stated its commitment 'to press for an end to obligatory and indefinite national service and to compulsory and onerous civilian militia duties [...] all of which could amount to forced labour.'²²¹ More recently, after the date when the HO's Guidance were issued, one of the members of the Foreign and Commonwealth Office highlighted the impossibility of collecting evidence from inside Eritrea due to the lack of proper access to the country.²²²

The latest discussion on Eritrea at the UK House of Commons reflects a reality that is far away from the recent findings of the HO. Members of the House have strongly condemned the national service as slavery, the failure to uphold the rule of law and the shoot-to-kill policy, *inter alia*. The House of Commons regards the government of Eritrea as the source of the systematic human rights violations in the country, which may amount to crimes against humanity. This body further requests the international community to offer protection for Eritrean asylum-seekers.²²³

3. ALLEGED EXPLANATIONS OF CHANGE OF POLICY ON ERITREA

The new Country of Origin Guidance on Eritrea may be qualified as politically driven strategy in order to attempt to curtail migration in the UK. Among other authors, Dr. Samuel Ayele Bekalo considers the new UK Guidance to be clearly more influenced by the recent political pressures related to migration than by the reality on the ground.²²⁴ Along the same lines, Leslie Lefkow, deputy director for Human Rights Watch Africa, said that '[t]he Danish report seems more like a political effort to stop migration than an honest assessment of Eritrea's human rights situation.'²²⁵ In to the author's point of view, there are efforts to promote political self-interest on behalf of the Eritrean and European governments in producing such reports with the aim of tightening the practice in Eritrean asylum cases.

In March 2015, the European Commission announced a new development aid package of €312 million to Eritrea. It is worth noting that, according to the EU itself, in previous years the EU-Eritrea cooperation had shown limited progress, to the extent that Eritrea's 10th European Development Fund (EDF) cooperation envelope was reduced from € 122 million to € 53.7 million. According to the treaties that govern the EU, development policy must 'contribute to the general objective of developing and consolidating democracy and the rule of law, and to that of respecting human rights and fundamental freedoms.' Currently, the EU seems to disregard the lack of improvements in the human rights situation in Eritrea – fact acknowledged by Eritrean

²²⁰ See, for instance, UNHCR (n172) 19.

²²¹ See Foreign & Commonwealth Office (n41) 8.

²²² Intervention by Mr Ian Duddi, Political Counsellor at Foreign and Commonwealth Office, at the 30th Meeting, 28th Regular Session of Human Rights Council, 16 March 2015 <<http://webtv.un.org/search/id-coi-on-human-rights-in-eritrea-30th-meeting-28th-regular-session-of-human-rights-council/4114024967001?term=Eritrea#full-text>>.

²²³ House of Commons, Human Rights in Eritrea, Publications & Records, Session 2015-16, 10th June 2015 <<http://www.parliament.uk/edm/2015-16/112>>.

²²⁴ Dr. Samuel Ayele Bekalo, Personal Communication, with the author, 17 April 2015.

²²⁵ Human Rights Watch (n7) 4.

opposition parties, Diaspora organisations and the academia -²²⁶ as the new bilateral aid package announced to support the Eritrean regime is three times the amount that was granted in previous years. Recent reports suggest that the new aid package 'would be provided in exchange for promises that Eritrea would curb migration.'²²⁷

Although President Isaias Afewerki has not officially announced any policy reducing the indefinite ENS to 18 months, the EU seems to rely on the assurances that the Eritrean government is effectively implementing that new policy. The EU must ensure that the funds are properly allocated in order to support the people in Eritrea; however, the EU has little control over how the funds are spent. The Eritrean government controls almost every aspect of political and economic life in the country. The government does not publish any kind of budget, and its income – based on taxes, equity shares, royalties from the extraction of natural resources, development aid, etc. – ends up in private banks in Qatar and China; in fact, the population has not seen any improvement whatsoever in their life conditions, Andebrhan Welde Giorgis argues.²²⁸

The EU External Action Service announced that it maintains a dialogue with the Eritrean government as a first priority to improve the living conditions in the country. The Danish and HO's Report refer to an 'ongoing and constructive dialogue' between the Eritrean government and the EU, as well as the embassies of the European countries.²²⁹ Questions as to how the dialogue can be effectively maintained with an oppressive government, or how to rely on a dictatorial regime, were raised at the meeting of the European Parliament Subcommittee on human rights. Similarly, the UN Commission of Enquiry emphasized the centrality of human rights when initiating dialogue and cooperation with the Eritrean government.

