



NOTHING WILL EVER BE ENOUGH

The Substantive Flaws in the Examination of Asylum Applications of Eritreans in Israel

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Hotline for Refugees and Migrants



Nothing Will Ever Be Enough: The Substantive Flaws in the Examination of Asylum Applications of Eritreans in Israel

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Cover photo: Eritrean refugees protest against the dictatorial regime of Isaias Afwerki in Israel, 2012. Photo by Sigal Rozen.



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About the Hotline for Refugees and Migrants

The Hotline for Refugees and Migrants is a non-partisan non-profit organization that aims to protect and promote the human rights of refugees and migrants, and to prevent human trafficking in Israel. We use client services, detention monitoring, litigation, and public policy initiatives to make Israel's migration policy more just and equal.

About HIAS Israel

HIAS (Hebrew Immigrant Aid Society) is an international non-profit Jewish organization, which has been aiding refugees for over 140 years and is currently operating in 16 countries around the world. The organization aims to be a professional authority in the field of immigration and serve as an actor coordinating and leading the efforts to deal with the challenges facing Jewish immigrants to Israel and asylum seekers. HIAS Israel operates a program providing pro-bono legal representation for asylum seekers in cases relating to their legal status. The participants of the program are attorneys and law students who volunteer to represent asylum seekers. Additionally, HIAS Israel provides legal advice on immigration in Israel, and assists Jewish immigrants ("olim").

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Introduction and Methodology

This report focuses on how the Population and Immigration Authority (PIA) handles the asylum requests of Eritrean citizens residing in Israel who make up the majority (70 percent) of asylum seekers in Israel. This paper follows several reports issued in recent years examining the persistent failure of the Israeli asylum system in adjudicating asylum claims.¹ The Israeli Supreme Court² and State Comptroller³ have voiced their criticism on the matter as well.

The report shows how, since 2009, when the Ministry of Interior assumed the responsibility for examining asylum applications in Israel, and until this day, the asylum system in Israel has been aimed toward rejecting the applications of Eritreans rather than fairly examining them.

As will be expounded on below, in 2019, following a series of legal proceedings,⁴ PIA committed to reexamining all the asylum cases of Eritreans in Israel based on “new” standards it implemented to scrutinize the applications.⁵ However, in reality, these guidelines continue to adopt a narrow and incorrect legal interpretation⁶ of

¹ See the following reports: Hotline for Refugees and Migrant, [Trapped in Limbo: Israel's Policy of Avoiding Making Decisions on Well-Founded Asylum Claims](#), December 2020; HIAS Israel, [0.06%: The Numbers Speak for Themselves The Israeli Asylum Process](#), August 2020; The Hotline for Refugees and Migrants, [Falling On Deaf Ears, Asylum Proceedings in Israel](#), October 2018; The Hotline for Refugees and Migrants, [No Safe Haven: Israeli Asylum Policy as Applied to Eritrean and Sudanese Citizens](#), December 2014; Hotline for Migrant Workers, [Until Our Hearts Are Completely Hardened: Asylum Procedures in Israel](#), March 2012.

² Administrative appeal 8908/11 Asfo vs. the Ministry of Interior (ruling issues on July 17, 2012); High Court of Justice case 7146/12 Najjet Serj Adam and others vs. the Knesset and others (September 16, 2013); High Court of Justice case 8665/14 Tshome Nega Desta and others vs. the Knesset and others (August 11, 2015); High Court of Justice case 2293/17 Ester Tsegay Gersegheer and others vs. the Knesset and others (April 23, 2020); High Court of Justice case 4690/18 Adam Gobara Tagal and others vs. the minister of interior and others (April 25, 2021).

³ State Comptroller report 68 part C: [The Population and Immigration Authority, the Handling of Applicants for Political Asylum in Israel](#) (Hebrew), p. 1419, May 8, 2018. Summary in English can be found at: [State Comptroller Harshly Criticized Israel's Handling of Asylum Requests](#), May 8, 2018.

⁴ Appeal (Jerusalem tribunal) 1010/14 Mesgna vs. the Ministry of Interior, February 15, 2018.

⁵ Administrative Appeal (Jerusalem tribunal) 18-04-12154, the State of Israel vs. John Doe, update statement by the State, July 7, 2019.

⁶ HIAS Israel, the Refugee Rights Clinic at Tel Aviv University, the Hotline for Refugees and Migrants, [Failures in Examining Asylum Applications of Eritreans](#) (Hebrew), address from November 11, 2021 to the Attorney General, the minister of interior and Adv. Daniel Solomon, the Legal Adviser of the Immigration Authority.

the Refugee Convention; this interpretation has been previously rejected by the Court of Appeals, established to examine immigration-related cases in Israel.⁷

Alongside a legal and historical overview, this report includes an in-depth examination of dozens of decisions to reject the applications of Eritrean asylum seekers. These decisions were reached over the past two years based on the “new” standards. This examination leads to a conclusion that these “new” standards are anything but new. As a result, like what has occurred over the past decade, Israel repeatedly rejected the asylum applications of individuals who would have been recognized as refugees in any country with a fair asylum system.

The report is based on an in-depth analysis of about 40 rejections of asylum applications of Eritrean citizens that were handed down over the past year. In each of the cases, we examined all the documents related to the decision – the asylum applications, the asylum interviews, the recommendations of the Refugee Status Determination Unit at PIA (henceforth: RSD Unit), the protocols of debates in the Advisory Committee on Refugee Affairs, and the rejection decisions themselves.⁸ Based on this in-depth analysis, we have identified a number of recurring failures in the adjudication of asylum applications of Eritrean citizens:

- The criteria based on which the asylum applications are rejected contravene the Refugee Convention and its legal interpretations.
- Over 95 percent of the asylum applications were rejected through an expedited procedure, which ought to be reserved only for extraordinary cases in which there appears to be no basis whatsoever for granting asylum.

⁷ Appeal 1010/14 Mesgna vs. the State of Israel, September 4, 2016.

⁸ Hotline for Migrant Workers, *Until Our Hearts Are Completely Hardened: Asylum Procedures in Israel*, March 2012, p. 8-12.

- The applications were examined based on the biased assumption that military service in Eritrea is a legitimate “civic duty,” and that deserting this service cannot serve as a basis for receiving asylum. This position ignores the unique characteristics of this service and the extreme position of the Eritrean regime concerning defection – despite extensive documentation of these matters in reports of human rights organizations and organs and the findings of asylum systems across the world.
- Most of the decisions are based on brief and superficial asylum interviews, during which employees of PIA ignored relevant information concerning detention conditions in Eritrea, the long duration of detention, and the persecution by the Eritrean regime of those it considers opponents to its rule.

Within these pages, we will examine the history and legal background of the examination of asylum applications of Eritrean asylum seekers in Israel and demonstrate the failings we have identified in the rejection decisions reached in these cases.

These failings explain why, **Eritrean asylum seekers, who receive refugee status in 81 percent of cases in Europe, are almost never recognized as refugees in Israel (where less than half a percent have received such a status).**⁹

⁹ European Union Agency for Asylum, [Latest Asylum Trends - Annual Overview 2021](#).

Background: The Asylum System in Israel

Israel was one of the first countries in the world to sign the International Convention Relating to the Status of Refugees (1951),¹⁰ and the Protocol Relating to the Status of Refugees (1967).¹¹ Although Israel has failed to incorporate the Convention into its domestic law through legislation, in a myriad of legal proceedings, representatives of the State declared that Israel is abiding by the Convention. The Procedure on Handling Asylum Seekers, which serves as the normative source guiding PIA when examining asylum applications, declares that Israel abides by the Convention and Protocol.¹²

In addition to these commitments, the State of Israel also recognizes that it cannot deport a person to a place where his or her life or liberty are threatened, even if the person does not meet the criteria set in the Refugee Convention for refugee status, owing to the non-refoulement principle.¹³ Therefore, those enjoying the protection of a non-removal policy, like Eritrean citizens, are not deported from Israel even if they did not file an asylum application or if their application is rejected, but they do not receive refugee status. It should be mentioned that when it comes to Eritrean asylum seekers, the decision to apply a policy of non-removal to them and the criteria under which it is applied have never been officially

¹⁰ The Convention Relating to the Status of Refugees, para 21, 3, 5.

¹¹ The Protocol Relating to the Status of Refugees, para 21, 23, 690.

¹² The Procedure Concerning Handling of Political Asylum Seekers in Israel, February 5, 2012, most recently updated on March 21, 2022.

¹³ The non-refoulement principle is enshrined in the 33rd article of the Refugee Convention and has become part of customary international law, which obligates all states. This principle is also enshrined in article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) and in articles 6 and 7 of the International Covenant on Civil and Political Rights. The principle was also codified in the ruling of the Israeli High Court of Justice (see HCJ case 4704/94 al-Tayj vs. the Minister of Interior. The Convention on the Rights of the Child has also been interpreted as obligating states to protect children in any decision concerning their fate, without an explicit mention of the non-refoulement principle. See Goodwin, Gill and MacAdam, *The Refugee in International Law*, Oxford University Press, Third Edition, 2007, p. 324

announced, and except for declarations about the existence of this policy – its conditions remain ambiguous.

Until 2001, a small representative office of the United Nations High Commissioner for Refugees (UNHCR) examined asylum claims in Israel. In 2001, a hybrid system was created under which the UNHCR examined the asylum applications, but the final determination on the applications was made by the Ministry of Interior.¹⁴

Under this system, the UNHCR handled the asylum applications – it received the applications, it registered asylum seekers, conducted asylum interviews with them, examined the conditions in their countries of origin and forwarded its recommendations to the inter-ministerial committee (which was made up of representatives of a number of Israeli governmental ministries), which decided whether to approve the recommendations of the UNHCR. The final decision was made by the Minister of Interior, or the Director General of the PIA, if the application was rejected through the expedited procedure.¹⁵

In 2008, the UNHCR began gradually transferring the examination of asylum applications to the Ministry of Interior. In 2009, the handling of asylum applications came under the purview of the RSD Unit, a specialized unit at the Ministry of Interior whose role is to receive, examine, and provide recommendations concerning the asylum applications. In addition, the Unit was given the authority to develop legal opinions concerning the conditions in the countries of origin of asylum seekers, used in the process of making determinations on asylum cases.

In 2011 the Procedure Concerning the Handling of Asylum Seekers was first published and came into effect. The Procedure determines how to handle requests

¹⁴ Website of HIAS Israel, the [Regulation Concerning Handling Asylum Segekers over the years](#) (Hebrew)

¹⁵ See fn. 8.

and is used till this day, while being updated from time to time.¹⁶ The process of handling asylum applications is made up of several stages:

During the initial stage, the asylum seeker undergoes “registration and identification,” which is intended to confirm identifying information and collect identifying data. If at the end of the identification process the RSD Unit determines that the applicant “is not who he claims to be, or is not the citizen of the country of which he claimed to be a citizen,” the head of a team inside the Unit can reject his application outright.¹⁷ If the request is not rejected at this stage, the RSD Unit conducts a full asylum interview, in the language of the applicant or another language he understand, if needed, through a translator.¹⁸

During the second stage, the RSD Unit can reject the asylum request if the applicant is the citizen of a country concerning which the Unit has a legal opinion that it constitutes a safe country. The request can also be rejected if the applicant is found to be not credible, or if their application does not provide a minimal legal or factual ground for granting political asylum.¹⁹

An asylum application that is not rejected is forwarded to the full review of the Advisory Committee on Refugee Affairs. This Committee is headed by a chairman appointed by the minister of justice,²⁰ and includes representatives from the Ministry of Justice, Ministry of Foreign Affairs, and a representative of the PIA of the Ministry of Interior. The Committee discusses the case of the asylum seeker based on the information presented to it by the RSD Unit and forwards its

¹⁶ Ibid.

¹⁷ Article 2 of the Regulation Concerning Handling Asylum Seekers.

¹⁸ Articles 4 and 4C of the Regulation Concerning Handling Asylum Seekers.

¹⁹ Article 6 of the Regulation Concerning Handling asylum Seekers.

²⁰ As of 2022, there are three chairpersons of the Advisory Committee on Refugee Affairs: Adv. Zion Amir, Adv. Efrat Kaplan, and Adv. Doron Barzilai.

recommendation to the minister of interior, who decided whether to accept or reject the recommendation of the Committee, and whether to grant the asylum seeker refugee status in Israel.

According to the Refugee Convention, a person is considered a refugee if they are able to prove that they are persecuted in their homeland based on the five grounds for persecution mentioned in the Convention: race, religion, citizenship, membership in a particular social group and political opinion.²¹ A person who is persecuted in his or her country for other reasons (for example, they committed a criminal offense and are wanted for trial) will not be considered a refugee under the Refugee Convention, although in some cases they may be eligible for protection from deportation under the non-refoulement principle or based on other grounds. The rate of recognition of refugees in Israel is extremely low. Over 99 percent of the applications are rejected. According to a report authored by HIAS Israel, which is based on information provided to the organization following Freedom of Information requests, alongside official data issued by the Ministry of Interior,²² between 2011-2019, Israel rejected 7,091 requests outright; 9,686 requests were rejected outright or through the expedited procedure,²³ and only 200 requests were forwarded to the Advisory Committee on Refugee Affairs. Out of those requests, 39 asylum applicants were granted refugee status, while 161 were rejected.²⁴

²¹ Article 1 of the Refugee Convention states that a person who faces persecution does not need to necessarily hold a certain political position, but they may be persecuted due to a political position ascribed to the individual by the persecutor. See Administrative Appeal 1440/13 Chima vs. the Ministry of Interior, para 26 of the decision of Justice Melcer (ruling issued on August 7, 2013).

²² See HIAS report mentioned in fn. 1.

²³ Data of the Population and Immigration Authority in response to a Freedom of Information request filed by HIAS Israel. Data provided on January 13, 2020.

²⁴ See HIAS report in fn. 1.

Eritrean Asylum Seekers and Their Grounds for Asylum

According to data of PIA, as of September 30, 2022, Israel is home to 19,490 Eritrean citizens.²⁵

Since 2006, in accordance with its stated policy, the State of Israel does not deport Eritrean citizens to their homeland, as it recognizes that their deportation may endanger their life or subject them to persecution. Thus, Israel follows the policy adopted by most of the world's countries, who do not deport Eritreans to Eritrea.²⁶

The grave violations of human rights in Eritrea have been extensively documented, and it is considered one of the world's most repressive dictatorship. For example, the Israeli High Court of Justice (Henceforth: HCJ) stated this in a ruling:

Since gaining its independence, no democratic elections were held in Eritrea, and the president, who also serves as the prime minister and supreme commander of the army, remains in power since then. The national assembly of Eritrea is made up of one party only (PFDJ). In Eritrea, according to reported of the UN, the authorities systematically and persistently violate human rights. These violations include executions

²⁵ Population and Immigration Authority, [Data on Foreigners in Israel – Third Issue for 2022](#), October 2022 (Hebrew). This represents a dramatic drop in the number of Eritrean citizens residing in Israel, compared to an all-time high of [35,833 in 2013](#) (Hebrew). Since then, thousands of Eritrean asylum seekers willingly departed the country each year, most of them to Western countries (chief among them Canada, which maintains a resettlement program for refugees who meet certain criteria). Thus, in 2018, 2,270 Eritrean asylum seekers left Israel; in 2019, 2,239 Eritrean asylum seekers left Israel; in 2020, 606 Eritrean asylum seekers left Israel, and in 2021, a total of 1,340 Eritrean asylum seekers left Israel. See Population and Immigration Authority, [Data on Foreigners in Israel – Concluding Edition for the Year 2021](#), February 2022 (Hebrew). These data do not include the number of children born to asylum seekers in Israel.