4. IMPLICATIONS OF THE NEW HO GUIDELINES ON ERITREA

4.1. HO's refusal decisions on Eritrean asylum claims

The implications of these Guidelines on Eritrea are far reaching. Ever since the Home Office issued its new Guidance, many Eritreans' claims have been refused.²³⁰ Many HO's refusal decisions deny asylum on the ground that the concerned asylum-seeker has not established a well-founded fear of persecution. Many others also deny humanitarian protection, due to lack of a real risk of suffering serious harm upon return.

As a result of the dismissal, the economic support that asylum-seekers receive is restricted.²³¹ Moreover, the process of being under a 'marginal status' - whereby asylum-seekers are deprived of many rights, such as remunerated employment or welfare -²³² is prolonged until

²²⁶ See UN Report (n5) 1, 57. An overview of the relations between Eritrea and the European Union is provided *ibid* 56-57.

²²⁷ See European External Policy Advisors (n204) 22.

²²⁸ See the intervention by Andebrhan Welde Giorgis (n125).

²²⁹ Danish Report (n2) 21; HO Guidance: National (including Military) Service (n1) 17.

²³⁰ The refusal rate for asylum applications from Eritreans has risen from 13% in 2014 to 23% so far this year. See Tracy McVeigh, 'EU states in deals to shut Eritrean borders' (*The Guardian*, 2015) <<http://www.theguardian.com/world/2015/jun/13/un-fears-eu-secret-eritrea-deals-close-border>>.

²³¹ If their claim has been refused and fully determined, asylum-seekers will not be eligible for asylum support under Section 95 of the Immigration and Asylum Act 1999 (accommodation and subsistence cash support) but they may be eligible for section 4 support of the Immigration and Asylum Act 1999. Section 4 allows for the provision of support to refused asylum seekers. The UK Border Agency provides asylum seekers with accommodation and £35.39 a week via a payment card with no cash support.

²³² While asylum seekers wait for a decision, 'they are given temporary admission to the UK which means that while their physical presence is lawful, they are legally considered not to have entered the country. This marginal status not only enables state officials to speed up removal in the event of an unsuccessful claim, it also makes their status as rights holders unclear. They are forbidden from seeking paid employment and receive welfare at a fraction of the level of residents, they are routinely detained if adjudged to be at risk of disappearing into the community or deemed to have a weak claim, they cannot live where they want

the appeal process against the HO refusal decision, before the first-tier Tribunal (Immigration and Asylum Chamber) or before the Upper Tribunal culminates. Furthermore, due to cuts to legal aid, many of them would be denied the opportunity to pursue their claim for asylum, by appealing HO's decisions or by applying for judicial review.

4.2. HO's Guidance seen as 'objective evidence' by Israel

Since 2012, the Israeli authorities have detained thousands of Eritreans 'for entering Israel irregularly.'²³³ Only four Eritreans who had additional grounds for asylum other than evasion or desertion from national service have been granted refugee status so far, while 997 requests out of 2,408 have been examined and rejected.²³⁴ In September 2013, the Israeli Supreme Court ruled that detention of Eritrean asylum-seekers was unlawful.²³⁵ The Israeli authorities responded by implementing a new policy, by which Eritreans who either did not apply for asylum or whose asylum claims were rejected were offered either to leave to Uganda or Rwanda or to be imprisoned at the Saharonim prison or at the Holot facility.²³⁶ This policy deprived refugees of any choice: their only 'choice' is to accept forcible deportation to these countries. To this end, the Center for Israeli Immigration Policy has started to quote the new HO's Guidance on Eritrea as 'objective evidence,' affirming there is no substantial hindrance to human rights in Eritrea.²³⁷ It seems that Israel uses the later Guidance to justify its policy to return Eritrean refugees to third countries where their safety - as explained below - is not guaranteed.

According to the UNHCR, bilateral transfer agreements must be public. However, there is not a formal public agreement between Israel and Uganda or Rwanda - as Henry Okello Oryem, the Foreign Affairs Minister of Uganda, confirmed.²³⁸ Moreover, bilateral transfer agreements must ensure the protection against *refoulement* in the receiving country.²³⁹ Israel should monitor, after deportation, the fulfillment of its international obligations towards refugees both in Uganda and

but are "dispersed" around the UK.' Matthew Gibney, *Policy Primer. Asylum Policy* (The Migration Observatory at the University of Oxford 2012) 3 <<http://www.migrationobservatory.ox.ac.uk/sites/files/migobs/Asylum%20Policy%20Primer.pdf>>.