²⁶ European Asylum Support Office: Country of Origin Information Report, September 2019, p. 53; US Department of State, Bureau of Democracy, Human Rights and Labor: 2019 Country Reports on Human Rights Practices: Eritrea; United Kingdom: Home office, Country Policy and Information Note Eritrea: National service and illegal exit Version 5.0 July 2018

without trial, shoot-to-kill policies for anyone trying to leave the country's borders, enforced disappearances of citizens and detentions that are not reported to the families; arbitrary detention and imprisonment; widespread use of physical and psychological torture during police, army and security forces' interrogations; inhumane detention conditions; compulsory military service for prolonged and open-ended periods during which authorities resort to cruel punishments that at times lead to suicides; violation of civil rights such as freedom of expression, assembly, association, freedom of religion and movement; discrimination of women and sexual violence; violation of the rights of children, including through their recruitment [into the military], and more...²⁷

Eritrean citizens are forcibly recruited for open-ended military or national service, which according to the UNHCR and many countries, has characteristics of slavery. A UN Commission of Inquiry on Human Rights in Eritrea determined in 2015 that Eritrea systematically violates the basic rights of citizens, exploits them and keeps them in conditions of slavery for their entire lives under the obligatory military service scheme.²⁸ The committee's report from 2015 is the most detailed source on the matter, and reports from more recent years found that no significant change has occurred since the publication of said report when it comes to recruitment methods, length of service, conditions of service, and the modes of punishment of deserters. Thus, a report of the U.S. Department of State from 2021 pointed to the

²⁷ High Court of Justice ruling 7146/12 Adam vs. the Knesset, para 6 of Justice Arbel's ruling, issued on September 16, 2013.

²⁸ Human Rights Council, Report on the detailed findings of the Commission of Inquiry on Human Rights in Eritrea, A/HRC/29/CRP.1, 5 June 2015, para.

continued escalation of human rights abuses in Eritrea, finding that military service essentially constitutes open-ended hard labor, which sometimes lasts for over 20 years.²⁹

In general, obligating citizens to perform military service is legitimate sovereign act of the state, despite inherently constraining the liberty of those serving. However, the UN Commission of Inquiry set a number of basic norms of international law that must apply to compulsory military service for it to be considered legitimate, including: service in accordance with the law without being subjected to arbitrary treatment or discrimination; a ban on child recruitment; setting procedures for conscientious objectors; and prohibition to deprive those recruited of their rights and liberties in an unreasonable and disproportionate manner, when the violation of rights and liberties is required by national security needs.³⁰ The UNHCR guidelines concerning asylum requests related to military service³¹ also instructs that if a person will be subjected to severe punishment, a threat to his life, and violation of his basic human rights due to his defection or refusal to serve in the military, the applicant ought to be considered as persecuted under the Refugee Convention.³² When the service conditions are so severe that they amount to

²⁹ US department of state: 2021 Country Reports on Human Rights Practices: "[Eritrea](#): The country's national service obligation amounted to a form of forced labor. By law all citizens between ages 18 and 50, with limited exceptions, must perform national service. The national service obligation legally consists of six months of military training and 12 months of active military or civilian national service, for a total of 18 months, or, for those unfit to undergo military training, 18 months of service in any public and government organ. During times of emergency, however, the government can suspend the 18-month limit, which it did in 1998 with the outbreak of the war with Ethiopia and has not rescinded. The result is an indefinite extension of the duration of national service, in some cases for more than 20 years; discharge from National Service is arbitrary and procedures for doing so remain opaque. Conscripts were employed by all governmental and party-run agencies, including for-profit enterprises, in conditions of forced labor."

³⁰ See fn. 28.

³¹ UNHCR, [Claims to Refugee Status related to Military Service within the context of Article 1A \(2\) of the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees](#), November 12, 2014.

³² *Ibid.*, p. 6: By way of example, disproportionate or arbitrary punishment for refusing to undertake State military service or engage in acts contrary to international law – such as excessive prison terms or corporal punishment – would be a form of persecution. Other human rights at stake in such claims include non-discrimination and the right

torture, cruel or inhumane treatment – the service will be deemed to amount to persecution as well.³³

This applies both to military service in Eritrea and those who have deserted it. While Eritrean law officially obligates all citizens to serve for 18 months,³⁴ in reality, the Eritrean regime has exploited tensions with Ethiopia to open-endedly extend the military service of all service men and women. A person who is drafted in Eritrea does not know when they will be discharged or whether they will ever be discharged. Disciplinary violations result in extreme physical punishments including, oftentimes, imprisonment in inhumane conditions in large metal containers, being kept underground, severe torture, shackling, starvation and more.³⁵ The UN Commission of Inquiry report determined that the violence to which recruits in the Eritrean military are subjected cannot be justified by any security need, and that several of the modes of punishment amount to torture, while others constitute cruel, illegal and humiliating punishments.³⁶ Another report submitted to the UN Human Rights Council by a special rapporteur in May 2020 noted that despite repeated announcements by the Eritrean regime

to a fair trial right, as well as the prohibitions against torture or inhuman treatment, forced labor and enslavement/servitude.

³³ Ibid., p. 8-9. “In cases involving conditions within the State armed forces, a person is clearly not a refugee if his or her only reason for desertion or draft evasion is a simple dislike of State military service or a fear of combat. However, where the conditions of State military service are so harsh as to amount to persecution the need for international protection would arise. This would be the case, for instance, where the terms or conditions of military service amount to torture or other cruel or inhuman treatment, violate the right to security and integrity of person, or involve forced or compulsory labor, or forms of slavery or servitude [including sexual slavery].”

³⁴ National Service Proclamation of Eritrea no. 83/1995. Issued on October 23, 1995.

³⁵ See fn 30 above from the U.S. Department of State report for 2021: [Eritrean] law prohibits torture. Reports of torture, however, continued, especially against political prisoners. According to UN experts, torture is allegedly common at the Eritrean prison. Former prisoners who have escaped the country have reported being tied up and held upside down on frames, legs and arms bound, while their feet, legs and buttocks were beaten with sticks or wire. In August 2019, Human Rights Watch published a report documenting security forces’ torture, including by beating, prisoners, army deserters, national service evaders, of persons attempting to flee the country without travel documents, and members of certain religious groups.

³⁶ See fn. 29.

concerning its intention to conduct reforms that will shorten the duration of military service and increase the pay of the service people, the conditions of service and its open-ended nature have remained unchanged.³⁷

Currently, those who avoid military service or desert from it in Eritrea, in addition to individuals who leave the country without permission, are considered by the regime to be dissidents. Many teenagers are taken into interrogation and are imprisoned while they are still high-school students, due to the suspicion that they intend to evade military service in the future.³⁸

A report by Amnesty International entitled “Just Deserters: Why Indefinite National Service in Eritrea has Created a Generation of Refugees,”³⁹ described, based on multiple interviews, the punishments to which defectors have been subjected, including prolonged detention without trial, beatings, and shoot-to-kill policies of those who attempt to flee the country unauthorized. In 2017, the UNHCR’s representative office in Israel published an updated guideline concerning asylum requests based on defection or avoidance of national service in Eritrea. According to these guidelines, since 2011, there has been no noticeable improvement in the policies implemented by the Eritrean regime concerning the national and military service, and no change has occurred concerning the consequences of desertion and unauthorized exit of defectors from the country.⁴⁰

³⁷ Human Rights Council, Human Rights Situation in Eritrea – Report of the Special Rapporteur on the situation of human rights in Eritrea, A/HRC/44/23, 11 May 2020, Para. 32

³⁸ See for example: European Asylum Support Office: Country of Origin Information Report, September 2019, p. 53; US Department of State, Bureau of Democracy, Human Rights and Labor: 2019 Country Reports on Human Rights Practices: Eritrea; United Kingdom: Home office, Country Policy and Information Note Eritrea: National service and illegal exit Version 5.0 July 2018

³⁹ Amnesty International, [Just Deserters](#): Why indefinite national service in Eritrea has created a generation of refugees, AFR 64/2930/2015

⁴⁰ UNHCR’s [Updated Position](#) on Refugee Claims based on Draft Evasion/Desertion from the Eritrean National Service, July 2017. Article 27 reads: Punishment for desertion/evasion from national service is carried out extra-judicially and is arbitrary. Detention is the most widespread sanction ranging between a few months and a few years.

Many asylum applications of Eritrean citizens are based on the grounds of being perceived by the Eritrean regime dissidents who voiced opposition to the military service and the ruling authority in Eritrea by leaving their country without authorization while being of age for compulsory service, or by defecting from the Eritrean military during their service and fleeing the country. In legal terms, the ground for asylum of most Eritrean asylum seekers is “persecution based on an attributed political opinion,” which is part of the grounds for persecution based on “political opinion” in the terms used by the Refugee Convention. When examining the existence of such ground for asylum, the relevant question **is not** whether the asylum seeker necessarily **meant** to oppose the regime through his or her defection, but whether **the persecutor, the regime, perceives the defection as political opposition.**⁴¹ Therefore, if the regime in Eritrea attributes political or ideological opposition to a person who fled the country, then this person is considered to be persecuted based on their political opinion, and they will meet the conditions of the Refugee Convention.

Many scholars have pointed out that because Eritrea views the military service as a tool to educate its citizens to be unified, loyal and in solidarity, avoidance, or defection from the service leads to accusation of disloyalty and even betrayal on the part of the defector. If the service is intended to educate and fulfil the ideology

There is lack of guidelines or policy on the length or terms of punishment although it has been suggested by sources that deserters from the military are subject to stricter punishment than evaders or deserters from the civilian sector, especially of those whose occupation is needed by the state. Detention conditions in Eritrea are extremely harsh, characterized by overcrowding, lack of food, water, sanitation, and medical services. Some are detained in underground prison cells and shipping containers without light, ventilation, or protection from extreme temperatures. Use of physical and psychological violence amounting to torture, cruel and inhumane and degrading punishment is prevalent and systematic. Following detention, conscripts are returned to national service or military training if they have not completed it. Military conscripts can also expect further arbitrary and harsh punishments when they are returned to their unit.

⁴¹ See Administrative Appeal Chima, fn. 22.

of the ruling party, then defection from the service is considered by the regime as a form of political opposition.⁴²

Many countries have adopted this interpretation of the Refugee Convention, and therefore citizens of Eritrea are recognized as refugees at very high rates across the world: **as of 2021, the recognition rate of Eritrean citizens as refugees in Europe stood at 81 percent.**⁴³ In the United Kingdom, 97 percent of Eritrean asylum seekers are recognized as refugees,⁴⁴ in Belgium 85.2 percent,⁴⁵ in Switzerland 71 percent gain refugee status (while 21% more gain complementary protection, which grants them nearly the same rights as those of recognized refugees),⁴⁶ Sweden recognizes about 64 percent of Eritreans as refugees,⁴⁷ while in Italy, the recognition rate stands at 53 percent (and 17 percent more gain complementary protection).⁴⁸

In Israel, on the other hand, the Ministry of Interior adopted an extremely narrow interpretation of the Refugee Convention, according to which desertion from the Eritrean military does not, in general, raise concerns of persecution based on political outlook. Over the years, this interpretation led to the mass rejection of nearly all asylum applications of Eritrean citizens. Due to gaps in the information

⁴² Kibreab G. The National service/Warsai-Yikealo Development Campaign and forced migration in post-independence Eritrea, *Journal of Eastern African Studies*, 2013, Vol. 7, no. 4. 630; Muller R. T. From rebel governance to state consolidation – Dynamics of loyalty and the securitization of the state in Eritrea, *Geoforum* 43 (2012) 793. See also the updated guidelines of the UNHCR from 2017, fn. 41. articles 38-39 state: Given the outsized role of national service in the economy and the militarization of society, evading/deserting from national service is a political act that defies the legal order and the authority of the Government. While evasion/desertion might not be meant as a political statement by the individual, it could nevertheless be perceived as such by the authorities, which thereby attribute to him a political opinion... It follows that evaders/deserters from national service are likely to be imputed a political opinion since the act of evasion/desertion from the national service is considered a political statement

⁴³ European Union Agency for Asylum, [Latest Asylum Trends - Annual Overview 2021](#)

⁴⁴ <https://asylumineurope.org/reports/country/united-kingdom/statistics/>

⁴⁵ <https://asylumineurope.org/reports/country/belgium/statistics/>

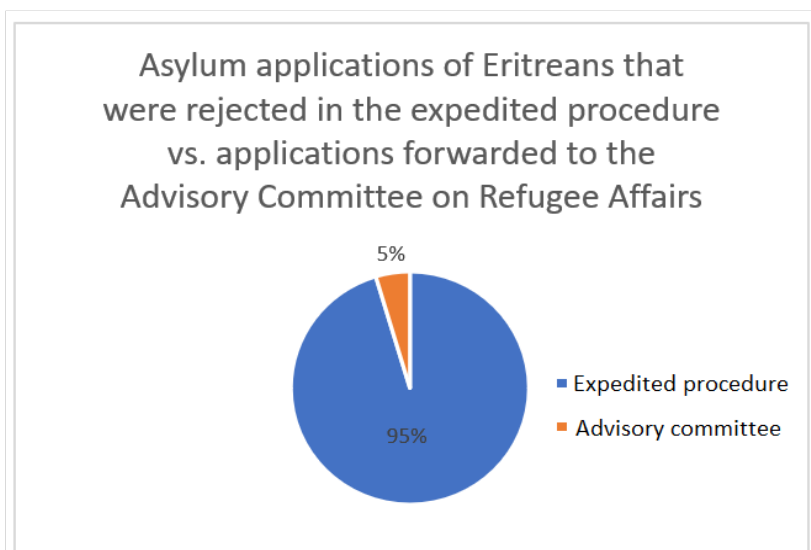
⁴⁶ <https://asylumineurope.org/reports/country/switzerland/statistics/>

⁴⁷ <https://asylumineurope.org/reports/country/sweden/statistics/>

⁴⁸ <https://asylumineurope.org/reports/country/italy/statistics/>

provided by the Ministry of Interior over the years, it is not possible to know the exact number of Eritreans who have been recognized as refugees in Israel. Based on a response to a Freedom of Information request provided to HIAS Israel, as of December 2021, Israel granted refugee status to **only 16 Eritreans** after reexamining their asylum cases. Those 16 individuals joined a handful of Eritrean asylum seekers recognized prior to this date. Since the first Eritrean asylum seekers escaped to Israel and till this day, **less than half a percent of Eritrean asylum seekers were recognized as refugees by Israeli authorities.**⁴⁹

In addition, the examination of asylum applications of Eritrean citizens (similarly to most other asylum requests) is carried out, almost by default, in the expedited procedure, without the applications ever being



examined by the Advisory Committee on Refugee Affairs.⁵⁰ According to data provided by PIA under the Freedom of Information Act, as of the end of 2021, over 95 percent of the asylum application of Eritrean asylum seekers were rejected through the expedited procedure, without being examined by the Advisory Committee on Refugee Affairs.⁵¹ It bears repeating that this procedure ought to be

⁴⁹ Response of Mali Davidian, the official in charge of Freedom of Information at the Population and Immigration Authority to Adv. Nimrod Avigal of HIAS, dated December 8, 2021.

⁵⁰ See fn 15 above, article 6 of the Regulation for Handling Asylum Seekers.