²³³ Human Rights Watch (n199) 22.

²³⁴ See ACRI, 'Supplementary affidavit on behalf of the State' (ACRI, 2015) available in the Hebrew version <<http://www.acri.org.il/he/wp-content/uploads/2015/02/hit8665meshivim2-5-0215.pdf>> and <<http://www.acri.org.il/he/wp-content/uploads/2015/03/hit8665meshivim2-5-0315.pdf>>.

²³⁵ Human Rights Watch (n199) 22.

²³⁶ As of late August 2014, 2,000 Eritreans and Sudanese - including over 1,000 who have claimed asylum - were detained in the Holot facility. 1,000 were detained in the Saharonim Detention Centre. The remaining 41,000 Eritreans and Sudanese in Israel's cities live under threat of being ordered to report to Holot (Human Rights Watch, 'Make Their Lives Miserable.' *Israel's Coercion of Eritrean and Sudanese Asylum Seekers to Leave Israel* (2014) <<http://www.hrw.org/report/2014/09/09/make-their-lives-miserable/israels-coercion-eritrean-and-sudanese-asylum-seekers>>. See also Haaretz, 'Israel to begin imminent deportation of some African refugees- even without their consent' (2015) <<http://www.haaretz.com/news/national/.premium-1.649757>>. See also Haaretz, 'Israel's new inhuman measures against asylum-seekers stain its moral image' (2015) <<http://www.haaretz.com/opinion/1.649989>>. See also Haaretz, 'As in Europe, Israel's courts must prevent deportations of asylum seekers' (2015) <<http://www.haaretz.com/news/national/.premium-1.649977>>. See also Haaretz, 'Our elected officials boast about deporting genocide survivors' (2015) <<http://972mag.com/our-elected-officials-boast-about-deporting-genocide-survivors/105147/>>.

²³⁷ See (n4) 4. See also NRG (2015) <<https://www.nrg.co.il/online/1/ART2/687/917.html>> (Hebrew).

²³⁸ Frederic Musisi, 'Government protests dumping of immigrants into countor' (*Sunday Monitor*, 2015) <<http://www.monitor.co.ug/News/National/Government-protests-dumping-immigrants-country/-/688334/2674334/-/g3gab4z/-/index.html>>.

²³⁹ UNHCR, *Guidance Note on bilateral and/or multilateral transfer arrangements of asylum-seekers* (2013) <<http://www.refworld.org/pdfid/51af82794.pdf>>.

Rwanda.²⁴⁰ Nevertheless, the testimonies gathered by the Hotline for Refugees and Migrants²⁴¹ and by the author report that Israel does not ensure compliance with such obligations. One of the interviewees noted: ‘in late December, I asked to leave Israel as I was denied access to asylum procedure. Israeli authorities only gave me the option to go Rwanda. Once I arrived at Rwanda’s Airport, immigration officers were waiting for me.’ This Eritrean refugee was only given two options, either to go to Uganda or South Sudan. She decided to go to Uganda; however she was forced to walk all the way there, and to pay \$300 to the immigration officers.²⁴²

Consequently, Israel is *de facto* deporting Eritrean asylum-seekers to countries where, as extensively reported by Hotline for Refugees and Migrants, the protection against *refoulement* to Eritreans is not granted.²⁴³ This clearly contravenes the international obligations towards refugees and asylum-seekers that Israel is bound by.

5. CONCLUSIONS AND RECOMENDATIONS

As extensively detailed in this paper and by the UN Commission of Enquiry on Human Rights in Eritrea, there is no evidence, that the Eritrean government made any improvement on the situation of human rights in the country. It constantly disregards the international human rights law it is bound by. As a result, the number of Eritreans in the Diaspora has dramatically increased in the recent months.²⁴⁴

The ENS remains indefinite, and has been further extended to elderly people and to those who are exempted by domestic law. In light of the circumstances explained above, this amounts to forced labour, which is linked with torture and other forms of inhuman treatment. Moreover, the penalties and arbitrary punishments for violations of military duties or for other unjustifiable grounds are of a degrading and inhuman nature. Accordingly, military service amounts to degrading treatment. Systematic human rights violations and widespread fear permeate the country. Both the reported enforced disappearances without any investigation by authorities and the widely common practice of the demolition of houses, amount to inhuman and degrading treatment. The lack of freedom of movement results from disproportionate penalties, such as arbitrary detention or arbitrary deprivation of life. Victims have access neither to state protection, nor to an independent judicial system. Some of these violations, as pointed out by the UN Commission of Enquiry, may constitute crimes against humanity.