⁵¹ See HIAS Israel, fn. 1 above.

reserved only for cases when the asylum application does not provide even minimal legal or factual grounds for being entitled to asylum.⁵² Despite this, Israel rejects through this procedure the asylum applications of Eritrean citizens as well, despite the abundance of reliable information concerning grave violations of human rights occurring in Eritrea, and the fact that its citizens are recognized as refugees in high numbers across the world.⁵³

The Examination of Asylum Applications of Eritrean Citizens in Israel: Legal and Historical Background

As mentioned above, for years, the State of Israel has applied a non-removal policy concerning Eritrean asylum seekers and does not deport Eritreans back to their homeland. Until 2013, Eritrean asylum seekers were entirely denied access to the asylum system, prevented from filing individual asylum claims. Thus, in 2009, in response to an appeal by the Hotline for Refugees and Migrants (Henceforth: HRM, named, at the time, the Hotline for Migrant workers) demanding that Eritrean and Sudanese citizens be allowed to file asylum applications, the Director of the RSD Unit, Haim Ephraim, stated that “at this stage, the RSD Unit does not handle foreign subjects whose citizenship is Eritrean or Sudanese; I would like to remark that these subjects are in any case eligible for temporary protection.”⁵⁴

⁵² Administrative Appeal 1440/13 Christopher Chima vs. the State of Israel – Ministry of Interior. Ruling issued on August 6, 2013. “The rule is that the respondent [Ministry of Interior] must examine applications for political asylum and rule on them with the appropriate carefulness and sensitivity (see for example, the ruling of my colleague, Justice Danziger, in the case of Gonzales in para 20) and after an in-depth and extensive interview conducted with the asylum seeker by an interviewer who was trained to examine these types of applications, both when it comes to the factual and legal basis **and after a hearing before the Advisory Committee**, which forwards its recommendation to the minister of interior who makes the final decision regarding the request. [Emphasis added]

⁵³ See fn. 30.

⁵⁴ Haim Ephraim, the Director of the RSD Unit, in a letter to the Hotline for Migrant Workers dated December 10, 2009. See also Administrative Appeal 8908/11 Asafo vs. Ministry of Interior (ruling issued on July 17, 2012). We

In the last four months of 2012, the HRM conducted 963 interviews with Eritrean and Sudanese citizens who were, at the time, jailed in Saharonim Prison in open-ended detention under the Anti-Infiltration Law. The interviews indicate that Israeli authorities did everything in their power to prevent them from applying for asylum, and instead, encourage them to leave to a “third country” (other than their homeland).⁵⁵ During 2013, HRM submitted 320 asylum applications on behalf of those detained, and this resulted in the State allowing asylum seekers to file claims from within Saharonim Prison and outside of it.⁵⁶

However, the applications were rejected, in line with the legal opinion concerning the eligibility of deserters from national or military service in Eritrea, which was drafted by the Legal Advisor of PIA, Adv. Daniel Solomon. This legal opinion was used and is still being used by the RSD Unit when examining asylum applications of Eritrean citizens. According to the legal opinion, as applied by PIA – desertion from the Eritrean military does not constitute grounds for receiving political asylum in Israel, since it has no relation to the five grounds for asylum found in the Refugee Convention, and thus asylum applications based solely on desertion will be rejected.⁵⁷

should remark that it appears that the Ministry of Interior continues to hold this position and uses the non-removal policy toward Eritrean citizens to justify rejecting their requests en masse. Only recently, as part of an appeal dealing with an Eritrean defector who was tortured, wounded and jailed during his military service for attempting to defect, did the Minister of Interior, Ayelet Shaked, determine that as long as the state of Israel does not deport asylum seekers back to their country, it is unjustifiable to claim that the rejection of their asylum applications is unreasonable. “As of this moment, there is no intention to forcibly remove the applicant to Eritrea, so there isn’t even the slightest possibility that rejecting the application will lead to a violation of the non-refoulement principle. Given this state of affairs, it is doubtful that the rejection of the application will produce an extremely unreasonable result, in any case.” See Appeal (Jerusalem Tribunal) 3490/21 John Doe vs. the Population and Immigration Authority (ruling yet to be published).

⁵⁵ Human Rights Watch and the Hotline for Migrant Workers, [Israel: Detained Asylum Seekers Pressured to Leave](#), March 2013.

⁵⁶ Hotline for Migrant Workers, [The Only Way Out is By Going Home](#), November 2013 (Hebrew).

⁵⁷ Population and Immigration Authority, the legal opinion concerning Eritrean subjects dated April 24, 2013. See also Appeal 1010/14 (ruling issued on February 14, 2018), p. 11 of the ruling.

Additionally, in 2015, PIA suddenly began applying an article in the Regulation for Handling Asylum Seekers, which allows to reject outright asylum applications filed over a year since the asylum seeker entered Israel.⁵⁸ Therefore, Eritrean asylum seekers who filed their applications in 2015 were rejected outright based on this article. The Court of Appeals voided these rejections, determining that since Eritrean and Sudanese asylum seekers were barred from applying for asylum for many years, it is impermissible to reject their asylum claims based on the “one year” article without providing them with prior warning.⁵⁹ Following this ruling, the Ministry of Interior stopped rejecting the asylum applications of Eritreans based on the “one year” rule, but did not re-open the asylum claims of Eritrean citizens who were rejected based on this ground. Only after HIAS Israel filed a petition on this matter were the applications reopened.⁶⁰

Over the following years, the Ministry of Interior rejected thousands of asylum claims of Eritrean citizens based on the 2013 legal opinion authored by Adv. Solomon. The rejection decisions were worded identically to all asylum applicants. The rejection stated that asylum requests based on desertion from the Eritrean military do not meet the criteria for well-grounded fear of persecution under the Refugee Convention:

According to the decision of the minister of interior, evasion of army service or deserting of army duties in and of themselves, or with no

⁵⁸ Fn 15, article 4 of the Regulation. It is worth mentioning that in 2012, Israel completed the erection of a fence along its border with Egypt and only a handful of asylum seekers were able to cross it between 2013 to 2016, the last year when asylum seekers managed to enter through the Egyptian border. According to [data](#) of the Immigration Authority, only 302 asylum seekers crossed the border from Egypt between 2013 to 2016 (43 in 2013, 21 in 2014, 220 in 2015 and 18 in 2016). Since 2016 and until the publication of this report, not a single asylum seeker has been able to cross the Egyptian border.

⁵⁹ Appeal (Tel Aviv Tribunal) 1279/16 A. G. N. vs. the Ministry of Interior. Ruling issued on November 6, 2016.

⁶⁰ Administrative Appeal (Jerusalem Tribunal) 57376-18-01 African Refugees Development Center and HIAS-Israel vs. the Ministry of Interior. Ruling issued on February 11, 2018.

connection to any of the grounds listed in the Refugee Convention, are insufficient to establish grounds for political persecution in according with the convention, and requests founded solely on draft dodging or desertion from the Eritrean army do not constitute a foundation for refugee status.

This mass rejection of asylum applications based on this legal opinion resulted in a major disparity between the high recognition rate of Eritreans as refugees worldwide, and their near-total rejection of their applications in Israel.

In June 2014, the Refugee Rights Clinic at Tel Aviv University and HRM filed an appeal against the rejection decision of one of the many asylum applications based on the abovementioned legal opinion.⁶¹ On September 4, 2016, the Court of Appeals ruled on the appeal, determining that the position of PIA, according to which desertion from the Eritrean military cannot constitute “attributable political opinion” under the Refugee Convention is an **erroneous** interpretation and contravenes international law and HCJ rulings. Therefore, the Court of Appeals ruled that this legal opinion is void.

PIA filed an appeal to the Regional Court against the ruling.⁶² In the appeal, PIA reversed its position, arguing that the legal opinion authored by Adv. Solomon in fact accepts the possibility that defection from military service may lead the regime to attribute a political opinion to the defector. This contradicted the explicit prior arguments of PIA according to which defection has no relation to any of the grounds for asylum under the Refugee Convention. The District Court therefore opined that there is no disagreement between the two sides concerning the

⁶¹ Appeal 1010/14 Mesgna vs. the Ministry of Interior. Ruling issued on September 4, 2016.

⁶² Administrative Appeal (Jerusalem Court) 32641-16-10, Population and Immigration Authority vs. John Doe. Ruling issued on January 26, 2017.

interpretation of the Refugee Convention, ordered the voiding of the ruling of the Court of Appeals, and determined that the case is to be returned to the Court of Appeals to examine what is the burden of proof required to demonstrate that the regime attributes a political opinion to defectors.⁶³

In February 2018, the Court of Appeals issued its second ruling.⁶⁴ In the ruling, the adjudicator cited the position of the UNHCR (which was filed as part of the initial appeal and criticized the position of PIA), adopting its view that it is a known fact that the Eritrean regime attributes an opposition political outlook to those deserting military service. Therefore, this is sufficient to establish the causal link required under the Convention.

The Court of Appeals rejected the position of PIA according to which the asylum seeker must provide evidence that he or she will personally face persecution by the regime that will attribute a political opinion to him. The Tribunal ruled that such a requirement sets a higher standard of proof than the one required under refugee laws. Based on this, in addition to the personal circumstance of the appellant who was jailed in inhumane conditions and tortured due to an attempt to desert from the military (a fact that proves he was previously persecuted by the regime that perceived him as an opponent and punished him accordingly), the adjudicator ruled that the asylum seeker ought to be recognized as a refugee due to the political opinion attributed to him by the Eritrean regime. The State, on its part, initially refused to accept the verdict and appealed for a second time to the District Court.⁶⁵ However, on the eve of the hearing the State asked for a stay to reexamine its legal position.

⁶³ Ibid.

⁶⁴ Appeal (Jerusalem Tribunal) 1010/14 Mesgna vs. the Ministry of Interior. Ruling issued on February 15, 2018.

⁶⁵ Administrative Appeal 12154-04-18 State of Israel vs. John Doe. Filed on April 9, 2018.

On July 7, 2019, the State announced that it adopted new standards for examining asylum applications of Eritrean citizens who claim to have deserted or evaded military or national service in their homeland.⁶⁶ In addition, the State announced that it will act to reexamine about 3,000 asylum applications of Eritrean citizens that were previously rejected, alongside about 10,000 asylum applications that are yet to be examined. The State remarked that every request will be reviewed, and if needed, an interview will be conducted and a new legal opinion will be formulated, and later the case will be determined based on the relevant Regulation.

The representative of the Ministry of Interior also stated that to draft the new standards, the RSD Unit reviewed hundreds of asylum interviews conducted with Eritrean asylum seekers. Based on these interviews, the Advisory Committee on Refugee Affairs created a list of “characteristics,” which are central common claims that regularly appear in asylum applications of Eritrean citizens.

However, in the document detailing the new standards, the State reverted to its initial position – despite it being rejected by the Court of Appeals – according to which merely a defection from military service does not necessarily justify recognizing an Eritrean citizen as a refugee. Therefore, an Eritrean who deserted the military will only be recognized as a refugee if the defection was accompanied by “additional and extraordinary circumstances, or when the defection has a clear, prolonged and pronounced ideological aspect.”

To clarify these general concepts, the standards document sets ambiguous tests, some of which have remained classified, which allegedly distinguish between circumstances when a person is recognized as a refugee, and when his or her application will be rejected. In reality, this document does not substantially

⁶⁶ [Update statement](#) (Hebrew) of the State in Administrative appeal 12154-04-18 from July 7, 2019.

contribute to clarifying the legal situation of Eritrean asylum seekers. For example, according to the standards document, a deserter from the Eritrean military may be recognized as a refugee if he or she were “exposed to severe harm in Eritrea based on a unique background” or if there are “unique circumstances concerning his military or national service, or actions that he carried out in the public sphere against the regime in Eritrea.”⁶⁷

During 2020 and 2021 various adjudicators at the Court of Appeals deliberated on appeals filed against the rejection of asylum claims of Eritrean citizens, which were all issued after PIA began examining the applications in line with the “updated” standards.⁶⁸

In some of the appeals, the appellant argues that the new standards are illegal, since they essentially reiterate the faulty legal position found in the legal opinion authored by Adv. Solomon, which had been rejected by the Court of Appeals.⁶⁹

In one of the legal proceedings concerning one of the appeals, the Ministry of Interior described how the new standards were developed.⁷⁰ The Ministry admitted that the standards document that was presented to the District Court as a “new” policy, took as its starting point the 2013 legal opinion of Adv. Solomon –

⁶⁷ Ibid., p. 5.

⁶⁸ It is important to note that most asylum seekers whose asylum applications are rejected can not afford to hire the services of an attorney who can appeal the unjust rejection of their application. The decision to reject asylum claims based on the “new” standards began being handed out in mid-2020, the peak of the COVID-19 pandemic in Israel and the lockdowns imposed due to it. These lockdowns exposed the injustice and damage that a government policy that refused to grant asylum seekers legal status and social rights in Israel. The social crisis and closure of the major sectors employing asylum seekers, created grave mental and economic hardship, food insecurity, evictions from homes, and the adoption of unhealthy coping strategies by asylum seekers attempting to survive without income. See more in the report by ASSAF (Aid Organization for Refugees and Asylum Seekers in Israel), [Staring into the Abyss – Asylum Seekers in Israel During COVID-19](#), March 2021.

⁶⁹ See for example Appeal (Jerusalem Tribunal) 3353/20 John Doe vs. the Ministry of Interior (ruling issued on June 21, 2021); Appeal (Jerusalem Tribunal) 1128/21 John Doe vs. the Immigration Authority (ruling issued on January 6, 2022); Appeal (Jerusalem Tribunal) 1045/21 John Doe vs. the Population and Immigration Authority (ruling issued on December 16, 2021).

⁷⁰ Appeal 3689-20 John Doe vs. the State of Israel – Population and Immigration Authority (ruling yet to be issued).

the one that was ruled to be in violation of the Refugee Convention. Building on this starting point, the Advisory Committee on Refugee Affairs reviewed hundreds of asylum applications and multiple sources of information concerning Eritrea and examine whether they include additional “special circumstances” or unique cases that have not been previously considered that should be added to the new standards document. This means that the Committee did not examine whether the central elements that appear in most asylum cases of Eritrean asylum seekers, or in the additional sources of information, constitute grounds for receiving refugee status under the Refugee Convention. Instead, the Committee used as a starting point the faulty and previously voided legal opinion, according to which these characteristics are insufficient for recognizing a person as a refugee, and only examined whether there are extraordinary and unusual cases in which this assumption of ineligibility for refugee status does not hold.⁷¹ Thus, the assumption of the Ministry of Interior appears to be that the majority of Eritreans cannot possibly be legitimate refugees, and therefore, additional, unique elements, on top of desertion of military service, need to be found for an Eritrean to deserve refugee status.

Additionally, the documents provided by the Ministry of Interior exposed that the review of sources of information by the Ministry was carried out in a biased and at times utterly wrong manner.⁷² For example, the document ignores the position of the UNHCR concerning Eritrea. Additionally, the RSD Unit focused on distinguishing between common and extraordinary circumstances and did not consider whether

⁷¹ [Documents](#) (Hebrew) provided by the Population and Immigration Authority as part of Appeal 3689-20, John Doe vs. the State of Israel – Population and Immigration Authority (ruling yet to be issued).

⁷² Appeal 3689-20 John Doe vs. the State of Israel, response of the appellant to the response of the Advisory Committee, provided on May 8, 2020.

the persecution described by the asylum seekers in their asylum interviews meets the definitions of the Refugee Convention. The list of “characteristics of claims” that the Advisory Committee generated is used to prove the frequency of certain claims, as “proof” that these claims cannot be “an additional factor” that is required to recognize a person as a refugee, according to the Israeli State. This baseless logic flagrantly misinterprets refugee law.

The bottom line is that the assumption of the Ministry of Interior is that a defector of the Eritrean military, who fled his compulsory and open-ended service in Eritrea, while risking his liberty and life, is not a refugee. The Ministry of Interior continues to uphold this position, although it was rejected by the Court of Appeals, and despite it contravening the accepted interpretation in countries with fair asylum systems, and the position of the UNHCR issued in 2017. The insistence to continue to hold this position leads to the conclusion that as in the past, the Ministry of Interior’s examination of asylum applications till this day is entirely geared toward rejecting them, rather than fairly considering them.

The New Rejections of Asylum Applications – Major Failings

This chapter will document the major and most common failings in the examination of asylum claims of Eritrean nationals, based on an in-depth examination of dozens of asylum cases. The information detailed in the cases below is based on the entirety of documents provided to us by the Ministry of Interior. These documents include the asylum application itself, the protocol of the asylum interview, the opinion of the RSD Unit, the opinion of the chairman of the Advisory Committee on Refugee Affairs, and the decision of the director of PIA.