Eritreans in the Diaspora – as explained above - are considered political opponents to the government for the sole reason that they do not actively support the government. Those who were forcibly returned to Eritrea are reported as facing detention, torture and other forms of inhuman treatment. Moreover, families of evaders and deserters still face reprisals by the government of Eritrea.

European missions have had access only to Eritrean authorities, that is to say, they have been allowed by the Eritrean authorities to go into the country and to contact certain persons, but only some handpicked targets. Moreover, the UN Commission of Inquiry on Eritrea has been denied access to the country. As a result, proper assessment of the Eritrean situation has not been carried out yet and may not be carried out until the circumstances change.

²⁴⁰ Article 33(1) of the Convention Relating to the Status of Refugees states that ‘[n]o Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

²⁴¹ See Hotline for Refugees and Migrants, ‘Where there is no Free Will, Israel, Voluntary Return procedures for Asylum-Seekers’ (2015) <<http://hotline.org.il/en/publication/where-there-is-no-free-will/>>.

²⁴² Interview, 17 April 2015.

²⁴³ See (n241) 28, 2.

²⁴⁴ See, for instance, UNHCR (n15) 5.

In addition to that, the government's non-official announcements that the British Home Office's Guidelines have echoed, such as the one stating that the military service would revert to a maximum duration of 18 months, are another source of concern. Their credibility is hardly acceptable, and yet a country of the Council of Europe such as the UK is using this kind of declaration as a basis for deciding under what conditions asylum is granted. This is another proof that more transparency is needed, in order for international public opinion to truly understand what is happening in Eritrea and be able to act accordingly.

It seems obvious that Eritrea is attempting to hide the reality in a bid to receive the benefits that development aid provides. It benefits the states which receive Eritrean asylum-seekers, which use it to change their official policies on Eritrea in order to curb migration. By hiding the human rights violations that are taking place within Eritrean borders, the Eritrean authorities are able to keep more citizens, who are more and more unlikely to be granted asylum in European countries, for their ENS.

That is not the only advantage. The European Development Fund provides financial assistance. However, the EU is unable to ensure that the European Development Fund is to be properly allocated in order to support the people in Eritrea. Requirements such as economic transparency are not guaranteed by Eritrean authorities. As a result, funds end up in other hands and never arrive at its real target, i.e. Eritrean citizens.

In light of the above, Eritrean authorities should grant full access to the UN Commission of Inquiry. Everyone, including the EU and European national immigration authorities, should have waited for the findings of the recent UN Commission of Enquiry's report, published on 6th June 2015, rather than giving credit to other questionable sources. In this sense, the national immigration Guidelines issued by the DIS and by the British Home Office, along with related policies, which are mainly based on those compromised sources, should be immediately withdrawn and replaced according to the new findings of the UN Commission of Enquiry. In addition to that, states must take into account human rights when initiating dialogue and cooperation with the Eritrean government. States must urge Eritrean Embassies to stop the illegal extraction of Diaspora taxes from Eritreans in the Diaspora, which amount to extortion.

Moreover, the countries that receive Eritrean asylum-seekers must respect the international principle of *non-refoulement*. This principle complements and further serves as a supplement to asylum claims. The provision of Article 1 A (2)²⁴⁵ of the Refugee Convention should be interpreted in relation to the provision of Article 33 (1), which prohibits states to return aliens to places where their life or freedom would be threatened. This principle prevails over other legal instruments of a different nature, such as the national Guidance mentioned in this paper. Even though the UK fails to consider that Eritreans have a well-founded fear of persecution upon return for reasons such as their political opinion – as defined in Article 1 A (2) of the Refugee Convention – it is still bound to provide asylum-seekers with humanitarian protection. Many of the circumstances that Eritreans face in the country amount to torture or inhuman or degrading treatment, including the ENS itself. Furthermore, as mentioned above, the mental anguish of anticipating the idea of returning to a place where the individual had already suffered torture amounts to inhuman treatment. This would entitle most Eritreans to international protection.

After all, tackling the situation in Eritrea is the only way of preventing more migrants from dying during their journey towards freedom and a better life, or to live a life of mistreatment and indignity in their own country. However, since that does not seem to be possible by starting to work from the inside, due to the deliberate closed nature of the Eritrean regime, the international

²⁴⁵ Article 1 A (2) of the Convention Relating to the Status of Refugees states that the term "refugee" shall apply to any person who has a well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country [...]

community must make the first efforts in order to preserve the human rights of those more than six million human beings.

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