We should remark that in November 2021, HRM, HIAS-Israel and the Clinic for Refugee Rights at Tel Aviv University addressed PIA, urging it to carry out a proper examination of the asylum claims of Eritrean citizens, in light of the findings of the report concerning the systematic failings in examining the asylum applications of Eritreans. This appeal has yet to be answered as of date.⁷³

Not Carrying Out Second Asylum Interviews

When the State announced in court on July 7, 2019, that it adopted new standards for examining asylum applications of Eritrean citizens, and that it will reexamine previously rejected asylum cases, the State mentioned that in every reexamined application, if the need arises, it will carry out a second asylum interview.⁷⁴

The asylum interviews conducted before the State was forced to reexamine the rejected applications, were based on the erroneous position that defection from the Eritrean military does not fulfil the requirements of the Refugee Convention. The asylum interviews carried out during those years clearly reflect the abovementioned position – the interviews were superficial and ignored relevant information concerning prison conditions in Eritrea, the ongoing arrests and detentions taking place in Eritrea, the political persecution by the Asmara regime of anyone considered an opponent, and more. Additionally, even in cases when the asylum seeker described being tortured or jailed during his military service, the interviewers failed to ask necessary follow-up questions about the conditions of detention, the circumstances, the length of the period of detention, or its consequences. If these questions had been asked, they could have affected the

⁷³ See fn. 6.

⁷⁴ See fn. 66.

conclusions of the interview and lead to recognizing many of the asylum seekers as refugees.

Additionally, some of the interviews were exceptionally brief, to the point that it is impossible to understand what is at the core of the asylum claim of the interviewee.⁷⁵ This problem becomes all the more acute given that many Eritrean asylum seekers entered Israel after being kidnapped and abused at torture camps in Sinai to extract a ransom from their family, and were left with severe damage to their body and mind, memory problems and deep post-trauma, which make it challenging to provide a coherent description, unless the interviewer is sensitive to these challenges and carries out the interview in a structured and trauma-informed, manner.⁷⁶

Additionally, some of the asylum interviews were carried out inside Givon or Saharonim prisons, as the interviewees suffered a great deal of distress due to the open-ended nature of their detention. The fact that only being granted refugee status was grounds for release, at the time, increased the pressure felt by the detainees during the asylum interviews.⁷⁷ Considering these circumstances, the superficial questions asked during the interviews did not allow asylum seekers to fully present their grounds for asylum, and it is impossible, based on their protocols, to even identify those asylum seekers whose cases include “extraordinary circumstances” that would allow to recognize a person as a refugee even under the incredibly narrow interpretation of the Ministry of Interior.

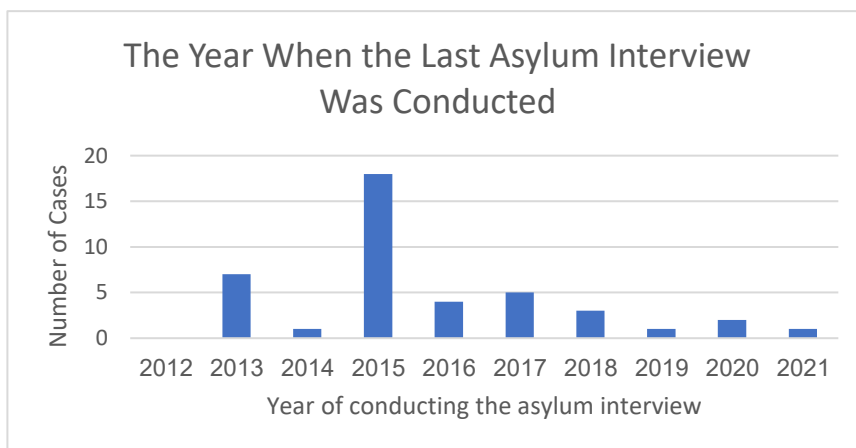
⁷⁵ Seven of the interviewed reviewed by HRM lasted less than an hour, a period of time that does not allow to grasp the life story of the asylum seeker. This is particularly the case considering the time required to confirm personal technical details, sign documents, and the non-simultaneous translation of the interview, carried out through an interpreter.

⁷⁶ Hotline for Migrant Workers, [“The Dead of the Wilderness”: Testimonies from Sinai Desert](#), February 12, 2011.

⁷⁷ Anti-Infiltration Law, 3rd amendment, 2012, article 30 (A)(C)

Finally, some of the asylum seekers began or intensified their political activism in Israel or began only in Israel to openly profess one of the religions prohibited in Eritrea. These activities may contribute to their persecution in Eritrea, but the RSD Unit could not have known about these developments without conducting an additional asylum interview with them since the decade that has passed, in many cases, since the initial interview.

Despite the significant shortcomings in the initial asylum interview, in the dozens of cases we examine, only in four did the Immigration Authority conduct another asylum



interview to the person upon the entry into force of the “new” standards.⁷⁸

Torture, Slavery and Imprisonment – Are There Circumstances Deemed “Extraordinary”?

As mentioned above, although the State of Israel recognizes the abusiveness of the Eritrean regime and that military service there is conducted in slavery-like conditions, the Ministry of Interior treats the military service in Eritrea as a legitimate obligation placed on citizens. Therefore, only if an asylum seeker is able to prove that he was kept or served in “extraordinary” conditions could he or she be recognized as a refugee.

⁷⁸ According to a [Freedom of Information response](#) (Hebrew) the Immigration Authority provided to HIAS on June 1, 2020, it appears that the number of interviews conducted was particularly low: starting on July 7, 2019 (when the “new” standards came into force) and until May 18, 2020, only 26 asylum interviews were conducted.

Upon examining dozens of rejected asylum applications it becomes apparent that **it is nearly impossible to convince the Ministry of Interior that the applicant's cases entailed these “extraordinary conditions” that would justify recognizing an Eritrean as a refugee.** Even in cases when asylum seekers described service in slavery-like conditions, which entailed torture, prolonged detention, abuse, starvation and more, the RSD Unit determined that this was merely a defection from a “citizen’s duty” due to harsh service conditions. These determinations reflect the principle set out in the standards’ document, according to which imprisonment, torture, silencing and denial of the freedom of speech do not entitle a person to refugee status.

In the examples below, asylum seekers described the harsh conditions that characterized their service, conditions that are in line with the extensive documentation on the situation in Eritrea, which results in high recognition rates of Eritreans as refugees around the world. In all the cases below, the RSD Unit determined that the person merely fled from civic duty, which does not make their situation extraordinary compared to other defectors, and hence their asylum applications were rejected.

M. K.

M. K. entered Israel in 2010. He was forcibly recruited into the Eritrean military when he was seventeen during a break from high-school and was not released for ten years. Due to his anger about being prevented from continuing his studies, he refused to carry out orders and was jailed. In his asylum application, filed in 2015, M. K. noted that he was forced to perform hard labor and served in slavery-like

conditions, and was threatened to not try to get released from the service or defect.

In the brief asylum interview conducted with him in 2015, which lasted only 55 minutes, M. K. was not asked about these matters, or about the circumstances that led to his jailing in Eritrea. Despite this, his asylum application was rejected yet again in 2021 through the expedited procedure, after a renewed examination of the case, with a generic rejection decision according to which he avoided a civic duty and did not describe being subjected to extraordinary violence compared to other applicants:

After re-examining the application, in the case before us, even if the applicant's version of events is to be fully believed, there are no [extraordinary] circumstances, as mentioned above. The application concerns merely a desertion from a civic duty of the applicant in his country, and this is due to personal reasons for the most part, and due to the conditions of service, its length, and the general situation in his country.

A. S.

A. S. entered Israel in 2011. During his military service in Eritrea, he asked for time off from the service to visit his father who was dying of cancer. After he was refused, he decided to flee the military base to visit him. He was caught and jailed for three months, during which he was tortured severely, and continues to suffer medical complications as a result.

In 2015, A. S. filed an asylum application and underwent an asylum interview in 2016. During his asylum interview, he was not asked about his incarceration or what happened to him once he was returned to the base. In February 2021, his

asylum application was rejected through the expedited procedure, with the rejection notice portraying his ordeal to “not liking to be in the army.” This was the rejection notice of the RSD Unit:

According to the applicant, the reason he left his homeland, Eritrea, is because he did not want to continue with his military service.

According to the applicant, he served in the army between 2006 and 2011.

According to him, he did not like being in the military, and after failing to return to the service in one of his breaks in 2010, he received a punishment of incarceration, starting in September and ending in December of 2010.

According to him, after he was released from detention, he returned to his base until he deserted and exited his country.

Although A. S. described the harsh punishments, he suffered due to his refusal to carry out the orders of his commanders, and although this type of refusal is perceived by the Eritrean regime as political opposition and a rebellion against the system, which demands its subjects obey it without question, his asylum application was rejected, claiming that he deserted his civic duty of military service due to “mostly personal reasons.”

G. T.

G. T. entered Israel in 2011 and underwent an asylum interview in 2018, when he was held in the Holot Detention Center. In his asylum interview, G. T. recounted that he was jailed after attempting to desert military service. He described that he fled the military due to the dictatorship in Eritrea, and that during his incarceration,

he saw sick people being beaten and tortured, starving, going to the bathroom chained to one another.

G. T. was barely asked by the interviewer about his period in detention, to which he points at the major reason for his escape from Eritrea. He was not asked about the torture he suffered during the detention, or how he managed to finally desert from the service. These questions could have shed light on the conditions in detention, which in cases when they arise to torture, slavery-like conditions and severe punishment, would buttress the claim that defection from military service resulted in persecution by the regime.

In July 2020, G. T.'s application too was rejected, with the same generic rejection statement, according to which his application concerns desertion of civil duty, and does not include anything but personal or general reasons concerning the dictatorship in Eritrea:

The application is entirely about a prolonged desertion of the civic duty of service in his country, due to personal reasons, and the main one being that according to him, he did not want to join the military due to the prevalent service conditions, and due to issues related to the general situation in his country.

Ignoring Relevant Information in the Rejection Decisions

As documented, the Ministry of Interior examined the asylum claims in a biased and superficial manner. Substantive ideological claims were labeled as “personal reasons;” detention in inhumane conditions and tortured were deemed “not extreme or severe punishment;” and opposition to the dictatorship based on political grounds was cast as “general reasons.”

This handling of asylum claims manifests in ignoring or narrowly interpreting relevant facts that the asylum seekers mentioned during their asylum interviews. This information would be omitted from the RSD Unit's decision concerning the asylum claim, or purposefully misinterpreted.

D. K.

D. K. entered Israel in 2011 and filed an asylum claim in 2015. According to his application, he was drafted into the Eritrean military in 1998, with the outbreak of the war against Ethiopia, as a medic. After the disappearance of 15 ministers who opposed the regime,⁷⁹ D. K. stated in a military gathering that the jailing of the ministers was unjustified. In response, he was threatened that he will be murdered. Later, following the defection of his wife from the military, he was jailed for an entire year. D. K. was not asked a single question about the conditions of detention in the military or what happened to him during his year in prison, but he described at length how a year after his release, he was demoted, was abused, and had his pay withheld. This is how D. K. addressed the matter in his asylum interview:

Question: After a year they let you out?

Answer: After a year that I was in prison, people in the military came and gave me a warning. If you say or speak the way you did before, you will not remain alive. This was in 2002 and then I returned to my regular base, and I was demoted, and my responsibilities stayed the same, but they demoted me, and they wouldn't give me the salary. I used to get leave once a year,

⁷⁹ United Nations Human Rights Office of the High Commissioner, Eritrea: 15 years later still no information on jailed senior politicians and independent journalists (16.9.2016), זמין בקישור: <https://www.ohchr.org/en/2016/09/eritrea-15-years-later-still-no-information-jailed-senior-politicians-and-independent>.

but they wouldn't let me leave like I used to, and I was frustrated, and my life was messed up.

Q: You were released from prison in July 2003, and until the 4th months in 2011, did something happen to you in the military?

A: All the time they would watch and follow me, and I wouldn't get my salary. I was in trouble. They watched me and I could not meet people or speak to soldiers. They would search for me.

The rejection decision of D. K.'s asylum application, which was delivered to him in January 2021, made no mention of the death threats after he spoke up during the gathering, or the consequences and abuse he suffered after his release from prison. The rejection decision completely distorts his statements, and contrary to what he stated in the interview, the rejection claims that he did not describe any event that may attest to being suspected of opposing the regime. The decision read as follows:

According to the applicant it appears that he was warned about speaking up during a gathering of soldiers concerning the arrest of the G-15 [dissident ministers]. However, he was not jailed following this, and hence this indicates that he was not suspected at the time of opposition to the regime... In the following eight years of service, the applicant made no mention of any event that attests to him being suspected of being a dissident.

I. A.

I. A. was forcibly recruited into the military when he was seventeen. He served in the military for over 12 years, during which he became a commander and rose the ranks. After an argument with his commanders, he deserted the service, but because he was not asked for any details concerning the event, it is unclear what led to his defection and escape from the country. During the interview, I. A. mentioned that he will be in great risk if returned to his country, due to his position as a commander in the military. He believed that this position would increase the threat to him and will cost him his life. He described it thus in the asylum interview conducted with him in 2013:

Q: Are you afraid of returning to your country?

A: Yes.

Q: What or whom are you afraid of?

A: Because of the ruling authority.

Q: What may happen?

A: Everyone says they'll be put in prison. For me, it's different. I was a commander for many years in the military, so they will see me differently. They may kill me.

Q: Is there different treatment of commanders?

A: Yes, they make it harder on you.

In October 2020 his asylum application was rejected for the second time, after a re-examination. The RSD Unit did not give any consideration to the increased risk to I. A.'s life and liberty due to his senior military position. This issue is mentioned

only briefly as part of the circumstances described by him, but the issue is not mentioned at all in the grounds for rejection. His application was rejected because according to the Ministry of Interior, he did not point to any extraordinary circumstances that would establish his persecution under one of the grounds mentioned in the Refugee Convention.

Summary and Recommendations

The handling of asylum applications of Eritrean citizens in Israel requires a substantive shift in perceptions, and an understanding that asylum claims cannot continue to be examined in the manner they have been until today.

The way asylum applications of Eritrean citizens are examined in Israel perpetuates a years-long injustice, which started with preventing Eritreans from filing asylum requests, then hindering the ability to file applications once that became theoretically possible, then continued in carrying out superficial, biased and deficient asylum interviews, and continues to this day in a biased and incorrect legal interpretation of asylum claims. This interpretation leads to rejection of nearly all well-founded asylum claims of asylum seekers who would have been recognized as refugees in any country with a fair asylum system.

To remedy this injustice, and to ensure that a proper and fair examination of asylum cases is carried out, one that conforms with the Refugee Convention and the administrative obligation to examine asylum claims fully, in a proper, fair and in-depth manner, the following steps should be adopted:

- The requirement to present “additional and extraordinary circumstances” or “a prolonged ideological component” to gain refugee status for those who have deserted Eritrean military must be abrogated immediately. These requirements (even if differently worded) were rejected both by the Court of Appeals and the UNHCR.
- The quality of interviews based on which asylum applications are decided must be thoroughly examined. As we have shown, even in cases that apparently meet the incredibly high standard of the Ministry of Interior, the

asylum applications were rejected because the interviewers failed to properly examine the history of persecution of the asylum seekers. In cases indicating that the asylum interview and rejection decisions were made based on an incomplete factual foundation, additional interviews should be conducted, while considering the time that has passed since the original interview.

- The Ministry of Interior must stop rejecting asylum applications en masse using the expedited procedure. Applications that show initial legal or factual indications that the asylum seeker may be entitled to protection ought to be examined fully before the Advisory Committee on Refugee Affairs.